

JAN 15 2014

A BILL FOR AN ACT

RELATING TO SERVICE-CONNECTED DISABILITY AND MEDICAL COVERAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that numerous studies
2 have proven that the risk of being diagnosed with cancer is
3 higher among firefighters than the general population. The
4 legislature further finds that in a three-year study completed
5 in 2005 by the University of Cincinnati, researchers concluded
6 that firefighters face a greater chance of cancer than any other
7 worker for the following types of cancer: one hundred two per
8 cent for testicular; fifty-three per cent for multiple myeloma;
9 fifty-one per cent for non-Hodgkin's lymphoma; thirty-nine per
10 cent for skin; thirty two per cent for brain and malignant
11 melanoma; twenty-nine per cent for rectum; twenty-eight per cent
12 for prostate; twenty-four per cent for buccal cavity and
13 pharynx; twenty-two per cent for stomach; twenty-one per cent
14 for colon; and fourteen per cent for leukemia. The legislature
15 also finds that firefighters face a greater risk of contracting
16 infectious diseases and illnesses associated with exposure to
17 patient care and biochemical substances due to bioterrorism.



1 The purpose of this Act is to provide firefighters with
2 comprehensive medical coverage and service-connected disability
3 retirement benefits for these medical conditions by presuming,
4 subject to rebuttal, that the condition arises out of and in the
5 course of employment.

6 SECTION 2. Section 88-79, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§88-79 Service-connected disability retirement.** (a)

9 Upon application of a member, or the person appointed by the
10 family court as guardian of an incapacitated member, any member
11 who has been permanently incapacitated for duty as the natural
12 and proximate result of an accident occurring while in the
13 actual performance of duty at some definite time and place, or
14 as the cumulative result of some occupational hazard, through no
15 wilful negligence on the member's part, may be retired by the
16 board for service-connected disability; provided that:

17 (1) In the case of an accident occurring after July 1,
18 1963, the employer shall file with the system a copy
19 of the employer's report of the accident submitted to
20 the director of labor and industrial relations;

21 (2) An application for retirement is filed with the system
22 within two years of the date of the accident, or the



1 date upon which workers' compensation benefits cease,
2 whichever is later;

3 (3) Certification is made by the head of the agency in
4 which the member is employed, stating the time, place,
5 and conditions of the service performed by the member
6 resulting in the member's disability and that the
7 disability was not the result of wilful negligence on
8 the part of the member; and

9 (4) The medical board certifies that the member is
10 incapacitated for the further performance of duty at
11 the time of application and that the member's
12 incapacity is likely to be permanent.

13 (b) In the case of firefighters, police officers, and
14 sewer workers, the effect of the inhalation of smoke, toxic
15 gases, chemical fumes, and other toxic vapors on the heart,
16 lungs, and respiratory system shall be construed as an injury
17 received or disease contracted while in the performance of their
18 duty and as the result of some occupational hazard for the
19 purpose of determining occupational disability retirement under
20 this section.

21 Notwithstanding any other law to the contrary, any
22 condition of impairment of health caused by any disease of the



1 heart, lungs, or respiratory system, resulting in permanent
2 incapacity to a firefighter, police officer, or sewer worker,
3 shall be presumed to have been suffered in the actual
4 performance of duty at some definite time and place through no
5 wilful negligence on the firefighter's, police officer's, or
6 sewer worker's part, and as a result of the inherent
7 occupational hazard of exposure to and inhalation of smoke,
8 toxic gases, chemical fumes, and other toxic vapors, unless the
9 contrary be shown by competent evidence; provided that such
10 firefighter, police officer, or sewer worker shall have passed a
11 physical examination on entry into such service or subsequent to
12 such entry, which examination failed to reveal any evidence of
13 such condition.

