

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 475

BY SENATORS FERNS AND KESSLER

[Introduced February 2, 2016;

Referred to the Committee on Banking and Insurance; and

then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating
 2 to whom Workers' Compensation Fund is disbursed; and including rebuttable
 3 presumptions for certain injuries and diseases for firefighters, volunteer firefighters,
 4 municipal, county and State Police officers.

Be it enacted by the Legislature of West Virginia:

1 That §23-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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"; 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 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~~ if
 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 mental retardation services and which is
 13 supported, in whole or in part, by state, county or municipal funds; board, agency, commission,

14 department or spending unit, including any agency created by rule of the Supreme Court of
15 Appeals, who have received personal injuries in the course of and resulting from their covered
16 employment, the employees are ineligible to receive compensation while the employees are at
17 the same time and for the same reason drawing sick leave benefits. The state employees may
18 only use sick leave for nonjob-related absences consistent with sick leave use and may draw
19 workers' compensation benefits only where there is a job-related injury. This proviso ~~shall~~ does
20 not apply to permanent benefits: *Provided, however,* That the employees may collect sick leave
21 benefits until receiving temporary total disability benefits. The Division of Personnel shall
22 ~~promulgate~~ propose rules for legislative approval pursuant to article three, chapter twenty-nine-a
23 of this code relating to use of sick leave benefits by employees receiving personal injuries in the
24 course of and resulting from covered employment: *Provided further,* That ~~in the event an~~ if
25 employee is injured in the course of and resulting from covered employment and the injury results
26 in lost time from work and the employee for whatever reason uses or obtains sick leave benefits
27 and subsequently receives temporary total disability benefits for the same time period, the
28 employee may be restored sick leave time taken by him or her as a result of the compensable
29 injury by paying to his or her employer the temporary total disability benefits received or an amount
30 equal to the temporary total disability benefits received. The employee shall be restored sick leave
31 time on a day-for-day basis which corresponds to temporary total disability benefits paid to the
32 employer: *And provided further,* That since the intent of this subsection is to prevent an employee
33 of the state or any of its political subdivisions from collecting both temporary total disability benefits
34 and sick leave benefits for the same time period, nothing in this subsection prevents an employee
35 of the state or any of its political subdivisions from electing to receive either sick leave benefits or
36 temporary total 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 ~~in this state~~ have contracted occupational pneumoconiosis or
42 other occupational disease, or have suffered a perceptible aggravation of an existing
43 pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in
44 case death has ensued, according to the provisions hereinafter made: *Provided*, That
45 compensation ~~shall~~ may not be payable for the disease of occupational pneumoconiosis, or death
46 resulting from the disease, unless the employee has been exposed to the hazards of occupational
47 pneumoconiosis in the State of West Virginia over a continuous period of not less than two years
48 during the ten years immediately preceding the date of his or her last exposure to ~~such~~ these
49 hazards, or for any five of the fifteen years immediately preceding the date of his or her last
50 exposure. An application for benefits on account of occupational pneumoconiosis shall set forth
51 the name of the employer or employers and the time worked for each. The commission may
52 allocate to and divide any charges resulting from such claim among the employers by whom the
53 claimant was employed for as much as sixty days during the period of three years immediately
54 preceding the date of last exposure to the hazards of occupational pneumoconiosis. The
55 allocation shall be based upon the time and degree 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 ~~shall~~ 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 shall be 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 ~~shall~~ may not be payable for an occupational disease or death resulting from the
88 disease unless the employee has been exposed to the hazards of the disease in the State of
89 West Virginia over a continuous period that is determined to be sufficient, by rule of the board of
90 managers, for the disease to have occurred in the course of and resulting from the employee's
91 employment. An application for benefits on account of an occupational disease shall set forth the

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

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

100 (h) ~~(1)~~ For purposes of this chapter, a rebuttable presumption that a professional
101 firefighter, a member of a volunteer fire department, a municipal police officer, a county police
102 officer or a member of the West Virginia State Police, who has developed a cardiovascular or
103 pulmonary disease or sustained a cardiovascular injury has received an injury or contracted a
104 disease arising out of and in the course of his or her employment exists if: (i) The person has
105 been actively employed by a fire department, volunteer fire department or as a police officer by a
106 municipality, a county, or the West Virginia State Police as a professional firefighter, volunteer fire
107 fighter or a municipal, county or state police officer for a minimum of two years prior to the
108 cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; and (ii) the injury
109 or onset of the disease or death occurred within six months of having participated in firefighting
110 or a training or drill exercise which actually involved firefighting or in the course of regular police
111 work or a training or drill exercise related to police work on the municipal, county or state level.
112 When the above conditions are met, it ~~shall be~~ is 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 Insurance Commissioner shall study the effects of the rebuttable presumptions~~
115 ~~created in this subsection on the premiums charged for workers' compensation for professional~~
116 ~~municipal firefighters; the probable effects of extending these presumptions to volunteer~~
117 ~~firefighters; and the overall impact of the risk management programs, wage replacement,~~

118 ~~premium calculation, the number of hours worked per volunteer, treatment of nonactive or "social"~~
119 ~~members of a volunteer crew and the feasibility of combining various volunteer departments under~~
120 ~~a single policy on the availability and cost of providing workers' compensation coverage to~~
121 ~~volunteer firefighters. The Insurance Commissioner shall file the report with the Joint Committee~~
122 ~~on Government and Finance no later than December 1, 2008.~~

123 (i) Claims for occupational disease as defined in subsection (f) of this section, 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.

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

NOTE: The purpose of this bill is to provide a rebuttable presumption that a professional firefighter has developed leukemia, lymphoma or multiple myeloma arising out of and in the course of employment as a firefighter if 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. The bill also allows coverage to employees for occupational pneumoconiosis or other occupational disease for work performed out-of-state.

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