

2013 -- H 5768

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO TOWNS AND CITIES - OPTIONAL RETIREMENT FOR MEMBERS OF  
POLICE FORCE AND FIREFIGHTERS

Introduced By: Representatives Craven, Mattiello, O'Neill, and Lombardi

Date Introduced: February 28, 2013

Referred To: House Judiciary

(Judiciary)

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 45-21.2-9 of the General Laws in Chapter 45-21.2 entitled  
2 "Optional Retirement for Members of Police Force and Fire Fighters" is hereby amended to read  
3 as follows:  
4           **45-21.2-9. Retirement for accidental disability.** -- (a) Any member in active service,  
5 regardless of length of service, is entitled to an accidental disability retirement allowance.  
6 Application for the allowance is made by the member or on the member's behalf, stating that the  
7 member is physically or mentally incapacitated for further service as the result of an injury  
8 sustained while in the performance of duty and certifying to the time, place, and conditions of the  
9 duty performed by the member which resulted in the alleged disability and that the alleged  
10 disability was not the result of the willful negligence or misconduct on the part of the member,  
11 and was not the result of age or length of service, and that the member has not attained the age of  
12 sixty-five (65). The application shall be made within eighteen (18) months of the alleged  
13 accident from which the injury has resulted in the member's present disability and shall be  
14 accompanied by an accident report and a physician's report certifying to the disability. If the  
15 member was able to return to his or her employment and subsequently reinjures or aggravates the  
16 same injury, the member shall make another application within eighteen (18) months of the  
17 reinjury or aggravation which shall be accompanied by a physician's report certifying to the  
18 reinjury or aggravation causing the disability. If a medical examination made by three (3)

1 physicians engaged by the retirement board, and other investigations as the board may make,  
2 confirms the statements made by the member, the board may grant the member an accidental  
3 disability retirement allowance.

4 (b) For the purposes of subsection (a), "aggravation" shall mean an intervening work-  
5 related trauma that independently contributes to a member's original injury that amounts to more  
6 than the natural progression of the preexisting disease or condition and is not the result of age or  
7 length of service. The intervening independent trauma causing the aggravation must be an  
8 identifiable event or series of work-related events that are the proximate cause of the member's  
9 present condition of disability.

10 (c) "Occupational cancer", as used in this section, means a cancer arising out of  
11 employment as a fire fighter, due to injury due to exposures to smoke, fumes, or carcinogenic,  
12 poisonous, toxic, or chemical substances while in the performance of active duty in the fire  
13 department.

14 (d) For purposes of subsection (a), "reinjury" shall mean a recurrence of the original  
15 work-related injury from a specific ascertainable event. The specific event must be the proximate  
16 cause of the member's present condition of disability.

17 (e) Any fire fighter, including one employed by the state, or a municipal firefighter  
18 employed by a municipality that participates in the optional retirement for police officers and fire  
19 fighters as provided in this chapter, who is unable to perform his or her duties in the fire  
20 department by reason of a disabling occupational cancer which develops or manifests itself  
21 during a period while the fire fighter is in the service of the department, and any retired member  
22 of the fire force of any city or town who develops occupational cancer, is entitled to receive an  
23 occupational cancer disability and he or she is entitled to all of the benefits provided for in this  
24 chapter, chapters 19, 19.1, and 21 of this title and chapter 10 of title 36 if the fire fighter is  
25 employed by the state.

26 (f) In the event that any party is aggrieved by the determination of the retirement board  
27 pursuant to section 45-19-1, for an injury occurring on or after July 1, 2011, the party may submit  
28 an appeal to the Rhode Island workers' compensation court. The appellant shall file a notice of  
29 appeal with the retirement board [and with the workers' compensation court within twenty \(20\)](#)  
30 [days of the entry of the retirement board's decision](#) and shall serve a copy of the notice of appeal  
31 upon the opposing party.

32 (g) Within twenty (20) days of the receipt of the notice of appeal, the retirement board  
33 shall transmit the entire record of proceedings before it, together with its order, to the workers'  
34 compensation court.

1 (h) In the event that a party files a notice of appeal to the workers' compensation court,  
2 the order of the retirement board shall be stayed pending further action by the court pursuant to  
3 the provisions of Rhode Island general law section 28-35-20.

4 (i) Upon receipt of the ~~record of proceedings before the retirement board~~ [notice of](#)  
5 [appeal](#), the court shall assign the matter to a judge and shall issue a notice at the time advising the  
6 parties of the judge to whom the case has been assigned and the date for pretrial conference in  
7 accordance with Rhode Island general law section 28-35-20.

8 (j) All proceedings filed with the workers' compensation court pursuant to this section  
9 shall be de novo and shall be subject to the provisions of chapters 29 to 38 of Title 28 for all case  
10 management procedures and dispute resolution processes, as provided under the rules of workers'  
11 compensation court. Where the matter has been heard and decided by the workers' compensation  
12 court, the court shall retain jurisdiction to review any prior orders or decrees entered by it. Such  
13 petitions to review shall be filed directly with the workers' compensation court and shall be  
14 subject to the case management and dispute resolution procedures set forth in chapters 29 through  
15 38 of title 28 ("Labor and Labor Relations").

16 (k) If the court determines that a member qualifies for accidental disability retirement,  
17 the member shall receive a retirement allowance equal to sixty-six and two-thirds percent (66  
18 2/3%) of the rate of the member's compensation at the date of the member's retirement, subject to  
19 the provisions of section 45-21-31.

20 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO TOWNS AND CITIES - OPTIONAL RETIREMENT FOR MEMBERS OF  
POLICE FORCE AND FIREFIGHTERS

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1           This act would require that for a party who is aggrieved by a determination of the  
2 retirement board, that he or she must file a notice of appeal with the retirement board and the  
3 workers' compensation court within twenty (20) days of the entry of the retirement board  
4 decision.

5           This act would take effect upon passage.

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