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Representative Carfagna

Cosponsors: Representatives Abrams, Baldridge, Blackshear, Boyd, Brent, Brown, Carruthers, Cross, Crossman, Denson, Edwards, Fraizer, Galonski, Ginter, Gross, Hall, Howse, Ingram, Jarrells, John, Johnson, Lanese, LaRe, Leland, Lepore-Hagan, Lightbody, Loychik, Manning, Miller, A., Miller, J., Miranda, O'Brien, Pavliga, Richardson, Roemer, Russo, Schmidt, Sheehy, Smith, K., Sobecki, Stein, Sweeney, West, White, Wiggam, Young, T.

Senators Brenner, Hackett, Antonio, Blessing, Cirino, Craig, Dolan, Fedor, Gavarone, Hoagland, Hottinger, Manning, Schuring, Thomas, Wilson, Yuko

A BILL

To amend section 742.38 of the Revised Code to
revise Ohio Police and Fire Pension Fund
disability determination procedures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 742.38 of the Revised Code be
amended to read as follows:

Sec. 742.38. (A) (1) The board of trustees of the Ohio
police and fire pension fund shall adopt rules establishing
minimum medical testing and diagnostic standards or procedures
to be incorporated into physical examinations administered ~~by~~
~~physicians~~ to prospective members of the fund. The standards or
procedures shall include diagnosis and evaluation of the
existence of any heart disease, cardiovascular disease, or
respiratory disease. The rules shall specify the form of the
~~physician's examination~~ report and the information to be

included in it. 15

The board shall notify all employers of the establishment 16
of the minimum standards or procedures and shall include with 17
the notice a copy of the standards or procedures. The board 18
shall notify all employers of any changes made to the standards 19
or procedures. Once the standards or procedures take effect, 20
employers shall cause each prospective member of the fund to 21
submit to a physical examination that incorporates the standards 22
or procedures. 23

(2) Division (A) (2) of this section applies to an employee 24
who becomes a member of the fund on or after the date the 25
minimum standards or procedures described in division (A) (1) of 26
this section take effect. For each employee described in 27
division (A) (2) of this section, the employer shall forward to 28
the board a copy of the ~~physician's~~ report of a physical 29
examination that incorporates the standards or procedures 30
described in division (A) (1) of this section. If an employer 31
fails to forward the report in the form required by the board on 32
or before the date that is sixty days after the employee becomes 33
a member of the fund, the board shall assess against the 34
employer a penalty determined under section 742.353 of the 35
Revised Code. 36

(B) Application for a disability benefit may be made by a 37
member of the fund or, if the member is incapacitated as defined 38
in rules adopted by the board, by a person acting on the 39
member's behalf. Not later than fourteen days after receiving an 40
application for a disability benefit from a member or a person 41
acting on behalf of a member, the board shall notify the 42
member's employer that an application has been filed. The notice 43
shall state the member's position or rank. Not later than 44

twenty-eight days after receiving the notice or filing an 45
application on behalf of a member, the employer shall forward to 46
the board a statement certifying the member's job description 47
and any other information required by the board to process the 48
application. 49

If the member applying for a disability benefit ~~becomes~~ 50
became a member of the fund prior to the date the minimum 51
standards or procedures described in division (A) (1) of this 52
section ~~take~~ took effect, the board may request from the 53
member's employer a copy of the ~~physician's~~ report of the 54
member's physical examination taken on entry into the police or 55
fire department or, if the employer does not have a copy of the 56
report, a written statement certifying that the employer does 57
not have a copy of the report. If an employer fails to forward 58
the report or statement in the form required by the board on or 59
before the date that is twenty-eight days after the date of the 60
request, the board shall assess against the employer a penalty 61
determined under section 742.353 of the Revised Code. ~~The~~ 62

The board shall maintain the information submitted under 63
this division and division (A) (2) of this section in the 64
member's file. 65

(C) For purposes of determining under division (D) of this 66
section whether a member of the fund is disabled, the board 67
shall adopt rules establishing objective criteria under which 68
the ~~board shall make the determination~~ is to be made. The rules 69
shall include standards that provide for all of the following: 70

