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117TH CONGRESS
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S. 1116

[Report No. 117–146]

To amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employees duty, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2021

Mr. CARPER (for himself, Ms. COLLINS, Mrs. FEINSTEIN, Mr. KING, Mr. VAN HOLLEN, Ms. DUCKWORTH, Ms. ROSEN, Mr. TESTER, Mr. MARKEY, Mr. BLUMENTHAL, Mr. BROWN, Mrs. FISCHER, Ms. CORTEZ MASTO, Ms. WARREN, Mr. OSSOFF, Ms. SINEMA, Ms. HASSAN, Mr. PADILLA, Mr. HEINRICH, Mr. LUJÁN, Mr. MERKLEY, Mrs. MURRAY, Mr. WYDEN, Ms. SMITH, Mr. DURBIN, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

SEPTEMBER 13, 2022

Reported by Mr. PETERS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employees duty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Firefighters
 5 Fairness Act of 2021”.

6 **SEC. 2. CERTAIN DISEASES PRESUMED TO BE WORK-RE-**
 7 **LATED CAUSE OF DISABILITY OR DEATH FOR**
 8 **FEDERAL EMPLOYEES IN FIRE PROTECTION**
 9 **ACTIVITIES.**

10 (a) **DEFINITION.**—Section 8101 of title 5, United
 11 States Code, is amended—

12 (1) by striking “and” at the end of paragraph
 13 (19);

14 (2) by striking the period at the end of para-
 15 graph (20) and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(21) ‘employee in fire protection activi-
 18 ties’ means a firefighter, paramedic, emergency
 19 medical technician, rescue worker, ambulance
 20 personnel, or hazardous material worker, who—

21 “(A) is trained in fire suppression;

22 “(B) has the legal authority and re-
 23 sponsibility to engage in fire suppression;

24 “(C) is engaged in the prevention,
 25 control, and extinguishment of fires or re-

1 sponse to emergency situations where life;
2 property, or the environment is at risk;
3 and

4 “(D) performs such activities as a pri-
5 mary responsibility of his or her job.”.

6 (b) PRESUMPTION RELATING TO EMPLOYEES IN
7 FIRE PROTECTION ACTIVITIES.—Section 8102 of title 5,
8 United States Code, is amended by adding at the end the
9 following:

10 “(c)(1) With regard to an employee in fire protection
11 activities, a disease specified in paragraph (3) shall be pre-
12 sumed to be proximately caused by the employment of
13 such employee, subject to the length of service require-
14 ments specified. The disability or death of an employee
15 in fire protection activities due to such a disease shall be
16 presumed to result from personal injury sustained while
17 in the performance of such employee’s duty. Such pre-
18 sumptions may be rebutted by a preponderance of the evi-
19 dence from the employing agency.

20 “(2) Such presumptions apply only if the employee
21 in fire protection activities is diagnosed with the disease
22 for which presumption is sought within 10 years of the
23 last active date of employment as an employee in fire pro-
24 tection activities.

1 “(3) The following diseases shall be presumed to be
 2 proximately caused by the employment of the employee in
 3 fire protection activities:

4 “(A) If the employee has been employed for a
 5 minimum of 5 years in aggregate as an employee in
 6 fire protection activities:

7 “(i) Heart disease.

8 “(ii) Lung disease.

9 “(iii) The following cancers:

10 “(I) Brain cancer.

11 “(II) Cancer of the blood or lymphatic
 12 systems.

13 “(III) Bladder cancer.

14 “(IV) Kidney cancer.

15 “(V) Testicular cancer.

16 “(VI) Cancer of the digestive system.

17 “(VII) Skin cancer.

18 “(VIII) Cancer of the respiratory sys-
 19 tem.

20 “(IX) Breast cancer.

21 “(iv) Any other cancer the contraction of
 22 which the Secretary of Labor through regula-
 23 tions determines to be related to the hazards to
 24 which an employee in fire protection activities
 25 may be subject.

