WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2672

(By M. Burkhart Rutledge)

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Passed April 8, 1989

In Effect Ninety Days From Passage
ENROLLED

H. B. 2672

(BY DELEGATES M. BURKE AND RUTLEDGE)

[Passed April 8, 1989; in effect ninety days from passage.]

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AN ACT to amend and reenact section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workers' compensation; disability and death benefits; providing that employees of the state and its political subdivisions may not simultaneously draw workers' compensation benefits and receive sick leave for the same period of time.

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 23. WORKERS' COMPENSATION.

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.

1 Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workers' compensation fund to the employees of employers subject to this chapter, which employees have received personal injuries in the course of and resulting
from their covered employment or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter:

Provided, That in the case of any employees of the state and its political subdivisions, including: counties; municipalities; cities; towns; any separate corporation or instrumentality established by one or more counties, cities or towns as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization established by the department of mental health for the provision of community health or mental retardation services and which is supported in whole or in part by state, county or municipal funds; board, agency, commission, department or spending unit including any agency created by rule of the supreme court of appeals, who have received personal injuries in the course of and resulting from their covered employment, such employees are ineligible to receive compensation while such employees are at the same time and for the same reason drawing sick leave benefits. Such state employees may only use sick leave for non-job related absences consistent with sick leave utilization, and may draw workers’ compensation benefits only where there is a job related injury. This proviso shall not apply to permanent benefits: Provided, however, That such employees may collect sick leave benefits until receiving temporary total disability benefits. The division of personnel shall promulgate rules pursuant to chapter twenty-nine-a of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of and resulting from covered employment: Provided further, That in the event an employee is injured in the course of and resulting from covered employment and such injury results in lost time from work, and such employee for whatever reason uses or obtains sick leave benefits and subsequently receives temporary total
disability benefits for the same time period, such employee may be restored sick leave time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. Such employee shall be restored sick leave time on a day for day basis which corresponds to temporary total disability benefits paid to the employer: And provided further, That since the intent of this paragraph is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing herein may be construed to prevent an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total benefits but not both.

For the purposes of this chapter the terms “injury” and “personal injury” shall include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commissioner shall likewise disburse the workers’ compensation fund to the employees of such employers in whose employment such employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting therefrom, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards, or for any five of the fifteen years immediately preceding the date of such last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time
worked for each, and the commissioner may allocate to
and divide any charges resulting from such claim
among the employers by whom the claimant was
employed for as much as sixty days during the period
of three years immediately preceding the date of last
exposure to the hazards of occupational pneumoconiosis.
The allocation shall be based upon the time and degree
of exposure with each employer.

For the purposes of this chapter disability or death
resulting from occupational pneumoconiosis, as defined
in the immediately succeeding sentence, shall be treated
and compensated as an injury by accident.

Occupational pneumoconiosis is a disease of the lungs
caused by the inhalation of minute particles of dust over
a period of time due to causes and conditions arising out
of and in the course of the employment. The term
"occupational pneumoconiosis" shall include, but shall
not be limited to, such diseases as silicosis, anthracosi-
licosis, coal worker's pneumoconiosis, commonly known
as black lung or miner's asthma, silico-tuberculosis
(silicosis accompanied by active tuberculosis of the
lungs), coal worker's pneumoconiosis accompanied by
active tuberculosis of the lungs, asbestosis, siderosis,
anthrax and any and all other dust diseases of the lungs
and conditions and diseases caused by occupational
pneumoconiosis which are not specifically designated
herein meeting the definition of occupational pneumo-
coniosis set forth in the immediately preceding sentence.

In determining the presence of occupational pneumo-
coniosis, X-ray evidence may be considered but shall not
be accorded greater weight than any other type of
evidence demonstrating occupational pneumoconiosis.

For the purposes of this chapter, occupational disease
means a disease incurred in the course of and resulting
from employment. No ordinary disease of life to which
the general public is exposed outside of the employment
shall be compensable except when it follows as an
incident of occupational disease as defined in this
chapter. Except in the case of occupational pneumo-
coniosis, a disease shall be deemed to have been incurred
in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

No award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

Claims for occupational disease as hereinbefore defined, except occupational pneumoconiosis, shall be processed in like manner as claims for all other personal injuries.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of , 1989.

Governor