

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2498

BY DELEGATES LOVEJOY, ROHRBACH, CAPUTO, STORCH,
BREWER, CANESTRARO, PUSHKIN, MILLER, R., ROBINSON
AND HICKS

[Introduced February 16, 2017; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating
 2 to workers' compensation; creating a rebuttable presumption that development of certain
 3 cancers by professional or volunteer firefighters arose out of the course of employment;
 4 and requiring the Insurance Commissioner to study the effects of the rebuttable
 5 presumption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

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

13 state, county or municipal funds; board, agency, commission, department or spending unit,
14 including any agency created by rule of the Supreme Court of Appeals, who have received
15 personal injuries in the course of and resulting from their covered employment, the employees
16 are ineligible to receive compensation while the employees are at the same time and for the same
17 reason drawing sick leave benefits. The state employees may only use sick leave for nonjob-
18 related absences consistent with sick leave use and may draw workers' compensation benefits
19 only where there is a job-related injury. This proviso shall not apply to permanent benefits:
20 *Provided, however,* That the employees may collect sick leave benefits until receiving temporary
21 total disability benefits. The Division of Personnel shall promulgate rules pursuant to article three,
22 chapter twenty-nine-a of this code relating to use of sick leave benefits by employees receiving
23 personal injuries in the course of and resulting from covered employment: *Provided further,* That
24 in the event an employee is injured in the course of and resulting from covered employment and
25 the injury results in lost time from work and the employee for whatever reason uses or obtains
26 sick leave benefits and subsequently receives temporary total disability benefits for the same time
27 period, the employee may be restored sick leave time taken by him or her as a result of the
28 compensable injury by paying to his or her employer the temporary total disability benefits
29 received or an amount equal to the temporary total disability benefits received. The employee
30 shall be restored sick leave time on a day-for-day basis which corresponds to temporary total
31 disability benefits paid to the employer: *And provided further,* That since the intent of this
32 subsection is to prevent an employee of the state or any of its political subdivisions from collecting
33 both temporary total disability benefits and sick leave benefits for the same time period, nothing
34 in this subsection prevents an employee of the state or any of its political subdivisions from
35 electing to receive either sick leave benefits or temporary total disability benefits, but not both.

36 (b) For the purposes of this chapter, the terms "injury" and "personal injury" include
37 occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and
38 workers' compensation benefits shall be paid to the employees of the employers in whose

39 employment the employees have been exposed to the hazards of occupational pneumoconiosis
40 or other occupational disease and in this state have contracted occupational pneumoconiosis or
41 other occupational disease, or have suffered a perceptible aggravation of an existing
42 pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in
43 case death has ensued, according to the provisions hereinafter made: *Provided*, That
44 compensation shall not be payable for the disease of occupational pneumoconiosis, or death
45 resulting from the disease, unless the employee has been exposed to the hazards of occupational
46 pneumoconiosis in the State of West Virginia over a continuous period of not less than two years
47 during the ten years immediately preceding the date of his or her last exposure to such hazards,
48 or for any five of the fifteen years immediately preceding the date of his or her last exposure. An
49 application for benefits on account of occupational pneumoconiosis shall set forth the name of
50 the employer or employers and the time worked for each. The commission may allocate to and
51 divide any charges resulting from such claim among the employers by whom the claimant was
52 employed for as much as sixty days during the period of three years immediately preceding the
53 date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be
54 based upon the time and degree of exposure with each employer.

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

58 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of
59 minute particles of dust over a period of time due to causes and conditions arising out of and in
60 the course of the employment. The term "occupational pneumoconiosis" includes, but is not
61 limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly
62 known as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active
63 tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of
64 the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and

65 conditions and diseases caused by occupational pneumoconiosis which are not specifically
66 designated in this section meeting the definition of occupational pneumoconiosis set forth in this
67 subsection.

