

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 82

BY SENATORS FERNS AND CLINE

[Originating in the Committee on Government
Organization; Reported on February 22, 2018]

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
3 for certain injuries and diseases for professional firefighters; setting eligibility criteria for
4 rebuttable presumptions; setting expiration of rebuttable presumption regarding leukemia,
5 lymphoma, or multiple myeloma arising out of and in the course of employment as a
6 firefighter on July 1, 2023, absent legislative action to the contrary; allowing coverage to
7 employees for occupational pneumoconiosis or other occupational disease for work
8 performed out of state under certain conditions; and eliminating outdated and obsolete
9 language.

Be it enacted by the Legislature of West Virginia:

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~~ intellectual and
13 developmental disability services and which is supported, in whole or in part, by state, county, or
14 municipal funds; board, agency, commission, department, or spending unit, including any agency
15 created by rule of the Supreme Court of Appeals, who have received personal injuries in the
16 course of and resulting from their covered employment, the employees are ineligible to receive
17 compensation while the employees are at the same time and for the same reason drawing sick
18 leave benefits. The state employees may only use sick leave for nonjob-related absences
19 consistent with sick leave use and may draw workers' compensation benefits only where there is
20 a job-related injury. This proviso ~~shall~~ does not apply to permanent benefits: *Provided, however,*
21 That the employees may collect sick leave benefits until receiving temporary total disability
22 benefits. The Division of Personnel shall ~~promulgate~~ propose rules for legislative approval
23 pursuant to §29A-3-1 *et seq.* of this code relating to use of sick leave benefits by employees
24 receiving personal injuries in the course of and resulting from covered employment: *Provided*
25 *further,* That in the event an employee is injured in the course of and resulting from covered
26 employment and the injury results in lost time from work and the employee for whatever reason
27 uses or obtains sick leave benefits and subsequently receives temporary total disability benefits
28 for the same time period, the employee may be restored sick leave time taken by him or her as a
29 result of the compensable injury by paying to his or her employer the temporary total disability
30 benefits received or an amount equal to the temporary total disability benefits received. The
31 employee shall be restored sick leave time on a day-for-day basis which corresponds to
32 temporary total disability benefits paid to the employer: *And provided further,* That since the intent
33 of this subsection is to prevent an employee of the state or any of its political subdivisions from
34 collecting both temporary total disability benefits and sick leave benefits for the same time period,
35 nothing in this subsection prevents an employee of the state or any of its political subdivisions
36 from electing to receive either sick leave benefits or temporary total disability benefits, but not

37 both.

38 (b) For the purposes of this chapter, the terms “injury” and “personal injury” include
39 occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and
40 workers’ compensation benefits shall be paid to the employees of the employers in whose
41 employment the employees have been exposed to the hazards of occupational pneumoconiosis
42 or other occupational disease and ~~in this state~~ have contracted occupational pneumoconiosis or
43 other occupational disease, or have suffered a perceptible aggravation of an existing
44 pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in
45 case death has ensued, according to the provisions hereinafter made: *Provided*, That
46 compensation ~~shall~~ is not be payable for the disease of occupational pneumoconiosis, or death
47 resulting from the disease, unless the employee has been exposed to the hazards of occupational
48 pneumoconiosis in the State of West Virginia over a continuous period of not less than two years
49 during the 10 years immediately preceding the date of his or her last exposure to such hazards,
50 or for any five of the 15 years immediately preceding the date of his or her last exposure: *Provided*,
51 however, That compensation may be paid for the disease of occupational pneumoconiosis or
52 other occupational disease, or death resulting from the disease when the employee performed
53 work out of the state at the direction and under the control of the employer. An application for
54 benefits on account of occupational pneumoconiosis shall set forth the name of the employer or
55 employers and the time worked for each. The commission may allocate to and divide any charges
56 resulting from such claim among the employers by whom the claimant was employed for as much
57 as 60 days during the period of three years immediately preceding the date of last exposure to
58 the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and
59 degree of exposure with each employer.

60 (c) For the purposes of this chapter, disability or death resulting from occupational
61 pneumoconiosis, as defined in §23-4-1(d) of this code, shall be treated and compensated as an
62 injury by accident.

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

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

76 (f) For the purposes of this chapter, occupational disease means a disease incurred in the
77 course of and resulting from employment. No ordinary disease of life to which the general public
78 is exposed outside of the employment is compensable except when it follows as an incident of
79 occupational disease as defined in this chapter. Except in the case of occupational
80 pneumoconiosis, a disease ~~shall be~~ is considered to have been incurred in the course of or to
81 have resulted from the employment only if it is apparent to the rational mind, upon consideration
82 of all the circumstances: (1) That there is a direct causal connection between the conditions under
83 which work is performed and the occupational disease; (2) that it can be seen to have followed
84 as a natural incident of the work as a result of the exposure occasioned by the nature of the
85 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it
86 does not come from a hazard to which workmen would have been equally exposed outside of the
87 employment; (5) that it is incidental to the character of the business and not independent of the
88 relation of employer and employee; and (6) that it appears to have had its origin in a risk

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

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

104 (h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter
105 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury
106 or who has developed leukemia, lymphoma, or multiple myeloma arising out of and in the course
107 of employment as a firefighter has received an injury or contracted a disease arising out of and in
108 the course of his or her employment exists if: (A) The person has been actively employed by a
109 fire department as a professional firefighter for a minimum of two years prior to the cardiovascular
110 injury or onset of a cardiovascular or pulmonary disease or death; ~~and~~ (B) the injury or onset of
111 the disease or death occurred within six months of having participated in firefighting or a training
112 or drill exercise which actually involved firefighting; and (C) in the case of the development of
113 leukemia, lymphoma, or multiple myeloma the person has been actively employed by a fire
114 department as a professional firefighter for a minimum of five years in the state prior to the

115 development of leukemia, lymphoma, or multiple myeloma, has not used tobacco products for at
116 least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall
117 be presumed that sufficient notice of the injury, disease, or death has been given and that the
118 injury, disease, or death was not self inflicted.

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

128 (2) The amendments made to this section during the 2018 regular session of the
129 Legislature to include leukemia, lymphoma, or multiple myeloma arising out of and in the course
130 of employment as a firefighter as a rebuttable presumption shall expire on July 1, 2023, unless
131 extended by the Legislature.

132 (i) Claims for occupational disease as defined in §23-4-1(f) of this code, except
133 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
134 and disease for professional firefighters, shall be processed in like manner as claims for all other
135 personal injuries.

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

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