1 “(B) Regardless of the length of time an em-
 2 ployee in fire protection activities has been em-
 3 ployed, any communicable disease that has been de-
 4 termined to be a pandemic by the World Health Or-
 5 ganization or the United States Centers for Disease
 6 Control and Prevention, or any chronic infectious
 7 disease, the contraction of which the Secretary of
 8 Labor through regulations determines to be related
 9 to the hazards to which an employee in fire protec-
 10 tion activities may be subject.”.

11 (c) APPLICATION.—The amendments made by this
 12 section shall apply to a covered disability or death that
 13 occurs on or after the date of the enactment of this Act.

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the “Federal Firefighters*
 16 *Fairness Act of 2022”.*

17 **SEC. 2. CERTAIN ILLNESSES AND DISEASES PRESUMED TO**
 18 **BE WORK-RELATED CAUSE OF DISABILITY OR**
 19 **DEATH FOR FEDERAL EMPLOYEES IN FIRE**
 20 **PROTECTION ACTIVITIES.**

21 (a) PRESUMPTION RELATING TO EMPLOYEES IN FIRE
 22 PROTECTION ACTIVITIES.—

23 (1) IN GENERAL.—Subchapter I of chapter 81 of
 24 title 5, United States Code, is amended by inserting
 25 after section 8143a the following:

1 **“§ 8143b. Employees in fire protection activities**

2 “(a) *DEFINITIONS.*—*In this section:*

3 “(1) *EMPLOYEE IN FIRE PROTECTION ACTIVI-*
 4 *TIES.*—*The term ‘employee in fire protection activi-*
 5 *ties’ means an employee employed as a firefighter,*
 6 *paramedic, emergency medical technician, rescue*
 7 *worker, ambulance personnel, or hazardous material*
 8 *worker who—*

9 “(A) *is trained in fire suppression;*

10 “(B) *has the legal authority and responsi-*
 11 *bility to engage in fire suppression;*

12 “(C) *is engaged in the prevention, control,*
 13 *and extinguishment of fires or response to emer-*
 14 *gency situations in which life, property, or the*
 15 *environment is at risk, including the prevention,*
 16 *control, suppression, or management of wildland*
 17 *fires; and*

18 “(D) *performs the activities described in*
 19 *subparagraph (C) as a primary responsibility of*
 20 *the job of the employee.*

21 “(2) *RULE.*—*The term ‘rule’ has the meaning*
 22 *given the term in section 804.*

23 “(3) *SECRETARY.*—*The term ‘Secretary’ means*
 24 *the Secretary of Labor.*

1 “(b) *CERTAIN ILLNESSES AND DISEASES DEEMED TO*
 2 *BE PROXIMATELY CAUSED BY EMPLOYMENT IN FIRE PRO-*
 3 *TECTION ACTIVITIES.*—

4 “(1) *IN GENERAL.*—*For a claim under this sub-*
 5 *chapter of disability or death of an employee who has*
 6 *been employed for not less than 5 years in aggregate*
 7 *as an employee in fire protection activities, an illness*
 8 *or disease specified on the list established under para-*
 9 *graph (2) shall be deemed to be proximately caused*
 10 *by the employment of that employee, if the employee*
 11 *is diagnosed with that illness or disease not later than*
 12 *10 years after the last active date of employment as*
 13 *an employee in fire protection activities.*

14 “(2) *ESTABLISHMENT OF INITIAL LIST.*—*There*
 15 *is established under this section the following list of*
 16 *illnesses and diseases:*

17 “(A) *Bladder cancer.*

18 “(B) *Brain cancer.*

19 “(C) *Chronic obstructive pulmonary disease.*

20 “(D) *Colorectal cancer.*

21 “(E) *Esophageal cancer.*

22 “(F) *Kidney cancer.*

23 “(G) *Leukemias.*

24 “(H) *Lung cancer.*

25 “(I) *Mesothelioma.*

1 “(J) *Multiple myeloma.*

2 “(K) *Non-Hodgkin lymphoma.*

3 “(L) *Prostate cancer.*

4 “(M) *Skin cancer (melanoma).*

5 “(N) *A sudden cardiac event or stroke suf-*
 6 *fered while, or not later than 24 hours after, en-*
 7 *gaging in the activities described in subsection*
 8 *(a)(1)(C).*

