
A BILL FOR AN ACT

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS.

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

1 SECTION 1. The legislature finds that firefighters can be
2 exposed to contaminants from fires that are known or suspected
3 to cause cancer. Firefighters are exposed to multiple
4 carcinogens and toxicants through incident exposure as
5 residential and vehicle fires release highly concentrated
6 toxicants from plastics and synthetics. In October 2013,
7 researchers from the National Institute for Occupational Safety
8 and Health published a study that found that firefighters have a
9 higher risk than the general population of being diagnosed with
10 cancer. The study looked at cancers and cancer deaths among
11 30,000 firefighters from Chicago, Philadelphia, and San
12 Francisco fire departments and found that cancers of the
13 respiratory, digestive, and urinary systems accounted for most
14 of the higher rates of cancer in the study population,
15 suggesting that firefighters are more likely to develop these
16 types of cancers. Additionally, a study in 2005 showed that
17 firefighters have significantly higher risks than the general
18 population of getting testicular cancer, multiple myeloma, non-



1 Hodgkin's lymphoma, skin cancer, brain and malignant melanoma,
2 rectal cancer, prostate cancer, buccal cavity and pharynx
3 cancer, stomach cancer, colon cancer, and leukemia. The Hawaii
4 Medical Service Association conducted a review of their members
5 who were Hawaii firefighters in collective bargaining unit (11)
6 over a defined period of time to estimate the incidence of
7 cancer among certain Hawaii Fire Fighters Association members
8 compared to a comparable population of Hawaii Medical Service
9 Association members. Although the study was limited to two
10 thousand male firefighters, the data showed that cancer rates
11 among members of the Hawaii Fire Fighters Association were much
12 higher than the general population for leukemia, buccal and
13 pharynx cancer, colon cancer, prostate cancer, and brain and
14 malignant melanoma.

15 The legislature further finds that H.C.R. No. 32, H.D. 1,
16 S.D. 1, regular session of 2016, requested the convening of a
17 task force to examine cancer in the firefighting profession.
18 The task force discussed, among other things, recommendations
19 for revisions to state workers' compensation laws that expedite
20 the delivery of workers' compensation medical and other benefits
21 for firefighters diagnosed with cancer, the percentages of



1 cancer diagnoses in Hawaii for the general population compared
2 to firefighters, and estimated costs to the State and counties
3 if there were to be an acceleration of workers' compensation
4 benefits for firefighters diagnosed with cancer. These
5 discussions led to the discovery that others states, such as
6 Arizona, California, Nevada, North Dakota, and Virginia, have
7 legislation that specifically mentions coverage of occupational
8 diseases for firefighters due to the higher risks of contaminant
9 exposure for firefighters.

10 The legislature notes that existing state law pertaining to
11 pensions and retirement systems explicitly recognizes the
12 inherent occupational hazard of exposure to smoke inhalation,
13 toxic gases, chemical fumes, and other toxic vapors and includes
14 a rebuttable presumption that firefighters who are permanently
15 incapacitated for duty or who die as a result of any condition
16 or impairment of health caused by any disease of the heart,
17 lungs, or respiratory system contracted the diseases while in
18 the performance of duty and receive certain benefits. Providing
19 sufficient medical coverage for firefighters recognizes the
20 inherent occupational hazards that come with the job, ensures
21 that firefighters receive proper medical treatment in a timely



1 manner, and lessens the impact of emotional toil, financial
2 burdens, and decreased quality of life on the families of
3 firefighters diagnosed with cancer.

4 The legislature also finds that fire departments are
5 expected to use the best equipment and management practices
6 available to identify and prevent firefighters from getting
7 cancer. The recommendations of the task force include
8 formulating best practices regarding annual exams and
9 recommended medical precautions for all fire departments, as
10 well as identifying gaps in wellness programs and examining
11 screening codes and claims for data trends. It is important to
12 ensure that adequate awareness exists among firefighters about
13 obtaining screenings early in order to detect conditions as soon
14 as possible.

