

2017 Regular Session

SENATE BILL NO. 222

BY SENATORS ERDEY, ALARIO, ALLAIN, APPEL, BARROW, BISHOP,
BOUDREAUX, CARTER, CHABERT, CLAITOR, COLOMB,
CORTEZ, DONAHUE, FANNIN, GATTI, HEWITT, JOHNS,
LAFLEUR, LAMBERT, LONG, LUNEAU, MARTINY, MILKOVICH,
MILLS, MIZELL, MORRELL, MORRISH, PEACOCK, PERRY,
PETERSON, RISER, GARY SMITH, JOHN SMITH, TARVER,
THOMPSON, WALSWORTH, WARD AND WHITE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC EMPLOYEES. Provides benefits for firemen and law enforcement officers who suffer a catastrophic injury resulting in permanent and total disability caused by an individual with the specific intent to kill an officer while the officer is engaged in the performance of his official duties. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 39:1533(A) and to enact Chapter 7-C of Title 40 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 40:1668, relative to disability
4 benefits for certain public employees; to provide benefits for firemen and law
5 enforcement officers who are permanently and totally disabled as a result of a
6 catastrophic injury sustained in the line of duty; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 39:1533(A) is hereby amended and reenacted to read as follows:

9 §1533. Self-Insurance Fund

10 A.(1) There is hereby created in the Department of the Treasury a special
11 fund to be known as the "Self-Insurance Fund". The fund shall consist of all
12 premiums paid by state agencies under the state's risk management program as
13 established by this Chapter, the investment income earned from such premiums, and
14 commissions retained in accordance with the provisions of this Title. This fund shall
15 be used only for the payment of losses incurred by state agencies under the
16 self-insurance program, premiums for insurance obtained through commercial
17 carriers, administrative expenses associated with the management of the state's risk,

1 law enforcement officers and firemen's survivors benefits as provided for in R.S.
2 40:1665(C) and 1665.2(C), **law enforcement officers and firemen's disability**
3 **benefits as provided for in R.S. 40:1668**, the payment of losses incurred by the
4 Jefferson Parish Human Services Authority in accordance with R.S. 28:831(J), the
5 payment of losses incurred by the Capital Area Human Services District in
6 accordance with R.S. 28:906, the payment of losses incurred by the Florida Parishes
7 Human Services Authority in accordance with R.S. 28:856, the payment of losses
8 incurred by the Metropolitan Human Services District in accordance with R.S.
9 28:866, the payment of losses incurred by the Northeast Delta Human Services
10 Authority in accordance with R.S. 28:896, the payment of losses incurred by the
11 South Central Louisiana Human Services Authority in accordance with R.S. 28:876,
12 and the funding of the legal services, such funds to be administered by the
13 commissioner of administration.

14 **(2) Payments for law enforcement officers and firemen survivor and**
15 **disability benefits as provided for in R.S. 40:1665(C), R.S. 40:1665.2(C), and**
16 **R.S. 40:1668 shall be made by the office of risk management on behalf of the**
17 **Law Enforcement Officers and Firemen's Survivor Benefit Review Board as a**
18 **result of a specific appropriation received for that purpose.**

19 * * *

20 Section 2. Chapter 7-C of Title 40 of the Louisiana Revised Statutes of 1950,
21 comprised of R.S. 40:1668, is hereby enacted to read as follows:

22 **CHAPTER 7-C. FIREMEN AND LAW ENFORCEMENT OFFICERS**

23 **- DISABILITY BENEFITS**

24 **§1668. Benefits for disabled firemen and law enforcement officers in certain**
25 **cases**

26 **A. It is hereby declared to be the public policy of this state, under its**
27 **police power, to provide for certain benefits to firemen and law enforcement**
28 **officers determined to be permanently and totally disabled as the direct and**
29 **proximate result of a catastrophic injury arising out of and in the course of the**

1 performance of their official duties.

2 B. As used in this Section, the following words have the following
3 meanings:

4 (1) "Board" means the Law Enforcement Officers and Firemen's
5 Survivor Benefit Review Board created and provided for in R.S. 40:1665.3.

6 (2) "Catastrophic injury" means an injury incurred on or after July 1,
7 2016, caused by an individual having the specific intent to kill the officer who
8 is engaged in the performance of his official duties, the direct and proximate
9 consequences of which, as provided by clear and convincing evidence unaided
10 by any presumption of disability, leaves the officer permanently and totally
11 disabled.

12 (3) "Law enforcement officer" means the following:

13 (a) All sheriffs and deputy sheriffs in the state employed on a full-time
14 basis.

15 (b) All members of the state police employed on a full-time basis.

16 (c) All municipal police officers in the state employed on a full-time basis.

17 (d) All university and college police officers at state universities and
18 colleges employed on a full-time basis.

19 (4) "Officer" includes firemen as defined in R.S. 40:1665 and law
20 enforcement officers as defined in Paragraph (3) of this Subsection.

21 (5) "Permanently and totally disabled" means the officer is unable to
22 engage in any employment or self-employment on a full-time basis, regardless
23 of the nature or character of the employment or self-employment.

