

H. B. 2006

(By Delegates Staggers, Moye, Shaver, Perry,
Martin, Smith, Moore and Michael)

[Introduced January 12, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §23-4-1 of the Code of West Virginia,
1931, as amended, relating to providing a rebuttable
presumption that a volunteer firefighter has developed a
pulmonary disease or sustained a cardiovascular injury for
workers' compensation benefits provided certain conditions of
employment have been met; eliminating the rebuttable
presumption that cardiovascular disease is a compensable
injury for firefighters; and changes the six-month time frame
for certain firefighter injuries to six weeks.

Be it enacted by the Legislature of West Virginia:

That §23-4-1 of the Code of West Virginia, 1931, as amended,
be amended and reenacted 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";**

1 **definition of occupational pneumoconiosis and other**
2 **occupational diseases; rebuttable presumption for**
3 **cardiovascular injury and ~~disease~~ or pulmonary**
4 **disease for firefighters.**

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

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

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

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

1 Virginia over a continuous period of not less than two years during
2 the ten years immediately preceding the date of his or her last
3 exposure to such hazards, or for any five of the fifteen years
4 immediately preceding the date of his or her last exposure. An
5 application for benefits on account of occupational pneumoconiosis
6 shall set forth the name of the employer or employers and the time
7 worked for each. The commission may allocate to and divide any
8 charges resulting from such claim among the employers by whom the
9 claimant was employed for as much as sixty days during the period
10 of three years immediately preceding the date of last exposure to
11 the hazards of occupational pneumoconiosis. The allocation shall
12 be based upon the time and degree of exposure with each employer.

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

17 (d) Occupational pneumoconiosis is a disease of the lungs
18 caused by the inhalation of minute particles of dust over a period
19 of time due to causes and conditions arising out of and in the
20 course of the employment. The term "occupational pneumoconiosis"
21 includes, but is not limited to, such diseases as silicosis,
22 anthracosilicosis, coal worker's pneumoconiosis, commonly known as
23 black lung or miner's asthma, silicotuberculosis (silicosis
24 accompanied by active tuberculosis of the lungs), coal worker's

1 pneumoconiosis accompanied by active tuberculosis of the lungs,
2 asbestosis, siderosis, anthrax and any and all other dust diseases
3 of the lungs and conditions and diseases caused by occupational
4 pneumoconiosis which are not specifically designated in this
5 section meeting the definition of occupational pneumoconiosis set
6 forth in this subsection.

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

11 (f) For the purposes of this chapter, occupational disease
12 means a disease incurred in the course of and resulting from
13 employment. No ordinary disease of life to which the general
14 public is exposed outside of the employment is compensable except
15 when it follows as an incident of occupational disease as defined
16 in this chapter. Except in the case of occupational
17 pneumoconiosis, a disease shall be considered to have been incurred
18 in the course of or to have resulted from the employment only if it
19 is apparent to the rational mind, upon consideration of all the
20 circumstances: (1) That there is a direct causal connection
21 between the conditions under which work is performed and the
22 occupational disease; (2) that it can be seen to have followed as
23 a natural incident of the work as a result of the exposure
24 occasioned by the nature of the employment; (3) that it can be

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

22 (g) No award shall be made under the provisions of this
23 chapter for any occupational disease contracted prior to July 1,
24 1949. An employee shall be considered to have contracted an

1 occupational disease within the meaning of this subsection if the
2 disease or condition has developed to such an extent that it can be
3 diagnosed as an occupational disease.

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

20 (2) The Insurance Commissioner shall study the effects of the
21 rebuttable presumptions created in this subsection on the premiums
22 charged for workers' compensation for professional municipal
23 firefighters; the probable effects of extending these presumptions
24 to volunteer firefighters; and the overall impact of the risk

1 management programs, wage replacement, premium calculation, the
2 number of hours worked per volunteer, treatment of nonactive or
3 "social" members of a volunteer crew and the feasibility of
4 combining various volunteer departments under a single policy on
5 the availability and cost of providing workers' compensation
6 coverage to volunteer firefighters. The Insurance Commissioner
7 shall file the report with the Joint Committee on Government and
8 Finance no later than December 1, 2008.

9 (i) Claims for occupational disease as defined in subsection
10 (f) of this section, except occupational pneumoconiosis for all
11 workers and pulmonary disease and cardiovascular injury and disease
12 for professional and volunteer firefighters, shall be processed in
13 like manner as claims for all other personal injuries.

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

NOTE: The purpose of this bill is to provide a rebuttable presumption for a volunteer firefighter who has developed a pulmonary disease or sustained a cardiovascular injury for workers' compensation benefits provided certain conditions of employment have been met. The bill eliminates the rebuttable presumption that cardiovascular disease is a compensable injury for firefighters. The bill also changes the six month time frame for certain firefighter injuries to six weeks.

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

be added.