S T A T E O F N E W Y O R K

3781--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. JAFFEE -- read once and referred to the Committee on Governmental Employees -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to certain medical presumptions applicable to members of the New York state and local employees' retirement system

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 363-a of the retirement and social security law, as amended by chapter 967 of the laws of 1974, is amended to read as follows:

2. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any condition of impairment of health caused by diseases of the heart, resulting in disability or death to a policeman, presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that [is] IT was incurred in the performance and discharge of duty AND THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT, unless the contrary be proved by competent evidence.

S 2. The retirement and social security law is amended by adding a new section 809 to read as follows:

S 809. EFFECT AND REBUTTAL OF CERTAIN MEDICAL PRESUMPTIONS PERTAINING TO DISEASES OF THE HEART. A. THIS SECTION SHALL APPLY TO CERTAIN APPLICATIONS FOR DISABILITY RETIREMENT ALLOWANCES MADE BY OR ON BEHALF OF A MEMBER OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM. IT SHALL APPLY ONLY TO APPLICATIONS THAT ARE SUBJECT UNDER THIS CHAPTER TO A PROVISION THAT ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY A DISEASE OF THE HEART, RESULTING IN DISABILITY, SHALL BE PRESUMPTIVE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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EVIDENCE THAT SUCH DISABILITY WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT.

B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AN APPLICATION FOR AN ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE THAT IS BASED ON A PERMANENT INCAPACITY CAUSED BY A DISEASE OF THE HEART, SHALL NOT BE REQUIRED TO ALLEGE OR ESTABLISH:

(1) THAT THE MEMBER SUSTAINED AN ACCIDENT OR OTHER INCIDENT RELATED TO THE PERFORMANCE AND DISCHARGE OF DUTY; OR

(2) THAT NOTICE WAS PROVIDED THEREOF.

C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE PRESUMPTIONS REFERRED TO IN SUBDIVISION A OF THIS SECTION MAY BE REBUTTED ONLY BY COMPETENT EVIDENCE THAT THE DISABILITY IS NOT THE NATURAL AND PROXIMATE RESULT OF THE PERFORMANCE AND DISCHARGE OF DUTY.

S 3. The retirement and social security law is amended by adding a new section 810 to read as follows:

S 810. EFFECT AND REBUTTAL OF CERTAIN MEDICAL PRESUMPTIONS PERTAINING TO DISEASES OF THE HEART. A. THIS SECTION SHALL APPLY TO ALL APPLICATIONS FOR DISABILITY RETIREMENT ALLOWANCES MADE BY OR ON BEHALF OF A MEMBER OF THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM. IT SHALL APPLY TO ALL APPLICATIONS THAT ARE SUBJECT UNDER THIS CHAPTER TO A PROVISION THAT ANY CONDITION OF IMPAIRMENT OF HEALTH CAUSED BY A DISEASE OF THE HEART, RESULTING IN DISABILITY, SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH DISABILITY WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT.

B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AN APPLICATION FOR AN ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE THAT IS BASED ON A PERMANENT INCAPACITY CAUSED BY A DISEASE OF THE HEART, SHALL NOT BE REQUIRED TO ALLEGE OR ESTABLISH:

(1) THAT THE MEMBER SUSTAINED AN ACCIDENT OR OTHER INCIDENT RELATED TO THE PERFORMANCE AND DISCHARGE OF DUTY; OR

(2) THAT NOTICE WAS PROVIDED THEREOF.

C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE PRESUMPTIONS REFERRED TO IN SUBDIVISION A OF THIS SECTION MAY BE REBUTTED ONLY BY COMPETENT EVIDENCE THAT THE DISABILITY IS NOT THE NATURAL AND PROXIMATE RESULT OF THE PERFORMANCE AND DISCHARGE OF DUTY.

S 4. The amendment made to subdivision 2 of section 363-a of the retirement and social security law by section one of this act shall not affect, impair or invalidate any temporary right, privilege or benefit conferred pursuant to the provisions of a general, special or local law (other than pursuant to articles 14 and 15 of the retirement and social security law) for any member of a public retirement system or pension plan funded by the state or one of its political subdivisions, nor shall any amendment thereto affect the application of such provisions as extended by the provisions of section 480 of the retirement and social security law.

S 5. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would amend the Retirement and Social Security Law in relation to heart disease related disabilities for members in the New York State and Local Employees' Retirement System (ERS) who currently have heart presumptions that reference an accident and all members in the New York State and Local Police and Fire Retirement System (PFRS). It would grant accidental disability benefits for heart cases by deeming such disabilities to have been sustained in the performance of duty, and the natural and proximate result of an accident, unless the contrary be proven by competent evidence. Further, the same criteria that exist for

determining accidental death benefits for firefighters would be extended to police officers.

If this bill is enacted, more accidental disability benefits would be granted. The estimated increase in the annual contributions to the State of New York would be approximately $610,000 for its PFRS members and approximately $1.1 million for its Unified Court Officers. The increases in annual contributions for the participating employers in the PFRS would be approximately $2.3 million. The increases in annual contributions for ERS counties that have elected the provisions of Article 14-B for their sheriffs with a date of membership prior to January 1, 1985 would be less than 0.1% of salary, the increase in annual contributions for the Town of Tonawanda would be less than 0.1% of the salary of its paramedics.

This estimate, dated December 16, 2011, and intended for use only during the 2012 Legislative Session, is Fiscal Note No. 2012-50 prepared by the Actuary for the NYS&LERS and NYS&LPFRS.