

JAN 20 2017

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# 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. Although fire departments are expected to use  
4 the best equipment and management practices available,  
5 firefighters are still exposed to multiple carcinogens and  
6 toxicants through incident exposure as residential and vehicle  
7 fires release highly concentrated toxicants from plastics and  
8 synthetics. In October 2013, researchers from the National  
9 Institute for Occupational Safety and Health published a study  
10 that found that firefighters have a higher risk than the general  
11 population of being diagnosed with cancer. The study looked at  
12 cancers and cancer deaths among 30,000 firefighters from  
13 Chicago, Philadelphia, and San Francisco fire departments and  
14 found that cancers of the respiratory, digestive, and urinary  
15 systems accounted for most of the higher rates of cancer in the  
16 study population, suggesting that firefighters are more likely  
17 to develop these types of cancers.



1           The legislature further finds that H.C.R. No. 32, H.D. 1,  
2 S.D. 1, regular session of 2016, requested the convening of a  
3 task force to examine cancer in the firefighting profession.  
4 The task force discussed, among other things, recommendations  
5 for revisions to state workers' compensation laws that expedite  
6 the delivery of workers' compensation benefits for firefighters  
7 diagnosed with cancer, the percentages of cancer diagnoses in  
8 Hawaii for the general population compared to firefighters, and  
9 estimated costs to the State and counties if there were to be an  
10 increase in workers' compensation benefits for firefighters  
11 diagnosed with cancer. These discussions led to the discovery  
12 that others states, such as Arizona, California, Nevada, North  
13 Dakota, and Virginia, have legislation that specifically  
14 mentions coverage of occupational diseases for firefighters due  
15 to the higher risks of contaminant exposure for firefighters.  
16 Providing sufficient medical coverage for firefighters not only  
17 ensures that firefighters receive the proper medical treatment  
18 in a timely manner, but also lessens the impact of emotional  
19 toil, financial burdens, and decreased quality of life on the  
20 families of firefighters diagnosed with cancer.



1           The purpose of this Act is to provide to firefighters who  
 2   develop cancer expanded benefits equal to one hundred per cent  
 3   of average weekly wages, disability indemnity, and death  
 4   benefits, paid for by the employer. The intent of this Act is  
 5   not to be a new benefit or to enhance the employees' retirement  
 6   system benefits of firefighters, but to improve access for  
 7   firefighters to comprehensive medical coverage and service-  
 8   connected disability retirement benefits for hazardous duty  
 9   related diseases that are presumed to arise out of and in the  
 10   course of employment.

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

14    **"CHAPTER**

15           **HAZARDOUS DUTY RELATED DISEASES TREATMENT INSURANCE BENEFITS**

16           §    -1  Definitions. As used in this chapter:

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

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

20           "Firefighter" means all federal, state, and county  
 21   employees whose principal duties are to prevent and fight fires.



1 "Hazardous duty related disease" means cancer.

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

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

8 § -2 Health coverage. (a) All individual and group  
9 accident and health or sickness insurance policies issued in  
10 this State, individual or group hospital or medical service plan  
11 contracts, and nonprofit mutual benefit society, fraternal  
12 benefit society, and health maintenance organization health plan  
13 contracts shall include within their hospital and medical  
14 coverage the benefits of hazardous duty related disease  
15 treatment for firefighters, except that this section shall not  
16 apply to insurance policies that are issued solely for single  
17 diseases, or otherwise limited, specialized coverage.

18 (b) The policies and contracts set forth in subsection (a)  
19 shall not be construed as reducing any obligation to provide  
20 services to an individual under any publicly funded program, an



1 individualized family service plan, an individualized education  
2 program, or an individualized service plan.

3 (c) Coverage under this section shall exclude coverage  
4 for:

5 (1) Care that is custodial in nature;

6 (2) Services and supplies that are not clinically  
7 appropriate;

8 (3) Services provided by family or household members;

9 (4) Treatments considered experimental; and

10 (5) Services provided outside of the State.

11 (d) Coverage under this section may be subject to  
12 copayment, deductible, and coinsurance provisions of a policy  
13 that are no less favorable than the copayment, deductible, and  
14 coinsurance provisions for substantially all medical services  
15 covered by the plan contract.

16 (e) The fees for medical care services and supplies for  
17 firefighters who develop a hazardous duty related disease shall  
18 be fully reimbursed based on the usual and customary charges  
19 comparable to mutual benefit societies, health maintenance  
20 organizations, and the Hawaii employer-union health benefits



1 trust fund for fees for services actually received by providers  
2 of health care services.

3       **§ -3 Inapplicability of workers' compensation law.**

4 Chapter 386 shall not apply to firefighters who develop a  
5 hazardous duty related disease and receive benefits pursuant to  
6 this chapter.

