

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **Senate Bill 62**

**FISCAL  
NOTE**

BY SENATORS YOST AND KESSLER

[Introduced January 13, 2016;

Referred to the Committee on Banking and Insurance;

then to the Committee on the Judiciary; and then to

the Committee on Finance.]

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; including rebuttable presumptions for  
3 certain injuries and diseases for firefighters, including members of volunteer fire  
4 departments; and allowing coverage to employees for occupational pneumoconiosis or  
5 other occupational disease for work performed out of state.

*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  
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  
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  
31 leave time on a day-for-day basis which corresponds to temporary total disability benefits paid to  
32 the employer: *And provided further,* That since the intent of this subsection is to prevent an  
33 employee of the state or any of its political subdivisions from collecting both temporary total  
34 disability benefits and sick leave benefits for the same time period, nothing in this subsection  
35 prevents an employee of the state or any of its political subdivisions from electing to receive either  
36 sick leave benefits or 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~~ is 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 hazards,  
49 or for any five of the fifteen years immediately preceding the date of his or her last exposure:  
50 *Provided, however, That compensation may be paid for the disease of occupational*  
51 *pneumoconiosis or other occupational disease, or death resulting from the disease when the*  
52 *employee performed work out of the state at the direction and under the control of the employer.*  
53 An application for benefits on account of occupational pneumoconiosis shall set forth the name  
54 of the employer or employers and the time worked for each. The commission may allocate to and  
55 divide any charges resulting from such claim among the employers by whom the claimant was  
56 employed for as much as sixty days during the period of three years immediately preceding the  
57 date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be  
58 based upon the time and degree of exposure with each employer.

59 (c) For the purposes of this chapter, disability or death resulting from occupational  
60 pneumoconiosis, as defined in subsection (d) of this section, shall be treated and compensated

61 as an injury by accident.

62 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of  
63 minute particles of dust over a period of time due to causes and conditions arising out of and in  
64 the course of the employment. The term "occupational pneumoconiosis" includes, but is not  
65 limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly  
66 known as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active  
67 tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of  
68 the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and  
69 conditions and diseases caused by occupational pneumoconiosis which are not specifically  
70 designated in this section meeting the definition of occupational pneumoconiosis set forth in this  
71 subsection.

72 (e) In determining the presence of occupational pneumoconiosis, X-ray evidence may be  
73 considered, but ~~shall~~ may not be accorded greater weight than any other type of evidence  
74 demonstrating occupational pneumoconiosis.

75 (f) For the purposes of this chapter, occupational disease means a disease incurred in the  
76 course of and resulting from employment. No ordinary disease of life to which the general public  
77 is exposed outside of the employment is compensable except when it follows as an incident of  
78 occupational disease as defined in this chapter. Except in the case of occupational  
79 pneumoconiosis, a disease ~~shall be~~ is considered to have been incurred in the course of or to  
80 have resulted from the employment only if it is apparent to the rational mind, upon consideration  
81 of all the circumstances: (1) That there is a direct causal connection between the conditions under  
82 which work is performed and the occupational disease; (2) that it can be seen to have followed  
83 as a natural incident of the work as a result of the exposure occasioned by the nature of the  
84 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it

85 does not come from a hazard to which workmen would have been equally exposed outside of the  
86 employment; (5) that it is incidental to the character of the business and not independent of the  
87 relation of employer and employee; and (6) that it appears to have had its origin in a risk  
88 connected with the employment and to have flowed from that source as a natural consequence,  
89 though it need not have been foreseen or expected before its contraction: *Provided, That*  
90 compensation ~~shall~~ is not be payable for an occupational disease or death resulting from the  
91 disease unless the employee has been exposed to the hazards of the disease in the State of  
92 West Virginia over a continuous period that is determined to be sufficient, by rule of the board of  
93 managers, for the disease to have occurred in the course of and resulting from the employee's  
94 employment. An application for benefits on account of an occupational disease shall set forth the  
95 name of the employer or employers and the time worked for each. The commission may allocate  
96 to and divide any charges resulting from ~~such~~ the claim among the employers by whom the  
97 claimant was employed. The allocation shall be based upon the time and degree of exposure  
98 with each employer.

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

103 (h) ~~(4)~~ For purposes of this chapter, a rebuttable presumption that a professional  
104 firefighter, including a member of a volunteer fire department, who has developed a  
105 cardiovascular or pulmonary disease or sustained a cardiovascular injury or who has developed  
106 leukemia, lymphoma or multiple myeloma arising out of and in the course of employment as a  
107 firefighter has received an injury or contracted a disease arising out of and in the course of his or  
108 her employment exists if: (i) The person has been actively employed by a fire department or

109 volunteer fire department as a professional firefighter for a minimum of two years prior to the  
110 cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; ~~and~~ (ii) the injury  
111 or onset of the disease or death occurred within six months of having participated in fire fighting  
112 or a training or drill exercise which actually involved fire fighting; and (iii) in the case of the  
113 development of leukemia, lymphoma or multiple myeloma the person has been actively employed  
114 by a fire department or volunteer fire department as a professional firefighter for a minimum of  
115 five years in the state prior to the development of leukemia, lymphoma or multiple myeloma, has  
116 not used tobacco products for at least ten years, is not over the age of sixty-five years and has  
117 completed cancer screenings during these periods. When the above conditions are met, it shall  
118 be presumed that sufficient notice of the injury, disease or death has been given and that the  
119 injury, disease or death was not self inflicted.

120 ~~(2) The Insurance Commissioner shall study the effects of the rebuttable presumptions~~  
121 ~~created in this subsection on the premiums charged for workers' compensation for professional~~  
122 ~~municipal firefighters; the probable effects of extending these presumptions to volunteer~~  
123 ~~firefighters; and the overall impact of the risk management programs, wage replacement,~~  
124 ~~premium calculation, the number of hours worked per volunteer, treatment of nonactive or "social"~~  
125 ~~members of a volunteer crew and the feasibility of combining various volunteer departments under~~  
126 ~~a single policy on the availability and cost of providing workers' compensation coverage to~~  
127 ~~volunteer firefighters. The Insurance Commissioner shall file the report with the Joint Committee~~  
128 ~~on Government and Finance no later than December 1, 2008.~~

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

133           ~~(j) On or before January 1, 2004, the Workers' Compensation Commission shall adopt~~  
134 ~~standards for the evaluation of claimants and the determination of a claimant's degree of whole-~~  
135 ~~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.