MICHIGAN CHAMBER OF COMMERCE

To: House Labor Committee

From: Wendy Block, Michigan Chamber of Commerce

Date: October 23, 2007

Re: Government-mandated Worker's Compensation Benefits

The purpose of this memorandum is to inform you of the Michigan Chamber's opposition to House Bill 4401. The Michigan Chamber fully supports the brave work of firefighters, and we recognize the risks they undertake each and every day. However, the Chamber is opposed to HB 4401 because we believe worker's compensation benefit determinations should be made on a case-by-case basis, not by state or federal mandates.

House Bill 4401 erodes the basic principle of the worker's compensation system (i.e., that eligibility should be based on injuries that result out of and in the course of employment) by creating a preference for a class of employees and shifting the burden of proof to the employer. As a result, this legislation would allow firefighters to claim they contracted cancer from exposure to fumes while fighting fires, but without actually having to prove that the cancer was in fact caused by those fires or their work.

In addition, HB 4401 would increase the cost of municipal government at a time when local officials need the Legislature's help in controlling costs. Repeal or reform of PA 312 would be a good place to start, rather than pursuit of a costly worker's compensation mandate.

Furthermore, this legislation opens the door to other employees in other professions, such as teachers, dry cleaners, agricultural operations, industrial occupations, etc., to demand presumptive eligibility. Furthermore, the wide-reaching scope deserves further scrutiny, especially when you consider the following questions:

- Would the bill provide presumptive eligibility to *any* employee of a fire department - regardless if he or she has ever fought a single fire?
- Would a firefighter who worked on the job for two years in his 20s and developing 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 (i.e., would 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 that employee may have done 5, 10 or more years before he/she started on the job)?

Thank you for the opportunity to submit our concerns to the Committee. Please feel free to contact me at 517/371.7678 if you have any questions.

Michigan Professional FIRE FIGHTERS UNION

Paul Hufnagel
President

1651 Kingsway Ct., Ste. E, Trenton, MI 48183
1.800.886.7338 fax 1.800.454.1757

Terrence H. Chesney
Secretary-Treasurer

www.mpffu.org

Memo

To: Majority Floor Leader Tobocman
Represemtative Fred Miller

From: Paul Hufnagel, President
Michigan Professional Fire Fighters Union

Date: April 24, 2007

Re: MPFFU Response to MML testimony – SB 102

Medical care for the firefighters will be compromised.

Medical care for firefighters will be improved as a workers right to medical benefits is not limited in terms of either "cost" or "duration" of benefits. However, limit on what a health care provider may charge for services continue to be part of fee schedules used by both health care plans and workers compensation. The limits of workers compensation medical benefits exceed those of regular health care plans which require limited hospital stays and medical benefits. Medical care will also improve for those firefighters who may have inadequate or no health care coverages. In addition, health care plans are more volatile and subject to constant change by the employers.

Insurers will likely dispute treatments that are novel, experimental, new or more frequent than expected.

Both workers compensation and regular health care plans may dispute experimental treatment. It is not common for them to cover novel or experimental treatments. However, again, a workers right to medical benefits is not limited in terms (either "cost" or duration of benefits".

Because of lower reimbursements and billing disputes, some medical service providers may be less likely to accept these employees as patients.

This is no different than traditional health care plans. Physician Networks who agree to accept fee schedules become participating doctors for both workers compensation and traditional coverage. All fees and other charges for any treatment or attendance, service, devices, apparatus, or medicine under the Act are subject to rules promulgated by the Bureau of Workers Compensation. The rules promulgated shall establish schedules of maximum charges for the treatment. These schedules shall be revised annually. A health facility or health care provider shall be paid either its usual and customary charge for treatment, or the maximum charge established under the rules, whichever is less. The director of the Bureau shall provide for an advisory committee to aid and assist in establishing the schedules of maximum charges.

Indirect health conditions resulting from or aggravated by a compromised immune system will lead to disputes.

Workers Compensation Laws intend to compensate workers for "any" injuries suffered in the course of the workers employment regardless of fault. Workers are entitled to certain wage loss benefits, cost of medical treatment and certain rehabilitation services. The determination of disability will continue to be the answers to questions of is the worker disabled, and did the employment cause the disability or make it more severe. The determination of disability must be some causal relationship between the disability and the employment. The employment may cause, contribute to, or aggravate the condition. In most cases the issues are factual medical matters that are resolved without much difficulty.

Unlike health insurers, workers compensation carriers won't pay for treatment on a voluntary basis that isn't directly related to the cancer.

This is no different than the Workers Compensation Disability statute at this time. If the worker is disabled and the disability was caused or aggravated through their employment, there is a causal relationship between the disability and the employment.

Health insurers may not voluntarily step in and pay for any gaps in care while disputes are ongoing.

The obligation and responsibilities of health care insurers are to pay for expenses of an injured party that are not work related. They will make payment based on limitations of the persons' health care coverage.

Most or all cancer presumption cases will force the afflicted employees to hire legal counsel.

