

H. B. 4535

(By Delegate Staggers)

[Introduced February 15, 2012; referred to the
Committee on the Judiciary then Finance.]

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 changing 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

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

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

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

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

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

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

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

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

1 black lung or miner's asthma, silicotuberculosis (silicosis
2 accompanied by active tuberculosis of the lungs), coal worker's
3 pneumoconiosis accompanied by active tuberculosis of the lungs,
4 asbestosis, siderosis, anthrax and any and all other dust diseases
5 of the lungs and conditions and diseases caused by occupational
6 pneumoconiosis which are not specifically designated in this
7 section meeting the definition of occupational pneumoconiosis set
8 forth in this subsection.

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

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

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

23 (g) No award shall be made under the provisions of this
24 chapter for any occupational disease contracted prior to July 1,

1 1949. An employee shall be considered to have contracted an
2 occupational disease within the meaning of this subsection if the
3 disease or condition has developed to such an extent that it can be
4 diagnosed as an occupational disease.

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

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

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

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

15 (j) On or before January 1, 2004, the Workers' Compensation
16 Commission shall adopt standards for the evaluation of claimants
17 and the determination of a claimant's degree of whole-body medical
18 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.