ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

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'Nonexecutive' stress leads heart attack risks

By BRYCE NELSON
The New York Times

Executive stress has been a popular subject for years among industrial psychologists and mass market writers. But the greater cause for concern in occurrence of heart disease, as a group of American and Swedish researchers now sees it, might appropriately be called nonexecutive stress.

From four studies based on 5,100 Swedish and American men, the investigators found that heart disease is more prevalent in workers such as cooks, waiters, hospital orderlies and assembly line personnel, who combine heavy job demands with a low ability to influence how their tasks are done.

The lowest tenth of such workers, measured in ability to control their own jobs, was approximately five times as likely to develop coronary heart disease as the privileged top tenth of workers in job control, according to Dr. Robert A. Karasek, an assistant professor of industrial engineering at Columbia University who led the multidisciplinary research effort.

The health risk of low job control in developing heart disease is "roughly the same order of magnitude as smoking or an elevated serum cholesterol level," he said in an interview last week. Machine-paced assembly line workers were from 70 to 200 percent more likely to develop heart disease than low-level managerial personnel.

The studies could eventually play a role in altering perceptions about the causes of heart disease, though the researchers emphasize that their work is not yet complete. They assert, however, that the project already points to the first scientific conclusions linking decision-making capacities on the job to the incidence of heart disease.

Karasek blamed the creation of so many low-control jobs in this century not only on the introduction of the manufacturing assembly line, but on the great influence of Frederick W. Taylor, the founder of scientific management and industrial engineering in the United States. In his theories, Taylor argued that mental and manual abilities had to be separated in designing jobs and that workers had to be restricted in their range of skills in order to develop depth of a specific skill—notions widely implemented by industry.

The chief investigators included Dr. Tores Theorell, professor at the National Institute for Psychosocial Factors and Health in Stockholm, and Dr. Joseph E. Schwartz, an assistant professor of sociology at Columbia. They reported their findings, based on examination of 2,950 Swedish workers, in the July 1981 issue of the American Journal of Public Health and in the March 1982 issue of Social Science Medicine, a British journal. Another study, based on 2,150 American workers, which was completed in September 1982, is still in manuscript.

"What's so exciting is that the American study confirms the Swedish findings," Karasek said.

"We've known that job factors are linked to stress, but these researchers have jumped over the stress link and gotten to the disease link," said Dr. Michael Smith, who directs research in motivation and stress for the National Institute for Occupational Safety and Health, the federal agency that financed the project.

The researchers compared workers with heart disease with a control group, matched for age, sex, race, smoking and education, that did not suffer from the illness. For example, in one of their studies they compared 334 Swedish workers with heart disease to 882 without it. Using research done by the Swedish Central Statistical Bureau to determine which occupations were low in job control, they found that a significantly larger proportion of the afflicted workers were in positions with low control over their jobs than were the disease-free workers.

"Job control" involved two factors: the worker's ability to make his own decisions at his work site and his capacity to use a range of skills. They found that high-control positions included those in forestry, dentistry and natural science, as well as jobs that seem like relics of a bucolic past: blacksmiths, auctioneers, peddlers and millwrights.

While they did not measure the stress the workers were under, they said their findings implicated psychological stress or strain as the pathway through which low job control is translated into heart disease. Exposure to high levels of psychological strain "is most effectively handled when the individual can most effectively translate that energy into action," Karasek said. "When the individual has no control, the sympathetic nervous system and its close control over the cardiovascular system may be adversely affected. A second result may be that hormonal and endocrinal accumulations build up, which the body is not well adapted to deal with over the long term. Chronic excess levels of psycho-endocrine hormones, such as adrenaline, noradrenaline and cortisol have been correlated with hypertension and predisposition to heart attacks. Also, long-term changes in the pattern of synthesis of these hormones and of the lipoproteins may be a pathway toward deterioration of the cardiovascular system. All of these mechanisms together may combine to put an individual at high risk for an episode of coronary heart disease."

It is unfortunate, Karasek added, that more studies have not been done on women, especially because female workers are heavily concentrated in the stressful areas where job demands are high but where worker control is low.

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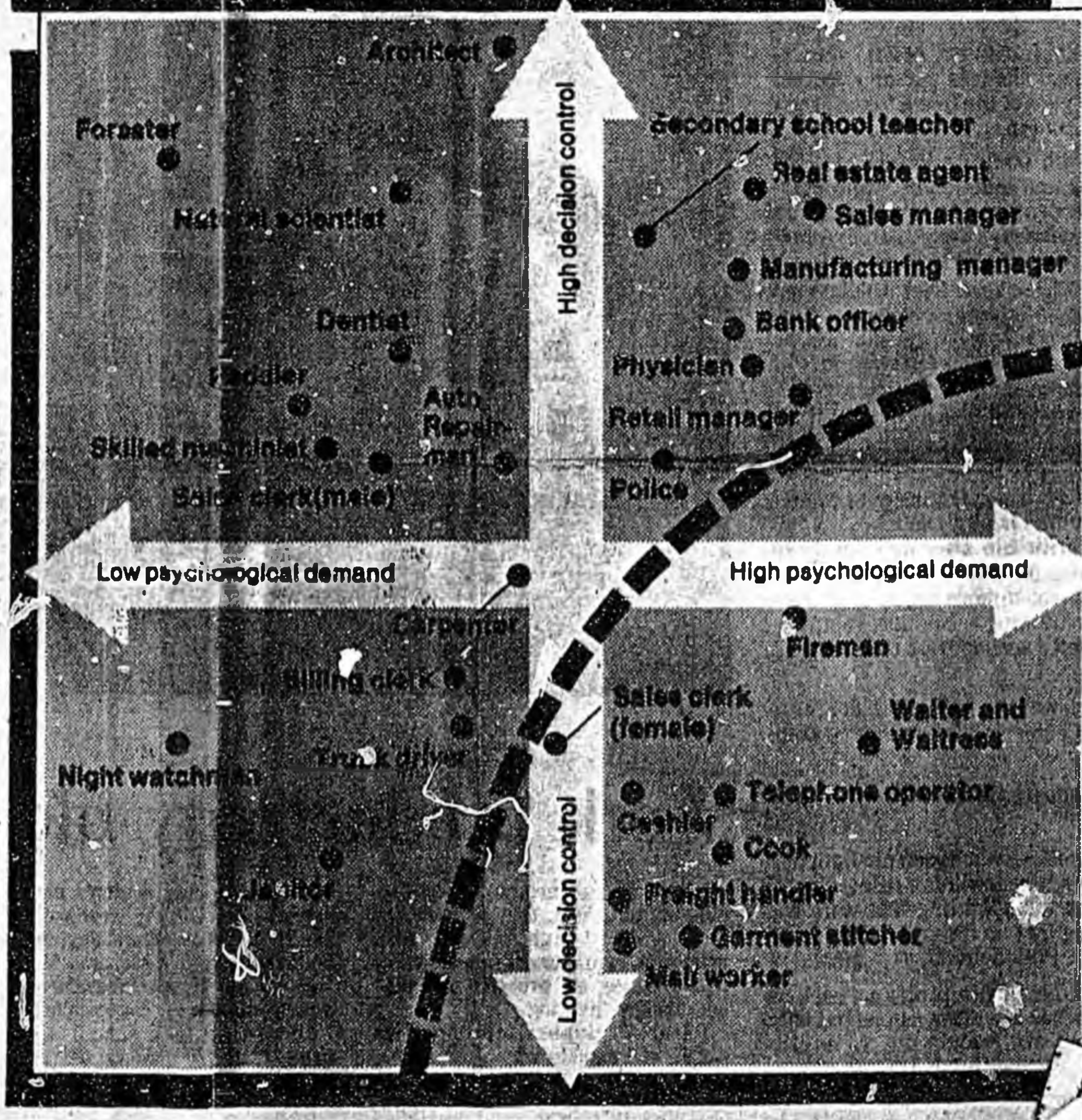
Stress at work

Research suggests that workers whose jobs involve high psychological strain but little decision making are more subject to cardiovascular illness. Jobs at right of curve in model below are among the top 25 percent in combined risk factor of low control and high psychological demands.

Source: Columbia University Department of Industrial Engineering and Operations Research



A BILL

TO BE ENTITLED

AN ACT

To provide that the disability or death of a firefighter caused by hypertension, heart disease or respiratory disease shall be considered as a service connected disability or death, subject to certain conditions prescribed in the Act, within the meaning of any laws which provide benefits for firefighters who, while employed by a municipality, are disabled in the line of duty or for the widow, children or other dependents of firefighters who, while employed by a municipality, are killed in the line of duty.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Definitions. As used herein the following words and terms shall have the meanings ascribed to them herein unless a contrary meaning is indicated by the context: "city" shall mean any municipality of the State, regardless of its population; "firefighter" shall mean a person employed as a firefighter or fireman by a city; "firefighter's occupational disease" shall mean any condition or impairment of health caused by hypertension, heart disease or respiratory disease; "disability" shall mean disability to perform duties as a firefighter; "benefit" shall mean any monetary allowance payable by a city, or from a pension system established for the firemen of a city, to a firefighter on account of his disability or to his dependents on account of his death, irrespective of whether the same is payable under a pension law of the State or under some other law of the State.

Section 2. The provisions of this Act shall apply to firefighters who upon entering the service of the city as firefighters have successfully passed a physical examination which failed to reveal any evidence of a firefighter's occupational disease and who have completed at least three years service as firefighters; provided, however, a physical examination was required at the time of entry into service.

Section 3. If a physical examination was not required at the time of entry into service, a firefighter who has had at least three years continuous service as a firefighter, next preceeding (sic) the effective date of this act, shall be deemed eligible for benefits under the provisions of this act.

Section 4. If a firefighter who qualifies for benefits under the provisions of this act suffers disability as a result of a firefighter's occupational disease his disability shall be compensable the same as any service connected disability under any law which provides benefits for firefighters of such city injured in the line of duty. If a firefighter who qualifies for benefits under the provisions of this act dies as the result of a firefighter's occupational disease, his death shall be compensable to the same extent as the death of a firefighter killed in the line of duty.

ALABAMA

FIRE DEPARTMENT

Sec. 450 (4). Disability or death of fire fighter caused by hypertension, heart disease or respiratory disease.--(1) Definitions.--As used herein the following words and terms shall have the meanings ascribed to them herein unless a contrary meaning is indicated by the contex: "City" shall mean any municipality of the state, regardless of its population; "fire fighter" shall mean a person employed as a fire fighter or fireman by a city "fire fighter's occupational disease" shall mean any condition or impairment of health caused by hypertension heart disease or respiratory disease; "disability" shall mean disability to perform duties as a fire fighter; "benefit" shall mean any monetary allowance payable by a city, or from a pension system established for the firemen of a city, to a fire fighter on account of his disability, or to his dependents on account of his death, irrespective of whether the same is payable under a pension law of the state or under some other law of the state.

(2) The provisions of this section shall apply to fire fighters who upon entering the service of the city as fire fighters have successfully passed a physical examination which failed to reveal any evidence of a fire fighter's occupational disease and who have completed at least three years service as fire fighters; provided, however, a physical examination was required at the time of entry into service.

(3) If a physical examination was not required at the time of entry into service, a fire fighter who has had at least three years continuous service as a fire fighter, next preceding the effective date of this section, shall be deemed eligible for benefits under the provisions of this section.

(4) If a fire fighter who qualifies for benefits under the provisions of this section suffers disability as a result of a fire fighter's occupational disease his disability shall be compensable the same as any service connected

disability under any law which provides benefits for fire fighters of such city injured in the line of duty. If a fire fighter who qualifies for benefits under the provisions of this section dies as the result of a fire fighter's occupational disease, his death shall be compensable to the same extent as the death of a fire fighter killed in the line of duty. (1967, p.1323, appvd. Sept. 8, 1967)

Section 5. All laws and parts of laws, including general, special and local laws, in conflict herewith are hereby repealed.

Section 6. If any part of this Act should be held unconstitutional, such holding shall not affect the validity of the remaining parts of said Act.

Section 7. This act shall become effective upon its approval by the Governor or upon its otherwise becoming a law.

Copies Supplied by: PROFESSIONAL FIRE FIGHTERS ASSOCIATION OF ALABAMA, 9-22-67

Calif.

of 1950, including training necessary or proper to engage in such activities.

(Added by Stats.1946, 1st Ex.Sess. c. 104, p. 133, § 4, eff. March 8, 1946. Amended by Stats.1951, c. 1440, p. 3400, § 3.)

Historical Note

The 1951 amendment added the reference to the Civil Defense Act of 1950.

Cross References

California Emergency Services Act, see Government Code § 8550 et seq.

Library References

Sovereign immunity study. Cal.Law Revision Comm. (1963) Vol. 5, pp. 153, 159.

Words and Phrases (Perm.Ed.)

§ 3211.93a Disaster service; exclusion of activities for which disaster council receives fee

"Disaster service" does not include any activities or functions performed by a person if the disaster council with whom such person is registered receives a fee or other compensation for the performance of such activities or functions by such person.

(Added by Stats.1957, c. 1103, p. 2408, § 1.)

Cross References

Disaster preparedness and relief, see Military and Veterans Code § 1500 et seq.

Library References

Sovereign immunity study. Cal. Law Revision Comm. (1963) Vol. 5, p. 159.

Words and Phrases (Perm.Ed.)

§ 3212. Injury; inclusion of hernia, heart trouble and pneumonia

In the case of members of a sheriff's office or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether such members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Division of Forestry of the State Department of Natural Resources whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of ac-

tive law enforcement service such as stenographer, telephone operators, and other office-workers, the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while such member is in the service in such office, division, department or unit, and in the case of members of such fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other office-workers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other office-workers, and in the case of active firefighting members of the Division of Forestry whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographer, telephone operators, and other office-workers, the term "injury" includes pneumonia and heart trouble which develops or manifests itself during a period while such member is in the service of such office, department or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia which manifests itself or develops during a period while the officer is in the service. The compensation which is awarded for such hernia, heart trouble or pneumonia, shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workmen's compensation laws of this state.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

(Stats.1937, c. 90, p. 266, § 3212. Amended by Stats.1939, c. 256, p. 1511, § 1; Stats.1945, c. 742, p. 1428, § 1; Stats.1947, c. 1210, p. 2721, § 1; Stats.1949, c. 730, p. 1347, § 1; Stats.1955, c. 797, p. 1398, § 1; Stats.1959, c. 758, p. 2744, § 1; Stats.1965, c. 1513, p. 3567, § 52.5, operative Jan. 15, 1966; Stats.1965, c. 1690, p. 3817, § 1.)

Historical Note

The 1939 amendment added the words, "and in the case of members of such fire departments, county forestry or fire fighting departments, and in the case of active

Research Department

From the Desk of:
WALT LAMBERT

Wash Post
3/4/75

Police Heart Attack Compensation Allowed

HARTFORD, Conn., March 4 (UPI)—The state supreme court has upheld a law allowing monetary awards to the families of policemen and firemen who die from heart attacks, whether at home or on the job.

The law provides unemployment compensation benefits if the law officers, and firemen passed physical examinations when they first began the job.

The high court noted that firemen and policemen were found to have an unusually high rate of heart disease and hypertension, and they deserved the benefits.

No. 9. pp. 12, 17); *Manchester Memorial Hospital, Inc. v. State Board of Labor Relations,* Conn. (36 Conn. L.J., No. 6. pp. 1, 3): Maltbie, Conn. App. Proc. § 327. Other assignments were attacks on the finding which would not materially affect the issues on appeal. *Ferino v. Palmer,* 133 Conn. 463, 465, 52 A.2d 433.

There is no error.

In this opinion the other judges concurred.

SUPREME COURT

December Term, 1974

MURIEL P. GROVER *v.* TOWN OF MANCHESTER ET AL.
(No. 7591)

MURIEL P. GROVER *v.* TOWN OF MANCHESTER ET AL.
(No. 7606)

Appeal by the named defendant from an award of the workmen's compensation commissioner for the first district, brought to the Court of Common Pleas in Hartford County, *Collins, J.*, and to the Superior Court in Hartford County, *Driscoll, J.*, and reserved by both courts for the advice of this court.

Maurice T. FitzMaurice, for the appellant (named defendant in both cases).

Thomas P. FitzGerald, with whom, on the brief, was *Herbert A. Phelon, Jr.,* for the appellee (plaintiff in both cases).

MACDONALD, J. The issues raised by these two reservations, one from the Superior Court and one from the Court of Common Pleas under the same name, are identical and involve the constitutionality of § 7-433c of the General Statutes entitled "Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease."

The relevant facts, as stipulated by the parties, are as follows: The plaintiff, Muriel Grover, is a dependent of Leo Grover, hereafter Grover, who died on September 7, 1971, from a coronary occlusion and who, at the time of his death, was employed as a regular paid member of the police department of the defendant town of Manchester. When first employed as a policeman, Grover successfully passed a physical examination which revealed no evidence of hypertension or heart disease. He did not sustain any accidental injury arising out of and in the course of his employment or suffer any repetitive trauma or acts which caused or contributed to his death, nor did he suffer from any occupational disease. His death was not compensable within the meaning of chapter 568 of the General Statutes, the Workmen's Compensation Act, and the commissioner, at a hearing, denied offers of the defendant town of Manchester to prove the foregoing facts concerning the cause of death. The commissioner also declined to [illegible] the constitutional questions raised by the defendant town, and these questions, by stipulation, have been reserved to this court under the provisions of § 31-324 for reservations from the Superior Court, and § 31-301 for reservations from the Court of Common Pleas, in workmen's compensation appeals. The two questions thus reserved are as follows: (1) Does § 7-433c of the General Statutes deprive the town of Manchester of property without due process of law in violation of the due process clauses of the United States and Connecticut constitutions? (2) Does the class preference created by § 7-433c contravene § 1 of article first of the Connecticut constitution?

