

## CHAPTER 2010-179

### House Bill No. 1193

An act relating to retirement; providing a short title; providing legislative findings; providing a statement of important state interest; amending s. 121.021, F.S.; revising the definition of “special risk member” to include certain members suffering a qualifying injury; amending s. 121.0515, F.S.; providing eligibility requirements for membership in the Special Risk Class for certain members suffering a qualifying injury; providing medical certification requirements; providing a definition; prohibiting the grant or creation of additional rights; providing retroactive effect; amending s. 112.191, F.S.; revising provisions providing death benefits for firefighters; expanding activities entitling firefighters to death benefits to include participation in training exercises and injury by an unlawful and intentional act that results in death; providing legislative findings that the act fulfils an important state interest; providing for application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the “Adam Pierce Act.”

Section 2. The Legislature finds that persons employed in law enforcement, firefighting, and criminal detention positions perform state and municipal functions; that it is their duty to protect life and property at their own risk and peril; that it is their duty to instruct school personnel, public officials, and private citizens about safety; and that their activities are vital to public safety. Therefore, the Legislature finds that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of persons employed in law enforcement, firefighting, and criminal detention positions and finds, in implementing the provisions of s. 14, Art. X of the State Constitution relating to pension trust fund systems and plans, that such retirement systems or plans be managed, administered, operated, and funded in such manner as to maximize the protection of pension trust funds. Pursuant to s. 18, Art. VII of the State Constitution, the Legislature determines and declares that the provisions of this act fulfill an important state interest.

Section 3. Paragraph (f) is added to subsection (15) of section 121.021, Florida Statutes, to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(15)

(f) Effective August 1, 2008, “special risk member” includes any member who meets the special criteria for continued membership set forth in s. 121.0515(2)(k).

Section 4. Paragraphs (g) through (j) of subsection (2) of section 121.0515, Florida Statutes, are amended, paragraph (k) is added to that subsection, and paragraph (d) is added to subsection (7) of that section, to read:

121.0515 Special risk membership.—

(2) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(g) The member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member’s primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community; or

(h) Effective October 1, 2005, through June 30, 2008, the member must be employed by a law enforcement agency or medical examiner’s office in a forensic discipline recognized by the International Association for Identification and must qualify for active membership in the International Association for Identification. The member’s primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are clerical or in accounting, purchasing, legal, and personnel, shall not be included;:-

(i) Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory in one of the following classes:

1. Forensic technologist (class code 8459);
2. Crime laboratory technician (class code 8461);
3. Crime laboratory analyst (class code 8463);
4. Senior crime laboratory analyst (class code 8464);
5. Crime laboratory analyst supervisor (class code 8466);
6. Forensic chief (class code 9602); or
7. Forensic services quality manager (class code 9603);:-

(j) Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and must spend at least 65 percent of his or her time performing duties that involve the collection, examination, preservation, documentation, preparation, or analysis of human tissues or fluids or physical evidence having potential biological, chemical, or radiological hazard or contamination, or use chemicals, processes, or materials that may have carcinogenic or health-damaging properties in the analysis of such evidence, or the member must be the direct supervisor of one or more individuals having such responsibility. If a special risk member changes to another position within the same agency, he or she must submit a complete application as provided in paragraph (3)(a); or-

(k) The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have suffered a qualifying injury as defined in this paragraph, must not be receiving disability retirement benefits as provided in s. 121.091(4), and must satisfy the requirements of this paragraph.

1. The ability to qualify for the class of membership defined in s. 121.021(15)(f) shall occur when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

a. That this physical loss or loss of use is total and permanent, except in the event that the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75-percent loss of motor function with respect to each arm or leg affected.

b. That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. That, notwithstanding this physical loss or loss of use, the individual is able to perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is either not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, “qualifying injury” means an injury sustained in the line of duty, as certified by the member’s employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury when the injury is a physical injury to the member’s physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding anything in this section to the contrary, an injury that would otherwise qualify as a qualifying injury shall not be considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c., that is required for qualification as a special risk member under this paragraph is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether a new position as described in sub-subparagraph 1.c. exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

(7) RETENTION OF SPECIAL RISK NORMAL RETIREMENT DATE.

(d) Notwithstanding any provision of this subsection to the contrary, this subsection does not apply to any special risk member who qualifies for continued membership pursuant to the provisions of paragraph (2)(k).

Section 5. Paragraphs (b) and (c) of subsection (2) of section 112.191, Florida Statutes, are amended to read:

112.191 Firefighters; death benefits.—

(2)

(b) The sum of \$50,000, as adjusted pursuant to paragraph (i), shall be paid as provided in this section if a firefighter is accidentally killed as specified in paragraph (a) and the accidental death occurs as a result of the firefighter’s response to what is reasonably believed to be an emergency involving the protection of life or property or the firefighter’s participation in a training exercise. This sum ~~is shall be~~ in addition to any sum provided ~~for~~ in paragraph (a). Notwithstanding any other provision of law, ~~in no case shall~~ the amount payable under this subsection may not be less than the actual amount stated therein.

(c) If a firefighter, while engaged in the performance of his or her firefighter duties, is unlawfully and intentionally killed, is injured by an

unlawful and intentional act of another person and dies as a result of such injury, dies as a result of a fire which has been determined to have been caused by an act of arson, or subsequently dies as a result of injuries sustained therefrom, the sum of \$150,000, as adjusted pursuant to paragraph (i), shall be paid as provided in this section. Notwithstanding any other provision of law, ~~in no case shall~~ the amount payable under this subsection may not be less than the actual amount stated therein.

Section 6. The Legislature finds that this act fulfills an important state interest.

Section 7. This act shall take effect upon becoming a law, and applies to firefighter deaths occurring on or after November 1, 2003.

Approved by the Governor June 1, 2010.

Filed in Office Secretary of State June 1, 2010.