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

71 (f) For the purposes of this chapter, occupational disease means a disease incurred in the
72 course of and resulting from employment. No ordinary disease of life to which the general public
73 is exposed outside of the employment is compensable except when it follows as an incident of
74 occupational disease as defined in this chapter. Except in the case of occupational
75 pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have
76 resulted from the employment only if it is apparent to the rational mind, upon consideration of all
77 the circumstances: (1) That there is a direct causal connection between the conditions under
78 which work is performed and the occupational disease; (2) that it can be seen to have followed
79 as a natural incident of the work as a result of the exposure occasioned by the nature of the
80 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it
81 does not come from a hazard to which workmen would have been equally exposed outside of the
82 employment; (5) that it is incidental to the character of the business and not independent of the
83 relation of employer and employee; and (6) that it appears to have had its origin in a risk
84 connected with the employment and to have flowed from that source as a natural consequence,
85 though it need not have been foreseen or expected before its contraction: *Provided*, That
86 compensation shall not be payable for an occupational disease or death resulting from the
87 disease unless the employee has been exposed to the hazards of the disease in the State of
88 West Virginia over a continuous period that is determined to be sufficient, by rule of the board of
89 managers, for the disease to have occurred in the course of and resulting from the employee's
90 employment. An application for benefits on account of an occupational disease shall set forth the

91 name of the employer or employers and the time worked for each. The commission may allocate
92 to and divide any charges resulting from such claim among the employers by whom the claimant
93 was employed. The allocation shall be based upon the time and degree of exposure with each
94 employer.

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

99 (h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter
100 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury
101 has received an injury or contracted a disease arising out of and in the course of his or her
102 employment exists if: (i) The person has been actively employed by a fire department as a
103 professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a
104 cardiovascular or pulmonary disease or death; and (ii) the injury or onset of the disease or death
105 occurred within six months of having participated in firefighting or a training or drill exercise which
106 actually involved fire fighting. When the above conditions are met, it shall be presumed that
107 sufficient notice of the injury, disease or death has been given and that the injury, disease or
108 death was not self-inflicted.

109 (2) For purposes of this chapter, a rebuttable presumption that a professional or volunteer
110 firefighter who has developed leukemia, lymphoma or multiple myeloma contracted the disease
111 arising out of and in the course of his or her employment exists if: (i) The person completed an
112 initial and any subsequent screening evaluations as recommended by the American Cancer
113 Society based on the age and sex of the firefighter prior to becoming a firefighter or within two
114 years of the effective date of this subdivision, and the evaluation indicated no evidence of cancer;
115 (ii) the person was actively employed by a West Virginia fire department as a professional or
116 volunteer firefighter for a minimum of five years prior to the onset or diagnosis of leukemia,

117 lymphoma or multiple myeloma; (iii) the diagnosis of the disease or death occurred no later than
118 ten years after the person's last active date of employment as a firefighter; (iv) the person is under
119 the age of sixty-five; and (v) the person has not used tobacco products at any time within ten
120 years of the date of diagnosis. When the above conditions are met, it shall be presumed that
121 sufficient notice of the disease or death has been given and that the disease or death was not
122 self-inflicted.

123 (3) The Insurance Commissioner shall study the effects of the rebuttable presumptions
124 created in this subsection on the premiums charged for workers' compensation for professional
125 municipal firefighters; the probable effects of extending these presumptions to volunteer
126 firefighters; and the overall impact of the risk management programs, wage replacement,
127 premium calculation, the number of hours worked per volunteer, treatment of nonactive or "social"
128 members of a volunteer crew and the feasibility of combining various volunteer departments under
129 a single policy on the availability and cost of providing workers' compensation coverage to
130 volunteer firefighters. The Insurance Commissioner shall file the report with the Joint Committee
131 on Government and Finance no later than December 1, 2008.

132 (i) Claims for occupational disease as defined in subsection (f) of this section, except
133 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
134 and disease for professional firefighters, shall be processed in like manner as claims for all other
135 personal injuries.

136 (j) On or before January 1, 2004, the Workers' Compensation Commission shall adopt
137 standards for the evaluation of claimants and the determination of a claimant's degree of whole-
138 body medical 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 a heading or the present law and underscoring indicates new language that would be added.