Section 7-433c recently was before us in *Grover v. Manchester,* Conn. (35 Conn. L.J., No. 27, p. 7) raising a procedural issue which was decided without a resolution of the two collateral constitutional questions raised here. It was enacted in its present form in 1971, as set forth in full in the footnote,[1] within two weeks of our decision in

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[1] "[Public Acts 1971, No. 524 § 1; General Statutes] Sec. 7-433c. BENEFITS FOR POLICEMEN OR FIREMEN DISABLED OR DEAD AS A RESULT OF HYPERTENSION OR HEART DISEASE. In recognition of the peculiar problems of uniformed members of paid fire departments and regular members of paid police departments, and in recognition of the unusual risks attendant upon these occupations, including an unusual high degree of susceptibility to heart disease and hypertension, and in recognition that the enactment of a statute which protects such fire department and police department members against economic loss resulting from disability or death caused by hypertension or heart disease would act as an inducement in attracting and securing persons for such employment, and in recognition, that the public interest and welfare will be promoted by providing such protection for such fire department and police department members, municipal employers shall provide compensation as follows: Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same

Ducharme v. *Putnam*, 161 Conn. 135, 285 A.2d 318, which declared unconstitutional a predecessor statute, Public Acts 1969, No. 380 § 1 (§ 7-433a), which had attempted to provide benefits identical to those of the statute now before us by raising a conclusive presumption. In *Ducharme*, we did not consider the merits of the legislature's intended purpose but only the method employed to attain that purpose. In other words, our legislature promptly acted to do what this court could not and refused to do in *Ducharme* and rewrote the statute by simply providing special compensation, or even an outright bonus, to qualifying policemen and firemen.

[illegible] recently in *Whitfield* v. *Empire Mu*[illegible], Conn. (36 Conn. L.J., No. 30, pp. [illegible] [A] plaintiff who attacks a statute on [illegible]al grounds has no easy burden.' . . . [illegible] constitutionality of legislation is in question, it is the duty of the court to sustain it unless its invalidity is beyond a reasonable doubt. . . . It is a rule of statutory construction . . . that courts are bound to assume that the legislature, in enacting a particular law, did so upon proper motives and to accomplish a worthy objective.'" Although the statute under consideration is [illegible]t regulatory, it does impose upon a town a financial obligation which, like restrictive regulations, is justified in the interest of promoting public safety, and does not deprive a town of property without due process of law.

It is difficult to call to mind any field of activity more closely related to the public safety than the encouragement of qualified individuals to seek employment as firemen and policemen.[2] It is evident from the preamble to § 7-433c that the legislature took into consideration the peculiar problems and unusual risks attendant upon these occupations in determining that they properly occupy a different status from other municipal employees. No other group has to withstand the abuses and attacks of the oppressed and frustrated of our modern society or carry with them a constant apprehension that they may be the target of maniacal revenge; no other municipal employees are called out from the security of their homes to ensure the security of the homes of others: no other municipal employees are required to make immediate decisions which are the subject of debate and deliberation in our courts. This is, indeed, class legislation somewhat analogous to the veterans' bonus legislation which passed the constitutional tests applied in *Lyman* v. *Adorno*, 133 Conn. 511, 514, 52 A.2d 702, and we refer to the extensive collection of authorities cited in the opinion in that case.

We conclude that the statute under consideration serves a proper public purpose and that, accordingly, the fact that it incidentally confers a direct benefit upon a certain class of individuals does not render it invalid as creating a class preference which contravenes § 1 of article first of the Connecticut constitution.

For the foregoing reasons, each of the two questions submitted to us by reservation from the Court of Common Pleas in No. 7591 must be answered in the negative.

Since the same two questions have been raised by reservation from the Superior Court in No. 7606, it would appear to serve no useful purpose and only to create unnecessary duplication of procedure and expense to require rendition of judgment in that court based upon identical answers. The reservation from the Court of Common Pleas was filed pursuant to § 31-301 of the General Statutes, which provides that all appeals from an award by a workmen's compensation commissioner shall be taken to the Court of Common Pleas.[3] As originally adopted in 1961, this section provided for such appeals to be taken to the Superior Court, but it was amended in 1972 (Public Act No. 108, § 6, effective September 1, 1972) by the substitution throughout of "Court of Common Pleas" for "Superior Court." At that time, no action was taken specifically to amend or repeal § 31-324, which then provided, as it does now, for reservation by the Superior Court to this court, "[w]hen, in any case arising under the provisions of this chapter, the superior court is of the opinion that the decision involves principles of law which are not free from reasonable doubt," and, further, that a pro forma award be made by the commissioner pending the opinion of this court on such

retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such [illegible]loyment, no proof or record of such examination shall be required [illegible]vidence in the maintenance of a claim under this section or under such municipal or state retirement systems. As used in this section, the term 'municipal employer' shall have the same meaning and shall be defined as said term is defined in section 7-467."

[2] We employ the exact terminology of the statute rather than the more recent references to "firepersons" and "policepersons."

[3] The relevant portions of § 31-301, at all times pertinent to this action read, and presently read, as follows: "At any time within ten days after entry of such award by the commissioner or after a decision of the commissioner upon a motion, either party may appeal therefrom to the court of common pleas for the county in which the injury occurred . . . . The procedure in appealing from an award of the compensation commissioner shall be the same as the procedure employed in an appeal from the court of common pleas to the supreme court."

reservation.[4] The reference to "any case arising under the provisions of this chapter" identifies such case as falling within the broad spectrum covered by § 31-301, and the conclusion is at least logical, if not inescapable, that it was only through oversight that § 31-324 was not either expressly repealed or amended by substituting "Court of Common Pleas" for "Superior Court" wherever the latter appears therein. In addition to that consideration, the provisions of Public Act No. 74-183, effective December 31, 1974, for appellate sessions of the Superior Court for the review of cases on appeal from the Court of Common Pleas, lead us to the conclusion that the reservation from the Court of Common Pleas was the proper procedure to follow and that the reservation from the Superior Court should be and hereby is dismissed for lack of jurisdiction.

No costs will be taxed in this court in favor of any party.

In this opinion the other judges concurred.

SUPREME COURT

January Term, 1975

PAULINE LEBLANC *v.* JOHN R. BRAY

Action to recover damages for personal injuries alleged to have been caused by the negligence of the defendant, brought to the Superior Court in Fairfield County and tried to the jury before *George, J.*; verdict for the defendant and motion to set aside the verdict denied; judgment for the defendant from which the plaintiff appealed. *No error.*

Sturges N. Laros, for the appellant (plaintiff).

Arnold J. Bai, with whom, on the brief, was *Stephen W. Leermakers*, for the appellee (defendant).

PER CURIAM. This case arises out of an accident which occurred when a motor vehicle operated by the plaintiff in a southerly direction on Mill Plain Road, a public highway in Fairfield, was struck on the left side by the front of a motor vehicle operated by the defendant which had just exited from a private hospital driveway. The finding is not challenged and the only assignments of error not specifically abandoned by the plaintiff in her appeal from the judgment rendered on a defendant's verdict pertain to (1) the denial of the plaintiff's motion to set aside the verdict as not supported by the evidence and (2) claimed errors in the court's charge to the jury.

With respect to the first claim, the verdict returned by the jury was a general one in favor of the defendant which imports that all issues submitted to the jury were found in favor of the defendant. *Bradley* v. *Niemann*, 137 Conn. 81, 83, 74 A.2d 876. If the jury could reasonably have found for the defendant on either the issue of his negligence or the plaintiff's contributory negligence, the verdict must stand, and the court, in considering a motion to set aside, must weigh the evidence in the light most favorable to the sustaining of the verdict. *Petrizzo* v. *Commercial Contractors Corporation*, 152 Conn. 491, 499, 208 A.2d 748; Maltbie, Conn. App. Proc. § 189. The court's action in this regard is to be tested by the evidence printed in the appendices to the briefs. Practice Book §§ 713-716, 718, 720-721. The record amply supports the court's action in denying the motion to set aside the verdict.

Shortly before the jury returned their verdict, they sent in the following question: "If, in our opinion, the plaintiff is negligent on just one count of the special defense, can we consider that the plaintiff has failed to prove her case?" The court answered this question in the affirmative followed by some explanatory remarks to which no exception was taken by the plaintiff.

In considering the plaintiff's attack on the court's charge, we must, of course, view the charge in its

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[4] Section 31-324, at all times pertinent to this action read, and presently reads, as follows: "RESERVATION OF CASES FOR THE SUPREME COURT. When, in any case arising under the provisions of this chapter, the superior court is of the opinion that the decision involves principles of law which are not free from reasonable doubt and which public interest requires shall be determined by the supreme court, in order that a definite rule be established applicable to future cases, said court may, on its own motion and without any agreement or act of the parties or their counsel, reserve such case for the opinion of the supreme court. Upon a reservation so made, no costs shall be taxed in favor of either party, and no entry fee, record fee, judgment fee or other clerk's fee in either court shall be taxed. If the commissioner finds that a claim before him involves a doubtful question of law, which the public interest requires should be finally and definitely determined, he may find the facts as in other cases and make his award, indicating that it is pro forma. A pro forma award shall be of the same effect as an award in ordinary cases except in the following particulars: On the filing of a pro forma award, the question shall come before the superior court as though an appeal had been taken, and said court shall thereupon reserve the case for the opinion of the supreme court in the manner herein indicated; but if, in the opinion of the superior court, the principles of law involved in the decision are in fact free from reasonable doubt and the public interest does not in fact require that they be determined by the supreme court, the superior court may, in its discretion, hear and determine the controversy as in other cases."

CHAPTER 75

AN ACT TO AMEND CHAPTER 118, VOLUME 33, LAWS OF DELAWARE, AS AMENDED BY CHAPTER 180, VOLUME 49, LAWS OF DELAWARE, ENTITLED "AN ACT PROVIDING FOR A FIREMEN'S PENSION FUND FOR MEMBERS OF THE BUREAU OF FIRE OF THE DEPARTMENT OF PUBLIC SAFETY OF THE CITY OF WILMINGTON" BY PROVIDING FOR A BASE MONTHLY MINIMUM PENSION PAYMENT.

Be it enacted by the General Assembly of the State of Delaware(two-thirds of all the Members elected to each Branch thereof concurring therein):

Section 1. Chapter 118, Volume 33, Laws of Delaware, as amended by Chapter 180, Volume 49, Laws of Delaware, is amended by striking out the words "One Hundred Fifty Dollars ($150.00)" as they appear in lines 5 and 6 of the last paragraph and inserting in lieu thereof the words "Two Hundred Twenty-five Dollars ($225.00)".

Section 2. Chapter 118, Volume 33, Laws of Delaware, as amended by Chapter 180, Volume 49, Laws of Delaware, is amended by striking out the words "Seventy-five Dollars ($75.00)" as they appear in lines 10 and 11 of the last paragraph and inserting in lieu thereof the words "One Hundred Twelve Dollars ($112.00)".

Section 3. The benefits conferred by this Act shall apply to all persons who had retired from the Bureau of Fire of the Department of Public Safety and to the widows of all persons who shall have so retired prior to the effective date of this Act, as well as any person retiring from the Bureau of Fire of the Department of Public Safety after the effective date of this Act.

Section 4. The increase in benefits provided by this Act shall become effective on the first day of the month following the date when this Act becomes law.

Approved June 25, 1963.

CHAPTER 118

THE CITY OF WILMINGTON

AN ACT providing for a firemen's pension fund for members of the Bureau of Fire of the Department of Public Safety of the City of Wilmington.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of each branch thereof concurring therein):

Section 1. Whenever a member of the Bureau of Fire of the Department of Public Safety shall have become disabled or incapacitated from injuries received while in the active performance of official duty and whenever any member of said Bureau who has performed faithful continuous service as such member for a period of not less than fifteen years shall have become permanently incapacitated from performing such regular active duty, he may be retired by the Directors of the Department of Public Safety from the regular active service and placed upon the retired list and all members of said Bureau who shall have performed faithful continuous service as such member for a period of at least twenty years shall upon their own application be placed upon the retired list whether they are disabled or not. Each person so retiring shall be entitled to receive from the sum herein established an amount equ... to one-half of the amount of his salary at the time of his retirement, so long as he may remain upon the retired list, said sum to be paid monthly, provided said sum shall be sufficient for the payment of all persons entitled to receive same, and in case it shall not be sufficient for that purpose at any time, then the claim of all persons entitled shall abate proportionately, but said sum at no time shall be reduced below the sum of one hundred thousand dollars.

Firemen's Pension Fund

To whom paid

Service

Retired list

Amount

Paid monthly

Claims abated, when

Section 2. No member of said Bureau shall be so retired until he has been duly notified by said Directors of the

Notification of retirement by Directors

THE CITY OF WILMINGTON

Department of Public Safety of their intention to so retire him, and until he has had a fair opportunity of being heard in opposition thereto, provided that any member of said Bureau deeming himself entitled to the benefits of this Act may make written application to said Directors for that purpose. No member of said Bureau of Fire shall be placed upon said retired list unless he shall first have undergone an examination as to his physical condition to be made by a Board of Physicians consisting of the Surgeon of the Department of Public Safety, the family physician of the said fireman and a third reputable physician of the City of Wilmington to be selected by the other members of said Board of Physicians; said Board shall report in writing to the Directors of Public Safety, the result of said physical examination together with a statement as to how far, in the opinion of said Board, the fireman examined is incapacitated from performing regular active duty as a fireman; upon the receipt of said report of said Board of Physicians, the Directors of Public Safety may retire such fireman in accordance with the provisions of this Act.

Written application, when

Examination of physical condition

Report to Directors of Public Safety

Section 3. Said Directors may at any time require any fireman on the retired list, except those retired by reason of having served twenty years to be re-examined by the Surgeon of said Department or some other competent physician authorized by said Directors to act in the premises and if on such re-examination said fireman is reported capable of performing regular duty, he may be required by said Directors to return to regular duty in the rank and grade in which he was serving at the time of his retirement.

Re-examination

If capable return to regular duty

Section 4. The widow or sole dependent parent of any member of the Bureau of Fire, or retired member thereof, who shall have lost his life in the performance of duty, or who shall have died from other causes after having performed faithful continuous service for a period of not less than fifteen years, shall receive a pension equal in amount to one-half of the amount of pension such member would have been entitled to as a retired fireman at the time of his death, pro-

Widow or dependent to receive pension

Amount

Proviso

vid[illegible] however, that no widow shall be entitled to a pension who shall have married such member during his last illness or after he shall have been placed on the retired list; and provided further, that if any widow entitled to a pension as aforesaid shall remarry, or shall lead and live an immoral life, then such pension shall cease.

Section 5. The Board of Trustees of the Firemen's Pension Fund shall consist of the Directors of the Department of Public Safety of the City of Wilmington, the chairman of the Finance Committee of the Council of Wilmington, the Chairman of the Public Safety Committee of the Council of Wilmington (or their successors in office) and five members of the Bureau of Fire, said five members to be elected only by vote of the members of the Bureau of Fire.

Members Firemen's Pension Fund

The Presiding Officer of the Department of Public Safety shall be the President of the Board of Trustees of the said Firemen's Pension Fund. The Board of Trustees of the Firemen's Pension Fund shall appoint a Secretary from among their own number. The said Secretary shall execute a bond for the faithful performance of his duties with respect to the said fund in such sum and form and with such surety as will be satisfactory to the Board of Trustees. The cost of said bond shall be defrayed from the proceeds of the fund.

Officers

Secretary to give bond

Section 6. All moneys collected in payment of fines imposed by the Directors of Public Safety upon the members of the Bureau of Fire, all moneys deducted or withheld from the pay of members of the Bureau of Fire by reason of absence from duty from any cause, all moneys donated to this fund and all rewards and testimonials paid to the members of the Bureau of Fire shall be credited to said Firemen's Pension Fund. The Trustees of the Firemen's Pension Fund may also receive such annual sums from each member of the Bureau of Fire as he may voluntarily agree to be paid monthly to said fund, which sum shall not be less than one per cent of the salaries of firemen who shall participate in the benefits of said Firemen's Pension Fund. The said Council of Wil-

Fund to consist of.

Amount to be paid by beneficiaries

THE CITY OF WILMINGTON

Council of Wilmington to appropriate $5000

mington shall annually appropriate not less than Five Thousand Dollars, which shall be credited to the Firemen's Pension Fund.

Custodian of fund

Section 7. The Treasurer of the City of Wilmington shall be the custodian of said fund and shall disburse the same upon the written order of the Board of Trustees. Said Treasurer shall execute a bond for the faithful performance of his duties with respect to this fund and in such sum and form and with such surety as will be satisfactory to said Board of Trustees. The cost of said bond shall be defrayed from the proceeds of the fund. The securities belonging to the fund shall be kept in a safe deposit company, to be approved by the Trustees of the Firemen's Pension Fund, and access to the safe of said fund shall only be had by the Treasurer jointly with either the President or Secretary.

Bond

Cost of bond, how paid.

Securities, where kept

Investment funds

Section 8. The Board of Trustees of the Firemen's Pension Fund may invest any part of said Firemen's Pension Fund that they deem proper in national, state, county or municipality bonds, said Board of Trustees shall make a report to the City Council of the City of Wilmington of the condition of said fund on the first day of April of each year. The fiscal year of the Firemen's Pension Fund shall begin on the first day of July of each year, and end on the thirtieth day of June the following year.

Fiscal year

When placed on retired list

Section 9. No member of the Bureau of Fire shall be placed upon the said retired list by the said Directors of Public Safety until such time as the said Firemen's Pension Fund created by Section 6 of this Act shall have amounted to at least the sum of Five Thousand Dollars.