15 The purpose of this Act is to fully effectuate the intent
16 of the current statutory presumption regarding hazardous duty
17 related diseases to ensure timely, appropriate medical care and
18 related benefits for individuals who are or have previous
19 service as a firefighter and develop cancer, by:

- 20 (1) Clarifying the presumption that the cancer arose out
21 of and in the course of employment as a firefighter,



1 regardless of whether the condition arises at any time
2 after the individual ends service as a firefighter;

3 (2) Providing access to medical coverage for cancer
4 treatment;

5 (3) Creating a process separate from the existing workers'
6 compensation system under chapter 386, Hawaii Revised
7 Statutes, to be used to access certain treatments and
8 benefits due to lost wages or death due to the cancer;
9 and

10 (4) Authorizing the awarding of certain retirement
11 benefits for disability or death due to the cancer if
12 certain conditions are met.

13 The intent of this Act is not to be a new benefit or to enhance
14 the benefits of firefighters, but to improve access for
15 firefighters to comprehensive medical coverage and other
16 benefits for hazardous duty related diseases that are presumed
17 to arise out of and in the course of employment. The legislature
18 notes that unlike most job-related injuries whose treatment is
19 compensable through the workers' compensation system, cancer
20 among firefighters and former firefighters is a disease that
21 often does not develop at a definite, identifiable time or place



1 and may not develop or be diagnosed until many years after
2 employment as a firefighter. Nevertheless, like employees with
3 other job-related injuries, individuals who develop cancer that
4 arises out of and in the course of employment as a firefighter
5 require treatment, including specialty treatments, from health
6 care providers who typically are unwilling to accept patients
7 for treatment reimbursable through a workers' compensation
8 mechanism.

9 SECTION 2. The Hawaii Revised Statutes is amended by
10 adding a new chapter to be appropriately designated and to read
11 as follows:

12 **"CHAPTER**

13 **HAZARDOUS DUTY RELATED DISEASES RELATED BENEFITS**

14 § -1 **Definitions.** As used in this chapter:

15 "Covered individual" means an individual who is a
16 firefighter or who has previous service as a firefighter in the
17 State.

18 "Director" means the director of labor and industrial
19 relations.

20 "Disability" shall be as defined in section 386-1.



1 "Employer" means the State for individuals who are or were
2 previously employed by the State as a firefighter in the State
3 and the respective county for individuals who are or were
4 previously employed by that county as a firefighter in the
5 State.

6 "Firefighter" means all state and county employees whose
7 principal duties are to prevent and fight fires in the State.

8 "Hazardous duty related disease" means cancer.

9 "Known carcinogen" means any of the carcinogenic agents
10 recognized by the International Agency for Research on Cancer,
11 or the state department of health.

12 "Total disability" means disability of such an extent that
13 the disabled firefighter has no reasonable prospect of finding
14 regular employment of any kind in the normal labor market.

15 § -2 **Health coverage.** (a) All individual and group
16 accident and health or sickness insurance policies issued in
17 this State under article 10A of chapter 431, individual or group
18 hospital or medical service plan contracts of mutual benefit
19 society under article 1 of chapter 432, benefit contracts of
20 fraternal benefit society under article 2 of chapter 432, health
21 maintenance organization health plan contracts under chapter



1 432D, and health benefits plans under chapter 87A shall include
2 within their hospital and medical coverage the benefits of
3 hazardous duty related disease treatment covered individuals,
4 including full hospital, surgical, and medical treatment
5 benefits.

6 (b) This section shall not apply to limited benefit health
7 insurance as provided pursuant to section 431:10A-102.5.

8 (c) Coverage under this section shall exclude coverage
9 for:

- 10 (1) Care that is custodial in nature;
- 11 (2) Services and supplies that are not clinically
12 appropriate;
- 13 (3) Services provided by family or household members;
- 14 (4) Treatments considered experimental unless the covered
15 individual is in a bona fide clinical trial
16 recommended by a physician licensed pursuant to
17 chapter 453; and
- 18 (5) Services provided outside of the State unless the
19 treatment is not available or provided in the State.

