

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 373**

FINAL READING

Introduced by Lautenbaugh, 18.

Read first time January 16, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to emergency response personnel; to amend  
2 sections 18-1723 and 35-1001, Reissue Revised Statutes  
3 of Nebraska; to change provisions relating to death  
4 or disability presumptions for a firefighter or police  
5 officer and death or disability prima facie evidence  
6 requirements for a firefighter or firefighter-paramedic;  
7 and to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 18-1723, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           18-1723 Whenever any firefighter who has served a total  
4 of five years as a member of a paid fire department of any city  
5 in this state or any police officer of any city or village,  
6 including any city having a home rule charter, shall suffer death  
7 or disability as a result of hypertension or heart or respiratory  
8 defect or disease, there shall be a rebuttable presumption that  
9 such death or disability resulted from accident or other cause  
10 while in the line of duty for all purposes of Chapter 15, article  
11 10, sections 16-1001 to 16-1042, and any firefighter's or police  
12 officer's pension plan established pursuant to any home rule  
13 charter, the Legislature specifically finding the subject of this  
14 section to be a matter of general statewide concern. The rebuttable  
15 presumption shall apply to death or disability as a result of  
16 hypertension or heart or respiratory defect or disease after the  
17 firefighter or police officer separates from his or her applicable  
18 employment if the death or disability occurs within three months  
19 after such separation. Such rebuttable presumption shall apply  
20 in any action or proceeding arising out of death or disability  
21 incurred prior to December 25, 1969, and which has not been  
22 processed to final administrative or judicial conclusion prior to  
23 such date.

24           Sec. 2. Section 35-1001, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           35-1001 (1) For a firefighter or firefighter-paramedic  
2 who is a member of a paid fire department of a municipality or a  
3 rural or suburban fire protection district in this state, including  
4 a municipality having a home rule charter or a municipal authority  
5 created pursuant to a home rule charter that has its own paid  
6 fire department, and who suffers death or disability as a result  
7 of cancer, including, but not limited to, cancer affecting the  
8 skin or the central nervous, lymphatic, digestive, hematological,  
9 urinary, skeletal, oral, or prostate systems, evidence which  
10 demonstrates that ~~(1)~~ (a) such firefighter or firefighter-paramedic  
11 successfully passed a physical examination upon entry into such  
12 service or subsequent to such entry, which examination failed  
13 to reveal any evidence of cancer, ~~(2)~~ (b) such firefighter  
14 or firefighter-paramedic was exposed to a known carcinogen, as  
15 defined on July 19, 1996, by the International Agency for Research  
16 on Cancer, while in the service of the fire department, and  
17 ~~(3)~~ (c) such carcinogen is reported by the agency to be a  
18 suspected or known cause of the type of cancer the firefighter  
19 or firefighter-paramedic has, shall be prima facie evidence that  
20 such death or disability resulted from injuries, accident, or other  
21 cause while in the line of duty for the purposes of sections  
22 16-1020 to 16-1042, a firefighter's pension plan established  
23 pursuant to a home rule charter, and a firefighter's pension or  
24 disability plan established by a rural or suburban fire protection  
25 district.

1           (2) For a firefighter or firefighter-paramedic who  
2 is a member of a paid fire department of a municipality or  
3 a rural or suburban fire protection district in this state,  
4 including a municipality having a home rule charter or a  
5 municipal authority created pursuant to a home rule charter  
6 that has its own paid fire department, and who suffers death  
7 or disability as a result of a blood-borne infectious disease,  
8 tuberculosis, meningococcal meningitis, or methicillin-resistant  
9 Staphylococcus aureus, evidence which demonstrates that (a)  
10 such firefighter or firefighter-paramedic successfully passed a  
11 physical examination upon entry into such service or subsequent  
12 to such entry, which examination failed to reveal any evidence of  
13 such blood-borne infectious disease, tuberculosis, meningococcal  
14 meningitis, or methicillin-resistant Staphylococcus aureus, and  
15 (b) such firefighter or firefighter-paramedic has engaged in the  
16 service of the fire department within ten years before the onset  
17 of the disease, shall be prima facie evidence that such death  
18 or disability resulted from injuries, accident, or other cause  
19 while in the line of duty for the purposes of sections 16-1020 to  
20 16-1042, a firefighter's pension plan established pursuant to a  
21 home rule charter, and a firefighter's pension or disability plan  
22 established by a rural or suburban fire protection district.

23           (3) The prima facie evidence presumed under this  
24 section shall extend to death or disability as a result  
25 of cancer as described in this section, a blood-borne

1 infectious disease, tuberculosis, meningococcal meningitis, or  
2 methicillin-resistant Staphylococcus aureus after the firefighter  
3 or firefighter-paramedic separates from his or her service to the  
4 fire department if the death or disability occurs within three  
5 months after such separation.

6 (4) For purposes of this section, blood-borne  
7 infectious disease means human immunodeficiency virus, acquired  
8 immunodeficiency syndrome, and all strains of hepatitis.

9 Sec. 3. Original sections 18-1723 and 35-1001, Reissue  
10 Revised Statutes of Nebraska, are repealed.