

1 HB94
2 208174-5
3 By Representatives Ingram and Hanes
4 RFD: Ways and Means General Fund
5 First Read: 02-FEB-21
6 PFD: 12/17/2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ENROLLED, An Act,

Relating to peace officers and firefighters; to amend Sections 36-30-1 and 36-30-2, Code of Alabama 1975, relating to the benefits awarded on account of injury or death, under certain conditions; to include a wildland firefighter employed by the Alabama Forestry Commission as a firefighter as eligible for injury or death benefits; and to specify that a volunteer firefighter or a member of an organized rescue squad who dies of cardiac arrest, cerebrovascular accident, or pulmonary edema within 24 hours of preparing to respond, responding, or serving in his or her capacity at an emergency or participating in a training exercise shall be presumptively deemed to have died in the performance of his or her duties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as "The Joe Donoghue Donoghue/Donna Jo Horton Act."

Section 2. Sections 36-30-1 and 36-30-2, Code of Alabama 1975, are amended to read as follows:

"§36-30-1.

"(a) For the purposes of this chapter, the following words and phrases shall have the following meanings:

1 "(1) AWARDING AUTHORITY. The State Board of
2 Adjustment, created and existing pursuant to Article 4,
3 Chapter 9 of Title 41.

4 "(2) COMPENSATION. The money benefits paid on
5 account of injury or death which occurred during the course of
6 employment or activity as a peace officer or firefighter and
7 is in the nature of workers' compensation.

8 "(3) DEPENDENT CHILD. An unmarried child under the
9 age of 18 years, or one over the age of 18 who is physically
10 or mentally incapacitated from earning.

11 "(4) DIRECT AND PROXIMATE RESULT OF A HEART ATTACK
12 OR STROKE. Death resulting from a heart attack or stroke
13 caused by engaging or participating in a situation while on
14 duty involving nonroutine stressful or strenuous physical law
15 enforcement, fire suppression, rescue, hazardous material
16 response, emergency medical service, prison security, disaster
17 relief, other emergency medical response activity, or
18 participation in a training exercise which involved nonroutine
19 stressful or strenuous physical activity; and the heart attack
20 or stroke is suffered while still on that duty after so
21 engaging or participating or not more than 24 hours after so
22 engaging or participating.

23 "(5) FIREFIGHTER or FIREFIGHTERS. A member or
24 members of a paid or volunteer fire department of a city,
25 town, county, or other subdivision of the state or of a public

1 corporation organized for the purpose of providing water,
2 water systems, fire protection services, or fire protection
3 facilities in the state; and shall include the chief,
4 assistant chief, wardens, engineers, captains, firefighters,
5 and all other officers and employees of such departments who
6 actually engage in fire fighting or in rendering first aid in
7 case of drownings or asphyxiation at the scene of action. The
8 term also includes a firefighter who is employed by the
9 Alabama Forestry Commission and who has been certified by the
10 State Forester as having met the wildland firefighter training
11 standards of the National Wildfire Coordinating Group.

12 "(6) PEACE OFFICER. All sheriffs, deputy sheriffs,
13 constables, municipal police officers, municipal policemen,
14 state and town marshals, members of the highway patrol, state
15 troopers, Alcoholic Beverage Control Board Enforcement
16 Division agents, enforcement officers of the Public Service
17 Commission, revenue agents, and persons who are required by
18 law to comply with the provisions of the Peace Officers'
19 Minimum Standards, employees of the Board of Corrections,
20 highway camp guards, law enforcement officers of the
21 Department of Conservation and Natural Resources, all law
22 enforcement officers of the Alabama Forestry Commission,
23 livestock theft investigators of the Department of Agriculture
24 and Industries, Capitol security guards, narcotic agents and
25 inspectors of the State Board of Health, any other state,

1 county, or municipal officer engaged in quelling a riot, or
2 civil disturbance, and university police officers.

3 "(7) RESCUE SQUAD MEMBER. A member of an organized
4 rescue squad of a city, town, county, or other subdivision of
5 the state or of a public corporation, organized for the
6 purpose of providing, within the scope of his or her practice:
7 First aid, treatment, or transport of the sick or injured;
8 rescue or recovery operations at incidents of drowning; search
9 and rescue of individuals lost or incapable of self rescue; or
10 any other emergency or non-emergency incident where the
11 services provided by the rescue squad are deemed necessary for
12 incident stabilization. The term includes all commanders,
13 officers, and members of organized rescue squads that are
14 members of the Alabama Association of Rescue Squads.

15 "(b) For the purposes of this chapter, the following
16 described persons shall be conclusively presumed to be wholly
17 dependent:

18 "(1) Spouse, unless it be shown that the spouse was
19 voluntarily living apart from the peace officer, firefighter,
20 or rescue squad member at the time of death, or unless it be
21 shown that the peace officer, firefighter, or rescue squad
22 member was not in any way contributing to the spouse's support
23 and had not in any way contributed to the spouse's support for
24 more than 12 months next preceding the occurrence of the
25 injury causing death.

1 "(2) Minor children under the age of 18 years and
2 those over 18 if physically and mentally incapacitated from
3 earning.

4 "(3) Spouse, child, mother, father, grandmother,
5 grandfather, sister, brother, mother-in-law, and father-in-law
6 who were wholly supported by a deceased peace officer,
7 firefighter, or rescue squad member at the time of his or her
8 death and for a reasonable period of time prior thereto shall
9 be considered his or her dependents and payment of
10 compensation may be made to them as hereinafter authorized.

