

Pennsylvania House Veterans Affairs and Emergency Preparedness Committee
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City of Philadelphia
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Chairman Barrar and Chairman Sainato:

On behalf of the City of Philadelphia, I respectfully submit this testimony to address inequities and unintended consequences of Act 46 of 2011 and to offer solutions to those unnecessary costly results. As always, a paramount concern for the City is the health and well-being of our public safety workforce, including our firefighters, who face unique daily challenges in protecting the citizens of Philadelphia. To that end, the City has long worked on a variety of measures to improve safety and reduce the hazards associated with this crucial job. However, it must be noted that the inequities of Act 46 of 2011 have imposed an unintended, unfunded mandate that will negatively affect the City's ability to provide needed services, including financial support for firefighters. The imposition of this additional burden presents a very real threat to the City of Philadelphia's financial well-being.

Since the enactment of Act 46 in July 2011, there have been 66 cases filed against the City of Philadelphia. Thirty one of these cases have been for prostate cancer. While we are sympathetic to those who suffer with this disease, prostate cancer has no plausible association with firefighting. According to Dr. Tee Guidotti, who has researched and written extensively on the correlation between firefighting and cancer, "prostate cancer... is so common in aging men that virtually all men, fire fighters or not, will eventually develop the disease given enough time." Because of the Act 46 presumption, the City must now defend and rebut a presumption for cancer claims which were rarely filed prior to Act 46 because the medical evidence did not support a causal connection with firefighting duties.

The cost of litigating these cases alone has imposed a significant burden on the City's taxpayers. Thus far the City has paid over \$523,000 in defense costs. This is costly litigation which was not, prior to the enactment of Act 46, a budget item in the City of Philadelphia's Employee Disability Program. Current reserves for the remaining 57 open cases are \$2.6 million for wage loss and medical care alone. This cost does not include the \$3.5 million in subrogation claims the City faces for past medical outlays. The City now faces in excess of \$6 million in potential liability that it did not face before Act 46 of 2011.

A noteworthy illustration of how Act 46 of 2011 benefits attorneys and insurance companies more than firefighters is in the area of subrogation. This is the practice by which the health insurance company obtains reimbursement for monies paid for treatment for these cancers from self-insured municipalities and self-insured trusts. Those insurers received premiums based on actuarial calculations presupposing a certain number and type of cancers. Now, in addition to those higher premiums, the

carriers are being reimbursed their actual costs, yielding a windfall in the form of a double recovery for the carriers and double payment for the municipality paying for the health care coverage. This means inordinate fee recoveries for attorneys and huge unanticipated exposures for employers. For instance, in the City of Philadelphia, we currently face potential liability of \$3.5 million in medical reimbursements to one insurance carrier. The attorney representing the health insurer has a potential fee of over \$700,000. In contrast, six of the 13 firefighters in that group all together were only claiming \$71,000 in wage loss, and the other 7 are claiming no wage loss benefits at all. It certainly was not the intent of the Legislature in drafting Act 46 to create a system where trial attorneys receive fees that are ten times greater than any recovery sought by the injured firefighters.

Based upon the flawed nature of Act 46 and the excessive costs and expenses as well as potential liability faced by the City of Philadelphia, we are asking for the following revisions to Act 46:

ACT 46 RECOMMENDED REVISIONS

In order to correct inequities/deficiencies in Act 46 the following amendments to Act 46 are proposed:

A. SUBROGATION

1. Notwithstanding paragraph two of Section 319 of the Workers' Compensation Act, health insurers, insurance trusts and self-insured health plans shall not have any right to subrogation in cases filed under Act 46 of 2011 or under the Pennsylvania Workers' Compensation and Occupational Disease Act.

2. The provisions of Act 46 of 2011 shall not apply retroactively to any alleged entitlement under Section 319 of the Workers' Compensation Act.

B. CAUSATION

1. The Act 46 presumption shall be limited to non-smokers and claimants under 60.
2. The Act 46 presumption shall not apply to prostate cancer and shall be limited to cancers which the scientific literature finds an increased association between the cancers and firefighting by an increased odds ratio of 1.5 or greater.
3. Before the presumption is applied, the firefighter must first establish that the cancer claimed has a higher incidence among firefighters.