7       **§ -4 Hazardous duty related disease benefits;**

8 **screenings.** (a) If a firefighter develops a hazardous duty  
9 related disease, the condition shall be presumed to arise out of  
10 and in the course of employment as a firefighter. The benefits  
11 shall include a benefit equal to one hundred per cent of the  
12 firefighter's average weekly wages, disability indemnity, and  
13 death benefits paid for by the employer.

14 (b) The presumption under subsection (a) is rebuttable  
15 only by a finding of substantial evidence to the contrary. This  
16 presumption shall be extended to a firefighter in perpetuity  
17 following termination of service.

18 (c) The employer shall pay for annual appropriate  
19 screenings and preventative screenings for hazardous duty  
20 related diseases for the firefighter; provided that the  
21 firefighter need not be diagnosed with a hazardous duty related



1 disease as a condition for payment by the employer of the costs  
2 of receiving a preventative screening for a hazardous duty  
3 related disease.

4       § -5 Disability retirement. (a) If a firefighter who  
5 has completed one or more years of credited service develops a  
6 hazardous duty related disease or dies due to a hazardous duty  
7 related disease, the death or hazardous duty related disease so  
8 developing or manifesting itself in those cases shall be  
9 presumed to arise out of and in the course of employment;  
10 provided that the firefighter shall have taken a physical  
11 examination upon becoming a firefighter, or subsequently  
12 thereto, that failed to reveal any evidence of the condition or  
13 impairment to health.

14       The benefits that are awarded for a death or hazardous duty  
15 related disease shall include full hospital, surgical, medical  
16 treatment, disability indemnity, and death benefits, as provided  
17 by this chapter and chapter 88. The computation of benefits  
18 authorized pursuant to this section shall not include the  
19 firefighter's credited vacation or sick leave while undergoing  
20 medical treatment for the condition.



1           (b) Notwithstanding the existence of nonindustrial  
2 predisposing or contributing factors, any firefighter  
3 permanently incapacitated from the performance of duty as a  
4 result of a hazardous duty related disease, shall receive a  
5 service-connected disability retirement if the member has been  
6 exposed to a known carcinogen resulting from the performance of  
7 job duties.

8           (c) The presumption under subsection (a) is rebuttable  
9 only by a finding of substantial evidence to the contrary. This  
10 presumption shall be extended to a firefighter in perpetuity  
11 following termination of service.

12           § -6 **Payment after death.** Where a firefighter is  
13 entitled to weekly income and indemnity benefits for permanent  
14 total disability and dies from any cause other than a hazardous  
15 duty related disease, payment of any unpaid balance of the  
16 benefits to the extent that the employer is liable therefor,  
17 shall be made to the firefighter's dependents as follows:

18           (1) To a dependent widow, widower, or reciprocal  
19 beneficiary, for the use of the widow, widower, or  
20 reciprocal beneficiary, and the dependent children, if  
21 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.

20       § -7 **Total disability; permanent; temporary.** (a) Where  
21 a hazardous duty related disease causes permanent total



1 disability, the employer shall pay the firefighter a weekly  
2 benefit equal to one hundred per cent of the firefighter's  
3 weekly wages.

4 The employer shall pay permanent total disability benefits  
5 promptly as they accrue to the firefighter entitled to the  
6 benefits without waiting for a decision from the director. The  
7 first payment of benefits shall become due and shall be paid no  
8 later than on the tenth day after the employer has been notified  
9 of the occurrence of the total disability, and thereafter the  
10 benefits due shall be paid weekly.

11 (b) Where a hazardous duty related disease causes total  
12 disability not determined to be permanent in character, the  
13 employer, for the duration of the disability shall pay the  
14 firefighter a weekly benefit of one hundred per cent of the  
15 firefighter's average weekly wages. If a firefighter is unable  
16 to complete a regular daily work shift due to a hazardous duty  
17 related disease, the firefighter shall be deemed totally  
18 disabled for work for that day.

19 The employer shall pay temporary total disability benefits  
20 promptly as they accrue to the firefighter entitled thereto  
21 without waiting for a decision from the director. The first



1 payment of benefits shall become due and shall be paid no later  
2 than on the tenth day after the employer has been notified of  
3 the occurrence of the total disability, and thereafter the  
4 benefits due shall be paid weekly.

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



1           §   -8   Entitlement to and rate of compensation.   (a)

2   Where a hazardous duty related disease causes death, the  
3   employer shall pay funeral expenses not to exceed ten times the  
4   maximum weekly benefit rate to the mortician and burial expenses  
5   not to exceed five times the maximum weekly benefit rate to the  
6   cemetery selected by the family including a reciprocal  
7   beneficiary or next of kin of the deceased or in the absence of  
8   such family including a reciprocal beneficiary or next of kin,  
9   by the employer.  Such payments shall be made directly to the  
10  mortician and cemetery.