Section 10. All Acts or parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved April 5, A. D. 1923.

Walt Lambert

June 25, 1973

Mr. Allen Wilson
Firefighters 747
1880 64th Avenue North
St. Petersburg, Florida

Mr. Sam Sinardi
Firefighters 754
1725 West Buffalo
Tampa, Florid

Gentlemen:

I have now been able to get a copy of Senate bill 847 which is effective July 1, 1973 and a copy is attached for each of you. This is the bill amending F.S. 112.18, commonly known as the "Heart & Lung Bill." I am also enclosing a photostatic copy of F.S. 112.18 as it appeared prior to Senate bill 847.

You will recall that after the Heart & Lung bill was first passed, attempts were made to apply it to Chapter 440 of the Florida Statutes, the Workmen's Compensation Provisions. The statutory language was clear, and the courts so held, that F.S. 112.18 had no affect whatsoever on the Florida Workmen's Compensation Provisions. The alleged purpose of Senate bill 847 is to change that, make the Heart & Lung bill applicable to the Workmen's Compensation Statutes, as well as providing Heart & Lung bill benefits in other areas. I have been asked to correspond with each of you, with reference to the applicability of the bill and its affect.

APPLICABILITY OF SENATE BILL 847
TO THE FLORIDA WORKMEN'S COMPENSATION
STATUTES

You will note that Senate bill 847 provides, at line 23 through 25, page 2,

"nothing herein shall be construed to extend or otherwise affect the provisions of Chapter 440.09 (4) pertaining to Workmen's Compensation." Florida Statute 112.18 as it previously appeared provided "nothing herein shall be construed to extend or otherwise affect the provisions of Chapter 440 pertaining to Workmen's Compensation." As you can see, the only change is the addition of the .09 (4). I think, however, this clearly shows legislative intent that this bill applies to Chapter 440. As you will recall, Florida Statute 440.09 (4) was the provision of the compensation statutes relating to governmental and municipal employees, providing for an offset of compensation against pension. It would appear that the obvious intent of the legislature and the change made in Section 112.18 was, at the time, to make it clear that the offset so provided would still be applicable so that firemen would have no advantage over other injured employees under the compensation act.

In talking with Ed Hoffman in West Palm Beach, it appears that what happened in this case was that Senate bill 847 passed while 440.09 (4) was still in the statutes. Shortly after Senate bill 847 passed, House bill 311 was passed deleting 440.09 (4) from the statutes. Now that 440.09 (4) has been repealed the language contained with reference to workmen's compensation (lines 23 through 25 of page 2, Senate bill 847) is really superfluous language. There is the possibility that this language will be deleted when the bill is codified in the general statutes. I hope so, as I think removing completely any reference to Workmen's Compensation Provisions will clearly show the intent.

Ed Hoffman advises me that in discussion of Senate bill 847 the issue of workmen's compensation applicability was specifically discussed, the specific intent was that it applied to the Workmen's Compensation Statutes and that the Department of Commerce has so accepted it. We can be sure that its applicability will be tested in the courts but to me the legislative intent does appear clear and it is my opinion that F.S. 112.18, as revised, will be applicable to the Florida Workmen's Compensation Law.

Assuming this is correct, the question then becomes what affect this will have on firemen, particularly in three groups. These groups would be:

a. Those firemen already disabled and retired as a result of heart disease.

b. Those firemen disabled or affected by hypertension or heart disease but still on combat duty.

c. Those firemen with no evidence of heart disease or hypertension

at this time.

In approaching this, I think it is important to note that paragraph 1 of F.S. 112.18 provides "any condition or impairment of health---caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental ---." The statute seems to clearly provide that there is a presumption of causal relation to employment and that there is a presumption of accidental injury as distinguished from occupational disease. I think this is further seen by the fact that it covers total as well as partial disability. Should the Heart & Lung Act be construed to create a new class of occupational illness, a fireman would be entitled to compensation benefits only if he was totally disabled, which as you know is seldom the case. Insomuch as heart d[illegible]ease and hypertension is defined as an accident, this would entitle the indi[illegible]dual to payment for partial disability.

THOSE FIREMEN ALREADY DISABLED AND RETIRED AS OF JULY 1, 1973, THE EFFECTIVE DATE OF SENATE BILL 847

It would be my opinion that those firemen already disabled and retired as of July 1, 1973 would not be affected by the amendments to F.S. 112.18. The applicability of a Heart & Lung law to the workm[illegible]n's compensation provisions opens a remedy to the firemen not previously available, as such. It also increases benefits to the firemen not available before in that it provides workmen's compensation payments that would ordinarily have been offset by pension. This would seem obviously to have been taken into account in the underwriting process by insurance carriers underwriting these risks and it would be my opinion that to apply F.S. 112.18 as it will appear on July 1, 1973 to this class of individual would be unconstitutional.

THOSE FIREMEN DISABLED OR AFFECTED BY HEART DISEASE OR HYPERTENSION ON JULY 1, 1973 BUT STILL ON COMBAT DUTY

Individuals falling in this class will probably be treated the same as any other employee who has a disability or pre-existing impairment. They should be handled the same, for example, as an employee who has had pre-existing back surgery, re-injures his back and requires additional surgery. This, for illustration, is a little over simplification. The problem is going to be whether or not a person who had heart disease or hypertension prior to July 1, 1973, but remained on combat duty, and became disabled for combat duty subsequent to July 1, 1973, was so disabled because of the

natural progression of the heart disease and hypertension or because of worsening of his condition caused by additional "accident" subsequent to July 1, 1973. This is going to be primarily a medical question. I think it would be a good idea for any fireman suffering from hypertension or heart disease to provide himself a complete evaluation, as closely around July 1, 1973 as can be arranged, to provide a case line for future studies. I don't see how a general characterization for individuals in this catagory can be made and each case will have to be handled on its own facts and merits.

THOSE FIREMEN WITHOUT EVIDENCE OF HYPERTENSION OR HEART DISEASE ON JULY 1, 1973

Firemen in this catagory are the most fortunate under the statutory amendment. The statute places a presumption that disability resulting from hypertension or heart disease is causally related to the employment and is accidental. It would seem, at this point, that heart attacks, for example, suffered on or off the job would be compensable without differentiation and it is no longer necessary for the employee to show "unusual exertion." In short, any firemen who develops hypertension or heart disease subsequent to July 1, 1973 will have the benefit of Florida Workmen's Compensation proceedings and assuming he is disabled for combat duty, will also have the benefit of the municipal pension.

I realize that I have not answered all the questions that will come to your mind after you have read this legislation and this letter. I have attempted only to answer the questions specifically put to me. If either of you have any additional questions please feel free to call me at any time.

Yours very truly,

WILLIAM D. DOUGLAS

WDD/sc
Enclosure

cc: Mr. Lawrence E. Hoffman
940 - 32nd Street
West Palm Beach, Florida 33407

GEORGIA

Occupational Diseases

1. Diseases Covered--The compensation law imposes liability on employers for disability and death only in cases of poisoning by 22 listed substances, diseased condition caused by exposure to X-ray or radioactive substances, asbestosis, and silicosis (Sec. 114-803).

2. Benefits Provided--If death or disability arises out of a covered occupational cause, the disablement or death is treated as the happening of an injury by accident, and compensation is payable according to the benefits provided for accidental injuries and deaths (Sec. 114-801).

3. Limitations as to Coverage--To be covered the disablement or death must occur within three years in the case of asbestosis and silicosis or within one year for other covered cause after the last injurious exposure to the hazard in such employment. In the event death occurs within seven years after the last exposure and follows continuous disablement which commenced within the above time limits, compensation will be payable (Sec. 114-801).

4. Employer Responsibility--The date of last exposure is taken as the date of injury for purposes of the law, and the employer in whose employment the last injurious exposure took place, is held solely liable for any compensation benefits payable (Sec. 114-809).

A BILL FOR AN ACT

RELATING TO DISABILITY RETIREMENT BENEFITS FOR FIREMEN AND AMENDING CHAPTER 6, REVISED LAWS OF HAWAII 1955, AS AMENDED.

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

Section 1. Section 6-46 of the Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

(a) By amending the first paragraph thereof to read as follows:

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 which 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 for service-connected total disability provided that:

(b) By adding the following paragraph after the first paragraph of subsection (4) thereof:

In the case of firemen, the cumulative 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 cumulative result of some occupational hazard for the purpose of determining total disability retirement under this section.

SECTION 2. Section 6-46.1 of the Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

(a) By amending the first paragraph thereof to read as follows:

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 for service-connected occupational disability provided that:

(b) By adding the following paragraph after the first paragraph of subsection (4) thereof:

In the case of firemen, the cumulative 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 cumulative result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

SECTION 3. This Act shall take effect on Junaury 1, 1966.

INTRODUCED BY: ______________________________

JUN 18 1971

HAWAII FIRE FIGHTERS ASSOCIATION
Local 1463, IAFF, AFL-CIO
2305 S. Beretania Street
Honolulu, Hawaii 96814

am L 1964, c 62, §5; am L 1965, c 222, §5; am L 1967, c 130, §§2, 4]

Revision note

Provisions have been rewritten and rearranged for clarity and uniformity of expression. RLH 6-42B(3) omitted as having no present application.

§88-65 Ordinary disability retirement. Upon the application of a member in service or of the head of his department, any member who has had ten or more years of creditable service shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing the application, on an ordinary disability retirement allowance if the medical board after a medical examination of the member certifies that:

(1) He is mentally or physically incapacitated for the further performance of duty;
(2) The incapacity is likely to be permanent; and
(3) The member should be retired. [L 1925, c 55, §6(3); RL 1935, pt of §7925; RL 1945, §708, subs 3; am L 1951, c 158, §1(a); RL 1955, §6-44]

§88-66 Allowance on ordinary disability retirement. Upon retirement for ordinary disability, a member shall receive a service retirement allowance if he has attained the age of fifty-five years, otherwise he shall receive a retirement allowance of twenty-five per cent of his average final compensation plus one per cent of his average final compensation for each full year of creditable service over fifteen, except that for each year of creditable service as a judge or an elective officer, he shall receive a retirement allowance computed as provided in section 88-64(3). [L 1925, c 55, §6(4); RL 1935, pt of §7925; RL 1945, §708, subs 4; RL 1955, §6-45; am L 1957, c 143, §4 and c 231, §1(d); am L 1961, c 175, §3 and c 181, §5; am L 1962, c 20, §3; am L 1963, c 127, §5; am L 1964, c 62, §7; am L 1965, c 222, §7]

§88-67 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 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) 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.

(c) 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.

In the case of firemen, the cumulative 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 cumulative result of some occupational hazard for the purpose of determining total disability retirement under this section. [L 1925, c 55, §6(5); RL 1935, pt of §7925; RL 1945, §708, subs 5; am L 1951, c 158, §1(b); am L 1955, c 24, §1; RL 1955, §6-46; am L 1963, c 127, §6; am L 1965, c 225, §1]

heart & lungs

§88-68 Allowance on retirement for service-connected total disability. Upon retirement for service-connected total disability, a member shall receive a retirement allowance which shall consist of (1) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and (2) a pension, in addition to the annuity, of sixty-six and two-thirds per cent of his average final compensation, except that if a member was, at any time, a class A member, the pension payable subsequent to the time when the member becomes eligible for a social security benefit, shall be reduced by sixteen and two-thirds per cent of the part of his average final compensation not in excess of $4,200 a year. [L 1925, c 55, §6(6); RL 1935, pt of §7925; RL 1945, §708, subs 6; RL 1955, §6-47; am L 1957, c 143, §5; am L 1961, c 175, §4; am L 1963, c 127, §8]

§88-69 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 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 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, that his incapacity is likely to be permanent.

(b) 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.

(c) 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.

In the case of firemen, the cumulative 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 cumulative result of some occupational hazard for the purpose of determining occupational disability retirement under this section. [L 1963, c 127, §7; am L 1965, c 225, §2; Supp, §6-46.1]

§88-70 **Allowance on retirement for service-connected occupational disability.** Upon retirement for service-connected occupational disability, a member shall receive for a period of three years from the date of retirement an allowance computed in the manner prescribed for service-connected total disability. In addition, within this three-year period,

he shall be reimbursed in full for all expenses for all services, drugs, and appliances approved by the medical board as being necessary to the treatment and care of the disability, which expenses are not met by the Hawaii public employees' health fund. Within the three-year period, the system shall also pay the cost of any physical and vocational rehabilitation services approved by the medical board. After the completion of three years, the annuity being paid shall be continued and the pension shall be thirty-three and one-third per cent of his average final compensation; provided, if the medical board shall, within the three-year period of time, find and certify that the disability pensioner is totally incapacitated for gainful employment, the board of trustees shall award a service-connected total disability benefit in which case benefits shall be paid under section 88-68.

Any other provision of this part notwithstanding, a pensioner, receiving service-connected occupational disability benefits, shall continue to receive such benefits irrespective of his later employment or if he later becomes a member of the system. If such a pensioner again becomes a public employee, his membership status in the retirement system shall be determined as though he were entering public employment for the first time and all benefits related to such new membership shall be accrued and paid without reference to the service-connected occupational disability benefits being paid. [L 1963, c 127, §9; Supp, §6-47.1]

IDAHO HEART AND LUNG LAW

OCCUPATIONAL DISEASES

Compensation shall be payable for disability or death of an employee resulting from the following Occupational Diseases:

> "Cardiovascular or pulmonary or respiratory diseases of a Paid Fireman, employed by a municipality, village, or Fire District as a regular member of a lawful established Fire Department, caused by overexertion in times of stress, or danger, or by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes, or other toxic gases arising directly out of, or in the course of, his employment."

The above enumerated Occupational Diseases are not to be taken as exclusive.

ILLINOIS

Chapter 108½ 6-151.1 of the Illinois Pension Code refers firemen "in any city whose population exceeds 500,000 according to the last Federal or State census," i.e., Chicago. Here firemen draw benefits from The Firemen's Annuity and Benefit Fund. Elsewhere in Illinois, the Illinois Workmen's Compensation law pertains to firemen.

6—151.1 Occupational disease disability benefits.] § 6-151.1. The General Assembly finds and declares that service in the Fire Department requires that firemen, in times of stress and danger must perform unusual tasks; that by reason of their occupation, firemen are subject to exposure to great heat and to extreme cold in certain seasons while in performance of their duties; that by reason of their employment firemen are required to work in the midst of and are subject to heavy smoke fumes, and poisonous, toxic or chemical gases from fires. The General Assembly further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

Any active fireman who has completed ten or more years of service and is unable to perform his duties in the Fire Department by reason of heart disease, tuberculosis or any disease of the lungs or respiratory tract, resulting solely from his service as a fireman, shall be entitled to receive an occupational disease disability benefit during any period of such disability for which he does not have a right to receive salary. Any fireman who shall enter the service after the effective date of this amendatory Act shall be examined by one or more practicing physicians appointed by the Board, and if said examination discloses impairment of the heart, lungs or respiratory tract, such fireman shall not be entitled to receive occupational disease disability benefit unless and until a subsequent examination reveals no such impairment.

Occupational disease disability benefit shall be 50% of the fireman's salary at the time of his removal from the Department payroll.

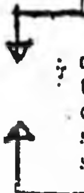
Such fireman also shall have a right to receive child's disability benefit of $20.00 a month on account of each unmarried child less than 18 years of age and dependent upon the fireman for support, either the issue of the fireman or legally adopted by him. The total amount of child's disability benefit payable to the fireman, when added to his occupational disease disability benefit, shall not exceed 75% of the amount of salary which he was receiving at the time of the grant of occupational disease disability benefit.

The first payment of occupational disease disability benefit or child's disability benefit shall be made not later than one month after the benefit is granted. Each subsequent payment shall be made not later than one month after the date of the latest payment.

Occupational disease disability benefit shall be payable during the period of the disability until the fireman reaches the age of compulsory retirement. Child's disability benefit shall be paid to such a fireman during the period of disability until such child or children attain age 18 or marry, whichever event occurs first. The fireman thereafter shall receive such annuity or annuities as are provided for him in accordance with other provisions of this Article. Added by act approved Aug. 11, 1967. L.1967, p. 2906.

5. *Accidental disability benefit.* Upon application of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city or town by which he is regularly employed, shall be retired by the respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Should a member in service or the chief of the police or fire departments become incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city or town by which he is regularly employed, he shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive his full pay and allowances until re-examined by said board and found to be fully recovered or permanently disabled.



Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases.

