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CHAIR:

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3rd SESSION, 65th GENERAL ASSEMBLY
Province of Prince Edward Island
67 ELIZABETH II, 2018

(Bill No. 40)

**An Act to Amend the
Workers Compensation Act (No. 3)**

Hon. Sonny (Stanley) Gallant
Minister of Workforce and Advanced Learning

GOVERNMENT BILL

Carol Mayne
Acting Queen's Printer
Charlottetown, Prince Edward Island

**For House
Use Only**

**Prince Edward Island
Legislative Assembly**

ASSEMBLY / SESSION / YEAR
65th General / 3rd / 2018

AMENDMENTS

BILL NUMBER: 40 **PAGE No. 2 of 10 PAGES**

TITLE: An Act to Amend the Workers Compensation Act (No. 3)

#	SECTION	AMENDMENT	DATE

NOTED:

CERTIFIED CORRECT:

COMMITTEE CLERK

CHAIR, IN COMMITTEE



AN ACT TO AMEND THE WORKERS COMPENSATION ACT (NO. 3)

BILL NO. 40

2018

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. **Subsection 1(1) of the *Workers Compensation Act* R.S.P.E.I. 1988, Cap. A-7.1, is amended**
 - (a) **by the addition of the following after clause (m.1):**
 - (m.2) “**fire inspector**” means an inspector as defined in the *Fire Prevention Act* R.S.P.E.I. 1988, Cap. F-11;
 - (m.3) “**firefighter**” means a full-time, part-time, casual or volunteer member of a fire department or fire brigade;
 - (b) **by the repeal of clause (n) and the substitution of the following:**
 - (n) “**impairment**” means a medically measurable, permanent
 - (i) loss of physiological function, anatomical function or anatomical structure, or
 - (ii) abnormality of psychological function, physiological function, anatomical function or anatomical structure;
 - (c) **in clause (t), by the deletion of the words “Minister of Justice and Public Safety and Attorney General” and the substitution of the words “Minister of Workforce and Advanced Learning”; and**
 - (d) **by the repeal of subclause (z)(iii) and the substitution of the following:**
 - (iii) a volunteer firefighter,

2. **Subsections 2(1), (2) and (3) of the Act are amended by the deletion of the word “Act” and the substitution of the word “Part”.**

3. **The Act is amended by the addition of the following after section 2:**

2.1 Employer of volunteer firefighter

(1) For the purposes of this Part, the municipality or organization responsible for operating the fire department or fire brigade in which a volunteer firefighter serves shall be considered the employer of the volunteer firefighter.

Provisions do not apply

(2) Notwithstanding subsection 2(1),

(a) sections 61 to 79 and 86 to 86.12 do not apply to the employer of a volunteer firefighter; and

(b) sections 86 to 86.12 do not apply to a volunteer firefighter.

4. **Section 6 of the Act is amended by the addition of the following after subsection (4.4):**

Presumption, heart injury to fire inspector or firefighter

(4.5) Where a worker who is a fire inspector or a firefighter suffers a heart attack, cardiac arrest or heart arrhythmia within 24 hours of responding to an emergency call or dispatch, it is presumed that personal injury by accident arising out of and in the course of employment has been caused to the worker, unless the contrary is shown.

5. **Section 34 of the Act is amended by the deletion of the words “May 1” and the substitution of the words “June 30”.**

6. **Clauses 37(1)(b), (c) and (e) of the Act are amended by the deletion of the words “\$10,000” and the substitution of the words “an amount equal to 40% of the maximum annual earnings in the year the death occurred”.**

7. **Section 43 of the Act is amended**

(a) **by the deletion of the word “Where” and the substitution of the words “Subject to subsection 43.1(12), where”; and**

(b) **by the deletion of the words “which is registered with and certified by the regulatory agency having jurisdiction in this province.”.**

8. **The Act is amended by the addition of the following after section 43:**

43.1 Funding for annuity benefit

(1) The Board shall, for each worker to whom this section applies, set aside an amount to provide an annuity benefit for the worker as set out in this section and sections 43.2 and 43.3.



Application of section

- (2) This section applies to a worker who is receiving wage loss benefits as a result of an injury if
- (a) the wage loss benefits have been paid to the worker with respect to that injury for more than 24 months; and
 - (b) the worker has become entitled to extended wage loss benefits with respect to that injury on or after the date that this section comes into force.

Revision of extended wage loss benefits

- (3) For greater certainty, a revision made to the amount of extended wage loss benefits to which a person was previously entitled does not affect the date of entitlement to those benefits for the purposes of clause (2)(b).

Amounts set aside

- (4) The Board shall set aside, for each worker to whom this section applies, an amount that is equal to five per cent of each payment of the extended wage loss benefits described in clause (2)(b) made to the worker after the date that this section becomes applicable to the worker, to fund the annuity benefit referred to in subsection (1).

Amount set aside is additional to payment

- (5) An amount set aside under subsection (4) is in addition to the amount of the extended wage loss benefits payment that is being made, and shall be set aside at the time the payment is made.

Election to contribute

- (6) A worker to whom this section applies may elect, no later than three months after the date that the worker becomes entitled to the extended wage loss benefits described in clause (2)(b), to contribute an amount that is equal to five per cent of each payment of those extended wage loss benefits made to the worker after the election is made, to be used, along with the amounts set aside under subsection (4), to fund the annuity benefit referred to in subsection (1).

Form and manner of election

- (7) An election under subsection (6) shall be made in a form and manner determined by the Board, and is irrevocable.

