

SB 571

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SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE

FOR


Senate Bill No. 571

(SENATORS JENKINS, PLYMALE, DEEM, MINARD,
GREEN, HALL, HUNTER, FOSTER, KESSLER,
STOLLINGS AND YODER, *original sponsors*)

[Passed March 8, 2008; in effect ninety days from passage.]

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OFFICE OF THE
SECRETARY OF STATE 

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AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to creating a rebuttable presumption that cardiovascular injury, disease or death or pulmonary disease or death of a professional firefighter is an occupational injury if certain criteria are met; providing that sufficient notice of occupational injury, disease or death has been provided under such

circumstances; establishing presumption that death or injury was not self inflicted; and requiring the Insurance Commissioner conduct a study and report back to the Joint Committee on Government and Finance.

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

17 whose jurisdiction is coextensive with one or more
18 counties, cities or towns; any agency or organization
19 established by the Department of Mental Health for the
20 provision of community health or mental retardation
21 services and which is supported, in whole or in part, by
22 state, county or municipal funds; board, agency,
23 commission, department or spending unit, including
24 any agency created by rule of the Supreme Court of
25 Appeals, who have received personal injuries in the
26 course of and resulting from their covered employment,
27 the employees are ineligible to receive compensation
28 while the employees are at the same time and for the
29 same reason drawing sick leave benefits. The state
30 employees may only use sick leave for nonjob-related
31 absences consistent with sick leave use and may draw
32 workers' compensation benefits only where there is a
33 job-related injury. This proviso shall not apply to
34 permanent benefits: *Provided, however,* That the
35 employees may collect sick leave benefits until
36 receiving temporary total disability benefits. The
37 Division of Personnel shall promulgate rules pursuant
38 to article three, chapter twenty-nine-a of this code
39 relating to use of sick leave benefits by employees
40 receiving personal injuries in the course of and
41 resulting from covered employment: *Provided further,*
42 That in the event an employee is injured in the course of
43 and resulting from covered employment and the injury
44 results in lost time from work and the employee for
45 whatever reason uses or obtains sick leave benefits and
46 subsequently receives temporary total disability
47 benefits for the same time period, the employee may be
48 restored sick leave time taken by him or her as a result
49 of the compensable injury by paying to his or her
50 employer the temporary total disability benefits
51 received or an amount equal to the temporary total

52 disability benefits received. The employee shall be
53 restored sick leave time on a day-for-day basis which
54 corresponds to temporary total disability benefits paid
55 to the employer: *And provided further*, That since the
56 intent of this subsection is to prevent an employee of
57 the state or any of its political subdivisions from
58 collecting both temporary total disability benefits and
59 sick leave benefits for the same time period, nothing in
60 this subsection prevents an employee of the state or any
61 of its political subdivisions from electing to receive
62 either sick leave benefits or temporary total disability
63 benefits, but not both.

64 (b) For the purposes of this chapter, the terms
65 "injury" and "personal injury" include occupational
66 pneumoconiosis and any other occupational disease, as
67 hereinafter defined, and workers' compensation
68 benefits shall be paid to the employees of the employers
69 in whose employment the employees have been exposed
70 to the hazards of occupational pneumoconiosis or other
71 occupational disease and in this state have contracted
72 occupational pneumoconiosis or other occupational
73 disease, or have suffered a perceptible aggravation of
74 an existing pneumoconiosis or other occupational
75 disease, or to the dependents, if any, of the employees,
76 in case death has ensued, according to the provisions
77 hereinafter made: *Provided*, That compensation shall
78 not be payable for the disease of occupational
79 pneumoconiosis, or death resulting from the disease,
80 unless the employee has been exposed to the hazards of
81 occupational pneumoconiosis in the State of West
82 Virginia over a continuous period of not less than two
83 years during the ten years immediately preceding the
84 date of his or her last exposure to such hazards, or for
85 any five of the fifteen years immediately preceding the

86 date of his or her last exposure. An application for
87 benefits on account of occupational pneumoconiosis
88 shall set forth the name of the employer or employers
89 and the time worked for each. The commission may
90 allocate to and divide any charges resulting from such
91 claim among the employers by whom the claimant was
92 employed for as much as sixty days during the period of
93 three years immediately preceding the date of last
94 exposure to the hazards of occupational
95 pneumoconiosis. The allocation shall be based upon the
96 time and degree of exposure with each employer.

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

101 (d) Occupational pneumoconiosis is a disease of the
102 lungs caused by the inhalation of minute particles of
103 dust over a period of time due to causes and conditions
104 arising out of and in the course of the employment. The
105 term "occupational pneumoconiosis" includes, but is
106 not limited to, such diseases as silicosis,
107 anthracosilicosis, coal worker's pneumoconiosis,
108 commonly known as black lung or miner's asthma,
109 silico-tuberculosis (silicosis accompanied by active
110 tuberculosis of the lungs), coal worker's
111 pneumoconiosis accompanied by active tuberculosis of
112 the lungs, asbestosis, siderosis, anthrax and any and all
113 other dust diseases of the lungs and conditions and
114 diseases caused by occupational pneumoconiosis which
115 are not specifically designated in this section meeting
116 the definition of occupational pneumoconiosis set forth
117 in this subsection.

