

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 900

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Flores

SUBJECT: Firefighters

DATE: February 12, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	GO	Fav/CS
2.	Present	Yeatman	CA	Pre-meeting
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 900 entitles firefighters to certain benefits upon a diagnosis of cancer, as an alternative to pursuing worker’s compensation claims. Specifically, firefighters are entitled to cancer treatment, at no cost to the firefighter, and a one-time cash payout of \$25,000, upon the firefighter’s initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Have been employed by his or her employer for at least 5 continuous years;
- Not have used tobacco products for at least the preceding 5 years; and
- Have not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer.

Employers must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer.

II. Present Situation:

According to the Department of Financial Services (DFS), Florida law does not provide benefits to firefighters who receive a diagnosis or treatment of cancer.¹ However, there is a statutory

¹ Department of Financial Services, Agency bill analysis, Nov. 29, 2017, p. 1.

provision relating to employment-related accidents and injuries of first responders. Benefits may be available upon a showing by a preponderance of the evidence that exposure to a specific toxic substance, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee and that the exposure arose out of employment.²

The incidence of cancer among firefighters appears to be higher on average than other occupations. Firefighters work in inherently dangerous situations on a daily basis. They are exposed to many different carcinogens, either inhaled or absorbed through the skin both on the scene and in the firehouse. Studies have been conducted at the state, national, and international level resulting in the identification of cancers found to be common among firefighters.³ This information has been used to train and educate firefighters to reduce exposure to carcinogens resulting from firefighting activities.

In 2010, the National Institute for Occupational Safety and Health (NIOSH) initiated a study to evaluate the cancer risk of firefighters.⁴ The study served to identify whether firefighters are at a higher risk of developing cancer related to exposure on the job. Researchers studied death related to cancer as well as specific types of cancers involved. Researchers took into consideration the types and number of fire runs, use of protective equipment, and diesel exhaust controls. The study spanned 4 years and the sample size included over 30,000 career firefighters serving in Chicago, Philadelphia, and San Francisco between 1950 and 2010. This was the largest study of firefighters ever completed.⁵

According to the 2010 study, firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general population in the United States. The cancers mostly responsible for this higher risk were respiratory (lung, mesothelioma), gastrointestinal (oral cavity, esophageal, large intestine) and kidney.⁶

III. Effect of Proposed Changes:

The bill creates a new section within Chapter 112, F.S., which addresses employees. The bill defines the term:

- “Employer” to mean a state board, commission, department, division, bureau or agency, or a county, municipality, or other political subdivision of the state; and
- “Firefighter” to mean an individual employed as a full-time firefighter within the fire department or public safety department of an employer whose primary responsibility is the prevention and extinguishing of fires; the protection of life and property; and the

² Section 112.1815(2)(a), F.S.

³ Occupation and Cancer, American Cancer Society, <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/occupation-and-cancer-fact-sheet.pdf>; 15 Jobs That Put You at a Higher Risk of Cancer, <https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html/?a=viewall>; Cancer Facts and Figures, American Cancer Society, <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html>; Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), [https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\).pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf).

⁴ A copy of the study is on file with the Senate Committee on Governmental Oversight and Accountability. *See also*, Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), [https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\).pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf).

⁵ <http://www.modernfirefighter.com/cancer-the-unseen-firefighter-killer/> (last visited January 25, 2018).

⁶ *Supra*, note 1.

enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

The bill provides that upon a diagnosis of cancer, a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, F.S., if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment, at no cost to the firefighter, covered within an employer-sponsored health plan or through a group health insurance trust fund, or a rider added to such policy. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer. The employer may timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

The benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.

If the firefighter participates in an employer-sponsored retirement plan:

- The retirement plan must consider the firefighter totally and permanently disabled if he or she is prevented from rendering useful and effective service as a firefighter and is likely to remain disabled continuously and permanently due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.
- The retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan:

- The employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death. This will serve as coverage for total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer.
- The employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of cancer or circumstances arising out of the treatment of cancer.

A firefighter who dies as a result of cancer or circumstances arising out of the treatment of cancer is considered to have died while engaged in the performance of his or her firefighter

duties under s. 112.191(2)(a), F.S., and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.⁷

The costs of purchasing the insurance policy or providing benefits through a self-funded system must be borne solely by the employer that employs firefighters. Furthermore, the costs of the insurance policy or benefits provided through a self-funded system may not be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage which is funded partially or wholly by firefighters.

The Division of State Fire Marshal within the Department of Financial services must adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

The bill contains a legislative finding that determines and declares that this act fulfills an important state interest.

The act takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution requires any general law that would require the expenditure of money to be passed by a two-thirds vote of the membership of each house of the Legislature. However, there is an exception from the mandates provision if the legislature has determined that the law fulfills an important state interest, and the expenditure is required to comply with a law that applies to all persons similarly situated.

This bill includes legislative findings that the bill fulfills an important state interest (see bill section 2), and the bill appears to apply to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, universities, community colleges, counties, and municipalities. If no exemptions or exceptions apply, the bill may require a two-thirds vote of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

⁷ Section 112.191(2)(a), F.S., provides that a firefighter who is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life while engaged in the performance of his or her firefighter duties is entitled to a sum of \$50,000. However, such killing must not be the result of suicide and such bodily injury may not be intentionally self-inflicted.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Firefighters will receive the benefits of cancer insurance and will not be required to pay the associated premiums.

C. Government Sector Impact:

Employers of firefighters will incur costs to pay the insurance premiums or bear the self-insurance costs as required by the bill.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

On lines 67-73, the bill states that “the employer must provide a disability retirement plan...until the firefighter’s death as coverage for total and permanent disability *attributable to the diagnosis of cancer arising out of the treatment of cancer.*” The current phrasing is unclear, and the sponsor may want to consider amending the language to match the phrasing in lines 65-66, if it better reflects her intent, i.e., “...*due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.*”

VIII. **Statutes Affected:**

This bill creates section 112.1816 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on January 30, 2018:

- Revises the benefits to which firefighters are entitled upon a diagnosis of cancer to provide that the benefits are an alternative to pursuing workers’ compensation benefits under chapter 440.
- Changes the entitlement benefit from a group health insurance or self-insurance policy to the benefit of cancer treatment that is covered within an employer-sponsored health plan or through a group health insurance trust fund.

- Allows an employer to timely reimburse the firefighter for out-of-pocket deductible, copayment or coinsurance costs incurred by the firefighter for treatment authorized by the bill.
- Limits the cash payout of \$25,000 to one-time, and upon the firefighter's initial diagnosis of cancer.
- Requires that employers make the authorized benefits available for 10 years after the date its former firefighter employee terminates employment so long as the firefighter otherwise met the criteria (5 years continuous employment, no tobacco product use, not employed in other high risk for cancer occupation) specified when he or she terminated employment and was not subsequently employed as a firefighter following that date.
- Limits to purposes of determining leave time and employee retention policies (rather than policies and the provision of benefits), the requirement that the cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer.
- If the firefighter does not participate in an employer-sponsored retirement plan:
 - Requires total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer in order for the employer to provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary until the firefighter's death.
 - Requires the employer to provide a death benefit to the firefighter's beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of the cancer or circumstances arising out of the treatment of cancer.
- Specifies that the Division of State Fire Marshal must adopt rules to "establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations" rather than "best practices."

B. Amendments:

None.