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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 135

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO LINE-OF-DUTY DISABILITY
BENEFITS TO COVERED FIREFIGHTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6701, Title 18 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 6701. Definitions.

~~As used in this chapter, the following words and terms have the following meanings:~~ For purposes of this chapter:

(1) ~~"Covered firefighters" shall mean enrolled firefighters, ladies auxiliary members, and volunteer ambulance
and rescue company members in good standing either according to the rules of their Delaware volunteer fire company
or association or through their assignment to a municipal fire company. The use of the masculine gender throughout
this chapter in referring to "covered firemen" shall also include the feminine gender where applicable.~~ means any of the
following:

a. A firefighter or emergency medical technician (EMT) who is an active member of a volunteer or
municipal fire department in this State, or a designated first responder, including firefighters and EMTs who are
volunteers, partly paid, or full-time employees.

b. A fire service instructor or fire marshal employed by this State.

c. A member of a fire department auxiliary.

(2) ~~"Line of duty," with respect to enrolled firefighters, ladies auxiliary members and volunteer ambulance
and rescue company members as defined in paragraph (1) of this section, shall mean~~ means while traveling to,
performing ~~their~~ a covered firefighter's assigned duties ~~duties~~, or returning from, a fire alarm, rescue ~~operation~~
operation, or any other ~~emergency volunteer fire company action; provided, however, that the phrases~~ action. The
phrases "traveling to" and "returning from" shall include the time encompassed by the firefighter's, ladies auxiliary
members' or volunteer ambulance and rescue company members' covered firefighter's entrance into their a personal

vehicle or company emergency vehicle in response to the alarm or emergency call until ~~their~~ the covered firefighter's
first disembarkation from ~~their~~ a personal vehicle at their home, place of employment employment, or other location.

(3)a. "Permanent disability" shall mean means a permanent ~~physical~~ condition arising out of and in the course
of actions in the line of duty, ~~but shall not include permanent disability from an injury or disease, which, although~~
~~aggravated in the line of duty, was not originally sustained in the line of duty; provided, however, that said duty and the~~
permanent disability ~~must be~~ is sufficient to disable the covered firefighter so that the covered firefighter is unable to
do the work normally required for the job or employment which ~~he or she~~ the covered firefighter held at the time ~~he or~~
~~she~~ the covered firefighter was disabled.

b. "Permanent disability" does not mean permanent disability from an injury or disease, which, although
aggravated in the line of duty, was not originally sustained in the line of duty.

Section 2. Amend Chapter 67 of Title 18 of the Delaware Code by making deletions as shown by strike through
and insertions as shown by underline as follows:

§ 6709. Presumption – Covered Firefighters.

(a) For purposes of this chapter, a covered firefighter is presumed to have an occupational disease that was
suffered in the line of duty if all of the following apply:

(1) The covered firefighter is not an auxiliary member.

(2) The covered firefighter has a condition under subsection (b) of this section.

(3) The covered firefighter is in compliance with the medical examination requirements under subsection (c)
of this section.

(4) The covered firefighter has been a covered firefighter for at least 5 years or is a retired covered firefighter
who is diagnosed with cancer within 5 years of the firefighter's last active service as a firefighter.

(5) The covered firefighter's condition under subsection (b) of this section results in permanent disability.

(b) Occupational diseases under subsection (a) of this section include any of the following:

(1) Lung disease.

(2) A heart problem that is either of the following:

a. Experienced within 72 hours of exposure to smoke, fumes, or toxic substances.

b. Experienced within 24 hours of strenuous physical exertion due to firefighting activities.

(3) Cancer if the covered firefighter was exposed, while in the line of duty, to an agent classified by the
International Agency for Research on Cancer or its successor agency as a group 1 or 2A carcinogen.

(4) Post-traumatic stress injury that is either of the following:

51 a. Caused by exposure to a traumatic event experienced while in the line of duty.

52 b. Presumed when the covered firefighter has been a covered firefighter for at least 5 years.