118 (e) In determining the presence of occupational
119 pneumoconiosis, X-ray evidence may be considered, but
120 shall not be accorded greater weight than any other
121 type of evidence demonstrating occupational
122 pneumoconiosis.

123 (f) For the purposes of this chapter, occupational
124 disease means a disease incurred in the course of and
125 resulting from employment. No ordinary disease of life
126 to which the general public is exposed outside of the
127 employment is compensable except when it follows as
128 an incident of occupational disease as defined in this
129 chapter. Except in the case of occupational
130 pneumoconiosis, a disease shall be considered to have
131 been incurred in the course of or to have resulted from
132 the employment only if it is apparent to the rational
133 mind, upon consideration of all the circumstances: (1)
134 That there is a direct causal connection between the
135 conditions under which work is performed and the
136 occupational disease; (2) that it can be seen to have
137 followed as a natural incident of the work as a result of
138 the exposure occasioned by the nature of the
139 employment; (3) that it can be fairly traced to the
140 employment as the proximate cause; (4) that it does not
141 come from a hazard to which workmen would have
142 been equally exposed outside of the employment; (5)
143 that it is incidental to the character of the business and
144 not independent of the relation of employer and
145 employee; and (6) that it appears to have had its origin
146 in a risk connected with the employment and to have
147 flowed from that source as a natural consequence,
148 though it need not have been foreseen or expected
149 before its contraction: *Provided*, That compensation
150 shall not be payable for an occupational disease or
151 death resulting from the disease unless the employee

152 has been exposed to the hazards of the disease in the
153 State of West Virginia over a continuous period that is
154 determined to be sufficient, by rule of the board of
155 managers, for the disease to have occurred in the course
156 of and resulting from the employee's employment. An
157 application for benefits on account of an occupational
158 disease shall set forth the name of the employer or
159 employers and the time worked for each. The
160 commission may allocate to and divide any charges
161 resulting from such claim among the employers by
162 whom the claimant was employed. The allocation shall
163 be based upon the time and degree of exposure with
164 each employer.

165 (g) No award shall be made under the provisions of
166 this chapter for any occupational disease contracted
167 prior to the first day of July, one thousand nine
168 hundred forty-nine. An employee shall be considered
169 to have contracted an occupational disease within the
170 meaning of this subsection if the disease or condition
171 has developed to such an extent that it can be
172 diagnosed as an occupational disease.

173 (h) (1) For purposes of this chapter, a rebuttable
174 presumption that a professional firefighter who has
175 developed a cardiovascular or pulmonary disease or
176 sustained a cardiovascular injury has received an injury
177 or contracted a disease arising out of and in the course
178 of his or her employment exists if: (i) The person has
179 been actively employed by a fire department as a
180 professional firefighter for a minimum of two years
181 prior to the cardiovascular injury or onset of a
182 cardiovascular or pulmonary disease or death; and (ii)
183 the injury or onset of the disease or death occurred
184 within six months of having participated in firefighting

185 or a training or drill exercise which actually involved
186 firefighting. When the above conditions are met, it
187 shall be presumed that sufficient notice of the injury,
188 disease or death has been given and that the injury,
189 disease or death was not self inflicted.

190 (2) The Insurance Commissioner shall study the
191 effects of the rebuttable presumptions created in this
192 subsection on the premiums charged for workers'
193 compensation for professional municipal firefighters;
194 the probable effects of extending these presumptions to
195 volunteer firefighters; and the overall impact of the risk
196 management programs, wage replacement, premium
197 calculation, the number of hours worked per volunteer,
198 treatment of nonactive or "social" members of a
199 volunteer crew and the feasibility of combining various
200 volunteer departments under a single policy on the
201 availability and cost of providing workers'
202 compensation coverage to volunteer firefighters. The
203 Insurance Commissioner shall file the report with the
204 Joint Committee on Government and Finance no later
205 than the first day of December, two thousand eight.

206 (i) Claims for occupational disease as defined in
207 subsection (f) of this section, except occupational
208 pneumoconiosis for all workers and pulmonary disease
209 and cardiovascular injury and disease for professional
210 firefighters, shall be processed in like manner as claims
211 for all other personal injuries.

212 (j) On or before the first day of January, two thousand
213 four, the Workers' Compensation Commission shall
214 adopt standards for the evaluation of claimants and the
215 determination of a claimant's degree of whole-body
216 medical impairment in claims of carpal tunnel
217 syndrome.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. L. White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell E. White
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *1st* Day of *April*, 2008.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 3:45pm