

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

S. 1116

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. CARPER (for himself and Ms. SINEMA)

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Federal Firefighters
- 5 Fairness Act of 2022”.

1 **SEC. 2. CERTAIN ILLNESSES AND DISEASES PRESUMED TO**
2 **BE WORK-RELATED CAUSE OF DISABILITY OR**
3 **DEATH FOR FEDERAL EMPLOYEES IN FIRE**
4 **PROTECTION ACTIVITIES.**

5 (a) PRESUMPTION RELATING TO EMPLOYEES IN
6 FIRE PROTECTION ACTIVITIES.—

7 (1) IN GENERAL.—Subchapter I of chapter 81
8 of title 5, United States Code, is amended by insert-
9 ing after section 8143a the following:

10 **“§ 8143b. Employees in fire protection activities**

11 “(a) DEFINITIONS.—In this section:

12 “(1) EMPLOYEE IN FIRE PROTECTION ACTIVI-
13 TIES.—The term ‘employee in fire protection activi-
14 ties’ means an employee employed as a firefighter,
15 paramedic, emergency medical technician, rescue
16 worker, ambulance personnel, or hazardous material
17 worker who—

18 “(A) is trained in fire suppression;

19 “(B) has the legal authority and responsi-
20 bility to engage in fire suppression;

21 “(C) is engaged in the prevention, control,
22 and extinguishment of fires or response to
23 emergency situations in which life, property, or
24 the environment is at risk, including the pre-
25 vention, control, suppression, or management of
26 wildland fires; and

1 “(D) performs the activities described in
2 subparagraph (C) as a primary responsibility of
3 the job of the employee.

4 “(2) RULE; RULE MAKING.—The terms ‘rule’
5 and ‘rule making’ have the meanings given those
6 terms in section 551.

7 “(3) SECRETARY.—The term ‘Secretary’ means
8 the Secretary of Labor.

9 “(b) CERTAIN ILLNESSES AND DISEASES DEEMED
10 TO BE PROXIMATELY CAUSED BY EMPLOYMENT IN FIRE
11 PROTECTION ACTIVITIES.—

12 “(1) IN GENERAL.—For a claim under this sub-
13 chapter of disability or death of an employee who
14 has been employed for not less than 5 years in ag-
15 gregate as an employee in fire protection activities,
16 an illness or disease specified on the list established
17 under paragraph (2) shall be deemed to be proxi-
18 mately caused by the employment of that employee,
19 if the employee is diagnosed with that illness or dis-
20 ease not later than 10 years after the last active
21 date of employment as an employee in fire protection
22 activities.

23 “(2) ESTABLISHMENT OF INITIAL LIST.—There
24 is established under this section the following list of
25 illnesses and diseases:

- 1 “(A) Bladder cancer.
- 2 “(B) Brain cancer.
- 3 “(C) Chronic obstructive pulmonary dis-
- 4 ease.
- 5 “(D) Colorectal cancer.
- 6 “(E) Esophageal cancer.
- 7 “(F) Kidney cancer.
- 8 “(G) Leukemias.
- 9 “(H) Lung cancer.
- 10 “(I) Mesothelioma.
- 11 “(J) Multiple myeloma.
- 12 “(K) Non-Hodgkin lymphoma.
- 13 “(L) Prostate cancer.
- 14 “(M) Skin cancer (melanoma).
- 15 “(N) A sudden cardiac event or stroke suf-
- 16 fered while, or not later than 24 hours after,
- 17 engaging in the activities described in sub-
- 18 section (a)(1)(C).
- 19 “(O) Testicular cancer.
- 20 “(P) Thyroid cancer.
- 21 “(3) ADDITIONS TO THE LIST.—
- 22 “(A) IN GENERAL.—
- 23 “(i) PERIODIC REVIEW.—The Sec-
- 24 retary shall—

1 “(I) in consultation with the Di-
2 rector of the National Institute for
3 Occupational Safety and Health and
4 any advisory committee determined
5 appropriate by the Secretary, periodi-
6 cally review the list established under
7 paragraph (2); and

8 “(II) by rule, add an illness or
9 disease to the list established under
10 paragraph (2) upon a sufficient show-
11 ing by a petitioner in a petition sub-
12 mitted under paragraph (4), or on the
13 Secretary’s own determination, in ac-
14 cordance with this paragraph.

15 “(ii) CLASSIFICATION.—A rule issued
16 by the Secretary under clause (i) shall be
17 considered to be a major rule for the pur-
18 poses of chapter 8.