53 (c)(1) A covered firefighter who joins the fire service on or after [the effective date of this Act] must do both of the

54 following:

55 a. Have a medical examination upon joining the fire service that reveals no evidence of a condition under

56 subsection (b) of this section.

57 b. Receive periodic medical examinations at no less than the intervals in paragraph (c)(4) of this section.

58 (2) A covered firefighter who is a member of the fire service on [the effective date of this Act] must do both

59 of the following:

60 a. Have a medical examination within 1 year of [the effective date of this Act].

61 b. Receive periodic medical examinations at no less than the intervals in paragraph (c)(4) of this section.

62 (3) A medical examination under this subsection must include all of the following:

63 a. A general medical history of the individual and the individual's family.

64 b. A physical examination including height, weight, blood pressure, and laboratory and diagnostic tests.

65 c. An evaluation for post-traumatic stress injury.

66 (4) A covered firefighter must receive a periodic medical examination, at the following minimum intervals:

67 a. Every 5 years during the first through twentieth year of service.

68 b. Every 3 years beginning at the twenty-first year of service.

69 (d) The presumption under subsection (a) of this section may be rebutted by a preponderance of the evidence of 1

70 of the following:

71 (1) The covered firefighter incurred the condition being alleged under subsection (b) before becoming a

72 firefighter.

73 (2)a. There is evidence that the covered firefighter's condition was caused by the use of tobacco products, or

74 other factors presenting an extremely high risk for the development of the condition under subsection (b) of this

75 section, including physical fitness and weight, lifestyle, hereditary factors, and exposure to agents outside of duties as a

76 firefighter.

77 b. The State Fire Prevention Commission, Department of Human Resources, and Delaware Volunteer

78 Fire Association shall define the tobacco use that excludes a covered firefighter from the presumption under

79 subsection (a) of this section and requirements for medical examinations under subsection (c) of this section.”.

(3) There is evidence that the covered firefighter was not exposed to an agent classified by the International Agency for Research on Cancer or its successor agency as a group 1 or 2A carcinogen.

(4) There is evidence that the covered firefighter's condition under paragraph (b)(4) of this section was caused by exposure to a traumatic event experienced while that did not occur in the line of duty or other risk factors outside of duties as a covered firefighter.

(e) Each fire company, department, and agency must maintain a comprehensive tracking system with records for each member firefighter's exposure to agents under paragraph (b)(3) of this section.

(f)(1) Beginning 2 years from [the effective date of this Act], the Commissioner shall prepare a report every 2 years regarding the presumed cancer claims under this section. This report must include all of the following information:

a. The number of approved claims.

b. The number of disapproved claims.

c. The number of active claims.

d. The cost related to approved claims and active claims.

(2) The Commissioner must submit the report required by paragraph (f)(1) of this section to the members of the General Assembly, the Delaware Fire Chiefs Association, the Delaware Volunteer Firefighter's Association, the Director of the Office of Management and Budget, and the Director of the Insurance Coverage Office of the Department of Human Resources.

(g) The standards for an "occupational disease" under this section apply only for the purposes of line-of-duty benefits under this chapter. Nothing in this section makes a covered firefighter eligible for benefits authorized under Chapter 23 of Title 19.

Section 3. This Act is effective on enactment and is implemented the earlier of the following:

(1) January 1, 2022.

(2) On fulfillment of the requirements under § 6709(d)(2)b. of Title 18 and the Secretary of the Department of Human Resources providing notice to the Registrar of Regulations, published in the Register of Regulations, that the contingency under this paragraph (2) of this section has been fulfilled."

SYNOPSIS

This Act expands the eligibility for Line-of-Duty disability benefits to all firefighters or emergency medical technicians (EMT) who are a member of a volunteer or municipal fire department in this State or a designated first responder, including firefighters and EMTs who are volunteers, partly paid or full-time employees, plus all fire service instructors or fire marshals employed by this State.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.