

1 **Senate Bill No. 456**

2 (By Senators Jenkins, Kessler (Mr. President), Chafin and
3 Plymale)
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5 [Introduced March 6, 2013; referred to the Committee on the
6 Judiciary.]
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11 A BILL to amend and reenact §23-4-1 of the Code of West Virginia,
12 1931, as amended, relating to workers' compensation; creating
13 a rebuttable presumption that development of certain cancers
14 by professional or volunteer firefighters arose out of the
15 course of employment; and requiring the Insurance Commissioner
16 to study the effects of the rebuttable presumption.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §23-4-1 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

21 **§23-4-1. To whom compensation fund disbursed; occupational
22 pneumoconiosis and other occupational diseases**

1 **included in "injury" and "personal injury";**
2 **definition of occupational pneumoconiosis and other**
3 **occupational diseases; rebuttable presumption for**
4 **cardiovascular injury and disease, pulmonary disease**
5 **or cancer for firefighters.**

6 (a) Subject to the provisions and limitations elsewhere in
7 this chapter, workers' compensation benefits shall be paid the
8 Workers' Compensation Fund, to the employees of employers subject
9 to this chapter who have received personal injuries in the course
10 of and resulting from their covered employment or to the
11 dependents, if any, of the employees in case death has ensued,
12 according to the provisions hereinafter made: *Provided*, That in
13 the case of any employees of the state and its political
14 subdivisions, including: Counties; municipalities; cities; towns;
15 any separate corporation or instrumentality established by one or
16 more counties, cities or towns as permitted by law; any corporation
17 or instrumentality supported in most part by counties, cities or
18 towns; any public corporation charged by law with the performance
19 of a governmental function and whose jurisdiction is coextensive
20 with one or more counties, cities or towns; any agency or
21 organization established by the Department of Mental Health for the
22 provision of community health or mental retardation services and

1 which is supported, in whole or in part, by state, county or
2 municipal funds; board, agency, commission, department or spending
3 unit, including any agency created by rule of the Supreme Court of
4 Appeals, who have received personal injuries in the course of and
5 resulting from their covered employment, the employees are
6 ineligible to receive compensation while the employees are at the
7 same time and for the same reason drawing sick leave benefits. The
8 state employees may only use sick leave for nonjob-related absences
9 consistent with sick leave use and may draw workers' compensation
10 benefits only where there is a job-related injury. This proviso
11 shall not apply to permanent benefits: *Provided, however,* That the
12 employees may collect sick leave benefits until receiving temporary
13 total disability benefits. The Division of Personnel shall
14 promulgate rules pursuant to article three, chapter twenty-nine-a
15 of this code relating to use of sick leave benefits by employees
16 receiving personal injuries in the course of and resulting from
17 covered employment: *Provided further,* That in the event an
18 employee is injured in the course of and resulting from covered
19 employment and the injury results in lost time from work and the
20 employee for whatever reason uses or obtains sick leave benefits
21 and subsequently receives temporary total disability benefits for
22 the same time period, the employee may be restored sick leave time
23 taken by him or her as a result of the compensable injury by paying

1 to his or her employer the temporary total disability benefits
2 received or an amount equal to the temporary total disability
3 benefits received. The employee shall be restored sick leave time
4 on a day-for-day basis which corresponds to temporary total
5 disability benefits paid to the employer: *And provided further,*
6 That since the intent of this subsection is to prevent an employee
7 of the state or any of its political subdivisions from collecting
8 both temporary total disability benefits and sick leave benefits
9 for the same time period, nothing in this subsection prevents an
10 employee of the state or any of its political subdivisions from
11 electing to receive either sick leave benefits or temporary total
12 disability benefits, but not both.

13 (b) For the purposes of this chapter, the terms "injury" and
14 "personal injury" include occupational pneumoconiosis and any other
15 occupational disease, as hereinafter defined, and workers'
16 compensation benefits shall be paid to the employees of the
17 employers in whose employment the employees have been exposed to
18 the hazards of occupational pneumoconiosis or other occupational
19 disease and in this state have contracted occupational
20 pneumoconiosis or other occupational disease, or have suffered a
21 perceptible aggravation of an existing pneumoconiosis or other
22 occupational disease, or to the dependents, if any, of the
23 employees, in case death has ensued, according to the provisions

1 hereinafter made: *Provided*, That compensation shall not be payable
2 for the disease of occupational pneumoconiosis, or death resulting
3 from the disease, unless the employee has been exposed to the
4 hazards of occupational pneumoconiosis in the State of West
5 Virginia over a continuous period of not less than two years during
6 the ten years immediately preceding the date of his or her last
7 exposure to such hazards, or for any five of the fifteen years
8 immediately preceding the date of his or her last exposure. An
9 application for benefits on account of occupational pneumoconiosis
10 shall set forth the name of the employer or employers and the time
11 worked for each. The commission may allocate to and divide any
12 charges resulting from such claim among the employers by whom the
13 claimant was employed for as much as sixty days during the period
14 of three years immediately preceding the date of last exposure to
15 the hazards of occupational pneumoconiosis. The allocation shall
16 be based upon the time and degree of exposure with each employer.

