

2020 -- H 7449 SUBSTITUTE A

LC003962/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO TOWNS AND CITIES -- CANCER BENEFITS FOR FIREFIGHTERS

Introduced By: Representatives Morin, O'Brien, Casimiro, Amore, and Vella-Wilkinson

Date Introduced: February 05, 2020

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 45-19.1 of the General Laws entitled "Cancer Benefits For Fire
2 Fighters" is hereby amended by adding thereto the following section:

3 **45-19.1-4. Conclusive presumption.**

4 (a) Any type of cancer found in a firefighter is conclusively presumed to be an occupational
5 cancer as that term is defined in § 45-19.1-2.

6 (b) This conclusive presumption shall not apply to firefighters hired after the effective date
7 of this section in the following situations:

8 (1) If a physical examination was conducted at the time the firefighter was hired and such
9 examination revealed that person had cancer; or

10 (2) If the firefighter has completed less than two (2) years of employment with their fire
11 department; or

12 (3) If the firefighter has regularly or habitually used tobacco products during the five (5)
13 years prior to any diagnosis of cancer.

14 (c) The provisions of this section shall apply retroactively to all cancer-related illnesses,
15 injuries and disability claims pending on or after the effective date.

16 SECTION 2. Section 45-21.2-9 of the General Laws in Chapter 45-21.2 entitled "Optional
17 Retirement for Members of Police Force and Fire Fighters" is hereby amended to read as follows:

18 **45-21.2-9. Retirement for accidental disability.**

19 (a) Any member in active service, regardless of length of service, is entitled to an accidental

1 disability retirement allowance. Application for the allowance is made by the member or on the
2 member's behalf, stating that the member is physically or mentally incapacitated for further service
3 as the result of an injury or illness sustained while in the performance of duty and certifying to the
4 time, place, and conditions of the duty performed by the member that resulted in the alleged
5 disability and that the alleged disability was not the result of the willful negligence or misconduct
6 on the part of the member, and was not the result of age or length of service, and that the member
7 has not attained the age of sixty-five (65). The application shall be made within eighteen (18)
8 months of the alleged accident from which the injury has resulted in the member's present disability
9 and shall be accompanied by an accident report and a physician's report certifying to the disability.
10 If the member was able to return to his or her employment and subsequently reinjures or aggravates
11 the same injury or illness, the member shall make another application within eighteen (18) months
12 of the reinjury or aggravation which shall be accompanied by a physician's report certifying to the
13 reinjury or aggravation causing the disability. If a medical examination made by three (3)
14 physicians engaged by the retirement board, and other investigations as the board may make,
15 confirms the statements made by the member, the board may grant the member an accidental
16 disability retirement allowance.

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

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

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

30 (e) Any fire fighter, including one employed by the state, or a municipal firefighter
31 employed by a municipality that participates in the optional retirement for police officers and fire
32 fighters as provided in this chapter, who is unable to perform his or her duties in the fire department
33 by reason of a disabling occupational cancer ([as defined in §§ 45-19.1-2 and 45-19.1-4](#)) that
34 develops or manifests itself during a period while the fire fighter is in the service of the department,

1 and any retired member of the fire force of any city or town who develops occupational cancer, [\(as](#)
2 [defined in §§ 45-19.1-2 and 45-19.1-4\)](#) is entitled to receive an occupational cancer disability and
3 he or she is entitled to all of the benefits provided for in this chapter, chapters 19, 19.1, and 21 of
4 this title and chapter 10 of title 36 if the fire fighter is employed by the state.

5 (f) In the event that any party is aggrieved by the determination of the retirement board
6 pursuant to § 45-19-1, for an injury or illness occurring on or after July 1, 2011, the party may
7 submit an appeal to the Rhode Island workers' compensation court. The appellant shall file a notice
8 of appeal with the retirement board and with the workers' compensation court within twenty (20)
9 days of the entry of the retirement board's decision and shall serve a copy of the notice of appeal
10 upon the opposing party.

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

14 (h) In the event that a party files a notice of appeal to the workers' compensation court, the
15 order of the retirement board shall be stayed pending further action by the court pursuant to the
16 provisions of § 28-35-20.

17 (i) Upon receipt of the notice of appeal, the court shall assign the matter to a judge and
18 shall issue a notice at the time advising the parties of the judge to whom the case has been assigned
19 and the date for pretrial conference in accordance with § 28-35-20.

20 (j) All proceedings filed with the workers' compensation court pursuant to this section shall
21 be de novo and shall be subject to the provisions of chapters 29 -- 38 of title 28 for all case
22 management procedures and dispute resolution processes, as provided under the rules of workers'
23 compensation court. The workers' compensation court shall enter a pretrial order in accordance
24 with § 28-35-20(c) that grants or denies, in whole or in part, the relief sought by the petitioner. The
25 pretrial order shall be effective upon entry and any payments ordered by it shall be paid within
26 fourteen (14) days of the entry of the order. Provided, however, that in the event that the retirement
27 board files a claim for trial of the pretrial order entered by the court, the order of the court shall be
28 stayed until a final order or decree is entered by the court. If after trial and the entry of a final decree
29 the court sustains the findings and orders entered in the pretrial order, the retirement board shall
30 reimburse the municipality all benefits paid by it from the time the pretrial order was entered until
31 the time the final decree is entered by the court. Where the matter has been heard and decided by
32 the workers' compensation court, the court shall retain jurisdiction to review any prior orders or
33 decrees entered by it. Such petitions to review shall be filed directly with the workers' compensation
34 court and shall be subject to the case management and dispute resolution procedures set forth in

1 chapters 29 -- 38 of title 28 ("Labor and Labor Relations").

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

6 SECTION 3. This act shall take effect upon passage and shall be given retroactive as well
7 as prospective effect and shall apply to all cancer-related illnesses, injuries and disability claims
8 pending upon the effective date of this act.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO TOWNS AND CITIES -- CANCER BENEFITS FOR FIREFIGHTERS

1 This act would clarify a presumption applying to firefighters, that if any type of cancer is
2 found in a firefighter, with three (3) exceptions, then it would be conclusively presumed to be an
3 occupational cancer arising out of their employment as firefighters.

4 This act would take effect upon passage and be given retroactive as well as prospective
5 effect and would apply to all cancer-related illnesses, injuries and disability claims pending upon
6 the effective date of this act.

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