9 “(O) *Testicular cancer.*

10 “(P) *Thyroid cancer.*

11 “(3) *ADDITIONS TO THE LIST.—*

12 “(A) *IN GENERAL.—*

13 “(i) *PERIODIC REVIEW.—The Sec-*
 14 *retary shall—*

15 “(I) *in consultation with the Di-*
 16 *rector of the National Institute for Oc-*
 17 *cupational Safety and Health and any*
 18 *advisory committee determined appro-*
 19 *priate by the Secretary, periodically*
 20 *review the list established under para-*
 21 *graph (2); and*

22 “(II) *if the Secretary determines*
 23 *that the weight of the best available sci-*
 24 *entific evidence warrants adding an*
 25 *illness or disease to the list established*

1 under paragraph (2), as described in
2 subparagraph (B) of this paragraph,
3 make such an addition through a rule
4 that clearly identifies that scientific
5 evidence.

6 “(ii) *CLASSIFICATION.*—A rule issued
7 by the Secretary under clause (i) shall be
8 considered to be a major rule for the pur-
9 poses of chapter 8.

10 “(B) *BASIS FOR DETERMINATION.*—The
11 Secretary shall add an illness or disease to the
12 list established under paragraph (2) based on the
13 weight of the best available scientific evidence
14 that there is a significant risk to employees in
15 fire protection activities of developing that illness
16 or disease.

17 “(C) *AVAILABLE EXPERTISE.*—In deter-
18 mining significant risk for purposes of subpara-
19 graph (B), the Secretary may accept as authori-
20 tative, and may rely upon, recommendations,
21 risk assessments, and scientific studies (includ-
22 ing analyses of National Firefighter Registry
23 data pertaining to Federal firefighters) by the
24 National Institute for Occupational Safety and
25 Health, the National Toxicology Program, the

1 *National Academies of Sciences, Engineering,*
 2 *and Medicine, and the International Agency for*
 3 *Research on Cancer.”.*

4 (2) *TECHNICAL AND CONFORMING AMEND-*
 5 *MENT.—The table of sections for subchapter I of chap-*
 6 *ter 81 of title 5, United States Code, is amended by*
 7 *inserting after the item relating to section 8143a the*
 8 *following:*

“8143b. Employees in fire protection activities.”.

9 (3) *APPLICATION.—The amendments made by*
 10 *this subsection shall apply to claims for compensation*
 11 *filed on or after the date of enactment of this Act.*

12 (b) *RESEARCH COOPERATION.—Not later than 120*
 13 *days after the date of enactment of this Act, the Secretary*
 14 *of Labor (referred to in this section as the “Secretary”)*
 15 *shall establish a process by which an employee in fire pro-*
 16 *tection activities, as defined in subsection (a) of section*
 17 *8143b of title 5, United States Code, as added by subsection*
 18 *(a) of this section (referred to in this section as an “em-*
 19 *ployee in fire protection activities”), filing a claim under*
 20 *chapter 81 of title 5, United States Code, as amended by*
 21 *this Act, relating to an illness or disease on the list estab-*
 22 *lished under subsection (b)(2) of such section 8143b (re-*
 23 *ferred to in this section as “the list”), as the list may be*
 24 *updated under such section 8143b, shall be informed about,*
 25 *and offered the opportunity to contribute to science by vol-*

1 *untarily enrolling in, the National Firefighter Registry or*
2 *a similar research or public health initiative conducted by*
3 *the Centers for Disease Control and Prevention.*

4 *(c) AGENDA FOR FURTHER REVIEW.—Not later than*
5 *3 years after the date of enactment of this Act, the Secretary*
6 *shall—*

7 *(1) evaluate the best available scientific evidence*
8 *of the risk to an employee in fire protection activities*
9 *of developing breast cancer, gynecological cancers, and*
10 *rhabdomyolysis;*

11 *(2) add breast cancer, gynecological cancers, and*
12 *rhabdomyolysis to the list, by rule in accordance with*
13 *subsection (b)(3) of section 8143b of title 5, United*
14 *States Code, as added by subsection (a) of this section,*
15 *if the Secretary determines that such evidence sup-*
16 *ports that addition; and*