24 C.(1) In any case in which an officer is determined by the board or a
25 court of competent jurisdiction pursuant to Paragraph (E)(2) of this Section to
26 be permanently and totally disabled as the direct and proximate result of a
27 catastrophic injury arising out of and in the course of the performance of the
28 officer's official duties, the following shall be paid by the state risk manager out
29 of the Self-Insurance Fund on behalf of the officer from the date of the

1 catastrophic injury as long as the officer is permanently and totally disabled:

2 (a) Premiums due from the officer for the amount and type of life,
3 health, accident, accidental death and dismemberment, hospital, surgical, and
4 medical expense insurance covering the officer and maintained by the officer
5 through the officer's employer at the time of the catastrophic injury. This
6 Subparagraph shall not apply to any premium due from the officer for
7 insurance covering any individual other than the officer.

8 (b) Copayments and deductibles applicable to any insurance policy for
9 which premiums are paid pursuant to Subparagraph (a) of this Paragraph for
10 healthcare benefits received by the officer.

11 (2) The premiums, deductibles, and copayments paid pursuant to this
12 Section shall be in addition to any other benefit or income available and paid to
13 the injured officer for the disability due to the catastrophic injury.

14 D.(1) In order to facilitate the operation of this Section, within one year
15 after the employing authority has knowledge of the permanent and total
16 disability of an officer under circumstances covered by this Section, the
17 employing authority or officer shall notify the Law Enforcement Officers and
18 Firemen's Survivor Benefit Review Board of the disability, the date of the
19 catastrophic injury for which the disability is a result, the circumstances
20 surrounding the injury, and such other information as may be requested by the
21 board.

22 (2) The officer seeking the benefits provided in this Section may notify
23 the board providing the information listed in Paragraph (1) of this Subsection.

24 (3) Nothing in this Section shall prevent the board from initiating
25 proceedings before being notified by the employing authority or officer.

26 E.(1) The board shall hear and decide by unanimous vote all claims for
27 disability benefits within sixty days after documentation is received. The board
28 may request any information necessary to make a determination of eligibility
29 for disability benefits.

1 (2) Within ten days after the board has reached its decision, it shall
2 notify the officer of its decision by certified mail. If the board denies the claim,
3 the officer shall have one year from the date of denial to file suit against the
4 state through the board in the parish where the incident that brought about the
5 permanent and total disability occurred. The date of denial shall be calculated
6 as one year from date of receipt of the decision from the board.

7 F. If the board determines the officer qualifies for the benefit payable
8 under this Section, the board shall notify the state risk manager.

9 G.(1) No benefit is payable under this Section with respect to the
10 disability of an officer if a benefit is payable under R.S. 40:1665, 1665.1, or
11 1665.2 with respect to the death of the officer.

12 (2) No benefit is payable under R.S. 40:1665, 1665.1, or 1665.2 with
13 respect to the death of an officer if a benefit is payable under this Section with
14 respect to the disability of the officer.

15 H. No benefit shall be payable pursuant to this Section if any of the
16 following applies:

17 (1) The catastrophic injury was caused by the intentional misconduct of
18 the officer or by the officer's intention to bring about his death, disability, or
19 injury.

20 (2) The officer was voluntarily intoxicated at the time of his catastrophic
21 injury.

22 (3) The officer was performing his duties in a grossly negligent manner
23 at the time of his catastrophic injury.

24 (4) The officer qualifies for federal or state life, health, accident,
25 accidental death and dismemberment, hospital, surgical, or medical expense
26 programs.

27 I. The board may adopt rules and regulations to implement the
28 provisions of this Section.

29 Section 3. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature
 2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 3 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 4 effective on the day following such approval.

The original instrument was prepared by Jerry J. Guillot. The following digest, which does not constitute a part of the legislative instrument, was prepared by J.W. Wiley

DIGEST

SB 222 Re-Reengrossed

2017 Regular Session

Erdey

Proposed law declares that the public policy of this state, under its police power, is to provide for certain benefits to firemen and law enforcement officers who suffer a catastrophic injury caused by an individual having the specific intent to kill the officer and occur while the officer is engaged in the performance of his official duties. To qualify for the benefit, the individual's act must be the direct and proximate cause of the officer's catastrophic injury incurred on or after July 1, 2016, and the injury must render the officer, as provided by clear and convincing evidence unaided by any presumption of disability, permanently and totally disabled.

Proposed law provides the following definitions:

- (1) "Board" means the Law Enforcement Officers and Firemen's Survivor Benefit Review Board created in present law.
- (2) "Catastrophic injury" means an injury caused by an individual having the specific intent to kill an officer who is engaged in the performance of his official duties, the direct and proximate consequences of which permanently prevent the officer from performing any gainful work.
- (3) "Officer" includes "firemen" as defined in present law and "law enforcement officers" includes all sheriffs and deputy sheriffs in the state employed on a full-time basis, all members of the state police employed on a full-time basis, all municipal police officers in the state employed on a full-time basis, and all university and college police officers at state universities and colleges employed on a full-time basis.