(1) Evaluating a member's illness or injury on which an 71
application for disability benefits is based; 72

(2) Defining the occupational duties of a police officer 73

or firefighter; 74

(3) Providing for the board to assign competent and 75
disinterested physicians, advanced practice registered nurses, 76
physician assistants, and vocational evaluators to conduct 77
examinations of a member; 78

(4) Requiring a written report for each disability 79
application that includes a summary of findings, medical 80
opinions, including an opinion on whether the illness or injury 81
upon which the member's application for disability benefits is 82
based was caused or induced by the actual performance of the 83
member's official duties, and any recommendations or comments 84
based on the medical opinions; 85

(5) ~~Providing for the board to consider~~ Taking into 86
consideration the member's potential for retraining or 87
reemployment. 88

(D) ~~This division does not apply to members of the fund~~ 89
~~who have elected to receive benefits and pensions in accordance~~ 90
~~with division (A) or (B) of section 742.37 of the Revised Code~~ 91
~~or from a police relief and pension fund or a firemen's relief~~ 92
~~and pension fund in accordance with the rules of that fund in~~ 93
~~force on April 1, 1947.~~ The board may grant disability benefits 94
to a member based solely on a review of an application for 95
disability benefits and supporting medical documentation or may 96
require the member to undergo a medical examination, a 97
vocational evaluation, or both. Any medical examination or 98
vocational evaluation shall be conducted by a physician, 99
advanced practice registered nurse, physician assistant, or 100
vocational evaluator assigned in accordance with rules adopted 101
under division (C) (3) of this section. If a medical examination 102
is conducted by an advanced practice registered nurse or 103

physician assistant, the board shall only accept an examination 104
report if a physician reviews, approves, and signs the report 105
before the report is submitted to the board. 106

As used in this division: 107

"Totally disabled" means a member of the fund is unable to 108
perform the duties of any gainful occupation for which the 109
member is reasonably fitted by training, experience, and 110
accomplishments. Absolute helplessness is not a prerequisite of 111
being totally disabled. 112

"Permanently disabled" means a condition of disability 113
that is expected to last for a continuous period of not less 114
than twelve months after an application for disability benefits 115
is filed and from which there is no present indication of 116
recovery. 117

"Hazardous duty" has the same meaning as in 5 C.F.R. 118
550.902, as amended. 119

(1) A member of the fund who is permanently and totally 120
disabled as the result of the performance of the member's 121
official duties as a member of a police or fire department shall 122
be paid annual disability benefits in accordance with division 123
(A) of section 742.39 of the Revised Code. In determining 124
whether a member of the fund is permanently and totally 125
disabled, the board shall consider standards adopted under 126
division (C) of this section applicable to the determination. 127

(2) A member of the fund who is permanently and partially 128
disabled as the result of the performance of the member's 129
official duties as a member of a police or fire department 130
shall, if the disability prevents the member from performing 131
those duties and impairs the member's earning capacity, receive 132

annual disability benefits in accordance with division (B) of 133
section 742.39 of the Revised Code. In determining whether a 134
member of the fund is permanently and partially disabled, the 135
board shall consider standards adopted under division (C) of 136
this section applicable to the determination. 137

(3) (a) A member of the fund who is permanently disabled as 138
a result of heart disease or any cardiovascular or respiratory 139
disease of a chronic nature, which disease or any evidence of 140
which disease was not revealed by the physical examination 141
passed by the member on entry into the department or another 142
examination specified in rules the board adopts under section 143
742.10 of the Revised Code, is presumed to have incurred the 144
disease while performing the member's official duties, unless 145
the contrary is shown by competent evidence. The board may waive 146
the requirement that the absence of disease be evidenced by a 147
physical examination if competent medical evidence of a type 148
specified in rules adopted under section 742.10 of the Revised 149
Code is submitted documenting that the disease was not evident 150
prior to or at the time of entry into the department. 151

