

1 **H. B. 4497**

2  
3 (By Delegates Caputo, Stephens, Ashley,  
4 Swartzmiller, Diserio, Ferro, Storch,  
5 Lawrence, Fleischauer, Morgan and Manypenny)  
6

7 [Introduced February 13, 2014; referred to the  
8 Committee on Banking and Insurance then the Judiciary.]  
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10 A BILL to amend and reenact §23-4-1 of the Code of West Virginia,  
11 1931, as amended, relating to workers' compensation; creating  
12 a rebuttable presumption that development of certain cancers  
13 by professional or volunteer firefighters arose out of the  
14 course of employment; and requiring the Insurance Commissioner  
15 to study the effects of the rebuttable presumption.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §23-4-1 of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

19 **ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

20 **§23-4-1. To whom compensation fund disbursed; occupational**  
21 **pneumoconiosis and other occupational diseases**  
22 **included in "injury" and "personal injury";**  
23 **definition of occupational pneumoconiosis and other**  
24 **occupational diseases; rebuttable presumption for**  
25 **cardiovascular injury and disease, pulmonary disease**

1                   **or cancer for firefighters.**

2           (a) Subject to the provisions and limitations elsewhere in  
3 this chapter, workers' compensation benefits shall be paid the  
4 Workers' Compensation Fund, to the employees of employers subject  
5 to this chapter who have received personal injuries in the course  
6 of and resulting from their covered employment or to the  
7 dependents, if any, of the employees in case death has ensued,  
8 according to the provisions hereinafter made: *Provided*, That in  
9 the case of any employees of the state and its political  
10 subdivisions, including: Counties; municipalities; cities; towns;  
11 any separate corporation or instrumentality established by one or  
12 more counties, cities or towns as permitted by law; any corporation  
13 or instrumentality supported in most part by counties, cities or  
14 towns; any public corporation charged by law with the performance  
15 of a governmental function and whose jurisdiction is coextensive  
16 with one or more counties, cities or towns; any agency or  
17 organization established by the Department of Mental Health for the  
18 provision of community health or mental retardation services and  
19 which is supported, in whole or in part, by state, county or  
20 municipal funds; board, agency, commission, department or spending  
21 unit, including any agency created by rule of the Supreme Court of  
22 Appeals, who have received personal injuries in the course of and  
23 resulting from their covered employment, the employees are  
24 ineligible to receive compensation while the employees are at the

1 same time and for the same reason drawing sick leave benefits. The  
2 state employees may only use sick leave for nonjob-related absences  
3 consistent with sick leave use and may draw workers' compensation  
4 benefits only where there is a job-related injury. This proviso  
5 shall not apply to permanent benefits: *Provided, however,* That the  
6 employees may collect sick leave benefits until receiving temporary  
7 total disability benefits. The Division of Personnel shall  
8 promulgate rules pursuant to article three, chapter twenty-nine-a  
9 of this code relating to use of sick leave benefits by employees  
10 receiving personal injuries in the course of and resulting from  
11 covered employment: *Provided further,* That in the event an  
12 employee is injured in the course of and resulting from covered  
13 employment and the injury results in lost time from work and the  
14 employee for whatever reason uses or obtains sick leave benefits  
15 and subsequently receives temporary total disability benefits for  
16 the same time period, the employee may be restored sick leave time  
17 taken by him or her as a result of the compensable injury by paying  
18 to his or her employer the temporary total disability benefits  
19 received or an amount equal to the temporary total disability  
20 benefits received. The employee shall be restored sick leave time  
21 on a day-for-day basis which corresponds to temporary total  
22 disability benefits paid to the employer: *And provided further,*  
23 That since the intent of this subsection is to prevent an employee  
24 of the state or any of its political subdivisions from collecting

1 both temporary total disability benefits and sick leave benefits  
2 for the same time period, nothing in this subsection prevents an  
3 employee of the state or any of its political subdivisions from  
4 electing to receive either sick leave benefits or temporary total  
5 disability benefits, but not both.

