

**Senate Bill No. 518**

(By Senators Yost and Fitzsimmons)

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[Introduced February 10, 2014; referred to the Committee on 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 to whom compensation fund  
12 disbursed; occupational pneumoconiosis and other occupational  
13 diseases included in definitions of "injury" and "personal  
14 injury"; definition of "occupational pneumoconiosis" and other  
15 occupational diseases; and rebuttable presumptions for certain  
16 injuries and diseases for firefighters, including members of  
17 volunteer fire departments.

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

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

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

22 **§23-4-1. To whom compensation fund disbursed; occupational**  
23 **pneumoconiosis and other occupational diseases**

1           **included in "injury" and "personal injury";**  
2           **definition of occupational pneumoconiosis and other**  
3           **occupational diseases; rebuttable presumption for**  
4           **cardiovascular injury and disease or pulmonary**  
5           **disease for firefighters.**

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

1 municipal funds; board, agency, commission, department or spending  
2 unit, including any agency created by rule of the Supreme Court of  
3 Appeals, who have received personal injuries in the course of and  
4 resulting from their covered employment, the employees are  
5 ineligible to receive compensation while the employees are at the  
6 same time and for the same reason drawing sick leave benefits. The  
7 state employees may only use sick leave for nonjob-related absences  
8 consistent with sick leave use and may draw workers' compensation  
9 benefits only where there is a job-related injury. This proviso  
10 shall not apply to permanent benefits: *Provided, however,* That the  
11 employees may collect sick leave benefits until receiving temporary  
12 total disability benefits. The Division of Personnel shall  
13 promulgate rules pursuant to article three, chapter twenty-nine-a  
14 of this code relating to use of sick leave benefits by employees  
15 receiving personal injuries in the course of and resulting from  
16 covered employment: *Provided further,* That in the event an  
17 employee is injured in the course of and resulting from covered  
18 employment and the injury results in lost time from work and the  
19 employee for whatever reason uses or obtains sick leave benefits  
20 and subsequently receives temporary total disability benefits for  
21 the same time period, the employee may be restored sick leave time  
22 taken by him or her as a result of the compensable injury by paying  
23 to his or her employer the temporary total disability benefits  
24 received or an amount equal to the temporary total disability

1 benefits received. The employee shall be restored sick leave time  
2 on a day-for-day basis which corresponds to temporary total  
3 disability benefits paid to the employer: *And provided further,*  
4 That since the intent of this subsection is to prevent an employee  
5 of the state or any of its political subdivisions from collecting  
6 both temporary total disability benefits and sick leave benefits  
7 for the same time period, nothing in this subsection prevents an  
8 employee of the state or any of its political subdivisions from  
9 electing to receive either sick leave benefits or temporary total  
10 disability benefits, but not both.

11 (b) For the purposes of this chapter, the terms "injury" and  
12 "personal injury" include occupational pneumoconiosis and any other  
13 occupational disease, as hereinafter defined, and workers'  
14 compensation benefits shall be paid to the employees of the  
15 employers in whose employment the employees have been exposed to  
16 the hazards of occupational pneumoconiosis or other occupational  
17 disease and ~~in this state~~ have contracted occupational  
18 pneumoconiosis or other occupational disease, or have suffered a  
19 perceptible aggravation of an existing pneumoconiosis or other  
20 occupational disease, or to the dependents, if any, of the  
21 employees, in case death has ensued, according to the provisions  
22 hereinafter made: *Provided,* That compensation shall not be payable  
23 for the disease of occupational pneumoconiosis, or death resulting  
24 from the disease, unless the employee has been exposed to the

1 hazards of occupational pneumoconiosis in the State of West  
2 Virginia over a continuous period of not less than two years during  
3 the ten years immediately preceding the date of his or her last  
4 exposure to such hazards, or for any five of the fifteen years  
5 immediately preceding the date of his or her last exposure:  
6 Provided, however, That compensation may be paid for the disease of  
7 occupational pneumoconiosis or other occupational disease, or death  
8 resulting from the disease when the employee performed work out of  
9 the state at the direction and under the control of the employer.

10 An application for benefits on account of occupational  
11 pneumoconiosis shall set forth the name of the employer or  
12 employers and the time worked for each. The commission may  
13 allocate to and divide any charges resulting from such claim among  
14 the employers by whom the claimant was employed for as much as  
15 sixty days during the period of three years immediately preceding  
16 the date of last exposure to the hazards of occupational  
17 pneumoconiosis. The allocation shall be based upon the time and  
18 degree of exposure with each employer.

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

23 (d) Occupational pneumoconiosis is a disease of the lungs  
24 caused by the inhalation of minute particles of dust over a period

1 of time due to causes and conditions arising out of and in the  
2 course of the employment. The term "occupational pneumoconiosis"  
3 includes, but is not limited to, such diseases as silicosis,  
4 anthracosilicosis, coal worker's pneumoconiosis, commonly known as  
5 black lung or miner's asthma, silicotuberculosis (silicosis  
6 accompanied by active tuberculosis of the lungs), coal worker's  
7 pneumoconiosis accompanied by active tuberculosis of the lungs,  
8 asbestosis, siderosis, anthrax and any and all other dust diseases  
9 of the lungs and conditions and diseases caused by occupational  
10 pneumoconiosis which are not specifically designated in this  
11 section meeting the definition of occupational pneumoconiosis set  
12 forth in this subsection.