(The "disease" clause at the end of provision 5 above also pertains to provision 9, contained elsewhere in the law, referring to accidental death benefits.)

disabled member shall remain upon the pension roll unless and until reinstated in such department by reason of such examination. [S13,§§932-g,-p; C24, 27, 31, 35, 39,§6322; C46, 50, 54, 58, 62, 66, 71,§410.14]

410.15 Guarantee of pension benefits. Each city, in which contributory fire or police retirement systems based upon actuarial tables, shall be established by this Act* for the benefit of firemen or policemen appointed to either force after the establishment of the same, is hereby bound and obligated to carry out, and authorized to enter into a written agreement evidencing the same, with each person, on retired or active service, who has heretofore contributed, or, at the time of the taking effect of this Act is contributing to the pension system now in effect in said city, in consideration of his past and his future payments to the pension fund of the system to which he is, or has been contributing, the present and prospective benefits provided by the pension system to which he is or has been contributing, guaranteeing that the present rate of payment by such person to said pension fund shall not be increased, also guaranteeing that the present and prospective rights and benefits provided for by said systems shall not be abridged nor lessened, and guaranteeing to all such persons so contributing all of the rights and benefits present and prospective provided in such pension system. The obligation of each such city for said rights and benefits shall be a direct charge on said city. [S13,§§932-h,-q; C24, 27, 31, 35, 39,§6323; C46, 50, 54, 58, 62, 66, 71,§410.15]

*45ExGA, ch 78, effective date, March 2, 1934

410.16 Moneys drawn — how paid — report. All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the appropriate board of trustees, which warrants shall designate the name of the person and the purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of each fund for the preceding fiscal year, the money on hand, and how invested. [S13,§§932-l,-r; C24, 27, 31, 35, 39, §6324; C46, 50, 54, 58, 62, 66, 71,§410.16]

Fiscal year, §363.29

410.17 City marshal. Service by any member of the police department as city marshal shall not deprive him of any rights under this chapter. In any matter in which said city marshal shall be individually interested and which requires the action of the board of trustees of the policemen's pension fund, he shall not act as a member of said board, but the mayor of the city shall act with the other two trustees of the board with respect thereto. Upon the termination of his term as city marshal, he shall regain the rank he held in the police department at the time of his appointment as city marshal. [C24, 27, 31, 35, 39,§6325; C46, 50, 54, 58, 62, 66, 71,§410.17]

410.18 Hospital expense. Cities and towns shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workmen's compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city or town under the provisions of this section. [C24, 27, 31, 35, 39,§6326; C46, 50, 54, 58, 62, 66, 71,§410.18]

HOURS OF SERVICE

410.19 Hours on duty limited. Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C27, 31, 35,§6326-a1; C39,§6326.01; C46, 50, 54, 58, 62, 66, 71,§410.19]

Referred to in §410.20
See also §411.10

410.20 Exceptions. The provisions of section 410.19 shall not apply to the chief, or other persons when in command of the fire department, nor to firemen who are employed subject to call only. [C27, 31, 35,§6326-a2; C39, §6326.02; C46, 50, 54, 58, 62, 66, 71,§410.20]

CHAPTER 411

RETIREMENT SYSTEMS FOR POLICEMEN AND FIREMEN

Applicable to all cities and towns

Referred to in §§85.1, 368.11, 368.15, 602.34

Creating retirement systems for policemen and firemen appointed after March 2, 1934

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411.1 Definitions controlling. The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement system" shall mean either the fire or the police retirement system of the said cities as defined in section 411.2.

2. "Policeman" or "policemen" shall mean only the members of a police department who have passed a regular mental and physical civil service examination for policeman, policewoman, or matron, and who shall have been duly appointed to such positions. Such members shall include patrolmen, patrolwomen, probationary patrolmen, matrons, sergeants, lieutenants, captains, detectives, and other senior officers who are so employed for police duty.

3. "Fireman" or "firemen" shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fireman and who shall have been duly appointed to such position. Such members shall include firemen, probationary firemen, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.

4. "Member" shall mean a member of either the police or fire retirement systems as defined by section 411.3.

5. "He", "his", and all other terms in the masculine gender shall be considered to include the feminine gender.

6. "Board of fire trustees" and "board of police trustees" shall mean the boards provided in section 411.5 to administer the fire retirement system and the police retirement system respectively.

7. "Medical board" shall mean the board of physicians provided for in section 411.5.

8. "Membership service" shall mean service as policemen or firemen rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

9. "Beneficiary" shall mean any person receiving a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

10. "Widow" shall mean only such surviving spouse of a marriage consummated prior to retirement of a deceased member from active service.

11. "Child" or "children" shall mean only surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement.

12. "Regular interest" shall mean interest at the rate of four percent per annum, compounded annually.

13. "Accumulated contributions" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund together with regular interest thereon as provided in section 411.8.

14. "Earnable compensation" or "compensation earnable" shall mean the regular compensation which a member would earn during a year on the basis of the stated compensation for his rank or position.

15. "Amount earned" shall mean the amount of money actually earned by a beneficiary for some definite period of time.

16. "Average final compensation" shall mean the average earnable compensation of the member during the five years of service he earned his highest salary as a policeman or fireman, or if he has had less than five years of such service, then the average earnable compensation of his entire period of service.

17. "Annuity" shall mean annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

18. "Pensions" shall mean annual payments for life derived from appropriations provided by the said cities. All pensions shall be paid in equal monthly installments.

19. "Retirement allowance" shall mean the sum of the annuity and the pension, or any benefits in lieu thereof granted to a member upon retirement.

20. "Annuity reserve" shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

See mortality tables at end of Vol. II

21. "Pension reserve" shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

22. "Actuarial equivalent" shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the boards of trustees, and regular interest.

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24. "Su... mean any ... jurisdictio... ment or ... city mana...

25. "Per... member's ... in the rat... able on ea... ing the sa... was held ... the time o... compensat... ment or d... 50, 54, 58.

411.2 N... any city ... men are o... service la... created an... ment or p... providing ... men or p... be so app... takes effec... Each such ... ment of a ... scribed, an... ment syste... of city)", ... of .... and by suc... be transact... and securit... retirement ... ation as of ... said syste... chapter. [C... 58, 62, 66, 7...

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411.4 Ser... tees shall fi...

23. "City" or "cities" shall mean any city or cities in which fire or police retirement systems are established by this chapter.

24. "Superintendent of public safety" shall mean any elected city official who has direct jurisdiction over the fire or police department, or the city manager in cities under the city manager form of government.

25. "Pension compensation" shall mean the member's average final compensation adjusted in the ratio of the earnable compensation payable on each July 1 to an active member having the same or equivalent rank or position as was held by the retired or deceased member at the time of retirement or death to the earnable compensation of such member at his retirement or death. [C35,§6326-f1; C39,§6326.01; C46, 50, 54, 58, 62, 66, 71,§411.1; 64GA, ch 1102,§1]

411.2 Name and date of establishment. In any city in which the firemen or policemen are or shall be appointed under the civil service law of this state, there are hereby created and established two separate retirement or pension systems for the purpose of providing retirement allowances only for firemen or policemen of said cities who shall be so appointed after the date this chapter takes effect, or benefits to their dependents. Each such system shall be under the management of a board of trustees hereinafter described, and shall be known as the "fire retirement system of .... (name of city)", and the "police retirement system of .... (name of city)", and by such names all of their business shall be transacted, all funds invested, and all cash and securities and other property held. The retirement systems so created shall begin operation as of the first day of the month in which said systems are there established by this chapter. [C35,§6326-f2; C39,§6326.04; C46, 50, 54, 58, 62, 66, 71,§411.2]

Referred to in §411.1(1)

411.3 Membership.

1. All persons who become policemen or firemen after the date such retirement systems are established by this chapter, shall become members thereof as a condition of their employment. Such members shall not be required to make contributions under any other pension or retirement system of city, county, or state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member. [C35,§6326-f3; C39,§6326.05; C46, 50, 54, 58, 62, 66, 71,§411.3; 64GA, ch 1124, §159]

Referred to in §411.1(4)
Omnibus repeal, 55GA, ch 183,§2

411.4 Service creditable. The board of trustees shall fix and determine by proper rules and regulations how much service in any year shall be equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay. [C35,§6326-f4; C39, §6326.06; C46, 50, 54, 58, 62, 66, 71,§411.4]

411.5 Administration.

1. *Boards.* The general administration and the responsibility for the proper operation of the retirement systems and for making effective the provisions of this chapter are hereby vested in a board of fire trustees to administer the system relating to firemen and a board of police trustees to administer the system relating to policemen. The said boards shall be constituted as follows:

a. The chief officer of the fire department, the city treasurer, the city solicitor or attorney, two firemen elected by ballot by the members of said department who are entitled to participate in a firemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the fire retirement system.

b. The chief officer of the police department, the city treasurer, the city solicitor or attorney, two policemen elected by ballot by the members of said department who are entitled to participate in a policemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the police retirement system.

c. The two citizens appointed by the mayor shall serve on both of said boards.

d. Upon the taking effect of this chapter, such members of each said department in said cities shall elect by ballot two active members of each such department to serve as members of said respective boards; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter each such department shall, every second year, on such date and in such manner as shall be prescribed by said board of trustees, elect by ballot one such member to serve for a term of four years.

e. Upon the taking effect of this chapter, the mayor, with the approval of the city council, shall appoint two citizens who do not hold any other public office, to serve as members of said boards of trustees; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter, every second year, one such citizen shall be so appointed for a four-year term.

f. If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired

term in the same manner as the office was previously filled.

2. *Voting.* Each trustee shall be entitled to one vote on each board. Four concurring votes shall be necessary for a decision by the trustees at any meeting of either board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* Subject to the limitations of this chapter, each board of trustees shall, from time to time, establish rules and regulations for the administration of funds created by this chapter and for the transaction of its business.

5. *Employees.* Each board of trustees shall elect from its membership a chairman, and shall, by majority vote of its members, appoint a secretary, who may, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by each board of trustees and all other expenses of each board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as each board of trustees shall approve.

6. *Data.* Each board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

7. *Records—reports.* Each board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall annually make a report to the city council showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

8. *Legal adviser.* The city attorney or solicitor of the said cities shall be the legal adviser of the boards of trustees.

9. *Medical board.* The board of fire trustees and the board of police trustees jointly shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter and shall report in writing to each board of trustees, respectively, its conclusions and recommendations upon all matters duly referred to it.

10. *Duties of actuary.* The actuary shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

11. *Tables—rates.* Immediately after the establishment of each retirement system, the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 12 of this section. The board of trustees shall adopt tables and certify rates of contribution to be used by the system.

See mortality tables at end of Vol. II

12. *Actuarial investigation.* In the year 1938, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the retirement system such mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the said cities in accordance with section 411.8 of this chapter.

13. *Valuation.* On the basis of such tables as the boards of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement systems created by this chapter. [C35, §6326-f5; C39,§6326.07; C46, 50, 54, 58, 62, 66, 71, §411.5]

Referred to in §§365.6, 411.1(6, 7)

411.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by each board of trustees as follows:

a. Any member in service may retire upon his written application to the board of police or fire trustees as the case may be, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, he desires to be retired, provided, that the said member at the time so specified for his retirement shall have attained the age of fifty-five and shall have served twenty-two years or more in said department, and notwithstanding that, during such period of notification, he may have separated from the service.

b. Any member in service who has attained the age of sixty-five years, shall be retired forthwith, provided, that upon the request of the superintendent of public safety, the respective board of trustees may permit such member to remain in service for periods not to exceed one year from the date of the last request from the superintendent of public safety. Provided further that no member of said departments employed on July 4, 1965, shall be so retired until he has completed twenty-two years' service for service retirement and will receive his pension benefits.

c. Any member in service who has been a member of the retirement system fifteen or more years and whose employment is terminated prior to his retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of fifteen twenty-seconds of the retirement allowance he would receive at retirement if his employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be based on the average final compensation at the time of termination of employment. The allowance shall not be available to a member who has chosen to withdraw his accumulated contributions as provided in subsection 10 of this section.

2. *Allowance on service retirement.* Upon retirement from service, a member shall receive a service retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension given by the city in addition to his annuity which together with his annuity shall make a total service retirement allowance equal to one-half of his average final compensation.

Referred to in subsection 13

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the chief of the police or fire departments, respectively, any member who has had five or more years of membership service shall be retired by the respective board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an ordinary disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

b. A pension which together with his annuity shall make a total retirement allowance equal to ninety percent of 1/70 of his average final compensation multiplied by the number of years of membership service, if such retirement allowance exceeds one-half of his average final compensation, otherwise a pension which together with his annuity shall provide a total retirement allowance equal to one-half of his average final compensation.

Referred to in subsection 13.

Amendment of 56GA, ch 203, retroactive to July 4, 1954

5. *Accidental disability benefit.* Upon application of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city or town by which he is regularly employed, shall be retired by the respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Should a member in service or the chief of the police or fire departments become incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city or town by which he is regularly employed, he shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive his full pay and allowances until re-examined by said board and found to be fully recovered or permanently disabled.

Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases.

6. *Retirement after accident.* Upon retirement for accidental disability a member shall receive an accidental disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension, in addition to the annuity, of 66⅔ percent of his average final compensation.

Referred to in subsection 13

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the respective board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit

to such medical examination, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all rights in and to his pension may be revoked by the respective board of trustees.

a. Should any beneficiary for disability not incurred in line of duty, be engaged in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation, then the amount of his pension shall be reduced to an amount which together with his annuity and the amount earned by him shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified, provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earned by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have his retirement allowance suspended while in active service.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member and he shall contribute thereafter at the same rate he paid prior to disability, and any former service on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and upon his subsequent retirement he shall be credited with all his service as a member and also with the period of disability retirement, provided that during such period of disability he has not engaged in a gainful occupation from which his net earnings exceeded the difference between his disability retirement allowance and the amount he would have received for said period if his compensation at the time of disability had continued.

c. The chief of the fire department or the chief of the police department of such city may, subject to approval of the medical board, assign any former member of such department who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such department.

8. *Ordinary death benefit.* Upon the receipt of proper proofs of the death of a member in service, there shall be paid to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees:

a. His accumulated contributions and, if the member has had one or more years of membership service and no pension is payable under the provisions of subsection 9 of this section, in addition thereto—

b. An amount equal to fifty percent of the compensation earnable by him during the year immediately preceding his death; or

If there be no such nomination of beneficiary, the benefits provided in paragraphs "*a*" and "*b*" shall be paid to his estate; or in lieu thereof, at the option of the following beneficiaries, respectively, even though nominated as such, there shall be paid a pension which, together with the actuarial equivalent of his accumulated contributions, shall be equal to one-fourth of the average final compensation of such member, but in no instance less than seventy-five dollars. In addition to the benefits herein enumerated, there shall also be paid for each child of a member under the age of eighteen years the sum of twenty dollars per month:

Referred to in subsection 9(c)

c. To the spouse to continue so long as said party remains unmarried; or

Referred to in subsection 9(b)

d. If there be no spouse, or if the spouse dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to the guardian of h[illegible] child or children under said age, divided in such manner as the board of trustees in its discretion shall determine, to continue as joint and survivor pension until every such child dies or attains the age of eighteen;

Referred to in subsection 9(b)

e. If there be no surviving spouse or child under age eighteen, then to his dependent father or mother or both, as the board of trustees in its discretion shall determine, to continue until remarriage or death.

Referred to in subsections 9 and 14(b)

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member in service or the chief of police or fire departments was the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city or town by which he is regularly employed, the board of trustees shall decide that death was so caused in the performance of duty, there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees the benefits set forth in paragraphs "*a*", "*b*" and "*c*" of this subsection:

a. His accumulated contributions; and in addition thereto—

b. A pension equal to one-half of the average final compensation of such member shall be paid to his spouse, children or dependent parents as provided in paragraphs "*c*", "*d*" and "*e*" of subsection 8 of this section [illegible]

addition to the benefits for the spouse herein enumerated, there shall also be paid for each dependent child of a member under the age of eighteen years the sum of twenty dollars per month.

c. If there be no spouse children under the age of eighteen years or dependent parent surviving such deceased member, the death shall be treated as an ordinary death case and the benefit payable in accordance with the provisions of subsection 8, paragraph "*b*", in lieu of the pension provided in paragraph "*b*" of this subsection 9, shall be paid to his estate.

Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases.

Referred to in subsection 14(b)

10. *Return of accumulated contributions.* Should a member cease to be a policeman or fireman except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.

Referred to in subsection 1

11. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time of his retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of his accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of his accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

12. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the said cities under the provisions of any workmen's compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the said cities under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workmen's compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the said cities under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

Workmen's compensation, ch 85

13. *Pension to spouse and children of deceased pensioned member.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4, or 6 of this section there shall be paid a pension:

a. To the spouse to continue so long as said partner remains unmarried, equal to one-half the amount received by such deceased beneficiary, but in no instance less than seventy-five dollars per month, and in addition thereto the sum of twenty dollars per month for each child under eighteen years of age; or

b. In the event of the death of the spouse either prior or subsequent to the death of the member, to the guardian of each surviving child under eighteen years of age, in the sum of twenty dollars per month for the support of such child.

Referred to in subsection 14(b)

14. *Annual readjustment of pensions.* Pensions payable under this section shall be adjusted as follows:

a. As of the first of July of each year, the monthly pensions authorized in this section payable to each retired member and to each beneficiary, except children, of a deceased member shall be recomputed. The formula authorized in this section which was used to compute the retired member's or beneficiary's pension at the time of retirement or death, including all amendments to the formula which may be adopted subsequent to the member's retirement or death, shall be used in the recomputation except the pension compensation shall be used in lieu of the average final compensation which the retired or deceased member was receiving at the time of retirement or death. The adjusted monthly pension shall be the amount payable at the member's retirement or death adjusted by one-half of the difference between the recomputed pension and the amount payable at the member's retirement or death. At no time shall the monthly pension or payment to the beneficiary be less than the amount which was paid at the time of the member's retirement or death.

b. As of the first of July of each year, the monthly pension payable to each surviving child in accordance with subsections 8, 9, and 13 of this section shall be adjusted to equal six percent of the monthly salary payable on such July 1 to an active member having the rank of first-class fireman, in the case of a child of a deceased member of the fire depart-

ment, or of a first-class patrolman, in the case of a child of a deceased member of the police department. If the monthly pension so computed is less than the amounts provided in subsections 8, 9 and 13 of this section, the amounts provided for in said subsections shall be payable.

c. All monthly pensions adjusted as provided in this subsection shall be payable beginning on July 1 of the year in which the adjustment is made and shall continue in effect until the next following July 1 at which time the monthly pensions shall again be recomputed and all monthly pensions shall be adjusted in accordance with the recomputations.

d. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within his rank at the time of his retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

e. A retired member who became eligible for benefits under the provisions of subsection 1 of this section but who did not serve twenty-two years and did not attain the age of fifty-five years prior to his termination of employment shall not be eligible for the annual readjustment of pensions provided for by this subsection. [C35,§6326-f6; C39,§6326.08; C46, 50, 54, 58, 62, 66, 71,§411.6; 64GA, ch 1102,§§2,3]

411.7 Management of funds.

1. The respective boards of trustees shall be the trustees of the several funds created by this chapter as provided in section 411.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds.