Deduction of contributions

- (8) Where a worker makes an election under subsection (6), the Board shall deduct and set aside the worker's contribution from each payment of the extended wage loss benefits described in subsection (6) made to the worker after the election is made.

Section 43 does not apply

- (9) Section 43 does not apply with respect to a worker to whom this section applies.

43.2 Funds paid into Accident Fund

- (1) Any amounts and contributions set aside for a worker under section 43.1 shall be paid into the Accident Fund.

Rate of return

- (2) The annual rate of return that applies with respect to amounts and contributions paid into the Accident Fund pursuant to subsection (1) shall be the rate of return, whether positive or negative, of the Accident Fund for the year, and shall be applied at the end of the year.

Annual statement to worker

- (3) The Board shall annually provide each worker with a statement with respect to the amounts and contributions paid into the Accident Fund for the worker's annuity benefit.

43.3 Amount to be paid out of Accident Fund

- (1) The amount to be paid out of the Accident Fund under this section is equal to the sum of the accumulated capital and the returns, whether positive or negative, on the accumulated capital, of the amounts and contributions paid into the Accident Fund to provide an annuity benefit for a worker to whom section 43.1 applies, subject to any adjustment for overpayment of wage loss benefits to the worker, as determined by the Board.

Payment to annuity provider

- (2) Subject to subsection (3), where a worker described in subsection (1) reaches the age of 65 years, the Board shall, after the last payment of extended wage loss benefits is made to the worker, pay the amount to be paid out of the Accident Fund to the provider of the annuity plan selected by the worker.

Payment of lump sum

- (3) The Board shall pay the amount to be paid out of the Accident Fund to the worker as a lump sum, instead of paying the amount to an annuity provider, if the amount is less than an amount that may be determined by the Board.

Benefit is in addition to specified benefits

- (4) Any benefit provided under this section is in addition to and not in lieu of any benefit paid pursuant to the Canada Pension Plan or the *Old Age Security Act* (Canada).

43.4 Death before entitlement or payment

- (1) Where a worker for whom amounts or contributions are paid into the Accident Fund for the worker's annuity benefit dies before the worker reaches the age of 65 or before an amount is paid to an annuity provider or the worker under section 43.3, the Board shall pay out of the Accident Fund an amount equal to the sum of the accumulated capital and the returns, whether positive or negative, on the accumulated capital, of the amounts and contributions to
- (a) a beneficiary designated by the worker; or
 - (b) where no beneficiary is designated, the worker's estate.

No other payment

- (2) Where an amount is paid to a person or an estate under this section, the Board is not liable to make any other payment with respect to that amount.



9. The Act is amended by the addition of the following after section 84:

84.1 Occupational disease, fire inspector or firefighter

- (1) For the purposes of section 84, where a worker who is or has been a fire inspector or firefighter suffers from a prescribed disease, the worker is presumed to suffer from an occupational disease due to the nature of the worker's employment, which shall be presumed to be the dominant cause of the occupational disease, if the worker
- (a) has been or was employed as a fire inspector or firefighter for a prescribed minimum period of time prior to the accident date referred to in subsection 84(1.1);
 - (b) was exposed to the hazards of a fire, other than a forest fire or wild fire, in the course of employment as a fire inspector or firefighter; and
 - (c) meets any other prescribed requirement.

Regulations

- (2) The Lieutenant Governor in Council may make regulations
- (a) prescribing diseases for the purpose of subsection (1);
 - (b) prescribing minimum periods of employment for the purpose of clause (1)(a), which may be specific to a particular prescribed disease;
 - (c) prescribing additional requirements for the purpose of clause (1)(c), which may be specific to a particular prescribed disease.

10. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

EXPLANATORY NOTES

SECTION 1 adds definitions to the Act for the terms “firefighter” and “fire inspector”, redefines “impairment”, corrects the title of the Minister to refer to the Minister currently responsible for the Act and substitutes a volunteer firefighter in place of a member of a municipal volunteer fire brigade in subclause 1(1)(z)(iii) to reflect the new definition of firefighter.

SECTION 2 corrects references to the application of the Act to refer to the application of Part I, in keeping with the application section in Part II.

SECTION 3 adds a new section 2.1 to the Act, which sets out who the employer of a volunteer firefighter is considered to be and specifies provisions of the Act that do not apply to volunteer firefighters or their employers.

SECTION 4 adds a presumption to the Act that a fire inspector or firefighter who suffers a specified heart injury within 24 hours of being dispatched to or attending at an emergency, is presumed to have suffered a personal injury by accident arising out of and in the course of employment.

SECTION 5 changes the date by which the annual report of the Workers Compensation Board is due.

SECTION 6 changes the amount of a lump sum payment payable on the death of a worker in certain circumstances.

SECTION 7 has the effect of making section 43 of the Act, which concerns claims for lost pension benefits, no longer apply to injured workers to whom the new provisions that are being added by section 4 will apply. It also removes wording that is not applicable.

SECTION 8 amends the Act to add several provisions that provide for an annuity benefit for qualified injured workers, including setting out who qualifies, how the benefit is to be funded by the Board and, at the worker’s option, by the worker, that the funds are to be paid into the Accident Fund and when and to whom payment related to the benefit is to be made.

SECTION 9 adds a section that provides for prescribed diseases to be presumed to be occupational diseases when contracted by a fire inspector or firefighter, provided certain conditions are met.

SECTION 10 provides for the coming into force of this Act.

(Bill No. 40)

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Workers Compensation Act (No. 3)**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 13, 2018
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Francis (Buck) Watts, Speaker

Charles H. MacKay, Clerk

Hon. Sonny (Stanley) Gallant
Minister of Workforce and Advanced Learning

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