

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### Senate Bill 228

FISCAL  
NOTE

BY SENATOR BOSO

[introduced February 9, 2017; referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating  
 2 to workers' compensation disability and death benefits; defining "professional firefighter";  
 3 and requiring the Insurance Commissioner to study the effects of the rebuttable  
 4 presumptions created on the premiums charged for workers' compensation for  
 5 professional firefighters and the overall impact of the risk management programs, wage  
 6 replacement, premium calculation for the cost providing coverage and the separation of  
 7 professional firefighter functions from nonactive, nonfirefighting or support functions in  
 8 volunteer fire departments.

*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.**

3 (a) Subject to the provisions and limitations elsewhere in this chapter, Workers  
 4 Compensation benefits shall be paid the Workers Compensation Fund, to the employees of  
 5 employers subject to this chapter who have received personal injuries in the course of and  
 6 resulting from their covered employment or to the dependents, if any, of the employees in case  
 7 death has ensued, according to the provisions hereinafter made: *Provided*, That in the case of  
 8 any employees of the state and its political subdivisions, including: Counties; municipalities; cities;  
 9 towns; any separate corporation or instrumentality established by one or more counties, cities or  
 10 towns as permitted by law; any corporation or instrumentality supported in most part by counties,  
 11 cities or towns; any public corporation charged by law with the performance of a governmental

12 function and whose jurisdiction is coextensive with one or more counties, cities or towns; any  
13 agency or organization established by the Department of Mental Health for the provision of  
14 community health or mental retardation services and which is supported, in whole or in part, by  
15 state, county or municipal funds; board, agency, commission, department or spending unit,  
16 including any agency created by rule of the Supreme Court of Appeals, who have received  
17 personal injuries in the course of and resulting from their covered employment, the employees  
18 are ineligible to receive compensation while the employees are at the same time and for the same  
19 reason drawing sick leave benefits. The state employees may only use sick leave for nonjob-  
20 related absences consistent with sick leave use and may draw Workers' Compensation benefits  
21 only where there is a job-related injury. This proviso shall not apply to permanent benefits:  
22 *Provided, however,* That the employees may collect sick leave benefits until receiving temporary  
23 total disability benefits. The Division of Personnel shall promulgate rules pursuant to article three,  
24 chapter twenty-nine-a of this code relating to use of sick leave benefits by employees receiving  
25 personal injuries in the course of and resulting from covered employment: *Provided further,* That  
26 in the event an employee is injured in the course of and resulting from covered employment and  
27 the injury results in lost time from work and the employee for whatever reason uses or obtains  
28 sick leave benefits and subsequently receives temporary total disability benefits for the same time  
29 period, the employee may be restored sick leave time taken by him or her as a result of the  
30 compensable injury by paying to his or her employer the temporary total disability benefits  
31 received or an amount equal to the temporary total disability benefits received. The employee  
32 shall be restored sick leave time on a day-for-day basis which corresponds to temporary total  
33 disability benefits paid to the employer: *And provided further,* That since the intent of this  
34 subsection is to prevent an employee of the state or any of its political subdivisions from collecting  
35 both temporary total disability benefits and sick leave benefits for the same time period, nothing  
36 in this subsection prevents an employee of the state or any of its political subdivisions from  
37 electing to receive either sick leave benefits or temporary total disability benefits, but not both.

