

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1189

Introduced by McDonnell, 5.

Read first time January 23, 2020

Committee:

- 1 A BILL FOR AN ACT relating to firefighters; to amend section 77-2716,
- 2 Revised Statutes Supplement, 2019; to adopt the Firefighter Cancer
- 3 Benefits Act; to provide for an income tax exemption for such
- 4 benefits; to provide an operative date; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the Firefighter Cancer Benefits Act.

3 Sec. 2. For purposes of the Firefighter Cancer Benefits Act:

4 (1) Cancer means a disease (a) caused by an uncontrolled division of
5 abnormal cells in a part of the body or a malignant growth or tumor
6 resulting from the division of abnormal cells and (b) affecting the
7 prostate or breast, lymphatic, lung, hematological, digestive, urinary,
8 neurological, or reproductive systems, or melanoma; and

9 (2) Firefighter means a firefighter or firefighter-paramedic who is
10 a member of a (a) paid fire department of a municipality or a rural or
11 suburban fire protection district in this state, including a municipality
12 having a home rule charter or a municipal authority created pursuant to a
13 home rule charter that has its own paid fire department or a volunteer
14 firefighter who has been deemed an employee under subdivision (3) of
15 section 48-115, or (b) paid fire department of an airport authority.

16 Sec. 3. Before any firefighter is entitled to benefits under the
17 Firefighter Cancer Benefits Act, such firefighter shall (1) successfully
18 pass a physical examination, such examination having failed to reveal any
19 evidence of cancer, and (2) have served at least twelve consecutive
20 months as a firefighter at any fire station within the State of Nebraska.
21 After serving at least twelve consecutive months as a firefighter, the
22 firefighter shall be deemed still in compliance with subdivision (2) of
23 this section even with a break in service, so long as such break does not
24 exceed six months.

25 Sec. 4. (1) Beginning on and after the operative date of this act,
26 every rural or suburban fire protection district, airport authority,
27 city, village, or nonprofit corporation shall provide and maintain
28 enhanced cancer benefits. Such benefits shall include, at a minimum, the
29 following:

30 (a) A lump-sum benefit of twenty-five thousand dollars for each
31 diagnosis payable to a firefighter upon acceptable proof to the insurance

1 carrier or other payor of a diagnosis by a board-certified physician in
2 the medical specialty appropriate for the type of cancer diagnosed that
3 there are one or more malignant tumors characterized by the
4 uncontrollable and abnormal growth and spread of malignant cells with
5 invasion of normal tissue, and that either:

6 (i) There is metastasis; and

7 (A) Surgery, radiotherapy, or chemotherapy is medically necessary;

8 or

9 (B) There is a tumor of the prostate, provided that it is tested
10 with radical prostatectomy or external beam therapy; or

11 (ii) Such firefighter has terminal cancer, his or her life
12 expectancy is twenty-four months or less from the date of diagnosis, and
13 he or she will not benefit from, or has exhausted, curative therapy;

14 (b) A lump-sum benefit of six thousand two hundred fifty dollars for
15 each diagnosis payable to a firefighter upon acceptable proof to the
16 insurance carrier or other payor of a diagnosis by a board-certified
17 physician in the medical specialty appropriate for the type of cancer
18 involved that either:

19 (i) There is carcinoma in situ such that surgery, radiotherapy, or
20 chemotherapy has been determined to be medically necessary;

21 (ii) There are malignant tumors which are treated by endoscopic
22 procedures alone; or

23 (iii) There are malignant melanomas; or

24 (c)(i) A monthly benefit of one thousand five hundred dollars
25 payable to a firefighter, of which the first payment shall be made six
26 months after total disability and submission of acceptable proof of such
27 disability to the insurance carrier or other payor that such disability
28 is caused by cancer and that such cancer precludes the firefighter from
29 serving as a firefighter. Such benefit shall continue for up to thirty-
30 six consecutive monthly payments.

31 (ii) Such monthly benefit shall be subordinate to any other benefit

1 actually paid to the firefighter solely for such disability from any
2 other source, not including private insurance purchased solely by the
3 firefighter, and shall be limited to the difference between the amount of
4 such other pay benefit and the amount specified in this section.