2. The city treasurer may invest at the direction of the respective boards of trustees such portion of the several funds created by this chapter as in the judgment of the respective boards are not needed for current payment of benefits under this chapter in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts, or general obligation or limited levy bonds issued by municipal corporations in this state as authorized for investment by insurance companies under section 511.8 and subject to all limitations contained in said section. In the event of loss on the redemption or sale of securities, where invested as prescribed by law, neither the treasurer nor the trustees shall be personally liable, but such loss shall be charged against the retirement funds. The city treasurer may sell any securities in such funds and reinvest the proceeds in accordance with the direction of the respective boards of trustees when such action may be deemed advisable by the trustees for the protection of said funds or the preservation of the value of the investment.

Referred to in subsection 1

3. Each board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the respective board of trustees from interest and other earnings on the moneys and other assets of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the cities and any excess of earnings over such amount required shall be deductible from the amounts to be contributed by the said cities.

4. The treasurer of the said cities shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the respective board of trustees. A duly attested copy of the resolution of the respective board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the respective board of trustees.

5. For the purpose of meeting disbursements for pensions, annuities, and other payments there may be kept available cash not exceeding ten percent of the total amount in the several funds of the retirement system on deposit in one or more banks or trust companies in said cities, organized under the laws of the state of Iowa, or of the United States, provided, that the amount on deposit in any one bank or trust company shall not exceed twenty-five percent of the paid-up capital and surplus of such bank or trust company.

6. No trustee and no employee of either board shall have any direct interest in the gains or profits of any investment made by the respective boards of trustees. No trustee shall receive any pay or emolument for his services except as secretary. No trustee or employee of either board of trustees shall directly or indirectly for himself or as an agent in any manner use the assets of the retirement system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or

ployee of the boards become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the respective board of trustees. [C35,§6326-f7; C39, §6326.09; C46, 50, 54, 58, 62, 66, 71,§411.7]

411.8 Method of financing. All the assets of each retirement system created and established by this chapter shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Annuity savings fund.*

a. The annuity savings fund shall be the fund in which shall be accumulated contributions from the compensation of the members to provide for their annuities. The rates of contribution payable by members according to their ages when becoming members shall be as follows:

Age when becoming a member	Rate of contribution
20	4.91%
21	4.97%
22	5.04%
23	5.11%
24	5.18%
25	5.26%
26	5.33%
27	5.41%
28	5.48%
29	5.56%
30	5.64%
31	5.72%
32	5.80%
33	5.88%
34	5.97%
35	6.05%
36	6.14%
37	6.22%
38	6.31%
39	6.40%
40	6.50%

Credit of excess paid before July 4, 1947, see 52GA, ch 219,§9

b. The proportions so computed for a person at age forty shall be applied to a member who attains a greater age before he becomes a member. The respective boards of trustees shall certify to the superintendent of public safety and the superintendent of public safety shall cause to be deducted from the salary of each member on each and every payroll for each and every pay period, the proportion of the compensation of each member so computed.

c. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by this chapter. The superintendent of public safety shall certify to the respective boards of trustees on each and every payroll, or in such other manner as the said boards of trustees shall prescribe, the amount deducted from each member's salary, and such amounts shall be paid into the respective annuity savings fund and shall be credited together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

d. The accumulated contributions of a member withdrawn by him or paid to his estate or designated beneficiary in the event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

Military service exception, §411.9

2. *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

3. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the said cities and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the said cities an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation the normal contribution shall be 7.9 percent.

b. On the basis of regular interest and of such mortality and other tables as shall be adopted by the boards of trustees, the actuary engaged by the said boards to make each valuation required by this chapter, shall immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed throughout his entire period of active service, would be suffi-

cient to provide for the payment of any death benefit or pension payable on this account. The rate percent so determined shall be known as the "normal contribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of mortality and service tables adopted by the boards of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

c. The total amount payable in each year to the pension accumulation fund shall be not less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, provided, however, that the aggregate payment by the said cities shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the said cities shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to him or on account of his death shall be transferred from the pension accumulation fund to the pension reserve fund.

4. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in his amount earned, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

5. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the said cities to pay the administration expenses of the retirement system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Annually the boards of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing year to provide for the expense of operation of the retirement system. [C35,§6326-f8; C39,§6326.10; C46, 50, 54, 58, 62, 66, 71,§411.8]

Referred to in §§411.1(13), 411.5(12,b), 411.7, 411.9

411.9 Military service exceptions. Any member who is absent while serving in the armed services of the United States or its allies and is discharged or separated therefrom under honorable conditions shall have any such period or periods of absence while serving in such armed services on other than a voluntary basis and one such period of absence, not in excess of four years, while serving in such armed forces on a voluntary basis included as part of his period of service in the department. Such member shall not be required to continue the contributions required of him under section 411.8 during such period of military service, provided that he shall, within six months after he has been discharged or separated under honorable conditions from such military service, return and resume his duties in the department, and provided further, that such member shall be declared physically capable of resuming such duties upon examination by the medical board. [C46, 50, 54, 58, 62, 66, 71,§411.9]

Referred to in §411.10

Resolutions before January 1, 1947, restoring to active duty legalized, 52GA, ch 319,§1

411.10 Fund to pay contributions of absent members. The cities which have a retirement system as provided under this chapter, shall create a fund for the purpose of paying the contributions to this fund of those members who voluntarily or by induction enter the military service or who are serving in the armed forces. Such fund shall be used for the purpose of paying the contributions which are required of the members, but which under the provisions of section 411.9 are waived during periods of military service as defined by section 411.9 and six months thereafter following discharge or separation under honorable conditions. Should any member fail to return to the department within six months after his honorable discharge from the military service the amount credited to his account in the fund by the city shall revert back to such city and such member or his representative shall not be entitled to claim any interest in the contribution so made by the city. [C46, 50, 54, 58, 62, 66, 71,§411.10]

411.11 Contributions by the city.

1. On or before the first day of July in each year the respective boards of trustees shall certify to the superintendent of public safety the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be included by the superintendent of public safety in his annual budget estimate. The amounts so certified shall be appropriated by the said cities and transferred to the retirement system for the ensuing year. Said cities shall annually levy a tax sufficient in amount to cover such appropriations.

2. To cover the requirements of the respective retirement systems for the period prior to

the date when the first regular appropriation is due as provided in subsection 1 of this section, such amounts as shall be necessary to cover the needs of the retirement system shall be paid into the pension accumulation fund and expense fund by special appropriations to the retirement system. [C35,§6326-f9; C39,§6326.11; C46, 50, 54, 58, 62, 66, 71,§411.11]

411.12 Guaranty. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under the provisions of this chapter and all expenses in connection with the administration and operation of the retirement systems are hereby made direct liability obligations of the said cities. All income, interest, and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said cities. Any amounts derived therefrom, which, when combined with regular appropriations made under the provisions of this chapter, exceed the amount required to provide for the discharge of such obligations, shall be used to reduce the regular appropriations otherwise required. [C35,§6326-f10; C39,§6326.12; C46, 50, 54, 58, 62, 66, 71,§411.12]

411.13 Exemption from tax and execution. The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided. [C35,§6326-f11; C39,§6326.13; C46, 50, 54, 58, 62, 66, 71,§411.13]

411.14 Protection against fraud. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of such retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of this state. Should any change or errors in records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the respective board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid. [C35,§6326-f12; C39,§6326.14; C46, 50, 54, 58, 62, 66, 71,§411.14]

Constitutionality, 46ExGA, ch 75,§20
Punishment, §687.7

411.15 Hospitalization and medical attention. Cities and towns shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workmen's compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city or town under the provisions of this section. [C66, 71,§411.15]

411.16 Hours of service. Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C66, 71,§411.16]

Referred to in §411.17
See also §410.19

411.17 Provisions not applicable. The provisions of section 411.16 shall not apply to the chief, or other persons when in command of a fire department, nor to firemen who are employed subject to call only. [C66, 71,§411.17]

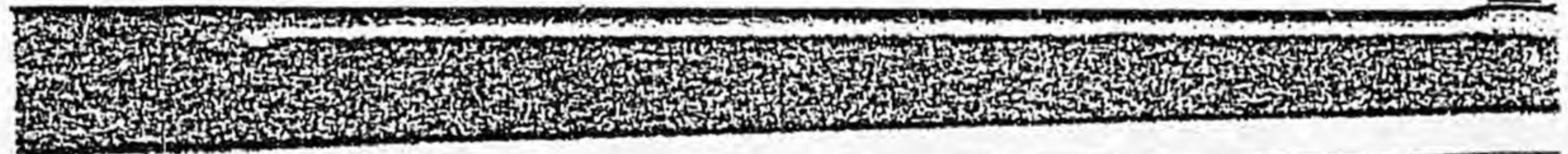
CHAPTER 412

MUNICIPAL UTILITY RETIREMENT SYSTEM

Applicable to cities over 6,000 population

See waterworks employees group insurance, ch 400

412.1 Authority to establish system.
412.2 Source of funds.
412.3 Rules and regulations.
412.4 Legal reserve insurance.
412.5 Public utility defined.



STATE OF KENTUCKY

WORKMEN'S COMPENSATION LAW

342.316 Occupational disease defined; medical examination; time for filing claim; presumption in the case of respiratory disease; provisions for determining liable employer. (1) "Occupational disease" as used in this chapter means a disease arising out of and in the course of the employment.

(a) A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The disease shall be incidental to the character of the business and not independent of the relationship of employer and employe. The disease need not have been foreseen or expected but, after its contraction, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

(b) "Injurious exposure" as used in this section shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which claim is made.

(2) (a) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to such disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter except that notice of claim shall be given to the employer as soon as practicable after the employe first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted such disease, or a diagnosis of such disease is first communicated to him, whichever shall first occur.

(b) The procedure with respect to filing of claims shall be as follows:

1. The application shall set forth the work history of the applicant with a concise description of injurious exposure to a specific occupational disease together with the names and addresses of employer or employers with the approximate date of employment and shall also include with the application two written medical reports supporting his claim. These medical reports shall be made on the basis of comprehensive clinical examinations and shall contain full and complete statements of the results thereof. The reports shall be made by duly licensed physicians. The clinical examinations shall include x-ray examinations. However, the failure of an x-ray examination to disclose the presence of an occupational disease shall not affect the legal presumption referred to in subsection (6) of this section.

2. The filing of a properly executed application for adjustment of claim, accompanied by the two medical reports described in subparagraph 1. of this paragraph, shall satisfy the requirements of the presumptive clause set out in subsection (6) of this section and the burden of proof shall immediately thereafter shift to the employer and the Special Fund.

3. Immediately upon receipt of said application for adjustment of claim, the board shall notify the affected employer, the Special Fund and any other interested party of such claim and shall furnish them with a full and complete copy of the claim.

4. Upon receipt of notice of claim the employer, the Special Fund, and any other interested party shall have the right as provided under KRS 342.021 to have the claimant examined by competent medical experts.

5. Within sixty days of the filing of the claim the employer, the Special Fund, and any other interested party shall notify the board and the claimant whether or not the claim will be resisted. If the claim is not resisted, then the board shall within ten days enter an order and award for the claimant. If the claim is resisted, the board shall set a date for a hearing and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the Workmen's Compensation Board shall be followed.

(3) The right to compensation under this chapter for disability resulting from an occupational disease shall be forever barred unless a claim is filed with the Workmen's Compensation Board within one year after the last injurious exposure to the occupational hazard or after the employe first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within said period, unless a claim therefor be filed with the Workmen's Compensation Board within one year after such death; provided, however, that notice of such claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes pay-

ment therefor, or, if the incurrence of the disease or the death of the employe, and its cause was known to the employer. Provided, however, that the right to compensation for any occupational disease shall be forever barred unless a claim is filed with the Workmen's Compensation Board within five years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease, a claim must be filed within ten years from the last injurious exposure to the occupational hazard.

(4) In claims for compensation due to the occupational disease of silicosis or any other compensable pneumoconiosis it must be shown that the employe was exposed to the hazards of the disease in his employment within this state for at least two years immediately next before his disability or death.

(5) The amount of compensation payable for disability due to occupational disease or for death from such disease, and the time and manner of its payment, shall be the same as provided for accidental injury or death under the general provisions of the Workmen's Compensation Act, but in no event to exceed such amounts as were in effect at the time of the last injurious exposure, and provided further, that the time of the beginning of compensation payments shall be the date of the employe's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later, and provided further, that in case of death where the employe has been awarded compensation or made timely claim within the period provided for in this section, an employe has suffered continuous disability to the date of his death occurring at any time within ten years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workmen's Compensation Act and in this section.

(6) In case of disability or death from silicosis, coal workers' pneumoconiosis, or any other compensable pneumoconiosis, complicated with tuberculosis of the lungs, pulmonary emphysema or other pulmonary dysfunction and there has been employment exposure to harmful dust or industrial hazards reasonably competent to produce such accompanying disease or dysfunction, there is a rebuttable legal presumption that all resultant disability therefrom is work related and compensable, and compensation shall be payable as for the uncomplicated disease, provided, however, that the disease or dysfunction was an essential factor in causing such disability or death.

(7) If an autopsy has been performed, no testimony relative thereto shall be competent unless the employer or his representative and a representative of the deceased employe shall have participated therein or been given reasonable opportunity to do so.

(8) No compensation shall be payable for occupational disease if the employe at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of such disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(9) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, save only to after-born children of a marriage existing at the beginning of such disability.

(10) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of such cause, that the claim for injury, disability or death which was the basis for such application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for such injury, disability or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this chapter. When such amendment is submitted, further or additional evidence may be heard by the board when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required herein.

(11) When an employe has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided herein.

(12) (a) The employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disablement only after an exposure of five or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employe was last exposed to the hazard of such occupational disease during a period of six months or more. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the Special Fund. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which de-

veloped to the point of disablement only after an exposure of five or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the Special Fund, and the employer shall be liable for sixty percent of the compensation due and the Special Fund shall be liable for forty percent of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the Special Fund under this section, all of the compensation awarded shall be paid by the carrier or self-insured employer, and the carrier or self-insured employer shall be reimbursed for such payments from the Special Fund on a quarterly basis and under such regulations as the board may provide for such purpose.

(b) In all claims for compensation partially payable by the Special Fund the Commissioner of Labor, as custodian of said fund, shall be designated as co-defendant.

(c) In all agreements for the payment of compensation and awards the amount payable by the employer and the amount payable out of the Special Fund shall be separately stated. An award against the employer shall be for only the percentage of the total compensation which the employer is obligated to pay. A separate award shall be made against the Special Fund for the balance of the compensation payable. Nothing in this section shall prohibit the Commissioner of Labor, as custodian of the Special Fund, from entering into agreements to pay the compensation for which it is liable; provided, however, that where compensation is payable by both the employer and the Special Fund, the commissioner shall not enter into an agreement unless the employer is a party to the agreement. (1944, c. 82, § 3; 1948, c. 151, § 4; 1956, c. 77, § 12; 1960, c. 147, § 16; 1960, c. 35; 1962, c. 276, § 3; 1964, c. 192, § 24; 1970, c. 16, § 3)

Note: Election of coverage.

(1944, c 82, §3; 1948, c 151, §4)

1953. Where the claimant established that he had contracted silicosis, and there was no proof that he had the disease when he began working in employer's mine in 1933, and his proof did show that the rock strata at the mine in the areas where he did his last drilling contained large amounts of silica, and also that on occasions there was a large amount of dust in the air while drilling was being done, his proof was sufficient to meet the burden placed upon him of proving that silicosis was contracted while he was working in employers coal mine under conditions prescribed in this section. United States Steel Co. v. Lockhart et al., 261 S. W. (2d) 643.

1953. The sixty day exposure provision in this section was intended to fix liability as between two or more employers in instances where a employe had been exposed to the hazards of the disease silicosis under more than one employer. Jones v. Crummies Creek Coal Co. et al., 264 S. W. (2d) 295.

1954. In silicosis cases existence of disease is essential fact; and if disease does exist question of whether there was an exposure to hazard in employment then will be determined, not as an abstract proposition, but in light of fact that disease exists. Kinker v. American Radiator & Standard Sanitary Corp., 268 S. W. (2d) 948.

1954. Board's failure to determine question as to whether claimant in silicosis case had the disease would require reversal of its decision to deny compensation for failure of proof of exposure, where board stated in its written opinion that if evidence had been such that it could be definitely determined that plaintiff was actually suffering from silicosis, requirement of definite proof of exposure to hazard would not be insisted upon. Ibid.

1956. In workmen's compensation proceedings, evidence was adequate to sustain finding that the employe, who sought partial permanent disability benefits for silicosis had been sufficiently exposed to silica dust for enough time to satisfy requirements of this section. United States Coal and Coke Company v. Hooks 286 S. W. (2d) 918.

1956. The purpose of provision of Workmen's Compensation Act, requiring one claiming compensation for disability due to silicosis to show that employee was exposed to hazards of disease in his employment within the state for at least two years before his disability or death was to afford employers protection against such claims by migrant workers and those who have incurred the disease in employment out of the state. Mary Helen Coal Corporation v. Parrott, 290 S. W. (2d) 477.

Provision of Workmen's Compensation Act, requiring one claiming compensation for disability due to silicosis to show that employe was exposed to hazards of disease in his employment within the state for at least two years before disability or death was intended to limit or qualify the class of employes who may become entitled to compensation benefits for silicosis and provision was not intended to require a specific number of days or hours of exposure to silica dust. Ibid.