11 "(c) If a paid or volunteer firefighter, peace
12 officer, certified police officer, reserve law enforcement
13 officer, or rescue squad member is killed while engaged in the
14 performance of his or her duties and there are no designated
15 beneficiaries, then the compensation shall be paid to his or
16 her dependents or partial dependents in the manner prescribed
17 by Section 36-30-3, and if there are none, the compensation
18 shall be paid to his or her non-dependent children, and if
19 there are none, the compensation shall be paid to his or her
20 parents, and if there are none, the compensation shall be paid
21 to the estate of the deceased.

22 "(d) Any member of the class named in subdivision
23 (3) of subsection (b) who regularly derived part of his or her
24 support from the earnings of the deceased peace officer,
25 firefighter, or rescue squad member, as the case may be, at

1 the time of his or her death and for a reasonable time
2 immediately prior thereto shall be considered his or her
3 partial dependent and payment of compensation may be made to
4 such partial dependent as hereinafter authorized.

5 "§36-30-2.

6 "(a) In the event a peace officer, a firefighter, a
7 volunteer firefighter who is a member of an organized
8 volunteer fire department registered with the Alabama Forestry
9 Commission, or a rescue squad member is killed, either
10 accidentally or deliberately, or dies as a result of injuries
11 received while engaged in the performance of his or her
12 duties, or dies as a direct and proximate result of a heart
13 attack or stroke, his or her beneficiaries or dependents shall
14 be entitled to compensation in the amount of one hundred
15 thousand dollars (\$100,000) to be paid from the State Treasury
16 as provided in Section 36-30-3, unless such death was caused
17 by the willful misconduct of the officer, firefighter, or
18 rescue squad member or was due to his or her own intoxication
19 or his or her willful failure or refusal to use safety
20 appliances provided by his or her employer or his or her
21 willful refusal or neglect to perform a statutory duty or any
22 other willful violation of a law or his or her willful breach
23 of a reasonable rule or regulation governing the performance
24 of his or her duties or his or her employment of which rule or
25 regulation he or she had knowledge. Any peace officer,

1 firefighter, volunteer firefighter, or rescue squad member
2 whose death results proximately from an injury received while
3 performing his or her duties shall, for the purposes of this
4 article, be deemed to have been killed while in the
5 performance of such duties. A volunteer firefighter or a
6 member of an organized rescue squad who dies of cardiac
7 arrest, cerebrovascular accident, or pulmonary edema within 24
8 hours after preparing to respond to a called emergency or
9 responding to an emergency; or after serving in his or her
10 capacity at an emergency; or after participating in a required
11 physical training exercise shall be presumed to have died in
12 the performance of his or her duties. If the State Health
13 Officer determines from all available evidence that a
14 volunteer firefighter, who is a member of an organized
15 volunteer fire department registered with the Alabama Forestry
16 Commission, has become totally disabled as a result of any
17 injury received while engaged in the performance of his or her
18 fire-fighting duties and the disability is likely to continue
19 for more than 12 months from the date the injury is incurred,
20 then the firefighter shall be entitled to receive disability
21 compensation in the amount of one hundred thousand dollars
22 (\$100,000) to be paid from the State Treasury as provided in
23 Section 36-30-3. The term total disability shall be
24 interpreted to mean that the injured party is medically
25 disabled to the extent that he or she cannot perform the

1 duties of the job occupation or profession in which he or she
2 was engaging at the time the injury was sustained. The State
3 Health Officer may seek the assistance of any state agency in
4 making the determination of disability and the state agencies
5 shall cooperate with the State Health Officer in such regard.
6 The State Health Officer shall render a decision within 30
7 days of the time a claim is filed. If such volunteer
8 firefighter disagrees with any officer, he or she may appeal
9 the determination to the State Board of Adjustment in
10 accordance with such board's procedures for such appeals.

11 "(b) Beginning in calendar year 2009, the
12 compensation amounts payable under this section shall be
13 adjusted on January 1 of each year to reflect any increase
14 during the preceding calendar year in the consumer price index
15 as published by the U.S. Department of Labor, Bureau of Labor
16 Statistics. The adjustment shall equal the percentage change
17 in the consumer price index during the preceding calendar
18 year.

19 "(c) Any person who currently serves or previously
20 served as a firefighter or law enforcement peace officer who
21 dies as a result of a firefighter's occupational disease as
22 defined in Section 11-43-144 or 36-30-40, or law enforcement
23 peace officer's occupational disease as defined in Section
24 36-30-20 shall be qualified for a state death benefit as
25 provided in subsection (a) as if the person died in the

1 performance of his or her duties, provided he or she satisfies
2 the three years' service requirement and physical examination
3 requirements set forth in Section 11-43-144, 36-30-22, or
4 36-30-41, respectively.

5 "(d) Any application for the state death benefit
6 that was submitted during the period from April 29, 2010,
7 until May 27, 2015, and denied because the firefighter or law
8 enforcement peace officer was no longer employed on the date
9 of death may be resubmitted based on subsection (c) within six
10 months of May 27, 2015, and reconsidered and granted by the
11 awarding authority.

12 "(e) The provisions of this section as amended by
13 the act adding this amendatory language shall be retroactive
14 to any death covered by this chapter as amended after January
15 1, 2019."

16 ~~"(e) The provisions of this section as amended by~~
17 ~~the act adding this amendatory language shall be retroactive~~
18 ~~to any death covered by this chapter as amended after January~~
19 ~~1, 2019, including any individual application for death~~
20 ~~benefits filed with the Board of Adjustment with a date of~~
21 ~~death after January 1, 2019, and any claim denied by the board~~
22 ~~with a date of death after January 1, 2019, shall be~~
23 ~~reconsidered based on the amendments provided by the act~~
24 ~~adding this amendatory language."~~

1 Section 3. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 30-MAR-21, as amended.

Jeff Woodard
Clerk

Senate	17-MAY-21	Amended and Passed
House	17-MAY-21	Concurred in Senate Amendment