

Senate Bill No. 50

(By Senators Yost, Facemire and Romano)

[Introduced January 14, 2015; referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to to whom workers’ compensation fund is disbursed; including rebuttable presumptions for certain injuries and diseases for firefighters, including members of volunteer fire departments; and allowing coverage to employees for occupational pneumoconiosis or other occupational disease for work performed out of state.

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

1 **firefighters.**

2 (a) Subject to the provisions and limitations elsewhere in this chapter, workers' compensation
3 benefits shall be paid the Workers' Compensation Fund, to the employees of employers subject to
4 this chapter who have received personal injuries in the course of and resulting from their covered
5 employment or to the dependents, if any, of the employees in case death has ensued, according to
6 the provisions hereinafter made: *Provided*, That in the case of any employees of the state and its
7 political subdivisions, including: Counties; municipalities; cities; towns; any separate corporation
8 or instrumentality established by one or more counties, cities or towns as permitted by law; any
9 corporation or instrumentality supported in most part by counties, cities or towns; any public
10 corporation charged by law with the performance of a governmental function and whose jurisdiction
11 is coextensive with one or more counties, cities or towns; any agency or organization established by
12 the Department of Mental Health, or its successor agencies, for the provision of community health
13 or mental retardation 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 course
16 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 leave
18 benefits. The state employees may only use sick leave for nonjob-related absences consistent with
19 sick leave use and may draw workers' compensation benefits only where there is a job-related injury.
20 This proviso ~~shall~~ does not apply to permanent benefits: *Provided, however*, That the employees
21 may collect sick leave benefits until receiving temporary total disability benefits. The Division of
22 Personnel shall ~~promulgate~~ propose rules for legislative approval pursuant to article three, chapter

1 twenty-nine-a of this code relating to use of sick leave benefits by employees receiving personal
2 injuries in the course of and resulting from covered employment: *Provided further*, That in the event
3 an employee is injured in the course of and resulting from covered employment and the injury results
4 in lost time from work and the employee for whatever reason uses or obtains sick leave benefits and
5 subsequently receives temporary total disability benefits for the same time period, the employee may
6 be restored sick leave time taken by him or her as a result of the compensable injury by paying to his
7 or her employer the temporary total disability benefits received or an amount equal to the temporary
8 total disability benefits received. The employee shall be restored sick leave time on a day-for-day
9 basis which corresponds to temporary total disability benefits paid to the employer: *And provided*
10 *further*, That since the intent of this subsection is to prevent an employee of the state or any of its
11 political subdivisions from collecting both temporary total disability benefits and sick leave benefits
12 for the same time period, nothing in this subsection prevents an employee of the state or any of its
13 political subdivisions from electing to receive either sick leave benefits or temporary total disability
14 benefits, but not both.

15 (b) For the purposes of this chapter, the terms “injury” and “personal injury” include
16 occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and
17 workers’ compensation benefits shall be paid to the employees of the employers in whose
18 employment the employees have been exposed to the hazards of occupational pneumoconiosis or
19 other occupational disease and ~~in this state~~ have contracted occupational pneumoconiosis or other
20 occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or
21 other occupational disease, or to the dependents, if any, of the employees, in case death has ensued,
22 according to the provisions hereinafter made: *Provided*, That compensation ~~shall~~ is not be payable

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

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

18 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute
19 particles of dust over a period of time due to causes and conditions arising out of and in the course
20 of the employment. The term “occupational pneumoconiosis” includes, but is not limited to, such
21 diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly known as black
22 lung or miner’s asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of the lungs),

1 coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis,
2 anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by
3 occupational pneumoconiosis which are not specifically designated in this section meeting the
4 definition of occupational pneumoconiosis set forth in this subsection.

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

8 (f) For the purposes of this chapter, occupational disease means a disease incurred in the
9 course of and resulting from employment. No ordinary disease of life to which the general public
10 is exposed outside of the employment is compensable except when it follows as an incident of
11 occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis,
12 a disease ~~shall be~~ is considered to have been incurred in the course of or to have resulted from the
13 employment only if it is apparent to the rational mind, upon consideration of all the circumstances:
14 (1) That there is a direct causal connection between the conditions under which work is performed
15 and the occupational disease; (2) that it can be seen to have followed as a natural incident of the
16 work as a result of the exposure occasioned by the nature of the employment; (3) that it can be fairly
17 traced to the employment as the proximate cause; (4) that it does not come from a hazard to which
18 workmen would have been equally exposed outside of the employment; (5) that it is incidental to
19 the character of the business and not independent of the relation of employer and employee; and (6)
20 that it appears to have had its origin in a risk connected with the employment and to have flowed
21 from that source as a natural consequence, though it need not have been foreseen or expected before
22 its contraction: *Provided*, That compensation ~~shall~~ is not be payable for an occupational disease or

1 death resulting from the disease unless the employee has been exposed to the hazards of the disease
2 in the State of West Virginia over a continuous period that is determined to be sufficient, by rule of
3 the board of managers, for the disease to have occurred in the course of and resulting from the
4 employee's employment. An application for benefits on account of an occupational disease shall
5 set forth the name of the employer or employers and the time worked for each. The commission may
6 allocate to and divide any charges resulting from ~~such~~ the claim among the employers by whom the
7 claimant was employed. The allocation shall be based upon the time and degree of exposure with
8 each employer.

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

13 (h) ~~(1)~~ For purposes of this chapter, a rebuttable presumption that a professional firefighter,
14 including a member of a volunteer fire department, who has developed a cardiovascular or
15 pulmonary disease or sustained a cardiovascular injury or who has developed leukemia, lymphoma
16 or multiple myeloma arising out of and in the course of employment as a firefighter has received an
17 injury or contracted a disease arising out of and in the course of his or her employment exists if: (i)
18 The person has been actively employed by a fire department or volunteer fire department as a
19 professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a
20 cardiovascular or pulmonary disease or death; ~~and~~ (ii) the injury or onset of the disease or death
21 occurred within six months of having participated in fire fighting or a training or drill exercise which
22 actually involved fire fighting; and (iii) in the case of the development of leukemia, lymphoma or

1 multiple myeloma the person has been actively employed by a fire department or volunteer fire
2 department as a professional firefighter for a minimum of five years in the state prior to the
3 development of leukemia, lymphoma or multiple myeloma, has not used tobacco products for at least
4 ten years, is not over the age of sixty-five years and has completed cancer screenings during these
5 periods. When the above conditions are met, it shall be presumed that sufficient notice of the injury,
6 disease or death has been given and that the injury, disease or death was not self inflicted.

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

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

20 ~~(j) On or before January 1, 2004, the Workers' Compensation Commission shall adopt~~
21 ~~standards for the evaluation of claimants and the determination of a claimant's degree of whole-body~~
22 ~~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 the present law, and underscoring indicates new language that would be added.