

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Enrolled**

### **Senate Bill 170**

By Senators Weld, Takubo, Phillips, Tarr, Oliverio,  
Deeds, Swope, Hamilton, Queen, Woodrum, Stuart,  
Jeffries, and Grady

[Passed March 8, 2024; in effect from passage]

1 AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating  
2 to compensable diseases of certain firefighters covered by workers' compensation;  
3 establishing rebuttable presumption of injury arising out of, and in the course of,  
4 employment for certain covered firefighters that develop bladder cancer, mesothelioma,  
5 and testicular cancer; providing for conditions of the presumption; and providing that the  
6 rebuttable presumption expires on July 1, 2027, unless extended by the Legislature.

*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 to the employees of employers subject to this chapter who  
3 have received personal injuries in the course of and resulting from their covered employment or to  
4 the dependents, if any, of the employees in case death has ensued, according to the provisions  
5 hereinafter made: *Provided*, That in the case of any employees of the state and its political  
6 subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or  
7 instrumentality established by one or more counties, cities or towns as permitted by law; any  
8 corporation or instrumentality supported in most part by counties, cities or towns; any public  
9 corporation charged by law with the performance of a governmental function and whose  
10 jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization  
11 established by the Department of Mental Health, or its successor agencies, for the provision of  
12 community health or intellectual and developmental disability services and which is supported, in  
13 whole or in part, by state, county, or municipal funds; board, agency, commission, department, or

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

36 (b) For the purposes of this chapter, the terms "injury" and "personal injury" include  
37 occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and  
38 workers' compensation benefits shall be paid to the employees of the employers in whose  
39 employment the employees have been exposed to the hazards of occupational pneumoconiosis

40 or other occupational disease and have contracted occupational pneumoconiosis or other  
41 occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or  
42 other occupational disease, or to the dependents, if any, of the employees, in case death has  
43 ensued, according to the provisions hereinafter made: *Provided*, That compensation is not  
44 payable for the disease of occupational pneumoconiosis, or death resulting from the disease,  
45 unless the employee has been exposed to the hazards of occupational pneumoconiosis in the  
46 State of West Virginia over a continuous period of not less than two years during the 10 years  
47 immediately preceding the date of his or her last exposure to such hazards, or for any five of the 15  
48 years immediately preceding the date of his or her last exposure. An application for benefits on  
49 account of occupational pneumoconiosis shall set forth the name of the employer or employers  
50 and the time worked for each. The commission may allocate to and divide any charges resulting  
51 from such claim among the employers by whom the claimant was employed for as much as 60  
52 days during the period of three years immediately preceding the date of last exposure to the  
53 hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree  
54 of exposure with employer.

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

58 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of  
59 minute particles of dust over a period of time due to causes and conditions arising out of, and in the  
60 course of, the employment. The term "occupational pneumoconiosis" includes, but is not limited  
61 to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known  
62 as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of  
63 the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs,  
64 asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and conditions and  
65 diseases caused by occupational pneumoconiosis which are not specifically designated in this

66 section meeting the definition of occupational pneumoconiosis set forth in this subsection.

67 (e) In determining the presence of occupational pneumoconiosis, x-ray evidence may be  
68 considered, but may not be accorded greater weight than any other type of evidence  
69 demonstrating occupational pneumoconiosis.

70 (f) For the purposes of this chapter, occupational disease means a disease incurred in the  
71 course of and resulting from employment. No ordinary disease of life to which the general public is  
72 exposed outside of the employment is compensable except when it follows as an incident of  
73 occupational disease as defined in this chapter. Except in the case of occupational  
74 pneumoconiosis, a disease is considered to have been incurred in the course of, or to have  
75 resulted from, the employment only if it is apparent to the rational mind, upon consideration of all  
76 the circumstances: (1) That there is a direct causal connection between the conditions under  
77 which work is performed and the occupational disease; (2) that it can be seen to have followed as  
78 a natural incident of the work as a result of the exposure occasioned by the nature of the  
79 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it  
80 does not come from a hazard to which workmen would have been equally exposed outside of the  
81 employment; (5) that it is incidental to the character of the business and not independent of the  
82 relation of employer and employee; and (6) that it appears to have had its origin in a risk connected  
83 with the employment and to have flowed from that source as a natural consequence, though it  
84 need not have been foreseen or expected before its contraction: *Provided*, That compensation is  
85 not payable for an occupational disease or death resulting from the disease unless the employee  
86 has been exposed to the hazards of the disease in the State of West Virginia over a continuous  
87 period that is determined to be sufficient, by rule of the Insurance Commissioner and Industrial  
88 Council, for the disease to have occurred in the course of and resulting from the employee's  
89 employment. An application for benefits on account of an occupational disease shall set forth the  
90 name of the employer or employers and the time worked for each. The commission may allocate  
91 to and divide any charges resulting from the claim among the employers by whom the claimant

92 was employed. The allocation shall be based upon the time and degree of exposure with each  
93 employer.

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

98 (h) For purposes of this chapter, a rebuttable presumption that a professional firefighter  
99 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury or  
100 who has developed leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or  
101 testicular cancer arising out of, and in the course of, employment as a firefighter has received an  
102 injury or contracted a disease arising out of, and in the course of, his or her employment exists if:  
103 (A) The person has been actively employed by a fire department as a professional firefighter for a  
104 minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary  
105 disease or death; (B) the injury or onset of the disease or death occurred within six months of  
106 having participated in firefighting or a training or drill exercise which actually involved firefighting;  
107 and (C) in the case of the development of leukemia, lymphoma, multiple myeloma, bladder cancer,  
108 mesothelioma, or testicular cancer, the person has been actively employed by a fire department as  
109 a professional firefighter for a minimum of five years in the state prior to the development of  
110 leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or testicular cancer, has  
111 not used tobacco products more than six times in a calendar year for at least 10 years, and is not  
112 over the age of 65 years. When the above conditions are met, it shall be presumed that sufficient  
113 notice of the injury, disease, or death has been given and that the injury, disease, or death was not  
114 self-inflicted. The amendments made to this section during the regular session of the Legislature,  
115 2024, to include bladder cancer, mesothelioma or testicular cancer arising out of, and in the course  
116 of, employment as a firefighter as a rebuttable presumption expire on July 1, 2027, unless  
117 extended by the Legislature.

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