5 (iii) Any firefighter receiving such monthly benefit may be required
6 to have his or her condition reevaluated. In the event any such
7 reevaluation reveals that such person has regained the ability to perform
8 duties as a firefighter, then his or her monthly benefits shall cease the
9 last day of the month of the reevaluation.

10 (iv) In the event that there is a subsequent reoccurrence of a
11 disability caused by cancer which precludes the firefighter from serving
12 as a firefighter, he or she shall be entitled to receive any remaining
13 monthly benefits.

14 (2) A firefighter shall also be entitled to an additional payment of
15 enhanced cancer death benefits in the amount of fifty thousand dollars
16 payable to his or her beneficiary or, if no beneficiary is named, to such
17 firefighter's estate upon acceptable proof by a board-certified physician
18 that such firefighter's death resulted from complications associated with
19 cancer.

20 (3) A firefighter shall be ineligible for benefits under the
21 Firefighter Cancer Benefits Act if he or she is already provided paid
22 firefighter cancer benefits pursuant to section 35-1001.

23 Sec. 5. The combined total of all benefits received by any
24 firefighter pursuant to subdivisions (1)(a) and (b) of section 4 of this
25 act during his or her lifetime shall not exceed fifty thousand dollars.

26 Sec. 6. Any firefighter who was simultaneously a member of more
27 than one fire department at the time of diagnosis shall not be entitled
28 to receive benefits under the Firefighter Cancer Benefits Act from or on
29 behalf of more than one of such fire departments. In the event a
30 volunteer of one fire department is simultaneously employed as a
31 firefighter who is a member of a paid fire department of a municipality,

1 an airport authority, or a rural or suburban fire protection district,
2 the rural or suburban fire protection district, city, village, or
3 nonprofit corporation for which such person serves as a volunteer shall
4 not be required to maintain benefits on such volunteer otherwise required
5 under the Firefighter Cancer Benefits Act during the period of time of
6 such employment.

7 Sec. 7. A firefighter shall remain eligible for benefits pursuant
8 to subdivisions (1)(a) and (b) and subsection (2) of section 4 of this
9 act for sixty months after the formal cessation of the firefighter's
10 status as a firefighter. The rural or suburban fire protection district,
11 airport authority, city, village, or nonprofit corporation in which such
12 firefighter served shall be responsible for payment of all premiums or
13 other costs associated with benefits provided under subdivisions (1)(a)
14 and (b) and subsection (2) of section 4 of this act throughout the
15 duration of the firefighter's coverage.

16 Sec. 8. A rural or suburban fire protection district, airport
17 authority, city, village, or nonprofit corporation shall, no later than
18 January 1, 2021, maintain proof of insurance coverage that meets the
19 requirements of the Firefighter Cancer Benefits Act or shall maintain
20 satisfactory proof of the ability to pay such compensation to ensure
21 adequate coverage for all firefighters. Sufficient documentation of
22 satisfactory proof of the ability to pay such compensation to ensure
23 adequate coverage for all firefighters shall be required and shall comply
24 with rules and regulations adopted and promulgated by the State Fire
25 Marshal. Such coverage shall remain in effect until sixty months after
26 the rural or suburban fire protection district, airport authority, city,
27 village, or nonprofit corporation no longer has any firefighters who
28 could qualify for benefits under the act.

29 Sec. 9. Any rural or suburban fire protection district, airport
30 authority, city, village, or nonprofit corporation that has had a
31 firefighter file a claim for or receive cancer disability benefits under

1 the Firefighter Cancer Benefits Act shall report such claims filed,
2 claims paid, and types of claims to the State Fire Marshal. Beginning on
3 December 1, 2022, the State Fire Marshal shall submit electronically an
4 annual report to the Legislature and Governor stating the number of
5 firefighters who have filed claims pursuant to the act and the number of
6 firefighters who have received benefits under the act.

7 Sec. 10. The State Fire Marshal may adopt and promulgate rules and
8 regulations necessary to carry out the Firefighter Cancer Benefits Act.

