

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Engrossed**

**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8 performed out of state under certain conditions; and eliminating outdated and obsolete  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. An  
51 application for benefits on account of occupational pneumoconiosis shall set forth the name of  
52 the employer or employers and the time worked for each. The commission may allocate to and  
53 divide any charges resulting from such claim among the employers by whom the claimant was  
54 employed for as much as 60 days during the period of three years immediately preceding the date  
55 of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based  
56 upon the time and degree of exposure with each employer.

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

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

62 the course of the employment. The term “occupational pneumoconiosis” includes, but is not  
63 limited to, such diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly  
64 known as black lung or miner’s asthma, silicotuberculosis (silicosis accompanied by active  
65 tuberculosis of the lungs), coal worker’s pneumoconiosis accompanied by active tuberculosis of  
66 the lungs, asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and  
67 conditions and diseases caused by occupational pneumoconiosis which are not specifically  
68 designated in this section meeting the definition of occupational pneumoconiosis set forth in this  
69 subsection.

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

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

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

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

101 (h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter  
102 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury  
103 or who has developed leukemia, lymphoma, or multiple myeloma arising out of and in the course  
104 of employment as a firefighter has received an injury or contracted a disease arising out of and in  
105 the course of his or her employment exists if: (A) The person has been actively employed by a  
106 fire department as a professional firefighter for a minimum of two years prior to the cardiovascular  
107 injury or onset of a cardiovascular or pulmonary disease or death; ~~and~~ (B) the injury or onset of  
108 the disease or death occurred within six months of having participated in firefighting or a training  
109 or drill exercise which actually involved firefighting; and (C) in the case of the development of  
110 leukemia, lymphoma, or multiple myeloma the person has been actively employed by a fire  
111 department as a professional firefighter for a minimum of five years in the state prior to the  
112 development of leukemia, lymphoma, or multiple myeloma, has not used tobacco products for at  
113 least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall

114 be presumed that sufficient notice of the injury, disease, or death has been given and that the  
115 injury, disease, or death was not self inflicted.

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

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

129 (i) Claims for occupational disease as defined in §23-4-1(f) of this code, 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 claimant's degree of whole-~~  
135 ~~body medical impairment in claims of carpal tunnel syndrome.~~