20 (d) Coverage under this section may be subject to
21 copayment, deductible, and coinsurance provisions of a policy



1 that are no less favorable than the copayment, deductible, and
2 coinsurance provisions for substantially all medical services
3 covered by the plan contract.

4 (e) The fees for medical care services and supplies for
5 firefighters who develop a hazardous duty related disease shall
6 be fully reimbursed based on the usual and customary charges
7 comparable to mutual benefit societies, health maintenance
8 organizations, and the Hawaii employer-union health benefits
9 trust fund for fees for services actually received by providers
10 of health care services.

11 § -3 **Benefits under this chapter; inapplicability of**
12 **workers' compensation law.** (a) If a covered individual
13 develops a hazardous duty related disease, the employer shall
14 pay to the covered individual benefits in accordance with this
15 chapter, including full hospital, surgical, and medical
16 treatment benefits for the covered individual, and rules adopted
17 by the department pursuant to this chapter.

18 (b) Chapter 386 shall not apply to covered individuals who
19 develop a hazardous duty related disease.

20 § -4 **Presumption that hazardous duty related disease**
21 **arises out of and in the course of employment as a firefighter.**



1 If a covered individual develops a hazardous duty related
 2 disease, for purposes of this chapter, the hazardous duty
 3 related disease shall be presumed to arise out of and in the
 4 course of employment as a firefighter, regardless of whether the
 5 hazardous duty related disease arises at any time after the
 6 covered individual ends service as a firefighter.

7 § -5 **Screenings.** The employer shall pay for
 8 appropriate, annual screenings and preventative screenings for
 9 hazardous duty related diseases for all firefighters; provided
 10 that a firefighter need not be diagnosed with a hazardous duty
 11 related disease as a condition for payment by the employer of
 12 the costs of receiving a preventative screening for a potential
 13 hazardous duty related disease.

14 § -6 **Permanent and temporary total disability benefits.**

15 (a) If a covered individual develops a hazardous duty related
 16 disease that results in permanent total disability, the covered
 17 individual is entitled to receive from the employer a weekly
 18 benefit equal to one hundred per cent of the covered
 19 individual's average weekly wages.

20 (b) The employer shall pay permanent total disability
 21 benefits promptly as they accrue to the covered individual



1 without waiting for a decision from the director. The first
2 payment of benefits shall become due and shall be paid no later
3 than on the tenth day after the employer has been notified of
4 the occurrence of the total disability, and thereafter the
5 benefits due shall be paid weekly.

6 (c) If a covered individual develops a hazardous duty
7 related disease that results in temporary total disability, for
8 the duration of the temporary total disability, the covered
9 individual is entitled to receive from the employer through a
10 weekly benefit equal to one hundred per cent of the covered
11 individual's average weekly wages. If a covered individual is
12 unable to complete a regular daily work shift due to a hazardous
13 duty related disease, the firefighter shall be deemed to be
14 totally disabled for work for that day.

15 (d) The employer shall pay temporary total disability
16 benefits promptly as they accrue to the covered individual
17 entitled thereto without waiting for a decision from the
18 director. The first payment of benefits shall become due and
19 shall be paid no later than on the tenth day after the employer
20 has been notified of the occurrence of the total disability, and
21 thereafter the benefits due shall be paid weekly.



1 (e) The payment of temporary total disability benefits
2 pursuant to this section shall be terminated only if the covered
3 individual is able to resume work. When the employer is of the
4 opinion that temporary total disability benefits should be
5 terminated because the covered individual is able to resume
6 work, the employer shall notify the covered individual in
7 writing of an intent to terminate the benefits at least two
8 weeks prior to the date when the last payment is to be made.
9 The notice shall give the reason for stopping payment and shall
10 inform the covered individual that the covered individual may
11 make a written request to the director for a hearing if the
12 covered individual disagrees with the employer. Upon receipt of
13 the request from the covered individual, the director shall
14 conduct a hearing as expeditiously as possible and render a
15 prompt decision. If the covered individual is unable to perform
16 light work, if offered, temporary total disability benefits
17 shall not be discontinued based solely on the inability to
18 perform or continue to perform light work.