9 Sec. 11. Section 77-2716, Revised Statutes Supplement, 2019, is
10 amended to read:

11 77-2716 (1) The following adjustments to federal adjusted gross
12 income or, for corporations and fiduciaries, federal taxable income shall
13 be made for interest or dividends received:

14 (a)(i) There shall be subtracted interest or dividends received by
15 the owner of obligations of the United States and its territories and
16 possessions or of any authority, commission, or instrumentality of the
17 United States to the extent includable in gross income for federal income
18 tax purposes but exempt from state income taxes under the laws of the
19 United States; and

20 (ii) There shall be subtracted interest received by the owner of
21 obligations of the State of Nebraska or its political subdivisions or
22 authorities which are Build America Bonds to the extent includable in
23 gross income for federal income tax purposes;

24 (b) There shall be subtracted that portion of the total dividends
25 and other income received from a regulated investment company which is
26 attributable to obligations described in subdivision (a) of this
27 subsection as reported to the recipient by the regulated investment
28 company;

29 (c) There shall be added interest or dividends received by the owner
30 of obligations of the District of Columbia, other states of the United
31 States, or their political subdivisions, authorities, commissions, or

1 instrumentalities to the extent excluded in the computation of gross
2 income for federal income tax purposes except that such interest or
3 dividends shall not be added if received by a corporation which is a
4 regulated investment company;

5 (d) There shall be added that portion of the total dividends and
6 other income received from a regulated investment company which is
7 attributable to obligations described in subdivision (c) of this
8 subsection and excluded for federal income tax purposes as reported to
9 the recipient by the regulated investment company; and

10 (e)(i) Any amount subtracted under this subsection shall be reduced
11 by any interest on indebtedness incurred to carry the obligations or
12 securities described in this subsection or the investment in the
13 regulated investment company and by any expenses incurred in the
14 production of interest or dividend income described in this subsection to
15 the extent that such expenses, including amortizable bond premiums, are
16 deductible in determining federal taxable income.

17 (ii) Any amount added under this subsection shall be reduced by any
18 expenses incurred in the production of such income to the extent
19 disallowed in the computation of federal taxable income.

20 (2) There shall be allowed a net operating loss derived from or
21 connected with Nebraska sources computed under rules and regulations
22 adopted and promulgated by the Tax Commissioner consistent, to the extent
23 possible under the Nebraska Revenue Act of 1967, with the laws of the
24 United States. For a resident individual, estate, or trust, the net
25 operating loss computed on the federal income tax return shall be
26 adjusted by the modifications contained in this section. For a
27 nonresident individual, estate, or trust or for a partial-year resident
28 individual, the net operating loss computed on the federal return shall
29 be adjusted by the modifications contained in this section and any
30 carryovers or carrybacks shall be limited to the portion of the loss
31 derived from or connected with Nebraska sources.

1 (3) There shall be subtracted from federal adjusted gross income for
2 all taxable years beginning on or after January 1, 1987, the amount of
3 any state income tax refund to the extent such refund was deducted under
4 the Internal Revenue Code, was not allowed in the computation of the tax
5 due under the Nebraska Revenue Act of 1967, and is included in federal
6 adjusted gross income.

7 (4) Federal adjusted gross income, or, for a fiduciary, federal
8 taxable income shall be modified to exclude the portion of the income or
9 loss received from a small business corporation with an election in
10 effect under subchapter S of the Internal Revenue Code or from a limited
11 liability company organized pursuant to the Nebraska Uniform Limited
12 Liability Company Act that is not derived from or connected with Nebraska
13 sources as determined in section 77-2734.01.

14 (5) There shall be subtracted from federal adjusted gross income or,
15 for corporations and fiduciaries, federal taxable income dividends
16 received or deemed to be received from corporations which are not subject
17 to the Internal Revenue Code.

18 (6) There shall be subtracted from federal taxable income a portion
19 of the income earned by a corporation subject to the Internal Revenue
20 Code of 1986 that is actually taxed by a foreign country or one of its
21 political subdivisions at a rate in excess of the maximum federal tax
22 rate for corporations. The taxpayer may make the computation for each
23 foreign country or for groups of foreign countries. The portion of the
24 taxes that may be deducted shall be computed in the following manner:

25 (a) The amount of federal taxable income from operations within a
26 foreign taxing jurisdiction shall be reduced by the amount of taxes
27 actually paid to the foreign jurisdiction that are not deductible solely
28 because the foreign tax credit was elected on the federal income tax
29 return;

30 (b) The amount of after-tax income shall be divided by one minus the
31 maximum tax rate for corporations in the Internal Revenue Code; and

1 (c) The result of the calculation in subdivision (b) of this
2 subsection shall be subtracted from the amount of federal taxable income
3 used in subdivision (a) of this subsection. The result of such
4 calculation, if greater than zero, shall be subtracted from federal
5 taxable income.

