

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2128

By Delegates Steele and Crouse

[Introduced January 11, 2023; 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 to
 2 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 2027, 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 any
 6 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 from
16 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 further,*
32 That since the intent of this subsection is to prevent an employee of the state or any of its political
33 subdivisions from collecting both temporary total disability benefits and sick leave benefits for the
34 same time period, nothing in this subsection prevents an employee of the state or any of its
35 political subdivisions from electing to receive either sick leave benefits or temporary total disability
36 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 or
43 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 15
49 years immediately preceding the date of his or her last exposure. An application for benefits on
50 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 as
58 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 the
61 course of the employment. The term "occupational pneumoconiosis" includes, but is not limited to,
62 such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as
63 black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of
64 the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs,
65 asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and conditions and

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

68 (e) In determining the presence of occupational pneumoconiosis, X-ray evidence may be
69 considered, but may 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 is
73 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 is 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 as
79 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 connected
84 with the employment and to have flowed from that source as a natural consequence, though it
85 need not have been foreseen or expected before its contraction: *Provided*, That compensation is
86 not payable for an occupational disease or death resulting from the disease unless the employee
87 has been exposed to the hazards of the disease in the state of West Virginia over a continuous
88 period that is determined to be sufficient, by rule of the board of managers, for the disease to have
89 occurred in the course of and resulting from the employee's employment. An application for
90 benefits on account of an occupational disease shall set forth the name of the employer or
91 employers and the time worked for each. The commission may allocate to and divide any charges

92 resulting from the claim among the employers by whom the claimant was employed. The
93 allocation shall be based upon the time and degree of exposure with each employer.

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

98 (h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter
99 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury or
100 who has developed leukemia, lymphoma, ~~or~~ multiple myeloma, bladder cancer, mesothelioma, or
101 testicular cancer arising out of and in the course of employment as a firefighter has received an
102 injury or contracted a disease arising out of and in the course of his or her employment exists if: (A)
103 The person has been actively employed by a fire department as a professional firefighter for a
104 minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary
105 disease or death; (B) the injury or onset of the disease or death occurred within six months of
106 having participated in firefighting or a training or drill exercise which actually involved firefighting;
107 and (C) in the case of the development of leukemia, lymphoma, ~~or~~ multiple myeloma, bladder
108 cancer, mesothelioma, or testicular cancer, the person has been actively employed by a fire
109 department as a professional firefighter for a minimum of five years in the state prior to the
110 development of leukemia, lymphoma, ~~or~~ multiple myeloma, bladder cancer, mesothelioma, or
111 testicular cancer, has not used tobacco products for at least 10 years, and is not over the age of 65
112 years. When the above conditions are met, it shall be presumed that sufficient notice of the injury,
113 disease, or death has been given and that the injury, disease, or death was not self-inflicted.

114 (2) The amendments made to this section during the 2018 regular session of the
115 Legislature to include leukemia, lymphoma, or multiple myeloma arising out of and in the course of
116 employment as a firefighter as a rebuttable presumption shall expire on July 1, 2023, unless
117 extended by the Legislature. The amendments made to this section during the 2023 Regular

118 Session of the Legislature to include bladder cancer, mesothelioma or testicular cancer arising out
119 of and in the course of employment as a firefighter as a rebuttable presumption expire on July 1,
120 2027, unless extended by the Legislature.

121 (i) Claims for occupational disease as defined in §23-4-1(f) of this code, except
122 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
123 and disease for professional firefighters, shall be processed in like manner as claims for all other
124 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, 2027, 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.