Most work related injuries are resolved without dispute and without the need for litigation. Litigation typically does not come into play unless either or both parties are discussing redemption/settlements. The Bureau of Workers Disability Compensation has sole jurisdiction for deciding disputes. Neither the worker nor the employer may take the case to ordinary courts or trials by jury. The Bureau employs mediators who attempt to help parties settle disputes before trials occur at the Bureau. Formal actions are then handled by magistrates. Either party may appeal to the Workers Compensation Appellate Commission, Court of Appeals and, if accepted, the Michigan Supreme Court. Attorney fees for workers, if necessary, are charged based on a contingent percentage fee. If there is a recovery, the fee is a percentage of the amount recovered. If there is no recovery, then no charges are made. The amount of the fee is governed by the Administrative Rules of the Bureau of Workers Disability Compensation.

The legislation won't ensure payment of wage loss benefits. Workers' Compensation carriers typically dispute an employees assertion that he or she is no longer able to work more frequently and aggressively than disability carriers.

Workers Compensation carriers make decisions based on the workers compensation disability statute which requires a review of information received from the treating physician including, medical information and work restrictions. These work restrictions

are compared to the employer's job descriptions to determine the duties performed by the injured worker. Again, most work related injuries are resolved without dispute and without the need for litigation. In most cases, a worker who is injured on the job receives medical treatment and compensation benefits voluntarily from the insurance carrier.

One of the most common symptoms associated with cancer is fatigue which routinely comes and goes and varies in degree. Disputes over forcing a fire fighter to continue working will be frequent.

These symptoms are not restricted to cancer patients. Most work related injuries resulting in medical treatment, medication, and/or surgery will case the same or similar symptoms. Work related injuries are resolved without dispute based on the information of the treating physician and the requirements of the job duties as reported by the employer.

The legislation duplicates benefits that are already being paid for by local governments.

Local governments do not compensate an injured worker for wage loss benefits. In addition, medical treatments and rehabilitation services are restricted or non existent based the health care plan purchased by the employee.

Although health and disability insurance costs won't be reduced, workers compensation costs will go up significantly and for a benefit that will be unevenly distributed among the fire fighters it is intended to help.

Health insurance and disability costs will be reduced. The Workers Compensation Disability Act requires that insurance carriers compensates workers for any injuries suffered in the course of the workers employment in which that worker is entitled to certain wage loss benefits, cost of medical treatment and certain rehabilitation services. These rules are applied evenly and fairly for any type of injured worker. Benefits are

paid at a rate of 80% after tax value of the injured workers average weekly wage, subject to a minimum and maximum. Benefits continue as long as the person is disabled as defined by the workers compensation act. Health care and disability plans are more volatile and subject to constant change.

Insurers are required to set aside 100% (without regard to investment income) of the expected lifetime cost of an injured worker's wage and medical expenses, along with an actuarially determined additional amount to cover unexpected or unforeseen costs.

This is a requirement of the Workers Compensation Disability Act. This legislation allows no change to this existing law and ensures the viability of insurance carriers and the future payment of benefits to the injured worker.

In addition to wages and medical benefits, the workers compensation law provides for an additional payment of ten years benefits (or more) to the dependents of an employee who dies as a result of a work related injury.

The Workers Compensation Disability Act rightfully requires payment of benefits to the dependents of deceased employees as a result of a work place injuries for a period of 500 weeks from the date of death. If at the expiration of the 500 week period any such wholly or partially dependent person is less than 18 years of age or over said age and physically or mentally incapacitated from earning, a workers compensation magistrate may order continuing or some portion of the benefit until the wholly or partially dependent person reaches the age of 18 or in the case of incapacitated at 21 years of age.

Based on our analysis, for each cancer case each year that occurs among the entire MML Workers Compensation Fund membership, premiums for all communities with paid fire departments will increase by 10% to 25%.

Open competition in the insurance industry for workers compensation in the state of Michigan may save the State's employers about 30% a year in net costs. A combination of this open competition and reduced compensation payments based on fee schedules and medical cost containment programs have helped saved Michigan businesses over half a billion dollars in insurance premiums. Because insurance rates and prices are set competitively in the marketplace, employers can save money by shopping aggressively for the best insurance coverage and the lowest price.

With 23 other states who have a form of cancer presumption in place here are some additional numbers on fire fighter disabilities and cost experience from around the country.

In the State of California, which has the largest career sector of fire fighters in the country (30,000) and one of the largest volunteer sectors (33,000) the addition of cancer presumptive benefits has had "no impact" on the actuarial assumptions or funding of the state's fire fighter retirement system (Assemblyman Sal Cannella, California Legislature). An actuary for the California Public Employee Retirement System (CALPERS), the largest retirement system in the United States, has declared that the addition of presumptive cancer benefits for fire fighters has had "minimal effect" on the actuarial costs to the retirement system. In fact, the financial implications were so minimal, that CALPERS never had to perform an actuarial impact study after the implementation of the benefit by the California legislature (David DuBois, Contract Services Department, CALPERS). During the first three years, an average of 45 annuitant claims were paid for cancer related disabilities. This is .07% of the active fire fighting workforce. The average claim for total cancer benefits was $14,075.00.