19 “(B) BASIS FOR DETERMINATION.—The
20 Secretary shall add an illness or disease to the
21 list established under paragraph (2) upon a suf-
22 ficient showing by a petitioner in a petition sub-
23 mitted under paragraph (4), or on the Sec-
24 retary’s own determination, based on the weight
25 of the best available scientific evidence that

1 there is a significant risk to employees in fire
2 protection activities of developing that illness or
3 disease.

4 “(C) AVAILABLE EXPERTISE.—In deter-
5 mining significant risk for purposes of subpara-
6 graph (B), the Secretary may accept as authori-
7 tative, and may rely upon, recommendations,
8 risk assessments, and scientific studies (includ-
9 ing analyses of National Firefighter Registry
10 data pertaining to Federal firefighters) by the
11 National Institute for Occupational Safety and
12 Health, the National Toxicology Program, the
13 National Academies of Sciences, Engineering,
14 and Medicine, and the International Agency for
15 Research on Cancer.

16 “(4) PETITIONS TO ADD TO THE LIST.—

17 “(A) IN GENERAL.—Any person may peti-
18 tion the Secretary to add an illness or disease
19 to the list established under paragraph (2).

20 “(B) CONTENT OF PETITION.—A petition
21 submitted under subparagraph (A) shall provide
22 information to show that there is sufficient evi-
23 dence of a significant risk to employees in fire
24 protection activities of developing the illness or

1 disease that is the subject of the petition from
2 the employment of those employees.

3 “(C) TIMELY AND SUBSTANTIVE DECI-
4 SIONS.—

5 “(i) IN GENERAL.—Not later than
6 180 days after the date on which the Sec-
7 retary receives a petition submitted under
8 this paragraph, the Secretary shall conduct
9 a rule making to determine whether to
10 grant or deny the petition.

11 “(ii) INSUFFICIENT BASES FOR DE-
12 NIAL.—The Secretary may not deny a peti-
13 tion submitted under this paragraph solely
14 on the basis of competing priorities, inad-
15 equate resources, or insufficient time for
16 review.

17 “(iii) RESULT OF RULE MAKING.—A
18 rule formulated as a result of a rule mak-
19 ing conducted under clause (i) shall—

20 “(I) contain an explanation for
21 the reasons of the Secretary to grant
22 or deny the applicable petition; and

23 “(II) be considered to be a major
24 rule for the purposes of chapter 8.”.

1 (2) TECHNICAL AND CONFORMING AMEND-
2 MENT.—The table of sections for subchapter I of
3 chapter 81 of title 5, United States Code, is amend-
4 ed by inserting after the item relating to section
5 8143a the following:

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

6 (3) APPLICATION.—The amendments made by
7 this subsection shall apply to claims for compensa-
8 tion filed on or after the date of enactment of this
9 Act.

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

1 research or public health initiative conducted by the Cen-
2 ters for Disease Control and Prevention.

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

6 (1) evaluate the best available scientific evi-
7 dence of the risk to an employee in fire protection
8 activities of developing breast cancer, gynecological
9 cancer, and rhabdomyolysis;

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

16 (3) submit to the Committee on Homeland Se-
17 curity and Governmental Affairs of the Senate and
18 the Committee on Education and Labor of the
19 House of Representatives a report containing—

20 (A) the findings of the Secretary after
21 making the evaluation required under para-
22 graph (1); and

23 (B) the determination of the Secretary
24 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 Director of the National In-
10 stitute for Occupational Safety and Health shall con-
11 duct a comprehensive study on long-term health ef-
12 fects that Federal wildland firefighters who are eligi-
13 ble to receive compensation for work injuries under
14 chapter 81 of title 5, United States Code, as amend-
15 ed by this Act, experience after being exposed to
16 fires, smoke, and toxic fumes when in service.

17 (3) REQUIREMENTS.—The study required
18 under paragraph (2) shall include—

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

22 (B) recommendations to Congress regard-
23 ing what legislative actions are needed to sup-
24 port the Federal wildland firefighters described
25 in subparagraph (A) in preventing health issues

1 from the toxic exposure described in paragraph
2 (2), similar to veterans who are exposed to burn
3 pits.

4 (4) SUBMISSION AND PUBLICATION.—The Di-
5 rector of the National Institute for Occupational
6 Safety and Health shall submit the results of the
7 study conducted under this subsection to the Com-
8 mittee on Homeland Security and Governmental Af-
9 fairs of the Senate and the Committee on Education
10 and Labor and make those results publicly available.

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

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

25 (2) may—

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

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

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

13 Not later than 60 days after the date of enactment
14 of 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' Compensa-
19 tion Act manual to reflect the changes made by the
20 Secretary pursuant to paragraph (1).