Where claimant had been employed by coal company as a motorman for at least two years and in such capacity was exposed to inhalation of silica dust from sand used on tram tracts, though he actually worked as a motorman only 430 days during such two-year period, provision of Workmen's Compensation Act, requiring claimant to show that employee was exposed to hazards of silicosis in his employment within the state for at least two years before disability or death, did not preclude recovery of compensation for disability due to silicosis. Ibid.

See annotations to KRS 342.005 (2) and 342.395.

1948 Amendment to Workmen's Compensation Act changing the procedure for determining disability in silicosis cases, including those pending before Workmen's Compensation Board at effective date of amendment, is not unconstitutional as impairing the obligation of a contract, since such change in remedial procedure does not abrogate or so circumscribe or restrict any right of employer or employe under the Act as seriously to impair the value of such right. General Refractories Co. v. Henderson, 313 Ky. 613, 232 S. W. (2d) 848.

1948 Amendment to KRS 342.315 and 342.316 merely altered the procedural method of establishing that claimant did not have silicosis and did not deprive employer of any vested defense, even though medical committee had already determined that claimant did not have silicosis. Ibid.

Since a report of medical committee (abolished in 1948) was subject to review by Workmen's Compensation Board upon exceptions seasonably filed, prior to such review and a determination by the Board, a finding by medical committee that claimant did not have silicosis created no vested right in employer to such a finding, consequently, 1948 Amendment changing procedure for determining disability in silicosis cases could be applied to case then pending before Board. Ibid.

Where the claimant established that he had contracted silicosis, and there was no proof that he had the disease when he began working in employer's mine in 1933, and his proof did show that the rock strata at the mine in the areas where he did his last drilling contained large amounts of silica, and also that on occasions there was a large amount of dust in the air while drilling was being done, his proof was sufficient to meet the burden placed upon him of proving that silicosis was contracted while he was working in employer's coal mine under conditions prescribed in this section. United States Steel Co. v. Lockhart et al., 261 S. W. (2d) 643.

intended to fix liability as between two or more employers in instances where an employe had been exposed to the hazards of the disease silicosis under more than one employer. Jones v. Crummies Creek Coal Co. et al., 264 S. W. (2d) 294.

1954. Where an employe had not been exposed to the hazards of silicosis following his acceptance of the silicosis provision of this section, the employe could not recover for disability caused by that disease. Fuston v. Consolidated Coal Co. et al., 265 S. W. (2d) 938.

Where the employe and the employer had not accepted the provisions of the silicosis section of the Workmen's Compensation Act, the one-year statute of limitations on actions for personal injuries applied even though employe alleged breach of contract by failure to furnish a reasonably safe place to work. Columbus Mining Co. v. Walker, 271 S. W. (2d) 276.

Where the employe and the employer had not accepted the provisions of the silicosis section of the Workmen's Compensation Act, the employe's action for disability caused by silicosis allegedly contracted in employer's mine accrued on the date of last exposure, rather than on the date of diagnosis, for purposes of determining application of statute of limitations. Ibid.

1954. In workmen's compensation case wherein the Workmen's Compensation Board had refused to grant an employe compensation for disability allegedly caused by silicosis, evidence of exposure to inhalable silica was sufficient to justify compensation award in the Board concluded that the employe had silicosis, since a high degree of proof was not necessary to establish such exposure. Robinson v. Peabody Coal Co., 273 S. W. (2d) 573.

In workmen's compensation proceeding, evidence was adequate to sustain finding that the employe, who sought partial permanent disability benefits for silicosis had been sufficiently exposed to silica dust for enough time to satisfy requirements of this section. United States Coal and Coke Company v. Hooks, 286 S. W. (2d) 918.

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1956. In determining whether employe gave notice of disability due to silicosis as soon as practicable in compliance with statutory requirement, statutory provision as to reasonable cause for delay or failure to give notice may be read as a part of such requirement, and hence delay in giving notice is not fatal to claim for compensation, if employe had reasonable cause for such delay. Harlan Fuel Co. v. Burkhart, 296 S. W. (2d) 722.

1956. Finding of Workmen's Compensation Board that employer had adequate and timely notice of disability due to silicosis was supported by the evidence, in view of circumstances giving rise to reasonable cause for delay in giving such notice. Ibid.

[illegible] findings of Workmen's Compensation Board as to date on which claimant was informed that he had contracted silicosis and period of delay in giving notice thereof to employer. Deal v. United States Steel Corporation, 296 S. W. (2d) 724.

1956. Where record contained evidence to support finding of Workmen's Compensation Board as to period of delay in giving notice to employer of disability due to silicosis, reviewing court would not disturb such finding. Ibid.

1956. Employer's knowledge of an ailment affecting employe's lungs prior to and at the time employe quit work may be taken into consideration in determining whether employe had reasonable cause for delay in giving notice of disability. Ibid.

1956. Where employe contracted silicosis but did not notify employer thereof until four months after employe had been advised of his condition, the employer's knowledge that the employe had been suffering from an ailment of chest and lungs for four years might not be sufficient to excuse the giving of notice to the employer "as soon as practicable", but the knowledge would have a material bearing as to whether the delay in giving notice was for "reasonable cause." United States Steel Corporation v. Burchfield, 296 S. W. (2d) 726.

1956. The reasons for the requirement of prompt notice to the employer are to enable the employer to investigate the claim and to make it posible that the employe be given prompt medical care to minimize the disability. Ibid.

1956. Where employe who quit work to be hospitalized for treatment of a lung condition did not notify the employer that he had contracted silicosis until four months after he had been so advised but employer had knowledge that employe was hospitalized and had been suffering for four years from a lung ailment, the employe had "reasonable cause" for the delay. Ibid.

1957. Evidence sustained award to coal miner, under provision of Workmen's Compensation Law that in cases of disability or death from silicosis, complicated with tuberculosis of lungs, compensation should be payable as for uncomplicated silicosis, if silicosis was an essential fact in causing such disability or death, rather than under provision that where silicosis is aggravated by other disease or infirmity not itself compensable, compensation shall be apportioned between the two disabling causes. Pond Creek Colliery v. Taylor, 302 S. W. (2d) 833.

1957. Evidence sustained award to coal miner, who was suffering from both tuberculosis and silicosis, under KRS 342.316 (7) (1953) rather than under subsection (11), KRS 1953. Ibid.

1957. Three month's interim between knowledge of coal mining employe that he had silicosis and notice to his employer was reasonable notice and "as soon as practicable" within meaning of this section (1955), notwithstanding that a year earlier the employe had been thrown out of work when employer closed mine. Lewallan v. Peabody Coal Co., 306 S. W. (2d) 262.

1957. Provision of Workmen's Compensation Act requiring claimant to give notice to the employer as soon as practicable after the claimant has knowledge he has contracted an occupational disease should be construed liberally in favor of the employe in order to effectuate the beneficient purposes of the Workmen's Compensation Act. Ibid.

1957. The Kentucky Compensation Act authorizing employer and employe to voluntarily subject themselves to silicosis provisions of Act by making voluntary application to board for coverage became a part of contract between employer and miner's union requiring employer to provide protection of benefits under Workmen's Compensation and occupational disease laws and it was duty of employer to join with employe in making written application to board to be included in silicosis provisions, and while employer under contract had no choice, employe had right to election to determine whether he would prefer statutory or common law protection. Reliford v. Eastern Coal Corporation, 149 F. S. 778.

1958. Evidence supported findings of the compensation board denying compensation for neurological condition involving atrophy of muscles and spastic tremors, on

ground that disability was attributable to pre-existing disease. Homer Brown Coal Co. v. Mays, 307 S. W. (2d) 934.

1958. Employer which had, by collective bargaining agreement, committed itself to comply with the workmen's compensation and occupational disease laws of state but had not formally or specially accepted silicosis provisions would be deemed as a matter of law and justice to have done so. Dick v. International Harvester Co., 310 S. W. (2d) 514.

1958. Where employe was paid a lump sum in satisfaction of award for disability from occupational disease, a claim for further compensation made more than one year after satisfaction of the award was barred. Harvey Coal Co. v. Colwell, 313 S. W. (2d) 274.

1958. Where employe who had been employed by three coal mining companies and who was operated upon in August 1954, for removal of portion of lung because of silicosis condition filed a claim against last company to employ him and first company to employ him in January 1955, but employe made no attempt to make known to second company that he had such a disease and he never made formal claim upon or proceeded directly against second company which was made a party defendant on motion by one of other defendants on April 11, 1955, notice given after a delay of 8 months to second company was not given "as soon as practicable" and failure to comply with statutory requirements precluded recovery for compensation benefits by employe in absence of excuse for failure to give earlier notice. Maas v. Tyler, 316 S. W. (2d) 211.

1959. In proceeding for compensation by 50-year-old operator of wagon drill who drilled holes in limestone rock inside underground large rooms or caverns for charges of explosives, wherein it appeared that employe was suffering from silicosis, bronchiectasis and emphysema and no claim was made that he suffered any temporary or permanent disability as result of blow on his chest by steel tongue while helping in moving of drill, substantial evidence, including biopsy report, sustained board's finding that employe was not exposed to hazards of disease of silicosis or any occupational disease in his employment with present employer within state for two years before his disability, and the diseases from which he was suffering were not aggravated or lighted up by any conditions of his employment by his present employer. Pace v. Louisville Crushed Stone Co., 323 S. W. (2d) 539.

1960. Right of recovery of compensation for silicosis may not be defeated by delay in giving notice where the employer is not prejudiced. Osborne Mining Corp. v. Barrera, 334 S. W. (2d) 917.

1960. Where compensation law made liable a last employer in whose services silicosis victim had been previously employed, it could be presumed that employer purchasing prior employer's business would not have employed the victim had it known of his condition. Ibid.

1960. Employe was not entitled to recover compensation for silicosis against last employer purchasing prior employer's mine for failure to give notice of the silicosis condition to the last employer, where excusing the delay would prejudice the last employer which was innocent of any fraud, negligence or other conduct that could form a just basis for fastening liability upon it. Ibid.

1960. Where it was established by medical testimony that coal-cutting machine operator had silicosis in January 1955, and where the diagnosis had been made by his employer's doctor and where mine superintendent, foreman, and section foreman were also notified of such conditions, and where, subsequent to new employer taking over mine on January 2, 1955, these employes were kept on by new employer, notice of claimant of his condition was imputable to new employer. Osborne Mining Co. v. Davidson, 330 S. W. (2d) 626.

1960. Where claimant, seeking workmen's compensation benefits for silicosis, had worked as a coal-cutting machine operator from March 9, 1924, until September 18, 1958, and where it was established by medical testimony in January 1955 that claimant had silicosis but where claimant continued to work even after new employer had taken over on January 2, 1955, and had continued working until he had become disabled, last employer was solely liable for compensation payments. Ibid.

1960. Where coal-cutting machine operator had been employed from March 9, 1924, until September 18, 1958, and where, in January 1955, it was medically established and diagnosed that operator had silicosis but where continued to work until he became disabled, claim for benefits filed November 25, 1958, was timely. Ibid.

1961. Where employe did not have injurious exposure during his 14 months' employment with certain coal mining company in outside work, company was not liable to employe for compensation for disability resulting from silicosis, anthracosis or a combination of both inasmuch as such condition antedated his employment by company. Webb v. Elkhorn Coal Co., 342 S. W. (2d) 533.

1961. In workmen's compensation proceeding brought by miner who had worked over 30 years inside mines and five years on the outside and who had been forced to quit work because of disability after 14 months of employment by defendant, evidence sustained finding that employe's condition, whether caused by silicosis anthracosis or a combination of both, antedated his employment by defendant. Ibid.

1961. Claimant was entitled to compensation for disability caused by silicosis where he became disabled while working for employer under occupational conditions which exposed him to the hazard of the disease, even if claimant had contracted silicosis on or before his employment by last employer. Gibson v. Blue Diamond Coal Co., 342 S. W. (2d) 693.

1961. Disability plus last exposure constitutes basis for an occupational disease claim against an employer, regardless of prior exposures or manifestations of the disease. Ibid.

1961. Controlling factor in determining an employer's liability for an occupational disease is not when or where the disease developed but where the employe became disabled while working under occupational conditions, which would, regardless of the time element, cause such disease. Ibid.

1961. Both amount of a common-law settlement of a claim and cause of action for disability because of silicosis, and degree of disability, should have been credited on whatever amount of disability might be found, and whatever award might be made by the Board of claimant's disability, where amount paid in settlement reflected degree of disability attributable at that time to silicosis. Blevins v. Johnson, 344 S. W. (2d) 375.

1961. Provision of this section requiring employment within the state for at least two years before disability, should be construed liberally to effectuate the purposes of the Act. Ibid.

1961. Settlement of a common-law action for disability caused by silicosis, was not a bar to a subsequent claim for workmen's compensation for disability, where legal right to workmen's compensation did not exist at time the common-law action was filed. Ibid.

1961. Date of disability under conditions which could cause disabling occupational disease is controlling factor in fixing liability for compensation as between various employers. W. M. Coal Company v. Campbell, 344 S. W. (2d) 794.

1961. Proof that conditions in last employment were such that over indefinite period of time they could have caused disabling occupational disease is sufficient to establish liability of last employer for compensation, though disease may have been contracted in substantial degree during prior employment. Ibid.

1961. Employer's insurer at time coal miner became totally disabled due to silicosis while working under conditions which could cause disease was liable for compensation, though policy had been issued only twelve days before disability. Ibid.

(1962) Notice to employer of occupational disease not required until disease causes disability which impairs capacity of employe to perform work, and employe knows or should know by exercise of reasonable care and diligence that he is suffering from the disease. Tungstall v. Blue Diamond Coal Co., 359 S. W. (2d) 614.

(1962) Workmen's compensation claimant who became disabled with pneumoconiosis and was last injuriously ex-

posed to hazard of that disease while in employment in coal company's mine was entitled to compensation. High Splint Coal Company v. Chandler, 263 S. W. (2d) 103.

(1962) Evidence supported finding that coal miner suffered occupational pneumoconiosis rather than silicosis, which would have required miner to show two-year exposure in order to obtain compensation. Ibid.

(1963) Notice of disability not required to be given until employe has disability from occupational disease which impairs capacity to perform work and employe knows or should know by exercise of reasonable care and diligence that he is suffering from disease. Inland Steel Company v. Mullins, 367 S. W. (2d) 250.

(1963) Board's finding that coal miner was totally disabled due to disease of silicosis, supported by evidence. Ibid.

(1963) Amendment 1962 (Sub (13) (a)) providing for workmen's compensation payments partially out of subsequent claim fund and partially by employer changed substantive rights and did not affect pending litigation, therefore, board did not err in failing to make fund party to pending proceedings and in failing to order partial payment from fund on final award entered after effective date of amendment. Ibid.

(1963) Proof relating to other possible contributing factors to total and permanent disability of one employed by coal mining company and found disabled by occupational disease of respiratory nature acquired in employment was insufficient to require apportionment. Bethlehem Mines Corporation v. Davis, 368 S. W. (2d) 176.

(1963) So long as man is able to carry on his duties, though he may suffer while doing them, he is not yet disabled within meaning of this section requiring timely notice of disability. Ibid.

(1963) Court could not supplant Board in its finding of fact that Board could not determine that claimant's disability which he asserted was silicosis resulted from occupational disease where evidence was conflicting, three physicians testified that claimant had silicosis and three testified that he did not. Roark v. Alva Coal Corporation, 371 S. W. (2d) 856.

(1965) Where worker was employed by one company which ceased operation in May 1961 and thereafter in December 1961 he was employed by another coal company and worked three days, and subsequently discovered that he had silicosis he was not disabled at the time he left employment of the first employer and consequently that company was not responsible for his occupational disease. Davis v. Harlan Everglow Coal Co., 392 S. W. (2d) 62.

(1965) Where on pre-employment examination, doctor recommended that the employe be not employed in mine where he would be exposed to dust, and he did not file claim for more than two years thereafter, the claim for occupational disease was barred by this statute. Good v. Russell Fork Coal Co., 387 S. W. (2d) 842.

(1965) Claim for condition in right hand which prevented worker from performing her duties, diagnosed as tenosynovitis, which was specifically attributable to the repetitious use of the right palm and wrist in operating a calculating machine during employment held to constitute one for a compensable disability from an occupational disease. National Stores, Inc. v. Hester, 393 S. W. (2d) 603.

(1965) Where claimant worked in coal mines in Kentucky for 33 years prior to November 1961 and then obtained work in West Virginia and continued work until September 1962 during all of which employment he was exposed to the occupational disease of silicosis, his disability due to silicosis was not compensable under the Kentucky law for the reason that he was not exposed to the hazards of the disease within this state for at least two years immediately next before his disability. Lovell v. Osborne Mining Corp., 395 S. W. (2d) 596.

(1965) Where statute which barred a claim not filed within 3 years after the last injurious exposure was amended before the bar had become complete so that the three year limitation was removed, the claim was not barred if otherwise filed within the statutory period. Kiser v. Bartley Mining Co., 397 S. W. (2d) 56.

(1966) Limitations prescribed by the workmen's compensation law did not apply to actions or breach of union contract requiring coverage for occupational diseases. Blankenship v. Majestic Collieries Co., 330 S.W. (2d) 699.

(1966) Where claimant's claim for workman's compensation benefits was denied on the ground that he did not suffer from an occupational disease his subsequent death from a cause not attributable to his work was not compensable. Marcus v. United States Steel Corp., 402 S.W. (2d) 692.

(1966) The maximum award available to claimant suffering from silicosis for which the employer could be liable would be fixed at the maximum amount allowable under the law at the time he separated from the employer's employment. Beth-Elkhorn Corp. v. Thomas, 404 S.W. (2d) 16.

