



## 1997 SENATE BILL 329

October 22, 1997 - Introduced by Senators WIRCH, RUDE, ROSENZWEIG, WINEKE, CHVALA, CLAUSING, BURKE, ROESSLER, C. POTTER, RISSER, DARLING, DECKER, GEORGE, JAUCH, PANZER, PLACHE, ELLIS, MOEN, SHIBILSKI, BRESKE and FARROW, cosponsored by Representatives KLUSMAN, WALKER, MUSSER, KRUSICK, KREIBICH, PORTER, HANDRICK, SCHNEIDER, DOBYNS, R. POTTER, TRAVIS, GREEN, RYBA, KREUSER, ROBSON, DUFF, STEINBRINK, JOHNSRUD, KEDZIE, LADWIG, L. YOUNG, SYKORA, LORGE, LA FAVE, HUEBSCH, BAUMGART, J. LEHMAN, M. LEHMAN, HARS DORF, OTTE, BOYLE, PLALE, GUNDERSON, KAUFERT, SERATTI, GRONEMUS, HASENOHRL, UNDERHEIM, STASKUNAS, LAZICH, GOETSCH, RUTKOWSKI, OTT and PLOUFF. Referred to Joint survey committee on Retirement Systems.

1     **AN ACT to amend** 40.25 (2), 40.25 (2m), 61.66 (2), 111.35 (4) and 891.45; and **to**  
2     **create** 40.25 (2t), 40.65 (7) (ar) and 891.455 of the statutes; **relating to:**  
3     presumption concerning employment-connected disease for certain municipal  
4     fire fighters.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, in any proceeding involving the application by a municipal fire fighter or his or her beneficiary for any disability or death benefit, where at the time of death or filing of application for disability benefits the deceased or disabled fire fighter had served a total of 5 years as a fire fighter and a qualifying medical examination given before the time of his or her joining the fire department showed no evidence of *heart or respiratory impairment or disease*, and where the disability or death is found to be caused by heart or respiratory impairment or disease, this finding shall be presumptive evidence that such impairment or disease was caused by his or her employment as a fire fighter.

This bill provides a new presumption for municipal fire fighters. Under the bill, in any proceeding involving the application by a municipal fire fighter or his or her beneficiary for disability or death benefits, where at the time of death or filing of application for disability benefits the deceased or disabled fire fighter had served a total of 10 years as a fire fighter and a qualifying medical examination given before the time of his or her joining the fire department showed no evidence of *cancer*, and where the disability or death is found to be caused by cancer, this finding shall be presumptive evidence that the cancer was caused by his or her employment as a fire

**SENATE BILL 329**

fighter. Under the bill, this presumption only applies to cancers affecting the skin, breasts, central nervous system or lymphatic, digestive, hematological, urinary, skeletal, oral or reproductive systems.

This bill will be referred to the joint survey committee on retirement systems for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 40.25 (2) of the statutes is amended to read:

2           40.25 (2) If Subject to subs. (2m) and (2t), if all requirements for payment of  
3 a retirement annuity are met except attainment of age 55 or age 50 for protective  
4 occupation participants, a separation benefit may be paid, if the participant's written  
5 application for a separation benefit is received by the department prior to the  
6 participant's 55th birthday or 50th birthday for protective occupation participants,  
7 in an amount equal to the additional and employe required contribution  
8 accumulations of the participant on the date the application for a separation benefit  
9 is approved.

10           **SECTION 2.** 40.25 (2m) of the statutes is amended to read:

11           40.25 (2m) Notwithstanding sub. (2), if If a participant who is initially covered  
12 under the Wisconsin retirement system on or after January 1, 1990, terminates  
13 employment and does not have creditable service in at least 5 calendar years, a  
14 separation benefit may be paid if the participant submits a written application to the  
15 department for a separation benefit in an amount equal to the additional and  
16 employe required contribution accumulations of the participant on the date that the  
17 application for a separation benefit is approved. For the purposes of this subsection  
18 there are no age requirements for receiving a separation benefit.

**SENATE BILL 329**

1           **SECTION 3.** 40.25 (2t) of the statutes is created to read:

2           40.25 **(2t)** A protective occupation participant who is covered by the  
3           presumption under s. 891.455 and who applied for a duty disability benefit under s.  
4           40.65 on or after the effective date of this subsection ... [revisor inserts date], may  
5           not be paid a separation benefit under sub. (2) or (2m) during the period in which he  
6           or she is receiving the duty disability benefit.

7           **SECTION 4.** 40.65 (7) (ar) of the statutes is created to read:

8           40.65 **(7)** (ar) 1. This paragraph applies to benefits based on applications filed  
9           on or after the effective date of this subdivision ... [revisor inserts date]. If a  
10          protective occupation participant, who is covered by the presumption under s.  
11          891.455, dies as a result of an injury or a disease for which a benefit is paid or would  
12          be payable under sub. (4), and the participant is survived by a spouse or an  
13          unmarried child under the age of 18, a monthly benefit shall be paid as follows:

14          a. To the surviving spouse until the surviving spouse remarries, if the surviving  
15          spouse was married to the participant on the date that the participant was disabled  
16          under sub. (4), 70% of the participant's monthly salary at the time of death, but  
17          reduced by any amount payable under sub. (5) (b) 1. to 6.

18          b. If there is no surviving spouse or the surviving spouse subsequently dies, to  
19          a guardian for each of that guardian's wards who is an unmarried surviving child  
20          under the age of 18, 10% of the participant's monthly salary at the time of death,  
21          payable until the child marries, dies or reaches the age of 18, whichever occurs first.

22          2. Benefits payable under this paragraph shall be increased each January 1 by  
23          the salary index determined for the prior year.

24          **SECTION 5.** 61.66 (2) of the statutes is amended to read:

**SENATE BILL 329****SECTION 5**

1           61.66 (2) The governing body of a village acting under sub. (1) may designate  
2 any person required to perform police protection and fire protection duties under sub.  
3 (1) as primarily a police officer or fire fighter for purposes of s. 891.45 or 891.455.

4           **SECTION 6.** 111.35 (4) of the statutes is amended to read:

5           111.35 (4) Notwithstanding s. 111.322, it is not employment discrimination  
6 because of use of a lawful product off the employer's premises during nonworking  
7 hours to refuse to employ an applicant if the applicant's use of a lawful product  
8 consists of smoking tobacco and the employment is as a fire fighter covered under s.  
9 891.45 or 891.455.

10          **SECTION 7.** 891.45 of the statutes is amended to read:

11          **891.45**           (title)           **Presumption of employment—~~connected~~**  
12 **employment-connected disease; heart or respiratory impairment or**  
13 **disease.** In any proceeding involving the application by a municipal fire fighter or  
14 his or her beneficiary for disability or death benefits under s. 66.191, 1981 stats., or  
15 s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at  
16 the time of death or filing of application for disability benefits the deceased or  
17 disabled municipal fire fighter had served a total of 5 years as a municipal fire fighter  
18 and a qualifying medical examination given prior to the time of his or her joining the  
19 department showed no evidence of heart or respiratory impairment or disease, and  
20 where the disability or death is found to be caused by heart or respiratory  
21 impairment or disease, such finding shall be presumptive evidence that such  
22 impairment or disease was caused by such employment. In this section, "municipal  
23 fire fighter" includes any person designated as primarily a fire fighter under s. 61.66  
24 (2) and any person under s. 61.66 whose duties as a fire fighter during the 5-year  
25 qualifying period took up at least two-thirds of his or her working hours.