6 (7) Federal adjusted gross income shall be modified to exclude any
7 amount repaid by the taxpayer for which a reduction in federal tax is
8 allowed under section 1341(a)(5) of the Internal Revenue Code.

9 (8)(a) Federal adjusted gross income or, for corporations and
10 fiduciaries, federal taxable income shall be reduced, to the extent
11 included, by income from interest, earnings, and state contributions
12 received from the Nebraska educational savings plan trust created in
13 sections 85-1801 to 85-1817 and any account established under the
14 achieving a better life experience program as provided in sections
15 77-1401 to 77-1409.

16 (b) Federal adjusted gross income or, for corporations and
17 fiduciaries, federal taxable income shall be reduced by any contributions
18 as a participant in the Nebraska educational savings plan trust or
19 contributions to an account established under the achieving a better life
20 experience program made for the benefit of a beneficiary as provided in
21 sections 77-1401 to 77-1409, to the extent not deducted for federal
22 income tax purposes, but not to exceed five thousand dollars per married
23 filing separate return or ten thousand dollars for any other return. With
24 respect to a qualified rollover within the meaning of section 529 of the
25 Internal Revenue Code from another state's plan, any interest, earnings,
26 and state contributions received from the other state's educational
27 savings plan which is qualified under section 529 of the code shall
28 qualify for the reduction provided in this subdivision. For contributions
29 by a custodian of a custodial account including rollovers from another
30 custodial account, the reduction shall only apply to funds added to the
31 custodial account after January 1, 2014.

1 (c) Federal adjusted gross income or, for corporations and
2 fiduciaries, federal taxable income shall be increased by:

3 (i) The amount resulting from the cancellation of a participation
4 agreement refunded to the taxpayer as a participant in the Nebraska
5 educational savings plan trust to the extent previously deducted under
6 subdivision (8)(b) of this section; and

7 (ii) The amount of any withdrawals by the owner of an account
8 established under the achieving a better life experience program as
9 provided in sections 77-1401 to 77-1409 for nonqualified expenses to the
10 extent previously deducted under subdivision (8)(b) of this section.

11 (9)(a) For income tax returns filed after September 10, 2001, for
12 taxable years beginning or deemed to begin before January 1, 2006, under
13 the Internal Revenue Code of 1986, as amended, federal adjusted gross
14 income or, for corporations and fiduciaries, federal taxable income shall
15 be increased by eighty-five percent of any amount of any federal bonus
16 depreciation received under the federal Job Creation and Worker
17 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
18 under section 168(k) or section 1400L of the Internal Revenue Code of
19 1986, as amended, for assets placed in service after September 10, 2001,
20 and before December 31, 2005.

21 (b) For a partnership, limited liability company, cooperative,
22 including any cooperative exempt from income taxes under section 521 of
23 the Internal Revenue Code of 1986, as amended, limited cooperative
24 association, subchapter S corporation, or joint venture, the increase
25 shall be distributed to the partners, members, shareholders, patrons, or
26 beneficiaries in the same manner as income is distributed for use against
27 their income tax liabilities.

28 (c) For a corporation with a unitary business having activity both
29 inside and outside the state, the increase shall be apportioned to
30 Nebraska in the same manner as income is apportioned to the state by
31 section 77-2734.05.

1 (d) The amount of bonus depreciation added to federal adjusted gross
2 income or, for corporations and fiduciaries, federal taxable income by
3 this subsection shall be subtracted in a later taxable year. Twenty
4 percent of the total amount of bonus depreciation added back by this
5 subsection for tax years beginning or deemed to begin before January 1,
6 2003, under the Internal Revenue Code of 1986, as amended, may be
7 subtracted in the first taxable year beginning or deemed to begin on or
8 after January 1, 2005, under the Internal Revenue Code of 1986, as
9 amended, and twenty percent in each of the next four following taxable
10 years. Twenty percent of the total amount of bonus depreciation added
11 back by this subsection for tax years beginning or deemed to begin on or
12 after January 1, 2003, may be subtracted in the first taxable year
13 beginning or deemed to begin on or after January 1, 2006, under the
14 Internal Revenue Code of 1986, as amended, and twenty percent in each of
15 the next four following taxable years.