Proposed law provides that in any case in which an officer is determined by the board or a court of competent jurisdiction pursuant to proposed law to be permanently and totally disabled as the direct and proximate result of a catastrophic injury arising out of and in the course of the performance of the officer's official duties, the following shall be paid by the state risk manager out of the Self-Insurance Fund on behalf of the officer, from the date of the catastrophic injury as long as the officer is permanently and totally disabled:

- (1) Premiums due from the officer for the amount and type of life, health, accident, accidental death and dismemberment, hospital, surgical, and medical expense insurance covering the officer and maintained by the officer through the officer's employer at the time of the catastrophic injury.
- (2) Copayment and deductibles applicable to any insurance policy for which premiums are paid pursuant to proposed law for healthcare benefits received by officer.

Proposed law defines "permanently and totally disabled" as "unable to engage in any

employment or self-employment on a full-time basis, regardless of the nature or character of the employment or self-employment".

Proposed law provides that within one year after the employing authority has knowledge of the permanent and total disability of an officer under circumstances covered by proposed law, the employing authority of the office shall notify the Law Enforcement Officers and Firemen's Survivor Benefit Review Board of the disability, the date of the catastrophic injury for which the disability is a result, the circumstances surrounding the injury, and such other information as may be requested by the board. Provides that the officer seeking the benefits provided in proposed law may notify the board providing the required information. Provides that nothing in proposed law shall prevent the board from initiating proceedings before being notified by the employing authority or officer.

Proposed law requires that the board hear and decide by unanimous vote all claims for disability benefits within 60 days after documentation is received. Proposed law further authorizes the board to request any information necessary to make a determination of eligibility for disability benefits.

Proposed law requires that within 10 days after the board has reached its decision, it notify the officer of its decision by certified mail. If the board denies the claim, the officer shall have one year from the date of denial to file suit against the state through the board in the parish where the incident that brought about the permanent and total disability occurred. The date of denial shall be calculated as one year from date of receipt of the decision from the board.

Proposed law provides that if the board determines the officer qualifies for the benefit payable under proposed law, the board shall notify the state risk manager.

Proposed law provides that no benefit is payable under proposed law with respect to the disability of an officer if a benefit is payable under present law with respect to the death of the officer. Further, no benefit is payable under present law with respect to the death of an officer if a benefit is payable under proposed law with respect to the disability of the officer.

Proposed law provides that no benefit shall be payable under proposed law if any of the following applies:

- (1) The catastrophic injury was caused by the intentional misconduct of the officer or by the officer's intention to bring about his death, disability, or injury.
- (2) The officer was voluntarily intoxicated at the time of his catastrophic injury.
- (3) The officer was performing his duties in a grossly negligent manner at the time of his catastrophic injury.
- (4) The officer qualifies for federal or state life, health, accident, accidental death and dismemberment, hospital, surgical, or medical expense programs.

Present law creates the Self-Insurance Fund in the state treasury consisting of all premiums paid by state agencies under the state's risk management program and the investment income earned from such premiums and commissions. Present law provides that the fund shall be used only for the payment of losses incurred by state agencies under the self-insurance program, premiums for insurance obtained through commercial carriers, administrative expenses associated with the management of the state's risk, law enforcement officers and firemen's survivors benefits, the payment of losses incurred by the Jefferson Parish Human Services Authority, the Capital Area Human Services District, the Florida Parishes Human Services Authority, the Metropolitan Human Services District, the Northeast Delta Human Services Authority, and the South Central Louisiana Human Services Authority, and the funding of the legal services, such funds to be administered by the commissioner of

administration.

Proposed law adds that the fund shall also be used to pay law enforcement officers and firemen's survivor and disability benefits as provided for in proposed law as a result of a specific appropriation received by the fund for that purpose. Otherwise retains present law.

Proposed law allows the Law Enforcement Officers and Firemen's Survivor Benefit Review Board to adopt rules and regulations to implement the proposed law's provisions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 39:1533(A); adds R.S. 40:1668)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Adds payments for insurance copayments and deductibles to disability benefits.
2. Limits both survivors and disability benefits for firemen and law enforcement officers from the Self-Insurance Fund to specific appropriations received by the Fund for that purpose.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Limits application to an injury incurred on or after July 1, 2016.
2. Provides that the "catastrophic injury" must be provided by clear and convincing evidence unaided by any presumption of disability, leaves the officer permanently and totally disabled.
3. Defines "law enforcement officer" and "permanently and totally disabled".
4. Changes the duration of payments from the Self-Insurance Fund from until the officer's death to as long as the officer is permanently and totally disabled.
5. Limits the payments for premiums to those covering only the officer.
6. Provides that no benefit shall be payable in the event that the officer qualifies for federal or state life, health, accident, accidental death and dismemberment, hospital, surgical, or medical expense programs.
7. Allows the Law Enforcement Officers and Firemen's Survivor Benefit Review Board to adopt rules and regulations to implement the provisions of the bill.

Senate Floor Amendments to reengrossed bill

1. Makes legislative bureau technical changes.