19 (f) The department shall adopt administrative rules
20 pursuant to chapter 91 to determine the process for applying for
21 and granting benefits pursuant to this section, including



1 requirements for hearings, appeals, and other procedures and
2 determinations necessary to effectuate this section.

3 (g) For the purposes of this section, average weekly wages
4 shall be computed in a manner that the resulting amount
5 represents most fairly, in the light of the covered individual's
6 employment pattern as a firefighter and the duration of the
7 covered individual's disability, the covered employee's average
8 weekly wages from all firefighter service at the time of the
9 diagnosis.

10 § -7 **Total disability payments to dependents upon death.**

11 When a covered individual is entitled to receive total
12 disability payments pursuant to section -6 and dies from any
13 cause other than the hazardous duty related disease, payment of
14 any unpaid balance of the benefits to the extent that the
15 employer is liable therefor shall be made to the covered
16 individual's dependents as follows:

17 (1) To a dependent widow, widower, or reciprocal
18 beneficiary, for the use of the widow, widower, or
19 reciprocal beneficiary, and the dependent children, if
20 any. The director may from time to time apportion



1 such compensation among the widow, widower, or
2 reciprocal beneficiary, and any dependent children;
3 (2) If there be no dependent widow, widower, or reciprocal
4 beneficiary, but one or more dependent children, then
5 to such child or children to be divided equally among
6 them if more than one;
7 (3) If there be no dependent widow, widower, reciprocal
8 beneficiary, or child, but there be a dependent
9 parent, then to such parent, or if both parents be
10 dependent, to both of them, to be divided equally
11 between them; or if there be no such parents, but a
12 dependent grandparent, then to such grandparent, or if
13 more than one, then to all of them to be divided
14 equally among them; and
15 (4) If there be no dependent widow, widower, reciprocal
16 beneficiary, child, parent, or grandparent, but there
17 be a dependent grandchild, brother, or sister, then to
18 such dependent, or if more than one, then to all of
19 them to be divided equally among them.



1 § -8 **Service-connected disability retirement.** (a)

2 Notwithstanding the existence of nonindustrial predisposing or
3 contributing factors, any covered individual who:

4 (1) Is a member of the employees' retirement system;

5 (2) Has at least one year of credited service;

6 (3) Is permanently incapacitated for duty in the covered
7 individual's current employment as a result of a
8 hazardous duty related disease; and

9 (4) Was exposed to a known carcinogen resulting from the
10 performance of job duties as a firefighter,

11 may be retired by the board of trustees of the employees'
12 retirement system and receive an allowance for service-connected
13 disability retirement pursuant to section 88-80.

14 (b) The covered individual may be retired by the board of
15 trustees of the employees' retirement system upon application of
16 the covered individual or, if incapacitated, the person
17 appointed by the family court as guardian of the covered
18 individual, at any time. The time limit to submit the
19 application pursuant to section 88-79(a)(2) shall not apply for
20 purposes of this section.



1 (c) The benefits provided pursuant to this section shall
2 not constitute benefit enhancements subject to section 88-99.

3 (d) For purposes of this section, "credited service" shall
4 have the same meaning as in section 87A-1.

5 § -9 Ordinary death benefit; accidental death benefit.

6 (a) If a covered individual who is a member of the employees'
7 retirement system and has at least one year of credited service
8 dies due to a hazardous duty related disease, upon receipt by
9 the employees' retirement system of proper proof of the member's
10 death, there shall be paid to the member's designated
11 beneficiary an ordinary death benefit pursuant to section 88-84;
12 provided that the covered individual shall have taken a physical
13 examination upon becoming a firefighter, or subsequently
14 thereto, that failed to reveal any evidence of the condition or
15 impairment to health.

16 (b) The computation of benefits authorized pursuant to
17 this section shall not include the covered individual's credited
18 vacation or sick leave while undergoing medical treatment for
19 the condition.

