

2021 -- S 0941 SUBSTITUTE A

LC002940/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO TOWNS AND CITIES -- OPTIONAL RETIREMENT FOR MEMBERS OF
POLICE FORCE AND FIRE FIGHTERS

Introduced By: Senators Ciccone, and F Lombardi

Date Introduced: May 28, 2021

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-21.2-9 of the General Laws in Chapter 45-21.2 entitled "Optional
2 Retirement for Members of Police Force and Fire Fighters" is hereby amended to read as follows:

3 **45-21.2-9. Retirement for accidental disability.**

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

1 confirms the statements made by the member, the board may grant the member an accidental
2 disability retirement allowance.

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

9 (c) "Occupational cancer," as used in this section, means a cancer arising out of
10 employment as a firefighter, due to injury or illness due to exposures to smoke, fumes, or
11 carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty in
12 the fire department.

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

16 (e) Any firefighter, including one employed by the state, or a municipal firefighter
17 employed by a municipality that participates in the optional retirement for police officers and
18 firefighters as provided in this chapter, who is unable to perform his or her duties in the fire
19 department by reason of a disabling occupational cancer (as defined in §§ 45-19.1-2 and 45-19.1-
20 4) that develops or manifests itself during a period while the firefighter is in the service of the
21 department, and any retired member of the fire force of any city or town who develops occupational
22 cancer (as defined in §§ 45-19.1-2 and 45-19.1-4), is entitled to receive an occupational cancer
23 disability and he or she is entitled to all of the benefits provided for in this chapter, chapters 19,
24 19.1, and 21 of this title and chapter 10 of title 36 if the firefighter is employed by the state.

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

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

34 (h) In the event that a party files a notice of appeal to the workers' compensation court, the

1 order of the retirement board shall be stayed pending further action by the court pursuant to the
2 provisions of § 28-35-20.

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

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

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

26 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO TOWNS AND CITIES -- OPTIONAL RETIREMENT FOR MEMBERS OF
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- 1 This act would allow any member in active service, regardless of age, to be eligible for an
- 2 accidental disability retirement allowance.
- 3 This act would take effect upon passage.

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