

ACT 182

H.B. NO. 2352-74

A Bill for an Act Relating to the Employees Retirement System of the State of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and declaration of necessity. The legislature hereby finds and declares that: (a) the firefighter is substantially exposed to the dangers of common forms of heart disease and that he may indeed be the victim of a very unique type of heart disease known as "Smoke Eaters Heart Disease"; (b) the frequent encounters with toxic gases such as carbon monoxide, cyanide gas, sulfur dioxide and nitrogen oxide which are sources of heart and lung disorders represent one of the major hazards to firefighters; (c) the gases may also use the lungs as a portal of entry and produce pathological disorders throughout the body; (d) the emotional stress of hearing the go-alarm can cause chemicals to be discharged into the bloodstream and constrict the arteries and create blood clots while increasing the workload of the heart; (e) the diagnosis and identification of the "Smoke Eaters Heart Disease" is complicated because many of the victims suffer from a combination of the aforementioned problems; (f) the present retirement system has not awarded any disability retirement benefits to firemen suffering from occupationally related diseases; (g) it is necessary to amend the law to activate the idle provisions for disability retirement benefits to firemen; and (h) it is hereby declared as a matter of legislative determination that any impairment of health caused by any respiratory disease to a fireman, shall be presumed to have been suffered in the actual performance of his duty as a result of the inherent

occupational hazard of exposure to and inhalation of smoke and toxic gases unless contrary evidence is produced.

The legislature hereby further finds and declares that: (a) the sewer worker is substantially exposed to the dangers of common forms of heart disease; (b) the frequent encounters with toxic gases which are sources of heart and lung disorders represent one of the major hazards to sewer workers; (c) the gases may also use the lungs as a portal of entry and produce pathological disorders throughout the body; (d) the present retirement system has not awarded any disability retirement benefits to sewer workers suffering from occupationally related diseases; (e) it is necessary to amend the law to activate the idle provisions for disability retirement benefits to sewer workers; and (f) it is hereby declared as a matter of legislative determination that any impairment of health caused by any respiratory disease to a sewer worker shall be presumed to have been suffered in the actual performance of his duty as a result of the inherent occupational hazard of exposure to and inhalation of toxic gases unless contrary evidence is produced.

SECTION 2. Section 88-77, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 88-77 Service-connected total disability retirement. (a) Upon application of a member, or of the head of his department, any member who has been permanently incapacitated as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on his part, may be retired by the board of trustees for service-connected total disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the bureau of workmen's compensation;
- (2) An application for retirement is filed with the board within two years of the date of the accident or the date upon which workmen's compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place and conditions of the service performed by the member resulting in his disability and that the disability was not the result of wilful negligence on the part of the member;
- (4) The medical board certifies that the member is incapacitated for gainful employment and that his incapacity is likely to be permanent.

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

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system,

resulting in permanent incapacity to a fireman or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firemen's or sewer worker's part and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such fireman or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

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

(d) The board shall have the power to determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) the certification made by the head of the agency in which the member is employed; or
- (2) a finding to this effect by the medical board."

SECTION 3. Section 88-79, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 88-79 Service-connected occupational disability retirement. (a) Upon application of a member, or of the head of his department, any member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard through no wilful negligence on his part, may be retired by the board of trustees for service-connected occupational disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the bureau of workmen's compensation;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workmen's compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place and conditions of the service performed by the member resulting in his disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for the further performance of duty and that his incapacity is likely to be permanent.

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

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a fireman or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the fireman's or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such fireman or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

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

(d) The board shall have the power to determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) the certification made by the head of the agency in which the member is employed; or
- (2) a finding to this effect by the medical board."

SECTION 4. Section 88-85, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 88-85 Accidental death benefit. Upon the receipt of proper proofs of a member's death by the board of trustees, there shall be paid to the member's designated beneficiary or to his estate the amount of his accumulated contributions and if, upon the receipt of evidence or proofs that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by negligence on the part of the member, there shall be paid in lieu of the ordinary death benefits provided by the contribution of the State or county, a pension of one-half of the average final compensation of the member:

- (1) to his widow to continue during her widowhood; or

- (2) if there be no widow, or if the widow dies or remarries before any child of the deceased member shall have attained the age of eighteen years, then to his child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half his final compensation until every child dies, or attains such age; or
- (3) if there is no widow or child under the age of eighteen years surviving the deceased member, then to his dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to his dependent father or to his dependent mother as the board, in its discretion, shall direct to continue for life.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a fireman or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the fireman's or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such fireman or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 6. This Act shall take effect upon its approval.

(Approved June 10, 1974.)

*Edited accordingly.