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

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

19           To the dependent widow, widower, or reciprocal beneficiary,  
20  if there are one or more dependent children of the deceased,  
21  sixty-six and two-thirds per cent.  The compensation to the



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

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

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

18 If there is no dependent widow, widower, or reciprocal  
19 beneficiary, child, parent or grandparent, but there is a  
20 dependent grandchild, brother, or sister, or two or more of  
21 them, then to those dependents thirty-five per cent for one



1 dependent, increased by fifteen per cent for each additional  
2 dependent, to be divided equally among the dependents if more  
3 than one.

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

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

14 § -9 Dependents. (a) The following persons, and no  
15 others, shall be deemed dependents and entitled to income and  
16 indemnity benefits under this chapter:

- 17 (1) A child who is:
- 18 (A) Unmarried and under eighteen years;
  - 19 (B) Unmarried and under twenty years if the child is  
20 a full-time student at a high school, business  
21 school, or technical school, or unmarried and



- 1                   under twenty-two years if the child is a full-  
2                   time undergraduate student at a college;
- 3                   (C) Unmarried and incapable of self-support; or  
4                   (D) Married and under eighteen years, if actually  
5                   dependent upon the deceased;
- 6                   (2) The surviving spouse or reciprocal beneficiary, if  
7                   either living with the deceased at the time of the  
8                   hazardous duty related disease or actually dependent  
9                   upon the deceased;
- 10                  (3) A parent or grandparent, if actually dependent upon  
11                  the deceased; and
- 12                  (4) A grandchild, brother, or sister, if under eighteen  
13                  years or incapable of self-support, and actually and  
14                  wholly dependent upon the deceased.
- 15                  (b) A person shall be deemed to be actually dependent upon  
16                  the deceased, if the deceased contributed all or a substantial  
17                  portion of the living expenses of that person at the time of  
18                  being diagnosed with a hazardous duty related disease.
- 19                  (c) Alien dependents not residing in the United States at  
20                  the time that the hazardous duty related disease was diagnosed



1 or leaving the United States subsequently shall maintain annual  
2 proof of such dependency as required by the director.

3 § -10 Duration of dependents' weekly benefits. (a) The  
4 weekly benefits to dependents shall continue:

5 (1) To a surviving spouse or reciprocal beneficiary, until  
6 death, remarriage, marriage, or entry into a new  
7 reciprocal beneficiary relationship with two years'  
8 compensation in one sum upon remarriage, marriage, or  
9 entry into a new reciprocal beneficiary relationship;

10 (2) To or for a child:

11 (A) So long as unmarried, until attainment of the age  
12 of eighteen;

13 (B) So long as unmarried, until attainment of the age  
14 of:

15 (i) Twenty if the child is a full-time student  
16 at a high school, business school, technical  
17 school; or

18 (ii) Twenty-two if the child is a full-time  
19 undergraduate student at a college;

20 (C) So long as unmarried, until termination of the  
21 child's incapability of self-support; or





1 (D) Until marriage, except that in the case of a  
2 married child under eighteen, weekly benefits  
3 shall continue during the period of actual  
4 dependency until attainment of the age of  
5 eighteen;

6 (3) To a parent or grandparent, for the duration, whether  
7 continuous or not, of the actual dependency, provided  
8 that the amount of the weekly benefits shall at no  
9 time exceed the amount payable at the time of death;  
10 and

11 (4) To or for a grandchild, brother, or sister, for the  
12 period in which that grandchild, brother, or sister  
13 remains actually and wholly dependent until attainment  
14 of the age of eighteen or termination of the  
15 incapability of self-support.

16 (b) The aggregate weekly benefits payable on account of  
17 any one death shall not exceed the product of three hundred  
18 twelve times the effective maximum weekly benefit rate  
19 prescribed in section -8, but this limitation shall not apply  
20 with respect to benefits to a surviving spouse or reciprocal  
21 beneficiary who is physically or mentally incapable of self-



1 support and unmarried as long as that surviving spouse or  
2 reciprocal beneficiary remains in that condition and to benefits  
3 to a child and to benefits to an unmarried child over eighteen  
4 incapable of self-support as long as that unmarried child is  
5 otherwise entitled to compensation.

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

12 § -11 Presumptions. In any proceeding for the  
13 enforcement of a claim for compensation under this chapter, it  
14 shall be presumed, in the absence of substantial evidence to the  
15 contrary, that:

- 16 (1) The claim is for a hazardous duty related disease;  
17 (2) Sufficient notice of such hazardous duty related  
18 disease has been given;  
19 (3) The hazardous duty related disease was not caused by  
20 the intoxication of the firefighter; and



1 (4) The hazardous duty related disease was not caused by  
2 the wilful intention of the firefighter."

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

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# S.B. NO. 383

**Report Title:**

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

**Description:**

Improves access for firefighters to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases that are presumed to arise out of and in the course of employment.

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