

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2292**

BY DELEGATES STEELE, TONEY, PAYNTER, SYPOLT,

CROUSE, LOVEJOY AND MANDT

[Introduced February 10, 2021; Referred  
to the Committee on Fire Departments and  
Emergency Medical Services 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 compensable diseases of certain firefighters covered by workers' compensation;  
3 establishing rebuttable presumption of injury arising out of and in the course of  
4 employment for certain covered firefighters that develop bladder cancer, mesothelioma,  
5 and testicular cancer; and providing that the rebuttable presumption expires on July 1,  
6 2025, unless extended by the Legislature.

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

#### **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 from 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, or its successor  
12 agencies, for the provision of community health or intellectual and developmental disability  
13 services and which is supported, in whole or in part, by state, county, or municipal funds; board,

14 agency, commission, department, or spending unit, including any agency created by rule of the  
15 Supreme Court of Appeals, who have received personal injuries in the course of and resulting  
16 from their covered employment, the employees are ineligible to receive compensation while the  
17 employees are at the same time and for the same reason drawing sick leave benefits. The state  
18 employees may only use sick leave for nonjob-related absences consistent with sick leave use  
19 and may draw workers' compensation benefits only where there is a job-related injury. This  
20 proviso does not apply to permanent benefits: *Provided, however,* That the employees may collect  
21 sick leave benefits until receiving temporary total disability benefits. The Division of Personnel  
22 shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.*, of this code, relating to  
23 use of sick leave benefits by employees receiving personal injuries in the course of and resulting  
24 from covered employment: *Provided further,* That in the event an employee is injured in the course  
25 of and resulting from covered employment and the injury results in lost time from work and the  
26 employee for whatever reason uses or obtains sick leave benefits and subsequently receives  
27 temporary total disability benefits for the same time period, the employee may be restored sick  
28 leave time taken by him or her as a result of the compensable injury by paying to his or her  
29 employer the temporary total disability benefits received or an amount equal to the temporary total  
30 disability benefits received. The employee shall be restored sick leave time on a day-for-day basis  
31 which corresponds to temporary total disability benefits paid to the employer: *And provided*  
32 *further,* That since the intent of this subsection is to prevent an employee of the state or any of its  
33 political subdivisions from collecting both temporary total disability benefits and sick leave benefits  
34 for the same time period, nothing in this subsection prevents an employee of the state or any of  
35 its political subdivisions from electing to receive either sick leave benefits or temporary total  
36 disability benefits, but not both.

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

40 employment the employees have been exposed to the hazards of occupational pneumoconiosis  
41 or other occupational disease and have contracted occupational pneumoconiosis or other  
42 occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis  
43 or other occupational disease, or to the dependents, if any, of the employees, in case death has  
44 ensued, according to the provisions hereinafter made: *Provided*, That compensation is not  
45 payable for the disease of occupational pneumoconiosis, or death resulting from the disease,  
46 unless the employee has been exposed to the hazards of occupational pneumoconiosis in the  
47 state of West Virginia over a continuous period of not less than two years during the 10 years  
48 immediately preceding the date of his or her last exposure to such hazards, or for any five of the  
49 15 years immediately preceding the date of his or her last exposure. An application for benefits  
50 on account of occupational pneumoconiosis shall set forth the name of the employer or employers  
51 and the time worked for each. The commission may allocate to and divide any charges resulting  
52 from such claim among the employers by whom the claimant was employed for as much as 60  
53 days during the period of three years immediately preceding the date of last exposure to the  
54 hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree  
55 of exposure with each employer.

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

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

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

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

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

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

95 (g) No award may be made under the provisions of this chapter for any occupational  
96 disease contracted prior to July 1, 1949. An employee has contracted an occupational disease  
97 within the meaning of this subsection if the disease or condition has developed to such an extent  
98 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 or who has developed leukemia, lymphoma, ~~or~~ multiple myeloma, bladder cancer, mesothelioma,  
102 or testicular cancer arising out of and in the course of employment as a firefighter has received  
103 an injury or contracted a disease arising out of and in the course of his or her employment exists  
104 if: (A) The person has been actively employed by a fire department as a professional firefighter  
105 for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or  
106 pulmonary disease or death; (B) the injury or onset of the disease or death occurred within six  
107 months of having participated in firefighting or a training or drill exercise which actually involved  
108 firefighting; and (C) in the case of the development of leukemia, lymphoma, ~~or~~ multiple myeloma,  
109 bladder cancer, mesothelioma, or testicular cancer, the person has been actively employed by a  
110 fire department as a professional firefighter for a minimum of five years in the state prior to the  
111 development of leukemia, lymphoma, ~~or~~ multiple myeloma, bladder cancer, mesothelioma, or  
112 testicular cancer, has not used tobacco products for at least 10 years, and is not over the age of  
113 65 years. When the above conditions are met, it shall be presumed that sufficient notice of the  
114 injury, disease, or death has been given and that the injury, disease, or death was not self-  
115 inflicted.

116 (2) The amendments made to this section during the 2018 regular session of the  
117 Legislature to include leukemia, lymphoma, or multiple myeloma arising out of and in the course

118 of employment as a firefighter as a rebuttable presumption shall expire on July 1, 2023, unless  
119 extended by the Legislature. The amendments made to this section during the 2021 Regular  
120 Session of the Legislature to include bladder cancer, mesothelioma or testicular cancer arising  
121 out of and in the course of employment as a firefighter as a rebuttable presumption expire on July  
122 1, 2025, unless extended by the Legislature.

123 (i) Claims for occupational disease as defined in §23-4-1(f) of this code, except  
124 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury  
125 and disease for professional firefighters, shall be processed in like manner as claims for all other  
126 personal injuries.

NOTE: The purpose of this bill is to include three types of cancer for which rebuttable presumption of injury from employment exists for firefighters and provides that the presumption for the three types of cancer expires July 1, 2025, unless extended by the Legislature.

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