6 (b) For the purposes of this chapter, the terms "injury" and  
7 "personal injury" include occupational pneumoconiosis and any other  
8 occupational disease, as hereinafter defined, and workers'  
9 compensation benefits shall be paid to the employees of the  
10 employers in whose employment the employees have been exposed to  
11 the hazards of occupational pneumoconiosis or other occupational  
12 disease and in this state have contracted occupational  
13 pneumoconiosis or other occupational disease, or have suffered a  
14 perceptible aggravation of an existing pneumoconiosis or other  
15 occupational disease, or to the dependents, if any, of the  
16 employees, in case death has ensued, according to the provisions  
17 hereinafter made: *Provided*, That compensation shall not be payable  
18 for the disease of occupational pneumoconiosis, or death resulting  
19 from the disease, unless the employee has been exposed to the  
20 hazards of occupational pneumoconiosis in the State of West  
21 Virginia over a continuous period of not less than two years during  
22 the ten years immediately preceding the date of his or her last  
23 exposure to such hazards, or for any five of the fifteen years  
24 immediately preceding the date of his or her last exposure. An

1 application for benefits on account of occupational pneumoconiosis  
2 shall set forth the name of the employer or employers and the time  
3 worked for each. The commission may allocate to and divide any  
4 charges resulting from such claim among the employers by whom the  
5 claimant was employed for as much as sixty days during the period  
6 of three years immediately preceding the date of last exposure to  
7 the hazards of occupational pneumoconiosis. The allocation shall  
8 be based upon the time and degree of exposure with each employer.

9 (c) For the purposes of this chapter, disability or death  
10 resulting from occupational pneumoconiosis, as defined in  
11 subsection (d) of this section, shall be treated and compensated as  
12 an injury by accident.

13 (d) Occupational pneumoconiosis is a disease of the lungs  
14 caused by the inhalation of minute particles of dust over a period  
15 of time due to causes and conditions arising out of and in the  
16 course of the employment. The term "occupational pneumoconiosis"  
17 includes, but is not limited to, such diseases as silicosis,  
18 anthracosilicosis, coal worker's pneumoconiosis, commonly known as  
19 black lung or miner's asthma, silico-tuberculosis (silicosis  
20 accompanied by active tuberculosis of the lungs), coal worker's  
21 pneumoconiosis accompanied by active tuberculosis of the lungs,  
22 asbestosis, siderosis, anthrax and any and all other dust diseases  
23 of the lungs and conditions and diseases caused by occupational  
24 pneumoconiosis which are not specifically designated in this

1 section meeting the definition of occupational pneumoconiosis set  
2 forth in this subsection.

3 (e) In determining the presence of occupational  
4 pneumoconiosis, X-ray evidence may be considered, but shall not be  
5 accorded greater weight than any other type of evidence  
6 demonstrating occupational pneumoconiosis.

7 (f) For the purposes of this chapter, occupational disease  
8 means a disease incurred in the course of and resulting from  
9 employment. No ordinary disease of life to which the general  
10 public is exposed outside of the employment is compensable except  
11 when it follows as an incident of occupational disease as defined  
12 in this chapter. Except in the case of occupational  
13 pneumoconiosis, a disease shall be considered to have been incurred  
14 in the course of or to have resulted from the employment only if it  
15 is apparent to the rational mind, upon consideration of all the  
16 circumstances: (1) That there is a direct causal connection  
17 between the conditions under which work is performed and the  
18 occupational disease; (2) that it can be seen to have followed as  
19 a natural incident of the work as a result of the exposure  
20 occasioned by the nature of the employment; (3) that it can be  
21 fairly traced to the employment as the proximate cause; (4) that it  
22 does not come from a hazard to which workmen would have been  
23 equally exposed outside of the employment; (5) that it is  
24 incidental to the character of the business and not independent of

1 the relation of employer and employee; and (6) that it appears to  
2 have had its origin in a risk connected with the employment and to  
3 have flowed from that source as a natural consequence, though it  
4 need not have been foreseen or expected before its contraction:  
5 *Provided*, That compensation shall not be payable for an  
6 occupational disease or death resulting from the disease unless the  
7 employee has been exposed to the hazards of the disease in the  
8 State of West Virginia over a continuous period that is determined  
9 to be sufficient, by rule of the board of managers, for the disease  
10 to have occurred in the course of and resulting from the employee's  
11 employment. An application for benefits on account of an  
12 occupational disease shall set forth the name of the employer or  
13 employers and the time worked for each. The commission may  
14 allocate to and divide any charges resulting from such claim among  
15 the employers by whom the claimant was employed. The allocation  
16 shall be based upon the time and degree of exposure with each  
17 employer.