16 (10) For taxable years beginning or deemed to begin on or after
17 January 1, 2003, and before January 1, 2006, under the Internal Revenue
18 Code of 1986, as amended, federal adjusted gross income or, for
19 corporations and fiduciaries, federal taxable income shall be increased
20 by the amount of any capital investment that is expensed under section
21 179 of the Internal Revenue Code of 1986, as amended, that is in excess
22 of twenty-five thousand dollars that is allowed under the federal Jobs
23 and Growth Tax Act of 2003. Twenty percent of the total amount of
24 expensing added back by this subsection for tax years beginning or deemed
25 to begin on or after January 1, 2003, may be subtracted in the first
26 taxable year beginning or deemed to begin on or after January 1, 2006,
27 under the Internal Revenue Code of 1986, as amended, and twenty percent
28 in each of the next four following tax years.

29 (11)(a) For taxable years beginning or deemed to begin before
30 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
31 federal adjusted gross income shall be reduced by contributions, up to

1 two thousand dollars per married filing jointly return or one thousand
2 dollars for any other return, and any investment earnings made as a
3 participant in the Nebraska long-term care savings plan under the Long-
4 Term Care Savings Plan Act, to the extent not deducted for federal income
5 tax purposes.

6 (b) For taxable years beginning or deemed to begin before January 1,
7 2018, under the Internal Revenue Code of 1986, as amended, federal
8 adjusted gross income shall be increased by the withdrawals made as a
9 participant in the Nebraska long-term care savings plan under the act by
10 a person who is not a qualified individual or for any reason other than
11 transfer of funds to a spouse, long-term care expenses, long-term care
12 insurance premiums, or death of the participant, including withdrawals
13 made by reason of cancellation of the participation agreement, to the
14 extent previously deducted as a contribution or as investment earnings.

15 (12) There shall be added to federal adjusted gross income for
16 individuals, estates, and trusts any amount taken as a credit for
17 franchise tax paid by a financial institution under sections 77-3801 to
18 77-3807 as allowed by subsection (5) of section 77-2715.07.

19 (13)(a) For taxable years beginning or deemed to begin on or after
20 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
21 federal adjusted gross income shall be reduced by the amount received as
22 benefits under the federal Social Security Act which are included in the
23 federal adjusted gross income if:

24 (i) For taxpayers filing a married filing joint return, federal
25 adjusted gross income is fifty-eight thousand dollars or less; or

26 (ii) For taxpayers filing any other return, federal adjusted gross
27 income is forty-three thousand dollars or less.

28 (b) For taxable years beginning or deemed to begin on or after
29 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the
30 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
31 (13)(a)(i) and (ii) of this section by the same percentage used to adjust

1 individual income tax brackets under subsection (3) of section
2 77-2715.03.

3 (14) For taxable years beginning or deemed to begin on or after
4 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an
5 individual may make a one-time election within two calendar years after
6 the date of his or her retirement from the military to exclude income
7 received as a military retirement benefit by the individual to the extent
8 included in federal adjusted gross income and as provided in this
9 subsection. The individual may elect to exclude forty percent of his or
10 her military retirement benefit income for seven consecutive taxable
11 years beginning with the year in which the election is made or may elect
12 to exclude fifteen percent of his or her military retirement benefit
13 income for all taxable years beginning with the year in which he or she
14 turns sixty-seven years of age. For purposes of this subsection, military
15 retirement benefit means retirement benefits that are periodic payments
16 attributable to service in the uniformed services of the United States
17 for personal services performed by an individual prior to his or her
18 retirement.

19 (15) For taxable years beginning or deemed to begin on or after
20 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
21 federal adjusted gross income shall be reduced by the amount received by
22 or on behalf of a firefighter for cancer disability benefits under the
23 Firefighter Cancer Benefits Act to the extent included in federal
24 adjusted gross income.

25 Sec. 12. This act becomes operative on January 1, 2021.

26 Sec. 13. Original section 77-2716, Revised Statutes Supplement,
27 2019, is repealed.