20 (c) For purposes of this section, "credited service" shall
21 have the same meaning as in section 87A-1.



1 § -10 **Death-related expenses; additional death benefits;**
2 **entitlement to and rate of compensation.** (a) If a covered
3 individual dies due to a hazardous duty related disease, the
4 employer shall pay funeral expenses not to exceed ten times the
5 maximum weekly benefit rate to the mortician and burial expenses
6 not to exceed five times the maximum weekly benefit rate to the
7 cemetery selected by the family including a reciprocal
8 beneficiary or next of kin of the deceased or in the absence of
9 such family including a reciprocal beneficiary or next of kin,
10 by the employer. Such payments shall be made directly to the
11 mortician and cemetery.

12 (b) In addition, the employer shall pay weekly benefits to
13 the deceased's dependents at the percentages of the deceased's
14 average weekly wages specified below, taking into account not
15 more than the maximum weekly benefit rate prescribed in this
16 section divided by .6667 and not less than the minimum
17 prescribed in this section divided by .6667.

18 To the dependent widow, widower, or reciprocal beneficiary,
19 if there are no dependent children, fifty per cent.

20 To the dependent widow, widower, or reciprocal beneficiary,
21 if there are one or more dependent children of the deceased,



1 sixty-six and two-thirds per cent. The compensation to the
2 widow, widower, or reciprocal beneficiary shall be for the use
3 and benefit of the widow, widower, or reciprocal beneficiary and
4 of the dependent children, and the director from time to time
5 may apportion the compensation between them in such way as the
6 director deems best.

7 If there is no dependent widow, widower, or reciprocal
8 beneficiary, but a dependent child, then to the child forty per
9 cent, and if there is more than one dependent child, then to the
10 children in equal parts sixty-six and two-thirds per cent.

11 If there is no dependent widow, widower, or reciprocal
12 beneficiary, or child, but there is a dependent parent, then to
13 the parent, if wholly dependent fifty per cent, or if partially
14 dependent twenty-five per cent; if both parents are dependent,
15 then one-half of the foregoing compensation to each of them; if
16 there is no dependent parent, but one or more dependent
17 grandparents, then to each of them the same compensation as to a
18 parent.

19 If there is no dependent widow, widower, or reciprocal
20 beneficiary, child, parent or grandparent, but there is a
21 dependent grandchild, brother, or sister, or two or more of



1 them, then to those dependents thirty-five per cent for one
2 dependent, increased by fifteen per cent for each additional
3 dependent, to be divided equally among the dependents if more
4 than one.

5 (c) The sum of all weekly benefits payable to the
6 dependents of the deceased employee shall not exceed one hundred
7 per cent of the covered individual's average weekly wages,
8 computed by observing the limits specified in subsection (b), if
9 necessary, the individual benefits shall be proportionally
10 reduced.

11 (d) If there be no dependents who are entitled to benefits
12 under this section, the employer shall pay an amount equal to
13 twenty-five per cent of three hundred twelve times the effective
14 maximum weekly benefit rate provided in this section, to the
15 nondependent parent or parents.

16 (e) For the purposes of this section, the maximum weekly
17 benefit rate shall be the rate determined by the department by
18 rule.

19 § -11 Dependents. (a) The following persons, and no
20 others, shall be deemed dependents and entitled to benefits
21 under this chapter:



- 1 (1) A child who is:
 - 2 (A) Unmarried and under eighteen years;
 - 3 (B) Unmarried and under twenty years if the child is
 - 4 a full-time student at a high school, business
 - 5 school, or technical school, or unmarried and
 - 6 under twenty-two years if the child is a full-
 - 7 time undergraduate student at a college;
 - 8 (C) Unmarried and incapable of self-support; or
 - 9 (D) Married and under eighteen years, if actually
 - 10 dependent upon the deceased;
- 11 (2) The surviving spouse or reciprocal beneficiary, if
- 12 either living with the deceased at the time of the
- 13 hazardous duty related disease or actually dependent
- 14 upon the deceased;
- 15 (3) A parent or grandparent, if actually dependent upon
- 16 the deceased; and
- 17 (4) A grandchild, brother, or sister, if under eighteen
- 18 years or incapable of self-support, and actually and
- 19 wholly dependent upon the deceased.
- 20 (b) A person shall be deemed to be actually dependent upon
- 21 the deceased, if the deceased contributed all or a substantial



1 portion of the living expenses of that person at the time of
2 being diagnosed with a hazardous duty related disease.