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

21 (d) Occupational pneumoconiosis is a disease of the lungs
22 caused by the inhalation of minute particles of dust over a period
23 of time due to causes and conditions arising out of and in the

1 course of the employment. The term "occupational pneumoconiosis"
2 includes, but is not limited to, such diseases as silicosis,
3 anthracosilicosis, coal worker's pneumoconiosis, commonly known as
4 black lung or miner's asthma, silicotuberculosis (silicosis
5 accompanied by active tuberculosis of the lungs), coal worker's
6 pneumoconiosis accompanied by active tuberculosis of the lungs,
7 asbestosis, siderosis, anthrax and any and all other dust diseases
8 of the lungs and conditions and diseases caused by occupational
9 pneumoconiosis which are not specifically designated in this
10 section meeting the definition of occupational pneumoconiosis set
11 forth in this subsection.

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

16 (f) For the purposes of this chapter, occupational disease
17 means a disease incurred in the course of and resulting from
18 employment. No ordinary disease of life to which the general
19 public is exposed outside of the employment is compensable except
20 when it follows as an incident of occupational disease as defined
21 in this chapter. Except in the case of occupational
22 pneumoconiosis, a disease shall be considered to have been incurred
23 in the course of or to have resulted from the employment only if it

1 is apparent to the rational mind, upon consideration of all the
2 circumstances: (1) That there is a direct causal connection
3 between the conditions under which work is performed and the
4 occupational disease; (2) that it can be seen to have followed as
5 a natural incident of the work as a result of the exposure
6 occasioned by the nature of the employment; (3) that it can be
7 fairly traced to the employment as the proximate cause; (4) that it
8 does not come from a hazard to which workmen would have been
9 equally exposed outside of the employment; (5) that it is
10 incidental to the character of the business and not independent of
11 the relation of employer and employee; and (6) that it appears to
12 have had its origin in a risk connected with the employment and to
13 have flowed from that source as a natural consequence, though it
14 need not have been foreseen or expected before its contraction:
15 *Provided,* That compensation shall not be payable for an
16 occupational disease or death resulting from the disease unless the
17 employee has been exposed to the hazards of the disease in the
18 State of West Virginia over a continuous period that is determined
19 to be sufficient, by rule of the board of managers, for the disease
20 to have occurred in the course of and resulting from the employee's
21 employment. An application for benefits on account of an
22 occupational disease shall set forth the name of the employer or
23 employers and the time worked for each. The commission may

1 allocate to and divide any charges resulting from such claim among
2 the employers by whom the claimant was employed. The allocation
3 shall be based upon the time and degree of exposure with each
4 employer.

5 (g) No award shall be made under the provisions of this
6 chapter for any occupational disease contracted prior to July 1,
7 1949. An employee shall be considered to have contracted an
8 occupational disease within the meaning of this subsection if the
9 disease or condition has developed to such an extent that it can be
10 diagnosed as an occupational disease.

11 (h) (1) For purposes of this chapter, a rebuttable presumption
12 that a professional firefighter who has developed a cardiovascular
13 or pulmonary disease or sustained a cardiovascular injury has
14 received an injury or contracted a disease arising out of and in
15 the course of his or her employment exists if: (i) The person has
16 been actively employed by a fire department as a professional
17 firefighter for a minimum of two years prior to the cardiovascular
18 injury or onset of a cardiovascular or pulmonary disease or death;
19 and (ii) the injury or onset of the disease or death occurred
20 within six months of having participated in fire fighting or a
21 training or drill exercise which actually involved fire fighting.
22 When the above conditions are met, it shall be presumed that
23 sufficient notice of the injury, disease or death has been given

1 and that the injury, disease or death was not self inflicted.

2 (2) For purposes of this chapter, a rebuttable presumption
3 that a professional or volunteer firefighter who has developed
4 leukemia, lymphoma or multiple myeloma contracted the disease
5 arising out of and in the course of his or her employment exists
6 if: (i) The person completed an initial and any subsequent
7 screening evaluations as recommended by the American Cancer Society
8 based on the age and sex of the firefighter prior to becoming a
9 firefighter or within two years of the effective date of this
10 subdivision, and the evaluation indicated no evidence of cancer;
11 (ii) the person was actively employed by a West Virginia fire
12 department as a professional or volunteer firefighter for a minimum
13 of five years prior to the onset or diagnosis of leukemia, lymphoma
14 or multiple myeloma; (iii) the diagnosis of the disease or death
15 occurred no later than ten years after the person's last active
16 date of employment as a firefighter; (iv) the person is under the
17 age of sixty-five; and (v) the person has not used tobacco products
18 at any time within ten years of the date of diagnosis. When the
19 above conditions are met, it shall be presumed that sufficient
20 notice of the disease or death has been given and that the disease
21 or death was not self inflicted.

22 ~~(2)~~ (3) The Insurance Commissioner shall study the effects of
23 the rebuttable presumptions created in this subsection on the

1 premiums charged for workers' compensation for professional
2 municipal firefighters; the probable effects of extending these
3 presumptions to volunteer firefighters; and the overall impact of
4 the risk management programs, wage replacement, premium
5 calculation, the number of hours worked per volunteer, treatment of
6 nonactive or "social" members of a volunteer crew and the
7 feasibility of combining various volunteer departments under a
8 single policy on the availability and cost of providing workers'
9 compensation coverage to volunteer firefighters. The Insurance
10 Commissioner shall file the report with the Joint Committee on
11 Government and Finance no later than December 1, 2008.

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

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

NOTE: The purpose of this bill is to provide a rebuttable
presumption that a professional firefighter who developed leukemia,

lymphoma or multiple myeloma arising out of and in the course of employment as a firefighter provided that 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.

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