

Calendar No. 1102

110th Congress }
2d Session }

SENATE

{ REPORT
110-520 }

FEDERAL FIREFIGHTERS FAIRNESS ACT OF 2008

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1924

TO AMEND CHAPTER 81 OF TITLE 5, UNITED STATES CODE, TO
CREATE A PRESUMPTION THAT A DISABILITY OR DEATH OF A
FEDERAL EMPLOYEE IN FIRE PROTECTION ACTIVITIES CAUSED
BY ANY OF CERTAIN DISEASES IS THE RESULT OF THE PER-
FORMANCE OF SUCH EMPLOYEE'S DUTY



NOVEMBER 17 (legislative day, SEPTEMBER 17), 2008.—Ordered to be
printed

U.S. GOVERNMENT PRINTING OFFICE

79-010

WASHINGTON : 2008

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FEDERAL FIREFIGHTERS FAIRNESS ACT OF 2008

NOVEMBER 17 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1924]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1924) to amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employee's duty, having considered the same, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

I. PURPOSE AND SUMMARY

S. 1924 creates a rebuttable presumption that a disability or death of a Federal employee in fire protection activities caused by certain diseases is the result of the performance of such employee's duty and is therefore compensable under worker compensation law.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Numerous studies have shown that firefighters—due to their daily exposure to stress, smoke, heat and various toxic substances—are far more likely than other workers to contract certain illnesses such heart disease, lung disease, and certain cancers. In addition, the role firefighters play in providing emergency medical services often exposes them to a number of infectious diseases. Heart disease, lung disease, cancer, and infectious disease are now among the leading causes of death and disability for firefighters. The following are examples of the many studies that have established linkages between fighting fires and such diseases and conditions:

1. A 2008 study of male Massachusetts firefighters from 1987 to 2003 found increased risk for numerous cancers, including colon and brain cancer.¹

2. A 2006 study conducted by the University of Cincinnati found that on-the-job exposure to soot and toxins creates an increased risk for various cancers among firefighters.²

3. A 2007 Harvard study published in the *New England Journal of Medicine* found that firefighters face a risk of death from heart attacks up to 100 times higher when involved in fire suppression as compared to non-emergency duties.³

4. A federal government study conducted during the development of an Occupational Safety and Health Administration Bloodborne Pathogen Standard showed that 98% of Emergency Medical Technicians and 80% of firefighters are exposed to bloodborne infectious diseases on the job.⁴

Forty states have enacted “presumptive disability” laws which presume that cardiovascular diseases and certain cancers and infectious diseases contracted by firefighters are job-related for purposes of worker’s compensation and disability retirement unless proven otherwise (see Figure 1). However, no such law covers firefighters employed by the federal government. There are approximately 15,000 federal firefighters, the majority of whom are employed by the Department of Defense.

According to the International Association of Fire Fighters (IAFF), Federal firefighters who have contracted cancers and infectious diseases have experienced difficulty in receiving compensation under the Federal Employee Compensation Act (FECA) (5 U.S.C. §81) because of the difficulty of linking the disease to precise incidents or exposures. Because their work environment involves routine exposure to hazardous substances,⁵ each incident—or the repeated exposure from many incidents over time—could potentially cause a disease or condition. This legislation would establish the presumption that the listed diseases and conditions are consistent with the work environment of firefighting. Therefore, in filing a claim associated with any of these diseases or conditions, an employee would no longer be required to establish a connection to a specific incident or incidents.

¹Dongmug Kang, M.D., Ph.D., et al. “Cancer Incidence Among Male Massachusetts Firefighters, 1987–2003.” *American Journal of Industrial Medicine*. 2008; 51:329–335.

²Grace K. LeMasters, Ph.D., et al. “Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies.” *Journal of Occupational and Environmental Medicine*. 2006; 48(11):1189–1202.

³Stefanos N. Kales, M.D., M.P.H., et al. “Emergency Duties and Deaths from Heart Disease among Firefighters in the United States.” *The New England Journal of Medicine*. 2007; 356(12):1207–1215.

⁴29 CFR 1910.1030 Occupational Safety and Health Administration Regulatory Impact and Flexibility Analysis.

⁵See Kang et al: “Firefighters are known to be exposed to recognized or probable carcinogens. These include benzene, polycyclic aromatic hydrocarbons, benzo(a)pyrene, formaldehyde, chlorophenols, dioxins, ethylene oxide, orthotoluidine...” (329).

Figure 1⁶:**State Presumptive Disability Laws**

The following states have presumptive disability laws which recognize that firefighters are at increased risk for certain illnesses. These laws create a presumption that the specified diseases are job related, but the details of the laws vary greatly from state to state.