3 (c) Alien dependents not residing in the United States at
4 the time that the hazardous duty related disease was diagnosed
5 or leaving the United States subsequently shall maintain annual
6 proof of such dependency as required by the director.

7 § -12 Duration of dependents' weekly benefits. (a) The
8 weekly benefits to dependents shall continue:

9 (1) To a surviving spouse or reciprocal beneficiary, until
10 death, remarriage, marriage, or entry into a new
11 reciprocal beneficiary relationship with two years'
12 compensation in one sum upon remarriage, marriage, or
13 entry into a new reciprocal beneficiary relationship;

14 (2) To or for a child:

15 (A) So long as unmarried, until attainment of the age
16 of eighteen;

17 (B) So long as unmarried, until attainment of the age
18 of:

19 (i) Twenty if the child is a full-time student
20 at a high school, business school, technical
21 school; or



- 1 (ii) Twenty-two if the child is a full-time
- 2 undergraduate student at a college;
- 3 (C) So long as unmarried, until termination of the
- 4 child's incapability of self-support; or
- 5 (D) Until marriage, except that in the case of a
- 6 married child under eighteen, weekly benefits
- 7 shall continue during the period of actual
- 8 dependency until attainment of the age of
- 9 eighteen;
- 10 (3) To a parent or grandparent, for the duration, whether
- 11 continuous or not, of the actual dependency, provided
- 12 that the amount of the weekly benefits shall at no
- 13 time exceed the amount payable at the time of death;
- 14 and
- 15 (4) To or for a grandchild, brother, or sister, for the
- 16 period in which that grandchild, brother, or sister
- 17 remains actually and wholly dependent until attainment
- 18 of the age of eighteen or termination of the
- 19 incapability of self-support.
- 20 (b) The aggregate weekly benefits payable on account of
- 21 any one death shall not exceed the product of three hundred



1 twelve times the effective maximum weekly benefit rate
 2 prescribed in section -8, but this limitation shall not apply
 3 with respect to benefits to a surviving spouse or reciprocal
 4 beneficiary who is physically or mentally incapable of self-
 5 support and unmarried as long as that surviving spouse or
 6 reciprocal beneficiary remains in that condition and to benefits
 7 to a child and to benefits to an unmarried child over eighteen
 8 incapable of self-support as long as that unmarried child is
 9 otherwise entitled to compensation.

10 (c) Upon the cessation under this section of compensation
 11 to or for any person, the benefits of the remaining dependents
 12 in the same class for any further period during which they are
 13 entitled to weekly payments shall be in the amounts which they
 14 would have received, had they been the only dependents entitled
 15 to benefits at the time of the firefighter's death.

16 § -13 **Presumptions.** In any proceeding for the
 17 enforcement of a claim for compensation under this chapter, it
 18 shall be presumed, in the absence of competent evidence to the
 19 contrary, that:

20 (1) The claim is for a hazardous duty related disease;



- 1 (2) Sufficient notice of such hazardous duty related
- 2 disease has been given;
- 3 (3) The hazardous duty related disease was not caused by
- 4 the intoxication of the covered individual; and
- 5 (4) The hazardous duty related disease was not caused by
- 6 the wilful intention of the covered individual."

7 SECTION 3. This Act shall take effect on July 1, 2017.

8



Report Title:

Hazardous Duty Related Diseases; Firefighters; Service Connected Disability and Medical Coverage

Description:

Improves access for firefighters and former firefighters to comprehensive medical coverage and retirement benefits for hazardous duty related diseases that are presumed to arise out of and in the course of employment. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