(b) A member of the fund who is a member of a fire 152
department, has been assigned to at least six years of hazardous 153
duty as a member of a fire department, and is disabled as a 154
result of cancer, is presumed to have incurred the cancer while 155
performing the member's official duties if the member was 156
exposed to an agent classified by the international agency for 157
research on cancer or its successor agency as a group 1 or 2A 158
carcinogen. 159

(c) The presumption described in division (D) (3) (b) of 160
this section is rebuttable in any of the following situations: 161

(i) There is evidence that the member incurred the type of 162

cancer being alleged before becoming a member of the department. 163

(ii) There is evidence that the member's exposure, outside 164
the scope of the member's official duties, to cigarettes, 165
tobacco products, or other conditions presenting an extremely 166
high risk for the development of the cancer alleged, was 167
probably a significant factor in the cause or progression of the 168
cancer. 169

(iii) There is evidence that shows, by a preponderance of 170
competent scientific evidence, that exposure to the type of 171
carcinogen alleged did not or could not have caused the cancer 172
being alleged. 173

(iv) There is evidence that the member was not exposed to 174
an agent classified by the international agency for research on 175
cancer or its successor agency as a group 1 or 2A carcinogen. 176

(v) The member is seventy years of age or older. 177

(d) The presumption described in division (D) (3) (b) of 178
this section does not apply if it has been more than fifteen 179
years since the member was last assigned to hazardous duty as a 180
member of a fire department. 181

(4) A member of the fund who has five or more years of 182
service credit and has incurred a permanent disability not 183
caused or induced by the actual performance of the member's 184
official duties as a member of the department, or by the 185
member's own negligence, shall if the disability prevents the 186
member from performing those duties and impairs the member's 187
earning capacity, receive annual disability benefits in 188
accordance with division (C) of section 742.39 of the Revised 189
Code. In determining whether a member of the fund is permanently 190
disabled, the board shall consider standards adopted under 191

division (C) of this section applicable to the determination. 192

(5) The board shall notify a member of its final action 193
awarding a disability benefit to the member within thirty days 194
of the final action. The notice shall be sent by certified mail, 195
return receipt requested. Not later than ninety days after 196
receipt of notice from the board, the member shall elect, on a 197
form provided by the board, either to accept or waive the 198
disability benefit award. If the member elects to waive the 199
disability benefit award or fails to make an election within the 200
time period, the award is rescinded. A member who later seeks a 201
disability benefit award shall be required to make a new 202
application, which shall be dealt with in accordance with the 203
procedures used for original disability benefit applications. 204

A person is not eligible to apply for or receive 205
disability benefits under this division, section 742.39 of the 206
Revised Code, or division (C) (2), (3), (4), or (5) of former 207
section 742.37 of the Revised Code unless the person is a member 208
of the fund on the date on which the application for disability 209
benefits is submitted to the fund. 210

With the exception of persons who may make application for 211
increased benefits as provided in division (D) (2) or (4) of this 212
section or division (C) (3) or (5) of former section 742.37 of 213
the Revised Code on or after July 24, 1986, or persons who may 214
make application for benefits as provided in section 742.26 of 215
the Revised Code, no person receiving a pension or benefit under 216
this section or division (C) of former section 742.37 of the 217
Revised Code may apply for any new, changed, or different 218
benefit. 219

(E) An advanced practice registered nurse or physician 220
assistant assigned in accordance with rules adopted under 221

division (C) (3) of this section to conduct a medical examination 222
of a member who has applied for disability benefits shall only 223
conduct an examination that is within the scope and practice 224
that is permitted under Chapter 4723. or 4730. of the Revised 225
Code, respectively, and does not exceed the advanced practice 226
registered nurse's or physician assistant's training. 227

(F) Notwithstanding the requirement of section 742.41 of 228
the Revised Code that all medical reports and recommendations 229
required are privileged, the board shall submit to the 230
administrator of workers' compensation any data necessary for 231
the report required under section 4123.86 of the Revised Code. 232

Section 2. That existing section 742.38 of the Revised 233
Code is hereby repealed. 234