

1 **definition of occupational pneumoconiosis and other**
2 **occupational diseases; rebuttable presumptions for**
3 **certain injuries and diseases for firefighters.**

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

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

1 That since the intent of this subsection is to prevent an employee
2 of the state or any of its political subdivisions from collecting
3 both temporary total disability benefits and sick leave benefits
4 for the same time period, nothing in this subsection prevents an
5 employee of the state or any of its political subdivisions from
6 electing to receive either sick leave benefits or temporary total
7 disability benefits, but not both.

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

1 exposure to such hazards, or for any five of the fifteen years
2 immediately preceding the date of his or her last exposure. An
3 application for benefits on account of occupational pneumoconiosis
4 shall set forth the name of the employer or employers and the time
5 worked for each. The commission may allocate to and divide any
6 charges resulting from such claim among the employers by whom the
7 claimant was employed for as much as sixty days during the period
8 of three years immediately preceding the date of last exposure to
9 the hazards of occupational pneumoconiosis. The allocation shall
10 be based upon the time and degree of exposure with each employer.

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

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

1 of the lungs and conditions and diseases caused by occupational
2 pneumoconiosis which are not specifically designated in this
3 section meeting the definition of occupational pneumoconiosis set
4 forth in this subsection.

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

9 (f) For the purposes of this chapter, occupational disease
10 means a disease incurred in the course of and resulting from
11 employment. No ordinary disease of life to which the general
12 public is exposed outside of the employment is compensable except
13 when it follows as an incident of occupational disease as defined
14 in this chapter. Except in the case of occupational
15 pneumoconiosis, a disease shall be considered to have been incurred
16 in the course of or to have resulted from the employment only if it
17 is apparent to the rational mind, upon consideration of all the
18 circumstances: (1) That there is a direct causal connection
19 between the conditions under which work is performed and the
20 occupational disease; (2) that it can be seen to have followed as
21 a natural incident of the work as a result of the exposure
22 occasioned by the nature of the employment; (3) that it can be
23 fairly traced to the employment as the proximate cause; (4) that it
24 does not come from a hazard to which workmen would have been

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

20 (g) No award shall be made under the provisions of this
21 chapter for any occupational disease contracted prior to July 1,
22 1949. An employee shall be considered to have contracted an
23 occupational disease within the meaning of this subsection if the
24 disease or condition has developed to such an extent that it can be

1 diagnosed as an occupational disease.

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

16 (2) For purposes of this chapter, a rebuttable presumption
17 that a professional or volunteer firefighter who has developed
18 leukemia, lymphoma or multiple myeloma contracted the disease
19 arising out of and in the course of his or her employment exists
20 if: (i) The person completed an initial and any subsequent
21 screening evaluations as recommended by the American Cancer Society
22 based on the age and sex of the firefighter prior to becoming a
23 firefighter or within two years of the effective date of this
24 subdivision, and the evaluation indicated no evidence of cancer;

1 (ii) the person as actively employed by a West Virginia fire
2 department as a professional or volunteer firefighter for a minimum
3 of five years prior to the onset or diagnosis of leukemia, lymphoma
4 or multiple myeloma; (iii) the diagnosis of the disease or death
5 occurred no later than ten years after the person's last active
6 date of employment as a firefighter; (iv) the person is under the
7 age of sixty-five; and (v) the person has not used tobacco products
8 at any time within ten years of the date of diagnosis. When the
9 above conditions are met, it shall be presumed that sufficient
10 notice of the disease or death has been given and that the disease
11 or death was not self inflicted.

12 ~~(2)~~ (3) The Insurance Commissioner shall study the effects of
13 the rebuttable presumptions created in this subsection on the
14 premiums charged for workers' compensation for professional
15 municipal firefighters; the probable effects of extending these
16 presumptions to volunteer firefighters; and the overall impact of
17 the risk management programs, wage replacement, premium
18 calculation, the number of hours worked per volunteer, treatment of
19 nonactive or "social" members of a volunteer crew and the
20 feasibility of combining various volunteer departments under a
21 single policy on the availability and cost of providing workers'
22 compensation coverage to volunteer firefighters. The Insurance
23 Commissioner shall file the report with the Joint Committee on
24 Government and Finance no later than December 1, 2008.

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

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

NOTE: The purpose of this bill is to provide a rebuttable presumption that a professional fire fighter 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 the present law, and underscoring indicates new language that would be added.