State	Heart Disease	Lung Disease	Cancer	Infectious Diseases
Alabama	✓	✓	✓	✓*
Alaska				
Arizona			✓*	
Arkansas				
California	✓		✓	✓
Colorado	✓	✓	✓*	✓*
Connecticut	✓			
Delaware				
District of Columbia				
Florida	✓			✓*
Georgia	✓	✓		
Hawaii	✓	✓		
Idaho	✓	✓		✓
Illinois	✓	✓	✓*	✓*
Indiana				✓*
Iowa	✓	✓		
Kansas	✓	✓	✓*	
Kentucky				
Louisiana	✓	✓	✓*	✓*
Maine	✓	✓		✓*
Maryland	✓	✓	✓*	
Massachusetts	✓	✓	✓*	
Michigan	✓	✓		
Minnesota	✓*	✓*	✓*	✓
Mississippi				

⁶ Provided by the IAFF.

State	Heart Disease	Lung Disease	Cancer	Infectious Diseases
Missouri	✓	✓	✓*	
Montana				
Nebraska			✓	
Nevada	✓	✓	✓*	✓*
New Hampshire	✓	✓	✓*	
New Jersey		✓		
New Mexico				
New York	✓	✓	✓*	✓*
North Carolina				
North Dakota	✓	✓	✓	✓*
Ohio	✓	✓		
Oklahoma	✓	✓	✓	✓*
Oregon	✓	✓		
Pennsylvania	✓	✓		✓*
Rhode Island		✓	✓	✓
South Carolina	✓	✓		
South Dakota	✓	✓		
Tennessee	✓	✓	✓**	
Texas	✓	✓	✓*	✓*
Utah				✓*
Vermont	✓		✓*	
Virginia	✓	✓	✓*	✓*
Washington	✓	✓	✓	✓
West Virginia				
Wisconsin	✓	✓	✓*	
Wyoming				

* Indicates that only specified diseases in these categories are covered

** Applies only to certain localities

III. LEGISLATIVE HISTORY

S. 1924 was introduced by Senators Carper and Warner on August 1, 2007, and referred to the Senate Committee on Homeland Security and Governmental Affairs. Senator Menendez was also an original co-sponsor. On August 22, 2007, the bill was referred to Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. It was reported to the full Committee on June 24, 2008, and on June 25, 2008 the full Committee, by voice vote, ordered it reported favorably to the Senate floor with an amendment in the nature of a substitute offered by Senators Carper and Warner.

The substitute amendment reduces the list of diseases that would be covered by the presumption. It establishes a five-year service requirement with respect to heart disease, lung disease, and the listed cancers (no minimum service requirement would exist for the listed infectious diseases). It requires that the National Institute for Occupational Safety and Health conduct a study of the effect of the Act and the current research on the health risks related to firefighting. It also gives the Secretary of Labor the authority to establish a presumption for additional diseases if he or she determines that they are related to the hazards firefighters face on the job.

S. 1924 was ordered to be reported favorably by voice vote as amended. Senator Coburn asked to be recorded as “Nay.” Senators present were Senators Lieberman, Levin, Akaka, Carper, Pryor, McCaskill, Tester, Collins, Stevens, Voinovich, Coleman, Coburn, Warner, and Sununu.

Similar bills were introduced in the House of Representatives by Rep. Jo Ann Davis (H.R. 103) on January 5, 2007, and by Rep. Lois Capps (H.R. 1142) on February 17, 2007.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 designates the name of the act as the “Federal Firefighters Fairness Act of 2008.”

Section 2. Certain diseases presumed to be work-related cause of disability or death for federal employees in fire protection activities

Subsection (a) defines the class of employees to whom the bill would apply. The presumption created by the bill would only apply to individuals who are trained in fire suppression, authorized to engage in fire suppression, and engage in fire suppression and other emergency response activities as a primary responsibility of their job.

Subsection (b) lists 20 infectious and non-infectious diseases for which the presumption would apply for employees covered by the bill. The Secretary of Labor would be permitted to add additional diseases to the list if he or she determines that they are related to the hazards firefighters face on the job. The presumption for non-infectious diseases would only apply to employees who have been employed by the Federal government for five years or more. The presumption for infectious diseases would apply to all covered

employees. The presumption would be rebuttable by a preponderance of the evidence.

Subsection (c) requires the National Institute of Occupational Safety and Health in the Centers for Disease Control and Prevention to report to Congress, no later than 10 years after enactment, on the claims filed under the presumption created in the bill and on the available research related to the health risks associated with firefighting. The report will also include any recommendations on any administrative or legislative actions necessary to ensure that those diseases most closely associated with firefighting are included in the presumption created in the bill.

Subsection (d) states that the presumption included in the bill only applies to injuries diagnosed and deaths occurring after the date of enactment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would not affect state, local, and tribal governments. The enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 2, 2008.

Hon. JOSEPH I. LIEBERMAN, *Chairman*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1924, the Federal Firefighters Fairness Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Anthony.

Sincerely,

PETER H. FONTAINE
(For Peter R. Orszag, Director).

Enclosure.

S. 1924—Federal Firefighters Fairness Act of 2008

Summary: S. 1924 would expand eligibility for federal firefighters with certain diseases and conditions to receive medical, wage replacement, and death benefits under the Federal Employees' Compensation Act (FECA).

CBO estimates that, on net, enacting S. 1924 would increase direct spending for benefits for firefighters by \$2 million in 2009 and \$26 million over the 2009–2018 period. Enacting the bill would not affect revenues.