13 (e) In determining the presence of occupational  
14 pneumoconiosis, X-ray evidence may be considered, but shall not be  
15 accorded greater weight than any other type of evidence  
16 demonstrating occupational pneumoconiosis.

17 (f) For the purposes of this chapter, occupational disease  
18 means a disease incurred in the course of and resulting from  
19 employment. No ordinary disease of life to which the general  
20 public is exposed outside of the employment is compensable except  
21 when it follows as an incident of occupational disease as defined  
22 in this chapter. Except in the case of occupational  
23 pneumoconiosis, a disease shall be considered to have been incurred  
24 in the course of or to have resulted from the employment only if it

1 is apparent to the rational mind, upon consideration of all the  
2 circumstances: (1) That there is a direct causal connection  
3 between the conditions under which work is performed and the  
4 occupational disease; (2) that it can be seen to have followed as  
5 a natural incident of the work as a result of the exposure  
6 occasioned by the nature of the employment; (3) that it can be  
7 fairly traced to the employment as the proximate cause; (4) that it  
8 does not come from a hazard to which workmen would have been  
9 equally exposed outside of the employment; (5) that it is  
10 incidental to the character of the business and not independent of  
11 the relation of employer and employee; and (6) that it appears to  
12 have had its origin in a risk connected with the employment and to  
13 have flowed from that source as a natural consequence, though it  
14 need not have been foreseen or expected before its contraction:  
15 *Provided,* That compensation shall not be payable for an  
16 occupational disease or death resulting from the disease unless the  
17 employee has been exposed to the hazards of the disease in the  
18 State of West Virginia over a continuous period that is determined  
19 to be sufficient, by rule of the board of managers, for the disease  
20 to have occurred in the course of and resulting from the employee's  
21 employment. An application for benefits on account of an  
22 occupational disease shall set forth the name of the employer or  
23 employers and the time worked for each. The commission may  
24 allocate to and divide any charges resulting from such claim among

1 the employers by whom the claimant was employed. The allocation  
2 shall be based upon the time and degree of exposure with each  
3 employer.

4 (g) No award shall be made under the provisions of this  
5 chapter for any occupational disease contracted prior to July 1,  
6 1949. An employee shall be considered to have contracted an  
7 occupational disease within the meaning of this subsection if the  
8 disease or condition has developed to such an extent that it can be  
9 diagnosed as an occupational disease.

10 (h) (1) For purposes of this chapter, a rebuttable presumption  
11 that a professional firefighter, including a member of a volunteer  
12 fire department who has developed a cardiovascular or pulmonary  
13 disease or sustained a cardiovascular injury or who has developed  
14 leukemia, lymphoma or multiple myeloma arising out of and in the  
15 course of employment as a firefighter has received an injury or  
16 contracted a disease arising out of and in the course of his or her  
17 employment exists if: (I) The person has been actively employed by  
18 a fire department or volunteer fire department as a professional  
19 firefighter for a minimum of two years prior to the cardiovascular  
20 injury or onset of a cardiovascular or pulmonary disease or death;  
21 ~~and~~ (ii) the injury or onset of the disease or death occurred  
22 within six months of having participated in fire fighting or a  
23 training or drill exercise which actually involved fire fighting;  
24 and (iii) in the case of the development of leukemia, lymphoma or



1 multiple myeloma the person has been actively employed by a fire  
2 department or volunteer fire department as a professional  
3 firefighter for a minimum of five years in the state prior to the  
4 development of leukemia, lymphoma or multiple myeloma, has not used  
5 tobacco products for at least ten years, is not over the age of  
6 sixty-five years and has completed cancer screenings during these  
7 periods. When the above conditions are met, it shall be presumed  
8 that sufficient notice of the injury, disease or death has been  
9 given and that the injury, disease or death was not self inflicted.

10 (2) The Insurance Commissioner shall study the effects of the  
11 rebuttable presumptions created in this subsection on the premiums  
12 charged for workers' compensation for professional municipal  
13 firefighters; the probable effects of extending these presumptions  
14 to volunteer firefighters; and the overall impact of the risk  
15 management programs, wage replacement, premium calculation, the  
16 number of hours worked per volunteer, treatment of nonactive or  
17 "social" members of a volunteer crew and the feasibility of  
18 combining various volunteer departments under a single policy on  
19 the availability and cost of providing workers' compensation  
20 coverage to volunteer firefighters. The Insurance Commissioner  
21 shall file the report with the Joint Committee on Government and  
22 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. The bill also allows for coverage to employees for occupational pneumoconiosis or other occupational disease for work performed out-of-state.

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