38 (b) For the purposes of this chapter, the terms

39 (1) "Injury" and "personal injury" include occupational pneumoconiosis and any other  
40 occupational disease, as hereinafter defined, and Workers Compensation benefits shall be paid  
41 to the employees of the employers in whose employment the employees have been exposed to  
42 the hazards of occupational pneumoconiosis or other occupational disease and in this state have  
43 contracted occupational pneumoconiosis or other occupational disease, or have suffered a  
44 perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the  
45 dependents, if any, of the employees, in case death has ensued, according to the provisions  
46 hereinafter made: *Provided*, That compensation shall not be payable for the disease of  
47 occupational pneumoconiosis, or death resulting from the disease, unless the employee has been  
48 exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a  
49 continuous period of not less than two years during the ten years immediately preceding the date  
50 of his or her last exposure to such hazards, or for any five of the fifteen years immediately  
51 preceding the date of his or her last exposure. An application for benefits on account of  
52 occupational pneumoconiosis shall set forth the name of the employer or employers and the time  
53 worked for each. The commission may allocate to and divide any charges resulting from such  
54 claim among the employers by whom the claimant was employed for as much as sixty days during  
55 the period of three years immediately preceding the date of last exposure to the hazards of  
56 occupational pneumoconiosis. The allocation shall be based upon the time and degree of  
57 exposure with each employer; and

58 (2) "Professional firefighter" means a member of a fire department that has received not  
59 less than the minimum education and training as provided in section five-d, article three, chapter  
60 twenty-nine of this code and performs functions for suppressing fire, performing rescue,  
61 controlling hazardous material releases and other related duties regardless of compensation as  
62 a volunteer or career firefighter.

63 (c) For the purposes of this chapter, disability or death resulting from occupational

64 pneumoconiosis, as defined in subsection (d) of this section, shall be treated and compensated  
65 as an injury by accident.

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

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

79 (f) For the purposes of this chapter, occupational disease means a disease incurred in the  
80 course of and resulting from employment. No ordinary disease of life to which the general public  
81 is exposed outside of the employment is compensable except when it follows as an incident of  
82 occupational disease as defined in this chapter. Except in the case of occupational  
83 pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have  
84 resulted from the employment only if it is apparent to the rational mind, upon consideration of all  
85 the circumstances: (1) That there is a direct causal connection between the conditions under  
86 which work is performed and the occupational disease; (2) that it can be seen to have followed  
87 as a natural incident of the work as a result of the exposure occasioned by the nature of the  
88 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it  
89 does not come from a hazard to which workmen would have been equally exposed outside of the

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

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

107 (h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter  
108 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury  
109 has received an injury or contracted a disease arising out of and in the course of his or her  
110 employment exists if: (i) The person has been actively employed by a fire department as a  
111 professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a  
112 cardiovascular or pulmonary disease or death; and (ii) the injury or onset of the disease or death  
113 occurred within six months of having participated in firefighting or a training or drill exercise which  
114 actually involved fire fighting. When the above conditions are met, it shall be presumed that  
115 sufficient notice of the injury, disease or death has been given and that the injury, disease or

116 death was not self inflicted.

117 (2) The Insurance Commissioner shall study the effects of the rebuttable presumptions  
 118 created in this subsection on the premiums charged for Workers' Compensation for professional  
 119 ~~municipal~~ firefighters; ~~the probable effects of extending these presumptions to volunteer~~  
 120 ~~firefighters~~; and the overall impact of the risk management programs, wage replacement,  
 121 premium calculation, ~~the number of hours worked per volunteer~~, treatment of nonactive,  
 122 nonfirefighting or support functions "social" members of a volunteer crew fire department and the  
 123 feasibility of combining various volunteer fire departments under a single policy on the availability  
 124 and cost of providing worker's compensation coverage to ~~volunteer~~ professional firefighter  
 125 functions in volunteer fire departments and separating individuals providing nonactive,  
 126 nonfirefighting or support functions in volunteer fire departments. The Insurance Commissioner  
 127 shall file the report with the Joint Committee on Government and Finance no later than ~~December~~  
 128 ~~1, 2008~~ November 1, 2017.

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 claimants degree of whole-  
 135 body medical impairment in claims of carpal tunnel syndrome.

NOTE: The purpose of this bill is to define "professional firefighter" for purposes of Workers' Compensation disability and death benefits and to require the Insurance Commissioner to study the effects of the rebuttable presumptions created in this section on the premiums charged for workers' compensation for professional firefighters and the overall impact of the risk management programs, wage replacement, premium calculation for the cost providing coverage to professional firefighters and the separation of professional firefighter functions from nonactive, nonfirefighting or support functions in volunteer fire departments.

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