Because employing agencies ultimately bear the cost of federal workers' compensation claims, CBO estimates that discretionary

costs for salaries and expenses would rise along with the FECA claims. Assuming appropriation of the necessary amounts, CBO estimates that spending subject to appropriation would increase by \$25 million over the 2009–2018 period.

S. 1924 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1924 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—											2009– 2013	2009– 2018
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018			
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority ..	2	2	2	3	3	3	3	3	3	3	12	26	
Estimated Outlays	2	2	2	3	3	3	3	3	3	3	12	26	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	1	2	3	3	3	3	3	3	3	3	11	27	
Estimated Outlays	1	2	2	3	3	3	3	3	3	3	10	25	
Memorandum:													
Intragovernmental Collections from Agencies to Pay for FECA Costs	-1	-2	-2	-3	-3	-3	-3	-3	-3	-3	-10	-25	

Notes: Components may not sum to totals because of rounding.

FECA = Federal Employees' Compensation Act.

Basis of estimate: For purposes of this estimate, CBO assumes that S. 1924 will be enacted near the start of fiscal year 2009.

Direct spending

S. 1924 would make federal firefighters who contract certain diseases presumptively eligible for benefits under FECA. The specified diseases include heart disease, lung disease, certain cancers, tuberculosis, hepatitis A, B, or C, and human immunodeficiency disease. Affected federal firefighters would be eligible for federal workers' compensation benefits, including medical expenses, disability payments, and death payments to survivors. Based on the incidence, disability, and death rates for the specified diseases, CBO estimates that between 200 and 300 people per year, on average, would qualify for benefits. CBO estimates that providing FECA benefits for eligible firefighters would increase direct spending by \$28 million over the 2009–2018 period.

Costs under FECA would be partially offset by small savings in federal disability and Federal Employees Health Benefits payments. For those claimants who would have been able to qualify for federal disability payments under current law, those disability payments would be replaced by FECA payments. In addition, the federal government's share of health care premiums for retirees would decline slightly as costs for covered medical conditions would be paid by FECA. After accounting for those offsets (\$2 million over the 10-year period), CBO estimates that, on net, enacting S. 1924

would increase mandatory spending by \$26 million over the 2009–2018 period.

Spending subject to appropriation

Because FECA costs ultimately are charged back to the claimant’s employing agency, the costs are borne by those agencies’ salaries and expense accounts. Therefore, CBO estimates that enacting S. 1924 would increase discretionary costs for salaries and expenses governmentwide by a total of \$25 million over the 2009–2018 period, assuming appropriation of the estimated amounts. Those reimbursements would be transferred to and credited to the FECA account, as shown in the memorandum line in the table above.

Intergovernmental and private-sector impact: S. 1924 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Christina Hawley Anthony; Impact on State, local, and Tribal governments: Lisa Ramirez-Branum; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Keith J. Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1924 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III. EMPLOYEES

Subpart G. Insurance and Annuities

CHAPTER 81. COMPENSATION FOR WORK INJURIES

Subchapter I. Generally

§ 8101. Definitions

For the purpose of this subchapter—

* * * * *

(19) “organ” means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; **[and]**

(20) “United States medical officers and hospitals” includes medical officers and hospitals of the Army, Navy, Air Force, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital des-

ignated as a United States medical officer or hospital by the Secretary of Labor^[1]; and

(21) “Employee in fire protection activities” means a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker, who—

(A) is trained in fire suppression;

(B) has the legal authority and responsibility to engage in fire suppression;

(C) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk; and

(D) performs such activities as a primary responsibility of his or her job.

§ 8102. Compensation for disability or death of employee

* * * * *

(c)(1) With regard to an employee in fire protection activities, a disease specified in paragraph (2) shall be presumed to be proximately caused by the employment of such employee, subject to the length of service requirements specified. The disability or death of an employee in fire protection activities due to such a disease shall be presumed to result from personal injury sustained while in the performance of such employee’s duty. Such presumptions may be rebutted by a preponderance of the evidence.

(2) The following diseases shall be presumed to be proximately caused by the employment of the employee:

(A) If the employee has been employed for a minimum of 5 years:

(i) Heart disease.

(ii) Lung disease.

(iii) The following cancers:

(I) Brain cancer.

(II) Cancer of the blood or lymphatic systems.

(III) Leukemia.

(IV) Lymphoma (except Hodgkin’s disease).

(V) Multiple myeloma.

(VI) Bladder cancer.

(VII) Kidney cancer.

(VIII) Testicular cancer.

(IX) Cancer of the digestive system.

(X) Colon cancer.

(XI) Liver cancer.

(XII) Skin cancer.

(XIII) Lung cancer.

(iv) Any other cancer the contraction of which the Secretary of Labor determines to be related to the hazards to which an employee in fire protection activities may be subject.

(B) Regardless of the length of time an employee has been employed:

(i) The following infectious diseases:

(I) Tuberculosis.

(II) Hepatitis A, B, or C.

(III) Human immunodeficiency virus (HIV).

(ii) Any uncommon infectious disease the contraction of which the Secretary of Labor determines to be related to the hazards to which an employee in fire protection activities may be subject.”.