17 *(3) submit to the Committee on Homeland Secu-*
18 *rity and Governmental Affairs of the Senate and the*
19 *Committee on Education and Labor of the House of*
20 *Representatives a report containing—*

21 *(A) the findings of the Secretary after mak-*
22 *ing the evaluation required under paragraph (1);*
23 *and*

24 *(B) the determination of the Secretary*
25 *under paragraph (2).*

1 (d) *REPORT ON FEDERAL WILDLAND FIRE-*
2 *FIGHTERS.*—

3 (1) *DEFINITION.*—*In this subsection, the term*
4 *“Federal wildland firefighter” means an individual*
5 *occupying a position in the occupational series devel-*
6 *oped pursuant to section 40803(d)(1) of the Infra-*
7 *structure Investment and Jobs Act (16 U.S.C.*
8 *6592(d)(1)).*

9 (2) *STUDY.*—*The Secretary of the Interior and*
10 *the Secretary of Agriculture, in consultation with the*
11 *Director of the National Institute for Occupational*
12 *Safety and Health, shall conduct a comprehensive*
13 *study on long-term health effects that Federal*
14 *wildland firefighters who are eligible to receive com-*
15 *ensation for work injuries under chapter 81 of title*
16 *5, United States Code, as amended by this Act, expe-*
17 *rience after being exposed to fires, smoke, and toxic*
18 *fumes when in service.*

19 (3) *REQUIREMENTS.*—*The study required under*
20 *paragraph (2) shall include—*

21 (A) *the race, ethnicity, age, gender, and*
22 *time of service of the Federal wildland fire-*
23 *fighters participating in the study; and*

24 (B) *recommendations to Congress regarding*
25 *what legislative actions are needed to support the*

1 *Federal wildland firefighters described in sub-*
 2 *paragraph (A) in preventing health issues from*
 3 *the toxic exposure described in paragraph (2),*
 4 *similar to veterans who are exposed to burn pits.*

5 (4) *SUBMISSION AND PUBLICATION.*—*The Sec-*
 6 *retary of the Interior and the Secretary of Agriculture*
 7 *shall submit the results of the study conducted under*
 8 *this subsection to the Committee on Homeland Secu-*
 9 *rity and Governmental Affairs of the Senate and the*
 10 *Committee on Education and Labor of the House of*
 11 *Representatives and make those results publicly avail-*
 12 *able.*

13 (e) *REPORT ON AFFECTED EMPLOYEES.*—*Beginning*
 14 *on the date that is 1 year after the date of enactment of*
 15 *this Act, with respect to each annual report required under*
 16 *section 8152 of title 5, United States Code, the Secretary—*

17 (1) *shall include in the report the total number*
 18 *of, and demographics regarding, employees in fire*
 19 *protection activities with illnesses and diseases de-*
 20 *scribed in the list (as the list may be updated under*
 21 *this Act and the amendments made by this Act), as*
 22 *of the date on which that annual report is submitted,*
 23 *which shall be disaggregated by the specific illness or*
 24 *disease for the purposes of understanding the scope of*
 25 *the problem facing those employees; and*

1 (2) *may—*

2 (A) *include in the report any information*
 3 *with respect to employees in fire protection ac-*
 4 *tivities that the Secretary determines to be nec-*
 5 *essary; and*

6 (B) *as appropriate, make recommendations*
 7 *in the report for additional actions that could be*
 8 *taken to minimize the risk of adverse health im-*
 9 *pacts for employees in fire protection activities.*

10 **SEC. 3. INCREASE IN TIME-PERIOD FOR FECA CLAIMANT TO**
 11 **SUPPLY SUPPORTING DOCUMENTATION TO**
 12 **OFFICE OF WORKER’S COMPENSATION.**

13 *Not later than 60 days after the date of enactment of*
 14 *this Act, the Secretary of Labor shall—*

15 (1) *amend section 10.121 of title 20, Code of*
 16 *Federal Regulations, or any successor regulation, by*
 17 *striking “30 days” and inserting “60 days”; and*

18 (2) *modify the Federal Employees’ Compensation*
 19 *Act manual to reflect the changes made by the Sec-*
 20 *retary pursuant to paragraph (1).*

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A BILL

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SEPTEMBER 13, 2022

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