In 1984, the State of Illinois added cancer presumption language to its worker compensation statute. The City of Chicago employs over 50% of the 10,700 career fire fighters in the State of Illinois. During the 6 year period following the implementation of the statute the average number of beneficiaries receiving occupational disability benefits was 8.3% lower than the average number of beneficiaries in the six years prior to passage. Thus the inclusion of cancer benefits in 1984 obviously had no impact on the

funding requirements for the occupational disability benefits portion of the Chicago Firemen's Annuity and Benefit Fund (Firemen's Annuity and Benefit Fund of Chicago Actuarial Statement).

In the first six years that they had fire fighter cancer legislation in Oklahoma, they had 22 claims paid statewide or 6% of the 378 disability claims paid. This averages to 4 claims per year for a rate of cancer claims of .03% at an average cost to the pension system of $10,409.00 per total cancer claim (Bob Hollander, Executive Director, Oklahoma Firefighters Pension and Retirement System). There are 3,420 career fire fighters and 9,000 volunteer fire fighters.

In Nevada, there were 3 cancer claims paid in the first four years that the legislation was enacted. None of these cases include lung cancer, which is covered under separate legislation (S. Mark Balen, President, Nevada Fire Fighters Association). There are 1,790 career fire fighters and 2,200 volunteer fire fighters in Nevada. This averages to less than 1 claim per year for a rate of cancer claims of .02%.

In Rhode Island, which passed the legislation in 1986, there were 6 claims paid in the first 8 years. This averages to less than 1 claim per year for a rate of cancer claims of .02% (Theodore Scripsack, Chairman, Rhode Island Firefighter's Relief Board). There are 2,200 career fire fighters and 2,800 volunteer fire fighters in Rhode Island.

In the first four years that they had cancer legislation in Massachusetts, there were 34 cancer claims paid (15 disability and 19 death benefits). (Joseph Martin, Deputy Director, Public Employee Retirement Agency). This averages to less than 9 claims per year at a rate of .03% of the active fire fighting workforce. There are 14,500 career fire fighters and 11,400 volunteer fire fighters in Massachusetts.

In Florida there 22,445 active career fire fighters. Using the assumption that Florida has a rate that does not exceed the average of the above States' cancer related disabilities --

.034% of the active fire fighting workforce -- the expected number of annual cancer claims for career fire fighters would be 8 fire fighters

Because cancer is a leading cause of death and the legislation covers most common cancers, the potential costs are enormous. The scientific connection between fire fighting and cancer is very questionable.

Cancer cannot be unexpected since it is recognized as an inherent hazard of continued exposure to conditions of the particular employment, such as firefighting, and the fact that it may be gradual rather than sudden on onset due to continued exposure gradually over a long period of time. Due to the direct causal connection between the conditions under which firefighting work is performed and cancer reflects a disease that arises out of and in the court of the employment. If should be seen to follow as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. It can be fairly traced to the employment as a proximate cause. It is incidental to the character of the business. There is a recognizable link between cancer and the distinctive features of a firefighters' job. "Peculiar to the occupation" is not used in the sense that cancer must be one which originates exclusively from the particular kind of employment in which the employee is engaged, but rather in the sense that the condition of that employment must result in a hazard which distinguishes it in character from the general run of occupations.

There is fact that smoking, as well as work related exposures to carcingeneous in smoke from fires, does contribute to a firefighter's impairment. The employment of firefighting need only be a "contributing cause" of the disease and is recognized that both contributed substantially to the likelihood of lung cancer.

April 2007

TODD & JULIE STANAWAY
27304 James
Warren, MI 48092

The Honorable Valde Garcia
State Representative
PO Box 30036
Lansing, MI 48909

Dear Senator Garcia,

My husband Todd and I are thankful this legislature is being proposed. Three months ago, he was diagnosed with Glioblastoma Multiforme. This is the most aggressive form of brain cancer a person can have.

Todd was a healthy thirty-five year old who NEVER smoked, drank or did drugs. He didn't even drink coffee or soda. Todd was a person who was in top physical condition. The morning of his CAT scan, he ran three miles. Now he can barely walk three blocks.

The research is telling us that Todd's brain cancer is the result of his job. That is plain and simple. He spent twelve years as a professional firefighter and seven of those years he served on the Western Wayne County Hazardous Incident Response Team. I can't even being to imagine the toxins he encountered in those years.

Todd is currently unable to work. Fortunately for us, he works with amazingly supportive men. Each has donated a sick day out of his own personal bank to give to Todd. This allows us to still collect Todd's salary. While we are so very appreciative, this really should not be necessary as his condition stems from a work related injury.

If Todd is unable to return to work, he will have to use what time he has accrued. Once that time runs out, Todd will no longer be employed and will cease to receive benefits and pay. This is not the fault of the Westland Fire Department. There is no law requiring them to offer him On the Job Injury benefits. That can be changed with the enacting of this law.

Todd and I are fearful for our family. I am a school teacher and with the loss of Todd's wages our future, and the future of our three year old daughter, takes a very different turn than what we had planned.

Please support this bill and the men and women who put their lives on the line to help others every day.

Thank you,
Julie Stanaway