

# STATE OF NEW YORK

6241--B

2019-2020 Regular Sessions

## IN ASSEMBLY

March 4, 2019

Introduced by M. of A. ABBATE, COLTON, JAFFEE, GRIFFIN, DenDEKKER --  
read once and referred to the Committee on Governmental Employees --  
committee discharged, bill amended, ordered reprinted as amended and  
recommitted to said committee -- 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  
providing a lung disease presumption for correction officers,  
correction supervisors, deputy sheriff patrol or deputy sheriff patrol  
supervisors

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The retirement and social security law is amended by adding  
2 a new section 63-g to read as follows:

3 § 63-g. Disability benefits; certain disabilities. Notwithstanding any  
4 provision of this chapter or of any general, special or local law to the  
5 contrary, any member who is a correction officer, correction supervisor,  
6 deputy sheriff patrol or deputy sheriff patrol supervisor who contracts  
7 any condition of impairment of health caused by diseases of the lung,  
8 resulting in disability or death to such correction officer, correction  
9 supervisor, deputy sheriff patrol or deputy sheriff patrol supervisor,  
10 presently employed, and who shall have sustained such disability while  
11 so employed, shall be presumptive evidence that such disability was  
12 incurred in the performance and discharge of duty and the natural and  
13 proximate result of an accident, unless the contrary be proved by compe-  
14 tent evidence; provided, however, that prior to entry into service, such  
15 correction officer, correction supervisor, deputy sheriff patrol or  
16 deputy sheriff patrol supervisor successfully passed a physical examina-  
17 tion which failed to disclose evidence of any disease or other impair-  
18 ment of the lung.

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

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1 § 2. The retirement and social security law is amended by adding a new  
2 section 605-f to read as follows:

3 § 605-f. Disability benefits; certain disabilities. Notwithstanding  
4 any provision of this chapter or of any general, special or local law to  
5 the contrary, any member who is a correction officer, correction super-  
6 visor, deputy sheriff patrol or deputy sheriff patrol supervisor who  
7 contracts any condition of impairment of health caused by diseases of  
8 the lung, resulting in disability or death to such correction officer,  
9 correction supervisor, deputy sheriff patrol or deputy sheriff patrol  
10 supervisor, presently employed, and who shall have sustained such disa-  
11 bility while so employed, shall be presumptive evidence that such disa-  
12 bility was incurred in the performance and discharge of duty and the  
13 natural and proximate result of an accident, unless the contrary be  
14 proved by competent evidence; provided, however, that prior to entry  
15 into service, such correction officer, correction supervisor, deputy  
16 sheriff patrol or deputy sheriff patrol supervisor successfully passed a  
17 physical examination which failed to disclose evidence of any disease or  
18 other impairment of the lung.

19 § 3. Notwithstanding any other provision of law to the contrary, none  
20 of the provisions of this act shall be subject to section 25 of the  
21 retirement and social security law.

22 § 4. This act shall take effect immediately.

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

This bill would allow certain members of the New York State and Local Employees' Retirement System (ERS) employed as correction officers, correction supervisors, deputy sheriff patrol, or deputy sheriff patrol supervisors to receive an accidental disability benefit if the member is impaired due to lung disease as the result of an accident, in the performance of his or her duties, unless the contrary be proven by competent evidence. For members in Tiers 1 and 2, the annual benefit would be 3/4 of final average salary (FAS) less worker's compensation. For members in Tiers 3-6 who are covered under the provisions of Article 14-B of the Retirement and Social Security Law (RSSL), the annual benefit would be 2/3 of FAS less worker's compensation. For all other affected members in Tiers 3-6, the annual benefit would be 1/3 of FAS. The provisions of Section 25 of the RSSL will not apply.

If this bill is enacted, it would lead to more disabilities being classified as "accidental". The cost of the revised benefit will depend upon the applicant's age, service, salary, plan, and benefit type otherwise payable.

However, we anticipate that few additional accidental disability retirements will be granted, and thus, the resulting costs are expected to be negligible.

All costs arising from this bill would be shared by the State of New York and all of the participating employers in the ERS.

Summary of relevant resources:

The membership data used in measuring the impact of the proposed change was the same as that used in the March 31, 2019 actuarial valuation. Distributions and other statistics can be found in the 2019 Report of the Actuary and the 2019 Comprehensive Annual Financial Report.

The actuarial assumptions and methods used are described in the 2015, 2016, 2017, 2018 and 2019 Annual Report to the Comptroller on Actuarial Assumptions, and the Codes, Rules and Regulations of the State of New York: Audit and Control.

The Market Assets and GASB Disclosures are found in the March 31, 2019 New York State and Local Retirement System Financial Statements and Supplementary Information.

I am a member of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

This fiscal note does not constitute a legal opinion on the viability of the proposed change nor is it intended to serve as a substitute for the professional judgment of an attorney.

This estimate, dated March 10, 2020, and intended for use only during the 2020 Legislative Session, is Fiscal Note No. 2020-75, prepared by the Actuary for the New York State and Local Retirement System.