

SB538 testimony.pdf

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Position: FWA

MARYLAND STATE FIREFIGHTER'S ASSOCIATION

REPRESENTING THE VOLUNTEER FIRE, RESCUE, AND EMS PERSONNEL OF MARYLAND.



Robert P. Phillips

Chair

Legislative Committee

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SB 538: Workers' Compensation – Occupational Disease Presumptions – Hypertension

My name is Robert Phillips and I am the Legislative Committee Chair for the Maryland State FireFighters Association (MSFA)

I wish to present testimony in favor with amendments of Senate Bill 538: Workers' Compensation – Occupational Disease Presumptions – Hypertension

The MSFA is in favor of and support this bill. We would like an amendment adding 9-1-1 dispatchers to the list of affected employees. Work in the dispatch center is very stressful at best and the toll taken both mentally and physically would be just cause to include them under this bill.

I thank the committee for their time and attention to this important bill and ask that you vote favorable on Senate Bill 405 with an amendment to include the 9-1-1 dispatchers.

I will now be glad to answer any questions, or my contact information is listed above and welcome any further inquiries you might have.

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Uploaded by: Julie Murray

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SB 538 Chesapeake-IWIF Testimony.pdf

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Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to Senate Bill 538

Senate Bill 538 proposes to amend Labor and Employment, § 9-503 by way of removing the need for disablement for firefighters (paid and volunteer) and various advanced life support units (paid and volunteer) with their hypertension diagnosis under Labor and Employment, § 9-503.

The Injured Workers' Insurance Fund and Chesapeake Employers' Insurance have many claims related to hypertension under Labor and Employment, § 9-503 since the inception of the presumption. From 2018 – 2022, the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance had 213 filed claims that included hypertension with an average cost per claim of \$42,631.73. With that said, we have very little data if these claims would be different should no disablement be needed to file the claims as most of these claims filed come with a disablement from a physician (even if it is a very limited disablement for a new medication). Very few claims are denied based on lack of disablement, and if they are, an injured worker is eligible to refile a new claim once they have disablement.

Of concern with this bill is that it creates a conflict with several other parts of the Labor and Employment Code as disablement is the Act's defining characteristic for statute of limitations purposes and to ascertain the liable employer and insurer. An occupational disease, by definition in Labor and Employment, § 9-101, "means a disease contracted by a covered employee: (1) as a result of and in the course of employment; and (2) that causes the covered employee to become temporarily or permanently, partially or totally incapacitated". (Incapacitation and disablement are equivalents via case law.) Without disablement, Labor and Employment, § 9-711 is invalidated for purposes of the statute of limitations (the employee shall file a claim within 2 years of disablement or when the covered employees/their dependents had actual knowledge the disablement was caused by employment). More importantly, disablement also establishes the responsible employer and insurer under Labor and Employment, § 9-502. Currently, the employer and insurer that is liable for payment of compensation is the one whom employed the injured worker where they were last injuriously exposed before the date of disablement. (*See CES Card Establishment Services v. Doub*, 104 Md. App. 301 (1995)).

Without disablement, employers and insurers would not be aware of whom is the responsible party. This has the potential to create chaos in litigation with an undue burden on the injured workers' last employer. The increased costs (and thereby increasing premium/reserves) would particularly

affect the municipalities and counties with volunteer firefighters as many volunteers were paid firefighters in other jurisdictions before retirement/volunteer firefighting.

Therefore, Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund must respectfully oppose Senate Bill 538.

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Uploaded by: Nancy Egan

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Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

Senate Bill 538 - Labor and Employment - Workers' Compensation – Hypertension

February 21, 2023

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 65 percent of the U.S. property-casualty insurance market, including 90% percent of Maryland’s workers’ compensation market. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 538.

Senate Bill 538 proposes to take an existing presumption of work-relatedness for hypertension in certain first responders and ratchet it up to an untenable degree by providing that individuals suffering from hypertension *do not have to demonstrate any disability whatsoever* to qualify for the presumption.

Many first responders already enjoy statutory preferences unavailable to the vast majority of claimants, in the form of various presumptions that relieve them of the modest burden of proving the work-relatedness of certain injuries and illnesses. By proposing to eliminate the most fundamental of compensability principles – that an individual be at least partially disabled as a result of the claimed injury or condition – Senate Bill 538 would set a terrible precedent that severely undermines that workers’ compensation system.

For these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 538.

Nancy J. Egan,

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Uploaded by: Brianna January

Position: INFO



Senate Bill 538

Workers' Compensation - Occupational Disease Presumptions - Hypertension

MACo Position:

To: Finance Committee

LETTER of INFORMATION

Date: February 21, 2023

From: Brianna January

The Maryland Association of Counties (MACo) respectfully submits this **LETTER of INFORMATION** on **SB 538**.

SB 538 would greatly alter existing workers' compensation benefits for volunteer and paid firefighters experiencing hypertension, by expanding eligibility and minimizing current requirements. Current law grants volunteer and professional firefighters hypertension as a presumption for worker's compensation, eligible by death or disability. SB 538 would remove that death and disability eligibility requirement and instead grants the benefit even if the claimant is still able to work and even if they choose to continue doing so – a dramatic rethinking of the core notion of workers' compensation.

Furthermore, the bill would only require a basic physical examination to qualify for the benefit, negating the existing presumption that a diagnosis of hypertension is related to the claimant's line of work in firefighting. In doing so, the bill essentially changes the current statute of limitations to claim benefits, making it near impossible to determine when hypertension started and whether it is attributable to firefighting or other factors like genetics and diet, as growing scientific evidence suggests.

Presumably, with the changes under SB 538, counties would experience an influx of volunteer and professional firefighters seeking workers' compensation benefits for hypertension, the vast majority of which would be approved for lifelong benefits under the new eligibility requirements of the bill.

MACo has a long history of opposing establishing presumptions for workers' compensation benefits. Public employers find themselves compensating for lifelong exposures where there is no material evidence to support the workplace as the origin of the illness. Courts have consistently ruled against employers on issues of presumptions, rendering these presumptions effectively irrebuttable. SB 538 would contribute to that imbalance.

As such, counties respectfully ask that the Committee consider the information outlined in this letter when reviewing SB 538.