(1966) Subsection (4) of this section becomes applicable only when an injurious exposure in Kentucky for two years has been interrupted by an injurious exposure outside of Kentucky. Ibid.

(1967) Where employe who had engaged in coal mining for various employers for many years had engaged in actual mining operations for two or three weeks in his last two years of employment, his claim for disability from silicosis against his last employer was allowable. Moore Mining Co. v. Gibbons, 412 S.W. (2d) 261.

(1967) Award in 1962 on the basis of 57.2% of disability as a result of silicosis, could be reopened and an award of 100% disability substituted as result of same disease on the basis of a finding of a change in condition. Daugherty v. Watts, 419 S.W. (2d) 137.

(1967) Where employe was totally disabled as a result of an injury while at work and it was later found that he was also totally disabled from silicosis for which special fund was liable, an award imposing complete liability on the employer for permanent disability so long as the disability was attributable to the injury at work was proper. Estep Coal Co. v. Ward, 421 S.W. (2d) 367.

342.320 Regulation of charges by attorneys, physicians and hospitals; policy as to attorney's fees. (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of the board. No attorney fees shall be allowed or approved against any party not represented by said attorney, nor shall any attorney fee be allowed or approved exceeding an amount equal to 20 percent of the amount recovered. Provided, however, the board, in making an allowance of attorney fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The board may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment.

(2) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the board, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The entire attorney's fee in a lump sum shall be paid directly to the attorney of record, and the board in allowing or approving an attorney's fee, as provided in this section, shall order the payment of same directly to the attorney, commuting sufficient of the final payments of compensation payable under the award to a lump sum for that purpose.

LOUISIANA

Sec. 2581. Development of heart and lung disease during employment in classified fire service; occupational disease

Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the State of Louisiana shall be classified as a disease or infirmity connected with the employment. The employee affected, or his survivors, shall be entitled to all rights and benefits to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during the employment whenever same is manifested at any time after the first five years of employment.

Title of Act: Declaring heart and lung disease developing during employment in the classified fire service in the State of Louisiana an occupational disease and providing for benefits to an affected employee; creating a presumption as to the development of the disease. Acts 1968, No. 337.

HOUSE BILL NO. 118 BY: MR. STRAIN

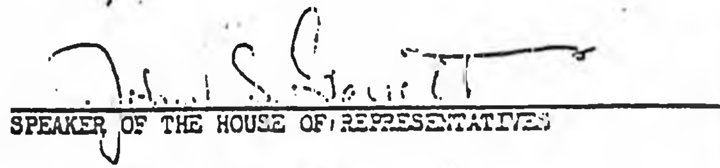
AN ACT

Declaring heart and lung disease developing during employment in the classified fire service in the State of Louisiana an occupational disease and providing for benefits to an affected employee; creating a presumption as to the development of the disease.

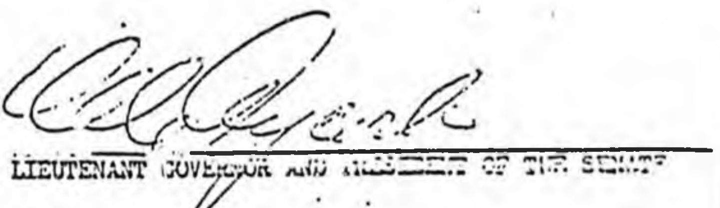
Be it enacted by the Legislature of Louisiana:

Section 1. Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the State of Louisiana shallbe classified as a disease or infirmity connected with the employment. The employee affected, or his survivors, shall be entitled to all rights and benefits to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during the employment whenever same is manifested at any time after the first five years of employment.

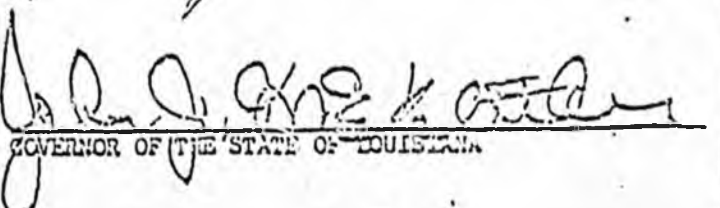
Section 2. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provisions or applications and, to this end, the provisions of this Act are hereby declared severable.



SPEAKER OF THE HOUSE OF REPRESENTATIVES



LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE



GOVERNOR OF THE STATE OF LOUISIANA

STATE OF MAINE

APPROVED

APR 24 '75

BY GOVERNOR

CHAPTER

169

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-FIVE

H. P. 230 — L. D. 286

AN ACT Relating to Pulmonary and Cardiac Diseases under the Workmen's Compensation Act.

Be it enacted by the People of the State of Maine, as follows:

39 MRSA §§ 64-B and 64-C are enacted to read:

§ 64-B. Cardiovascular injury or disease or pulmonary disease suffered by a fire fighter

If any person has been an active member of a municipal fire department or of a volunteer fire fighters' association for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if said disease has developed or the injury has occurred within 6 months of having participated in fire fighting or training or drill which actually involves fire fighting, it shall be presumed, unless the employer proves the contrary by a preponderance of the evidence, that the employee received the injury or contracted the disease arising out of and in the course of his employment, that sufficient notice of the injury or disease has been given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

§ 64-C. Cardiovascular injury or disease or pulmonary disease resulting in a firefighter's death

If any person had been an active member of a municipal fire department or of a volunteer fire fighters' association for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and provided that the person had developed the disease or had suffered the injury which resulted in death within 6 months of having a cardiovascular disease or pulmonary disease which resulted in his death, and had participated in fire fighting or training or drill which actually involves fire fighting, it shall be presumed, unless his employer proves to the contrary by a preponderance of the evidence, that the person received the injury or disease arising out of and in the course of his employment, that sufficient notice of the injury or disease was given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

CHAPTER 6

OCCUPATIONAL SAFETY RULES AND REGULATIONS BOARD

Sec.
561. Declaration of policy
562. Coverage
563. Definitions
564. Establishment of board; purpose
565. Powers and duties of board
566. Enforcement
567. Enforcement penalty
568. Appeals
569. Rules and regulations

Sec. 561. Declaration of policy

It is declared the public policy of the [illegible]e that [illegible]s employed in any occupation [illegible] [illegible] [illegible]s to their health and safety.

1969, c. 454.

Sec. 562. Coverage

This chapter shall apply to all employers except those exempt under section 45-A.

1969, c. 454.

Sec. 563. Definitions

Under this chapter, the following words shall have the following meanings:

1. Approved. "Approved" shall mean as approved by the Board of Occupational Safety Rules and Regulations;

2. Board. "Board" shall mean the Board of Occupational Safety Rules and Regulations;

3. Commissioner. "Commissioner" shall mean the Commissioner of Labor and Industry;

4. Department. "Department" shall mean the Department of Labor and Industry;

5. Employ. "Employ" shall mean employ, suffer or permit to work;

6. Employee. "Employee" shall mean any individual employed or permitted to work by an employer but the following individuals shall be exempt from this chapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Commission law and the Federal Unemployment Insurance Tax Law;

B. Any individual employed in domestic service in or about a private home;

C. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee;

7. Occupation. "Occupation" shall mean employment in an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

8. Occupational safety and health standard. "Occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations or processes reasonably necessary to provide employment and places of employment that are free from hazards to safety or health;

9. Single industry. "Single industry" shall mean an industry as defined in the Standard Industrial Classification Manual 1967.

1969, c. 454.

Sec. 564. Establishment of board; purpose

For the purpose of formulating and adopting safety rules and regulations to provide reasonably safe and healthful working conditions for all employees, other than those exempt in section 45-, the Board of Occupational Safety Rules and Regulations is established.

The board shall consist of 7 members of which 6 shall be appointed by the Governor with the advice and consent of the Council. Of the 6 appointed members of the board, 2 shall represent employers; 2 shall represent employees; one shall represent an insurance company licensed to insure Workmen's Compensation within the State and one shall represent the public. The 7th member of the board shall be the Commissioner of Labor and Industry.

The term of office for the appointed members shall be 4 years. In the first appointment, 2 shall be appointed for a term of 2 years; 2 shall be appointed for a term of 3 years and 2 shall be appointed for a term of 4 years. The chairman shall be elected biennially by the members of the board. Each member shall hold office until his successor is duly appointed and qualified.

In case of a vacancy in board membership, the Governor, with the advice and consent of the Council, shall appoint a member of the proper classification to fill the unexpired term of the absent member.

The board shall meet at least twice yearly at the State Capitol or any other place designated by the chairman.

The 6 appointed members of the board shall serve without salary and shall receive their actual expenses while engaged in the performance of their duties as members of the board. The chairman of the board shall approve and countersign all vouchers for expenditures under this section.

1969, c. 454.

Sec. 565. Powers and duties of board

The board shall formulate and adopt reasonable rules and regulations for safe and healthful working conditions, including rules requiring the use of personal protective equipment. The rules and regulations so formulated shall conform as far as practicable to nationally recognized standards of industrial safety. Such rules and regulations shall become effective 90 days after the date of their adoption and promulgation. Before any rules and regulations are adopted, a public hearing shall be held after suitable notice has been published in at least 3 daily newspapers in the State. The board may at its discretion appoint ad hoc single industry's committees to advise and counsel the board on rules and regulations needed for the protection of the workers engaged in the industry. Such committees

shall be composed of an equal number of representatives of employers and from employees engaged in the single industry and not less than one member representing safety engineers engaged by insurance companies licensed to write Workmen's Compensation Insurance in the State. Such committee members shall serve without salary and shall receive their actual expenses in the performance of their duties as members of such committees.

1969, c. 454.

Sec. 566. Enforcement

The department shall inspect and enforce the rules and regulations.

1969, c. 454.

Sec. 567. Enforcement penalty

If, upon inspection or investigation, the commissioner or his agents determine that any employer or employee has violated any rule or regulation promulgated under section 565, he shall issue such orders as are deemed to be necessary to enforce such rule or regulation. Any employer or employee who has been found in violation of any rule or regulation and who refuses to obey the order of the commissioner shall be punished by a fine of not less than $25 nor more than $200 for each violation. Each violation shall be a separate offense. When the violation is of a continuing nature, each day during which it continues after a reasonable time specified in the order shall constitute a separate offense, except during the time of appeal as provided in section 568.

1969, c. 454.

Sec. 568. Appeals

Any person aggrieved by an order or act of the commissioner or of an inspector of the department under this chapter may, within 15 days after notice thereof, appeal from such order or act to the board which shall hold a hearing thereon, and said board shall, after such hearing, issue an appropriate order either approving or disapproving said order or act.

Any such order of the board or any rule or regulation formulated by the board shall be subject to review by the Superior Court by an

appeal taken within 30 days after the date of such order to the Superior Court held in and for the county in which the operation is located at the instance of any party in interest and aggrieved by said order or decision. Such appeal shall be prosecuted by complaint to which such party shall annex the order of the board and in which the appellant shall set forth the substance of and the reasons for the appeal. Upon the filing thereof, the court shall order notice thereof. Upon the evidence and after hearing, which shall be held not less than 7 days after notice thereof, the court may modify, affirm or reverse the order of the board and the rule or regulation on which it is based in whole or in part in accordance with the law and the weight of the evidence. The court, upon hearing, shall determine whether the filing of the appeal shall operate as a stay of any order pending the final determination of the appeal, and may impose such terms and conditions as may be deemed proper.

1969, c. 454.

Sec. 563. Rules and regulations

The rules and regulations formulated under this chapter may supplement, but shall in no manner supersede, the rules and regulations duly promulgated by the Board of Boiler Rules, the Board of Construction Safety Rules and Regulations and the Board of Elevator Rules and Regulations, whose rule making authority is clearly set forth in sections 173, 373 and 432, respectively.

1969, c. 454.

tion payments, any surplus or earnings remaining may be invested in the securities specified in this section.

8. If any employer shall default in any payment to the occupational disease account, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The board is hereby authorized, in its discretion, to cancel any employer's right to operate under compensation plan No. 3 for failure to pay the premiums due; provided, that when the board makes an order cancelling an employer's right for failure to pay premiums or assessments it shall be the duty of the board to make such order at least sixty (60) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties wherein the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices to the effect that the board has cancelled the right of the said employer to operate under the act, and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the occupational disease act.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion, finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

9. For any disability to any employee resulting from an occupational disease occurring during default in any payment to the occupational disease compensation account, the defaulting employer as to such disability shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the occupational disease compensation account the amount of such default together with the penalty prescribed in subsection 5 of this section.

10. The person entitled to sue under the provisions of subsection 9 of this section shall have the option of proceeding by suit or taking under this act. If such persons take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the occupational disease compensation account. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

11. Any cause of action assigned to the state under the provisions of subsection 10 of this section may be prosecuted or compromised by the board in its discretion.

12. Where an employee is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician attending him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the employee, provided that the filing of a certificate of the attending physician shall not constitute a sworn claim for compensation.

13. For proper compliance with the provisions of subsection 12 of this section, the physician, after approval by the board, shall be paid out of the occupational disease compensation account, five dollars ($5.00) for each case.

14. Where death results from an occupational disease, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the board.

15. In computing the payroll of any employer the entire compensation received by any employee subject to this act shall be included, whether it be in the form of salary, wage, piecework, or otherwise and whether payable in money, board or otherwise.

16. Disbursements out of the occupational disease compensation account in the agency fund shall be made by the treasurer of the board, as the board may order. If at any time there shall not be sufficient money in the occupational disease compensation account with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum (6%) per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

17. All earnings made by the occupational disease compensation account by reason of interest paid for the deposit thereof, or

otherwise, shall be credited to and become a part of said account, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the occupational disease compensation account shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars ($5,000.00), or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

92-1335. Hearing, findings and awards. Upon receiving a demand for hearing or rehearing by the party dissatisfied by either the first or second determination of compensability by the board, as provided in section 92-1315, the board shall hold such hearing within ninety (90) days from the date of demand for hearing or rehearing. After the final hearing by the board, it shall within thirty (30) days, make and file a finding upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the parties.

92-1336. Power of board to award compensation and time and manner of payment. The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, subject to the limitations in this act contained; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

92-1337. Where payment due to child under eighteen years. Where payment is due to a child under eighteen (18) years of age to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

92-1338. Payment of compensation shall begin. Payment of compensation under this act shall begin on July 1, 1959.

92-1339. Common law defenses not available.

A. Employers subject to and who fail to comply with the provisions of section 92-1334 of this act shall not be entitled to the benefits

of this act during the period of noncompliance, and shall not avail himself of the defenses:

1. That the employee was negligent, unless such negligence was willful;

2. That the disability was caused by the negligence of a fellow employee;

3. That the employee had assumed the risks inherent, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

92-1340. Penalties for violation. An employer subject to this act who fails to comply with section 92-1334, or a person who violates any other provision of this act, does an act prohibited thereby, or fails or refuses to perform a duty imposed by this act within the time prescribed by law or by the board for which no penalty is specifically provided, or fails, neglects or refuses to obey an order of the board or a judgment of a court under the provisions of this act, is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than six hundred dollars ($600.00) for the first offense, and not less than two hundred dollars ($200.00) nor more than twelve hundred dollars ($1,200.00) for each subsequent offense.

92-1341. Deduction from wages of any part of a premium misdemeanor—hospital contributions. It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

92-1342. False representation by employee. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease when the contrary is true.

92-1343. Legal action by board. Upon request of the board, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this act or for the recovery of money due the state occupational disease compensation account in the agency fund or for any penalty provided for in this act, and he shall prosecute

92-1351. Depositions may be taken. The Board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

92-1352. Powers of board. The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

92-1353. Powers to issue writs and process—fees for serving. The board, and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

92-1354. Power to administer oaths, certify official acts, issue subpoenas—witness fees and mileage. The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in an inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the fund appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the

board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

92-1355. Power of district court concerning production of testimony —contempt. The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall be the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case of proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten (10) days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

92-1356. Certificates and certified copies as evidence. Copies of

official documents and orders filed or deposited according to law in the office of the board, certified to by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under and bound by the provisions of the occupational disease act of Montana, is a question for determination, a certificate by a member of the board, or by the secretary under the official seal of the board, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the occupational disease act of Montana, shall be prima facie evidence thereof.

92-1357. Apportionment of costs and disbursements—expenses. The costs and disbursements incurred in any proceeding or hearing before the board or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan No. 3, may be paid from the occupational disease compensation account in the agency fund, and in the discretion of the industrial board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or officers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the State of Montana.

92-1358. Books, records and payrolls to be open to inspection. The books, records, and payrolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the boards or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection shall subject the following employer to a penalty of one hundred dollars ($100.00) for each offense, to be collected by civil action in the name of the state.

92-1359. Jurisdiction of board to hear disputes and controversies. All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

92-1360. Presumption as to legality of rules, orders, findings, etc., of board. All orders, rules and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful until and unless they are modified or set aside by the board or upon review.

92-1361. Collateral attack not permitted. No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

92-1362. Appeal to district court. Within thirty (30) days after the rendition of the final decision of the board provided in this act and within twenty (20) days after notice thereof, any party affected thereby, may appeal to the district court of the judiciary district of the State of Montana, in and for the county in said state wherein the occupational disease disability occurred or the employer may have a place of residence, or if such employer be a corporation may have his principal office or place of business and said appeal shall be for the purpose of having the lawfulness of the determination, order, decision or award inquired into and determined.

92-1363. Procedure upon appeal. The said appeal shall be taken pursuant to the provisions of section 92-834, Revised Codes of Montana, 1947.

92-1364. Appearance on appeal. Appearances shall be made and judgment rendered in the manner set forth in section 92-835, Revised Codes of Montana, 1947.

