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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2672

(By ~~Mr.~~ *Del. M. Burke & Rutledge*)

— ● —

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.]

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
2 this chapter set forth, the commissioner shall disburse
3 the workers' compensation fund to the employees of
4 employers subject to this chapter, which employees have
5 received personal injuries in the course of and resulting

6 from their covered employment or to the dependents, if
7 any, of such employees in case death has ensued,
8 according to the provisions hereinafter made; and also
9 for the expenses of the administration of this chapter,
10 as provided in section two, article one of this chapter:
11 *Provided*, That in the case of any employees of the state
12 and its political subdivisions, including: counties;
13 municipalities; cities; towns; any separate corporation or
14 instrumentality established by one or more counties,
15 cities or towns as permitted by law; any corporation or
16 instrumentality supported in most part by counties,
17 cities, or towns; any public corporation charged by law
18 with the performance of a governmental function and
19 whose jurisdiction is coextensive with one or more
20 counties, cities or towns; any agency or organization
21 established by the department of mental health for the
22 provision of community health or mental retardation
23 services and which is supported in whole or in part by
24 state, county or municipal funds; board, agency,
25 commission, department or spending unit including any
26 agency created by rule of the supreme court of appeals,
27 who have received personal injuries in the course of and
28 resulting from their covered employment, such em-
29 ployees are ineligible to receive compensation while such
30 employees are at the same time and for the same reason
31 drawing sick leave benefits. Such state employees may
32 only use sick leave for non-job related absences consist-
33 ent with sick leave utilization, and may draw workers'
34 compensation benefits only where there is a job related
35 injury. This proviso shall not apply to permanent
36 benefits: *Provided, however*, That such employees may
37 collect sick leave benefits until receiving temporary
38 total disability benefits. The division of personnel shall
39 promulgate rules pursuant to chapter twenty-nine-a of
40 this code relating to use of sick leave benefits by
41 employees receiving personal injuries in the course of
42 and resulting from covered employment: *Provided*
43 *further*, That in the event an employee is injured in the
44 course of and resulting from covered employment and
45 such injury results in lost time from work, and such
46 employee for whatever reason uses or obtains sick leave
47 benefits and subsequently receives temporary total

48 disability benefits for the same time period, such
49 employee may be restored sick leave time taken by him
50 or her as a result of the compensable injury by paying
51 to his or her employer the temporary total disability
52 benefits received or an amount equal to the temporary
53 total disability benefits received. Such employee shall be
54 restored sick leave time on a day for day basis which
55 corresponds to temporary total disability benefits paid
56 to the employer: *And provided further*, That since the
57 intent of this paragraph is to prevent an employee of the
58 state or any of its political subdivisions from collecting
59 both temporary total disability benefits and sick leave
60 benefits for the same time period, nothing herein may
61 be construed to prevent an employee of the state or any
62 of its political subdivisions from electing to receive
63 either sick leave benefits or temporary total benefits but
64 not both.

65 For the purposes of this chapter the terms "injury"
66 and "personal injury" shall include occupational pneu-
67 moconiosis and any other occupational disease, as
68 hereinafter defined, and the commissioner shall likewise
69 disburse the workers' compensation fund to the em-
70 ployees of such employers in whose employment such
71 employees have been exposed to the hazards of occupa-
72 tional pneumoconiosis or other occupational disease and
73 in this state have contracted occupational pneumoconi-
74 osis or other occupational disease, or have suffered a
75 perceptible aggravation of an existing pneumoconiosis
76 or other occupational disease, or to the dependents, if
77 any, of such employees, in case death has ensued,
78 according to the provisions hereinafter made: *Provided*,
79 That compensation shall not be payable for the disease
80 of occupational pneumoconiosis, or death resulting
81 therefrom, unless the employee has been exposed to the
82 hazards of occupational pneumoconiosis in the state of
83 West Virginia over a continuous period of not less than
84 two years during the ten years immediately preceding
85 the date of his last exposure to such hazards, or for any
86 five of the fifteen years immediately preceding the date
87 of such last exposure. An application for benefits on
88 account of occupational pneumoconiosis shall set forth
89 the name of the employer or employers and the time

90 worked for each, and the commissioner may allocate to
91 and divide any charges resulting from such claim
92 among the employers by whom the claimant was
93 employed for as much as sixty days during the period
94 of three years immediately preceding the date of last
95 exposure to the hazards of occupational pneumoconiosis.
96 The allocation shall be based upon the time and degree
97 of exposure with each employer.

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

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

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

122 For the purposes of this chapter, occupational disease
123 means a disease incurred in the course of and resulting
124 from employment. No ordinary disease of life to which
125 the general public is exposed outside of the employment
126 shall be compensable except when it follows as an
127 incident of occupational disease as defined in this
128 chapter. Except in the case of occupational pneumoco-
129 niosis, a disease shall be deemed to have been incurred

130 in the course of or to have resulted from the employment
131 only if it is apparent to the rational mind, upon
132 consideration of all the circumstances (1) that there is
133 a direct causal connection between the conditions under
134 which work is performed and the occupational disease,
135 (2) that it can be seen to have followed as a natural
136 incident of the work as a result of the exposure
137 occasioned by the nature of the employment, (3) that it
138 can be fairly traced to the employment as the proximate
139 cause, (4) that it does not come from a hazard to which
140 workmen would have been equally exposed outside of
141 the employment, (5) that it is incidental to the character
142 of the business and not independent of the relation of
143 employer and employee, and (6) that it must appear to
144 have had its origin in a risk connected with the
145 employment and to have flowed from that source as a
146 natural consequence, though it need not have been
147 foreseen or expected before its contraction.

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

156 Claims for occupational disease as hereinbefore
157 defined, except occupational pneumoconiosis, shall be
158 processed in like manner as claims for all other personal
159 injuries.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Fredrick L. Kuper

Chairman Senate Committee

J. L. Settle

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

James C. Mullis

Clerk of the Senate

Ronald E. Hogg

Clerk of the House of Delegates

Sam R. Tucker

President of the Senate

Raymond M. Carroll

Speaker of the House of Delegates

The within *is approved* this the *26th*
day of *April*, 1989.
Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/89

Time 2:11