18 (g) No award shall be made under the provisions of this  
19 chapter for any occupational disease contracted prior to July 1,  
20 1949. An employee shall be considered to have contracted an  
21 occupational disease within the meaning of this subsection if the  
22 disease or condition has developed to such an extent that it can be  
23 diagnosed as an occupational disease.

24 (h) (1) For purposes of this chapter, a rebuttable presumption

1 that a professional firefighter who has developed a cardiovascular  
2 or pulmonary disease or sustained a cardiovascular injury has  
3 received an injury or contracted a disease arising out of and in  
4 the course of his or her employment exists if: (i) The person has  
5 been actively employed by a fire department as a professional  
6 firefighter for a minimum of two years prior to the cardiovascular  
7 injury or onset of a cardiovascular or pulmonary disease or death;  
8 and (ii) the injury or onset of the disease or death occurred  
9 within six months of having participated in fire fighting or a  
10 training or drill exercise which actually involved fire fighting.  
11 When the above conditions are met, it shall be presumed that  
12 sufficient notice of the injury, disease or death has been given  
13 and that the injury, disease or death was not self inflicted.

14 (2) For purposes of this chapter, a rebuttable presumption  
15 that a professional or volunteer firefighter who has developed  
16 leukemia, lymphoma or multiple myeloma contracted the disease  
17 arising out of and in the course of his or her employment exists  
18 if: (i) The person completed an initial and any subsequent  
19 screening evaluations as recommended by the American Cancer Society  
20 based on the age and sex of the firefighter prior to becoming a  
21 firefighter or within two years of the effective date of this  
22 subdivision, and the evaluation indicated no evidence of cancer;  
23 (ii) the person was actively employed by a West Virginia fire  
24 department as a professional or volunteer firefighter for a minimum



1 of five years prior to the onset or diagnosis of leukemia, lymphoma  
2 or multiple myeloma; (iii) the diagnosis of the disease or death  
3 occurred no later than ten years after the person's last active  
4 date of employment as a firefighter; (iv) the person is under the  
5 age of sixty-five; and (v) the person has not used tobacco products  
6 at any time within ten years of the date of diagnosis. When the  
7 above conditions are met, it shall be presumed that sufficient  
8 notice of the disease or death has been given and that the disease  
9 or death was not self inflicted.

10       ~~(2)~~ (3) The Insurance Commissioner shall study the effects of  
11 the rebuttable presumptions created in this subsection on the  
12 premiums charged for workers' compensation for professional  
13 municipal firefighters; the probable effects of extending these  
14 presumptions to volunteer firefighters; and the overall impact of  
15 the risk management programs, wage replacement, premium  
16 calculation, the number of hours worked per volunteer, treatment of  
17 nonactive or "social" members of a volunteer crew and the  
18 feasibility of combining various volunteer departments under a  
19 single policy on the availability and cost of providing workers'  
20 compensation coverage to volunteer firefighters. The Insurance  
21 Commissioner shall file the report with the Joint Committee on  
22 Government and Finance no later than December 1, 2008.

23       (i) Claims for occupational disease as defined in subsection  
24 (f) of this section, except occupational pneumoconiosis for all

1 workers and pulmonary disease and cardiovascular injury and disease  
2 for professional firefighters, shall be processed in like manner as  
3 claims for all other personal injuries.

4 (j) On or before January 1, 2004, the Workers' Compensation  
5 Commission shall adopt standards for the evaluation of claimants  
6 and the determination of a claimant's degree of whole-body medical  
7 impairment in claims of carpal tunnel syndrome.

NOTE: The purpose of this bill is to provide a rebuttable presumption that a professional firefighter who developed leukemia, lymphoma or multiple myeloma arising out of and in the course of employment as a firefighter provided that the firefighter completed certain cancer screening, the firefighter worked in West Virginia as a firefighter for at least five years, the firefighter has not used tobacco products for ten years and is not over sixty-five years old.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.