14 (c) If a firefighter who has completed five or more years
15 of credited service, dies or develops an illness due to:

16 (1) Cancer, including leukemia;

17 (2) A blood-borne infectious disease; or

18 (3) An exposure to a biochemical substance,

19 the cancer, blood-borne infectious disease, or exposure to a

20 biochemical substance so developing or manifesting itself in

21 those cases shall be presumed to arise out of and in the course

22 of employment; provided that the firefighter shall have taken a



1 physical examination upon becoming a firefighter, or
2 subsequently thereto, which failed to reveal any evidence of the
3 condition or impairment of health.

4 The benefits that are awarded for cancer, including
5 leukemia, a blood-borne infectious disease, or an exposure to a
6 biochemical substance, shall include full hospital, surgical,
7 medical treatment, disability indemnity, and death benefits, as
8 provided by this chapter. The computation of benefits
9 authorized pursuant to this section shall not include the
10 firefighter's credited vacation or sick leave while undergoing
11 medical treatment for cancer, a blood-borne infectious disease,
12 or an exposure to a biochemical substance.

13 (d) Notwithstanding the existence of nonindustrial
14 predisposing or contributing factors, any firefighter
15 permanently incapacitated from the performance of duty as a
16 result of cancer, a blood-borne infectious disease, or an
17 exposure to a biochemical substance, shall receive a service-
18 connected disability retirement if the member demonstrates that
19 the member was exposed to a known carcinogen resulting from the
20 performance of job duties.

21 (e) The presumption under subsection (c) may be rebutted
22 by clear and convincing evidence that the condition or



1 impairment was not caused or contributed to in material part by
2 the firefighter's employment. Unless so controverted, the board
3 is bound to find in accordance with the presumption. This
4 presumption shall be extended to a member following termination
5 of service for a period of three calendar months for each full
6 year of the requisite service, but not to exceed sixty months in
7 any circumstance, commencing with the last date actually worked
8 as a firefighter.

9 ~~(e)~~ (f) The board may waive strict compliance with the
10 time limits within which a report of the accident and an
11 application for service-connected disability retirement must be
12 filed with the board if it is satisfied that the failure to file
13 within the time limited by law was due to ignorance of fact or
14 law, inability, or to the fraud, misrepresentation, or deceit of
15 any person, or because the applicant was undergoing treatment
16 for the disability or was receiving vocational rehabilitation
17 services occasioned by the disability.

18 ~~(d)~~ (g) The board may determine whether or not the
19 disability is the result of an accident occurring while in the
20 actual performance of duty at some definite time and place and
21 that the disability was not the result of wilful negligence on
22 the part of the member. The board may accept as conclusive:



1 (1) The certification made by the head of the agency in
2 which the member is employed; or

3 (2) A finding to this effect by the medical board.

4 [~~e~~] (h) Upon approval by the board, the member shall be
5 eligible to receive a service-connected disability retirement
6 benefit after the member has terminated service. Retirement
7 shall become effective on the first day of a month, except for
8 the month of December when retirement on the first or last day
9 of the month shall be allowed.

10 (i) For the purposes of this section:

11 "Biochemical substance" means any biological or chemical
12 agent that may be used as a weapon of mass destruction,
13 including but not limited to any chemical warfare agent,
14 weaponized biological agent, or nuclear radiological agent, as
15 these terms are defined by the Centers for Disease Control and
16 Prevention.

17 "Blood-borne infectious disease" means a disease caused by
18 exposure to pathogenic microorganisms that are present in human
19 blood that can cause disease in humans, including but not
20 limited to those pathogenic microorganisms defined as blood-
21 borne pathogens by the state department of health.



1 "Firefighter" includes a member engaged in active fire
2 supression.

3 "Known carcinogen" means any of the carcinogenic agents
4 recognized by the International Agency for Research on Cancer,
5 or the state department of health.

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2014.

9

INTRODUCED BY:



BY REQUEST



S.B. NO. 2086

Report Title:

State Fire Council Package; Service-Connected Disability and Medical Coverage

Description:

Provides firefighters with comprehensive medical coverage and service-connected disability retirement benefits for certain medical conditions that are presumed to arise out of and in the course of employment.

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