92-1365. Appeal to supreme court. Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the State of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

92-1366. Employer liability. There is imposed on every employer subject to this act a liability for the payment of compensation as herein provided.

92-1367. No vested right to compensation. The right to the compensation provided for herein shall not, nor shall the rate or amount thereof be, or become vested or continuing rights, in persons awarded compensation under this act, or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this act or any amendment hereof, or to wholly discontinue to all persons all compensation provided for by this act, or any amendment hereof.

92-1368. This act to be liberally construed. Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

92-1369. All acts or parts of acts in conflict herewith are hereby repealed.

92-1370. This act shall be in full force and effect from and after its date of passage and approval.

AN ACT to add new Section ~~103~~ 64A to Article 101 of the Annotated Code of [redacted] (1970 Supplement), title "Workmen's Compensation," ~~to be under the new subtitle "Death and Disability Payments—Fire Fighters,"~~ to follow immediately after Section ~~103~~ 64 thereof, to ~~establish certain medical conditions where the death or disability of a fire fighter is presumed to be accidental and as a result of his employment~~ PROVIDE THAT THERE IS A PRESUMPTION OF COMPENSABLE OCCUPATIONAL DISEASE IN CASES OF CERTAIN FIRE FIGHTERS SUSTAINING TEMPORARY OR TOTAL DISABILITY OR DEATH UNDER CERTAIN CONDITIONS, AND TO PROVIDE THAT BENEFITS MAY ALSO BE PAYABLE UNDER A RETIREMENT SYSTEM UNDER CERTAIN CONDITIONS.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That new Section ~~103~~ 64A be and it is hereby added to Article 101 of the Annotated Code of Maryland (1970 Supplement), title "Workmen's Compensation," ~~to be under the new subtitle "Death and Disability Payments—Fire Fighters,"~~ SUBTITLE, "MISCELLANEOUS" to follow immediately after Section ~~103~~ 64 thereof, and to read as follows:

Death and Disability Payments—Fire Fighters

~~*103*~~ *64A.*

Any condition or impairment of health of any PAID municipal, county, airport authority, ~~*port authority,*~~ *or fire control district fire fighter caused by lung diseases, heart diseases, or hypertension resulting in total or partial disability or death shall be* ~~*presumed to have been accidental and to have been suffered in the course of his employment, provided that such fire fighter had successfully passed a physical examination upon entering into service as a fire fighter which failed to reveal any evidence of any such condition or impairment of health*~~ *PRESUMED TO BE COMPENSABLE UNDER THIS ARTICLE AND TO HAVE BEEN SUFFERED IN THE LINE OF DUTY AND AS A RESULT OF HIS EMPLOYMENT.*

NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE ~~*AND*~~ *ANY PAID FIRE FIGHTER WHOSE COMPENSABLE CLAIM RESULTS FROM A CONDITION OR IMPAIRMENT OF HEALTH CAUSED BY LUNG DISEASES, HEART DISEASES OR HYPERTENSION AND HAS BEEN SUFFERED IN THE LINE OF DUTY SHALL RECEIVE SUCH BENEFITS AS ARE PROVIDED FOR IN THIS ARTICLE IN ADDITION TO SUCH BENEFITS AS HE MAY BE ENTITLED TO UNDER THE RETIREMENT SYSTEM IN WHICH SAID FIRE FIGHTER WAS A PARTICIPANT AT THE TIME OF HIS CLAIM. THE BENEFITS RECEIVED UNDER THIS ARTICLE HOWEVER, SHALL BE ADJUSTED SO THAT THE TOTAL OF ALL WEEKLY BENEFITS SHALL NOT EXCEED ONE HUNDRED PERCENT OF THE WEEKLY SALARY WHICH WAS PAID TO SAID FIRE FIGHTER.*

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1971.

House 1. No. 483.

Introduced by Delegates Robey and Weissgoff.

EMERGENCY BILL

House Bill No. 911—By Delegate Friedman.

CHAPTER........................

A BILL ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 33 of Article 101 of the Annotated Code of [illegible] ~~(1964 Replacement Volume), title "Workmen's Compensation," subtitle "Application of Article; Extra-Hazardous Employments," as added by Chapter .... (House Bill 105) of the 1971 Laws of Maryland,~~ (1970 SUPPLEMENT AS AMENDED BY CHAPTER 741 OF THE ACTS OF 1970 AND CHAPTER .... (HOUSE BILL 105) OF THE ACTS OF 1971), TITLE "WORKMEN'S COMPENSATION," SUBTITLE "APPLICATION OF ARTICLE; EXTRA-HAZARDOUS EMPLOYMENTS to provide that whenever benefits are furnished by an employer, as defined, equal to or better than the benefits provided under Article 101 of the Annotated Code of Maryland, such defined employer shall be released of any obligation thereunder, but should such benefits be less than those required by the said Article 101, such defined employer shall make up the difference, and the Workmen's Compensation Commission is empowered to determine whether such benefits are equal to or better than the benefits required under said Article 101; to authorize the Workmen's Compensation Commission to make an award for any benefit furnished by an employer which is less than required by this Article; and to provide that the Workmen's Compensation Commission shall have continuing jurisdiction over cases arising under this Section.

1 SECTION 1. *Be it enacted by the General Assembly of Maryland,*
2 That Section 33 of Article 101 of the Annotated Code of Maryland
3 ~~(1964 Replacement Volume), title "Workmen's Compensation," sub-~~
4 ~~title "Application of Article; Extra-Hazardous Employments," as~~
5 ~~added by Chapter .... (House Bill 105) of the 1971 Laws of Mary-~~
6 ~~land,~~ (1970 SUPPLEMENT AS AMENDED BY CHAPTER 741
7 OF THE ACTS OF 1970 AND CHAPTER .... (HOUSE BILL 105)
8 OF THE ACTS OF 1971), TITLE "WORKMEN'S COMPENSA-

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike out~~ indicates matter stricken out of bill.

TION," SUBTITLE "APPLICATION OF ARTICLE; EXTRA-HAZARDOUS EMPLOYMENTS be and it is hereby repealed and re-enacted, with amendments, to read as follows:

33.

In time of peace and while engaged in military service all officers and enlisted men of the organized militia of the State of Maryland shall be deemed workmen of the State for wages within the meaning of this section; provided that, whenever and so long as provision equal to or better than that given under the terms of this article is made by the federal government for an employee of the military department of Maryland injured in the course of employment, such employee shall not be entitled to the benefit of this article.

Whenever by statute, charter, ordinances, resolution, regulation or policy adopted thereunder, whether as part of a pension system or otherwise, any benefit or benefits are furnished employees of employers covered under Section 2(a)(2) of this Article, the dependents and others entitled to benefits under this Article as a result of the death of such employees, the benefit or benefits when furnished by the employer shall satisfy and discharge pro tanto or in full as the case may be, the liability or obligation of the employer for any benefit under this Article. Should any benefits so furnished be less than those provided for in this Article the employer shall be liable to furnish the additional benefit as will make up the difference between the benefit furnished and the similar benefit required in this Article.

The Commission shall have full power to determine whether any benefit provided by the employer is equal to or better than any benefit provided for in this Article, and to render an award against the employers to furnish additional benefit or benefits to make up the difference between the benefit furnished by the employers and the benefits required by this Article as the case may be. This section shall also be subject to the continuing powers and jurisdiction of the Commission provided for in this Article.

SEC. 2. *And be it further enacted*, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a yea and nay vote supported by three-fifths of all members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

MASSACHUSETTS

Sec. 94. Impairment of health caused by hypertension, etc., resulting in disability or death of paid fire or police department member; presumption. Nothwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory system, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department or permanent member of a police department, or of the police force of the metropolitan district commission, or of the state police in the department of public safety, or of the capitol police, or of the public works building police, or to any employee of the registry of motor vehicles in the department of public works who entered the service of the registry as an investigator or examiner and performed police duty, or to any employee in the department of correction whose regular or incidental duties require the care, supervision or custody of prisoners, criminally insane persons or defective delinquents, or to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, shall, if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

Added St.1950, c.551, as amended St.1951, c.594; St.1956, c.411; St.1956, c.511; St.1956, c.580; St.1963, c.610.

MASSACHUSETTS

Sec. 94A. Disability or death caused by disease of lungs or respiratory tract; paid fire department member; presumption. Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory retirement system, any condition of impairment of health caused by any disease of the lungs or respiratory tract, resulting in total disability or death to a uniformed member of a paid fire department, shall, if he successfully passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, as a result of the inhalation of noxious fumes or poisonous gases, unless the contrary be shown by competent evidence.

Added St.1962, c.164.

MICHIGAN STATUTES

Sec. 17.237 (401) Definitions: ordinary diseases not compensable; hernia. Sec. 401. Whenever used in this act:

(a) "Disability" means the state of being disabled from earning full wages at the work in which the employee was last subject to the conditions resulting in disability.

(b) "Disablement" means the event of becoming so disabled.

(c) "Personal injury" shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of the employment. Ordinary diseases of life to which the public is generally exposed outside of the employment shall not be compensable. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and promptly reported to the employer.

Sec. 17.237 (405) Respiratory and heart diseases of firemen and law enforcement personnel: conditions precedent to filing claim. Sec. 405.

(1) In the case of a member of a full paid fire or police department of a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff and his deputies and members of the state police, "personal injury" shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties as a fire fighter or policeman.

(2) Such respiratory and heart diseases or illnesses resulting

therefrom are deemed to arise our of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he, or his decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request two copies of the determination denying pension benefits, one copy of which may be filed with the bureau.

Sec. 17.237(411) Disablement from occupational disease or injury deemed personal injury. Sec. 411. The disablement of an employee resulting from such disease or disability shall be treated as the happening of a personal injury within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this chapter, except where specifically otherwise provided herein.

MICHIGAN

§ 17.237(405) Respiratory and heart diseases of firemen and law enforcement personnel; conditions precedent to filing claim.] SEC. 405. (1) In the case of a member of a full paid fire ◆ department of [an airport run by a county road commission in counties of 1,000,000 population or more or by a state university or college or of a full paid fire or police department of] a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff and his deputies and members of the state police, "personal injury" shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties as a fire fighter or policeman.

(2) Such respiratory and heart diseases or illnesses resulting therefrom are deemed to arise out of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he, or his decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request 2 copies of the determination denying pension benefits, 1 copy of which may be filed with the bureau.

(CL '48, § 418.405.)

MINNESOTA

Subd. 15. Occupational disease. "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes such disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the workman would have been equally exposed outside of the employment. If immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota highway patrol, conservation officer service, state crime bureau, or sheriff or full time deputy sheriff of any county, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of his employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota highway patrol, conservation officer service, state crime bureau, or sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of his employment.

STATE OF MISSOURI

87.005. Firemen, certain diseases presumed incurred in line of duty--conditions.--1. Notwithstanding the provisions of any law to the contrary, after five years service, any condition of impairment of health caused by any disease of the lungs or respiratory tract, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence. 2. This section shall apply only to the provisions of chapter 87, RSMo 1959. (L.1967 p. 167Sec.1)

87.006. Firemen, certain diseases presumed incurred in line of duty--persons covered.--1. Nothwithstanding the provisions of any law to the contrary, and only for the purpose of computing retirement benefits provided by an established retirement plan, after five years' service, any condition of impairment of health caused by any disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence. 2. This sec. shall apply to paid members of all fire departments of all counties, cities, towns, fire districts and other governmental units.

STATE OF MONTANA

OCCUPATIONAL DISEASE ACT

OCCUPATIONAL DISEASE ACT

STATUTORY INDEX

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92-1323. Prohibiting lump sum settlements. No award made upon any claim pursuant to this act may be converted into a lump sum payment, in whole or in part, except in case the claimant, after having filed a claim with the employer, the board or the insurer, as the case may be, shall have entered into a contract of employment with an attorney for the recovery of such claim, the terms of which employment contract shall be deemed to be reasonable compensation by said board for such attorney's services, in which case, the amount of such attorney's compensation may be ordered by the board to be paid by the employer, insurer or the board as the case may be, and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant pursuant to this act, or said board may at its option require such payments to be deducted each week in such amount as it deems advisable from the payments thereafter to be made to the claimant pursuant to this act and paid to said attorney as they are so deducted from the weekly payments to the claimant.

92-1324. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this act, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding five hundred dollars ($500.00).

92-1325. Medical and hospital expenses. In addition to the compensation provided by this Act, the following shall be furnished:

If an employee becomes totally disabled from an occupational disease, he shall be entitled to receive medical services, hospitalization, medicines and such other treatment as may be approved by the board not exceeding in amount the sum of twenty-five hundred dollars ($2,500.00), provided, however, that in such cases of total disability where apportionment of such sum does not meet such hospital expense, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper.

Any employee who suffers any of the occupational diseases listed in section 92-1304, but who is able to continue in his employment while being treated therefor, shall be entitled to receive such medical services, treatments and medicines reasonably required, not exceeding the value of one thousand dollars ($1,000.00).

The employer, or insurer, or the board shall not be required to furnish such services if the employee refuses to allow them to be

furnished or if the employee is under hospital contract as provided in section 92-610 (2937), Revised Codes of Montana, 1947, as amended.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of a disabled employee in a particular case such disabled employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

92-1326. Aggravation. Where an occupational disease is aggravated by any other disease or infirmity not itself compensable or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion only if the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

92-1327. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this act, and other than pulmonary tuberculosis, compensation shall be reduced as provided in section 92-1326.

92-1328. Compensation precluded by willful misconduct, willful self-exposure or willful disobedience of orders of board. Notwithstanding any other provisions of this act, no employee, beneficiary, or dependent of an employee shall be entitled to receive compensation for disability from an occupational disease when such disability was caused by the willful misconduct, willful self-exposure, or willful disobedience to such reasonable rules and regulations ordered by the board and which have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of the employee.

92-1329. Assignment of compensation—exemption from attachment or execution.

A. Compensation, whether determined or not, shall not, prior to the delivery of the warrant therefor, be assignable.

B. Compensation shall be exempt from attachment, garnishment and execution.

92-1330. Agreement by employee to waive compensation or to pay premium void—no liability in certain cases. An agreement by an employee to waive his rights to compensation and except as otherwise provided in this act, an agreement by an employee to pay any portion of the premium paid by his employer, shall be void.

A. The employer may give, within two weeks of an application, physical examinations to the applicants for employment. Where an applicant for employment whether such applicant has been formerly employed by the employer to whom application is made, or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinafter provided.

The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the board by the employer within five (5) days after such examination to such medical report and x-rays, if any, shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

The board shall submit such medical report and x-rays, if any, to a physician of its choice from the medical panel, and such physician shall report to the board his finding as to whether the medical report is satisfactory. The board shall within twenty (20) days after the receipt of such medical report from the employer enter its order approving or disapproving such report and specifying the particular disease or diseases found. Such order shall be in writing stating the reason for such approval or disapproval. A copy of such order shall be mailed to the employer and a copy of such order shall be mailed to the applicant for employment within twenty-four (24) hours after the board has approved or disapproved such report.

An applicant for employment may commence work prior to the approval or disapproval of such report by the board, but if the board shall disapprove such report the employer may discharge such applicant for employment without liability to such applicant.

Provided, however, that if no physical examination is given to the applicant for employment within said two (2) week period then

such applicant for employment shall be fully eligible to the benefits of this act.

B. Employers may give within one hundred eighty (180) days after becoming subject to this act physical examinations to any employees which said employer has in his employment. Where an employee, though not actually disabled is found upon competent medical and x-ray examination to be afflicted with an occupational disease or diseases, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if the report of said medical examination be approved by the board as hereinbefore provided in subsection A of this section 92-1330.

Provided, however, that if no examination is given to the employee within said one hundred eighty (180) day period then such employee shall be fully eligible to the benefits of this act.

C. All such reports shall become permanent records of the board.

The board may make reasonable rules and regulations relative to the form, execution and filing of such reports not inconsistent with the provisions of this act.

92-1331. Rights of suit at common law. There shall be no common law right of action for damages from occupational disease against an employer who elects to come under the provisions of this act, excepting for those employees not eligible for compensation under the terms of this act, or who reject coverage of this act.

92-1332. Prohibiting supplementing of benefits. No person receiving compensation or benefits under the public welfare act of the State of Montana, as provided for by sections 71-1001 to 71-1009, inclusive, of the Revised Codes of Montana, 1947, as amended, shall be entitled to compensation or benefits under this act.

92-1333. Diminution of compensation. Compensation payable pursuant to the terms of this act to the claimant, his beneficiaries or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workmen's Compensation Act of Montana or any other workmen's compensation act.

92-1334. Compensation plans. Employers shall secure compensation to their employees under one of the following plans:

COMPENSATION PLAN NUMBER ONE

1. **When and how employer may elect to adopt—direct payment to employee.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may by order of the said board make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

2. **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the State of Montana, in the industries, trades, works, occupations or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars ($5.00) for the filing of every such proof of solvency.

3. **Employer permitted to carry on business and settle directly with employee—renewal of application.** If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation pl[illegible] No. 1, shall, at least thirty (30) days before the expiration of each [illegible]l year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

4. **Additional proof of solvency—revocation of order.** The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time,

upon notice to such employer of not less than ten (10) or more than twenty (20) days, after and upon a full hearing, revoke any order or approval theretofore made.

5. **Requiring security of employer.** If said industrial accident board shall find that such employer has no financial responsibility for the payment of the compensation herein provided to be paid, which must necessarily be expected to become chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer before receiving [illegible] permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated percentum of said employer's last preceding annual payroll, or a certain percentum of the established amount of his annual payroll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

6. **Failure of employer to pay compensation — duty of board.** Upon failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such industrial accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the