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WEST VIRGINIA LEGISLATURE

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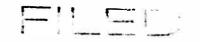
COMMITTEE SUBSTITUTE

FOR

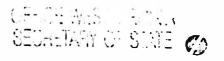
Senate Bill No. 571

(Senators Jenkins, Plymale, Deem, Minard, Green, Hall, Hunter, Foster, Kessler, Stollings and Yoder, original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]



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[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to creating a rebuttable presumption that cardiovascular injury, disease or death or pulmonary disease or death of a professional firefighter is an occupational injury if certain criteria are met; providing that sufficient notice of occupational injury, disease or death has been provided under such

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circumstances; establishing presumption that death or injury was not self inflicted; and requiring the Insurance Commissioner conduct a study and report back to the Joint Committee on Government and Finance.

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 firefighters.
 - 1 (a) Subject to the provisions and limitations elsewhere
 - 2 in this chapter, workers' compensation benefits shall be
 - 3 paid the Workers' Compensation Fund, to the
 - 4 employees of employers subject to this chapter who
 - 5 have received personal injuries in the course of and
 - 6 resulting from their covered employment or to the
 - 7 dependents, if any, of the employees in case death has
 - 8 ensued, according to the provisions hereinafter made:
 - 9 Provided, That in the case of any employees of the state
 - 10 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 17 18 counties, cities or towns; any agency or organization 19 established by the Department of Mental Health for the 20 provision of community health or mental retardation 21 services and which is supported, in whole or in part, by 22 state, county or municipal funds; board, agency, 23 commission, department or spending unit, including 24 any agency created by rule of the Supreme Court of 25 Appeals, who have received personal injuries in the 26 course of and resulting from their covered employment, 27 the employees are ineligible to receive compensation 28 while the employees are at the same time and for the 29 same reason drawing sick leave benefits. The state 30 employees may only use sick leave for nonjob-related 31 absences consistent with sick leave use and may draw 32 workers' compensation benefits only where there is a 33 job-related injury. This proviso shall not apply to 34 permanent benefits: Provided, however, That the employees may collect sick leave benefits until 35 36 receiving temporary total disability benefits. The 37 Division of Personnel shall promulgate rules pursuant 38 to article three, chapter twenty-nine-a of this code 39 relating to use of sick leave benefits by employees 40 receiving personal injuries in the course of and 41 resulting from covered employment: Provided further, 42 That in the event an employee is injured in the course of 43 and resulting from covered employment and the injury 44 results in lost time from work and the employee for whatever reason uses or obtains sick leave benefits and 45 46 subsequently receives temporary total disability 47 benefits for the same time period, the employee may be 48 restored sick leave time taken by him or her as a result 49 of the compensable injury by paying to his or her 50 employer the temporary total disability benefits 51 received or an amount equal to the temporary total

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disability benefits received. The employee shall be **52** restored sick leave time on a day-for-day basis which 53 54 corresponds to temporary total disability benefits paid 55 to the employer: And provided further, That since the intent of this subsection is to prevent an employee of 56 the state or any of its political subdivisions from 57 collecting both temporary total disability benefits and 58 sick leave benefits for the same time period, nothing in 59 60 this subsection prevents an employee of the state or any of its political subdivisions from electing to receive 61 62 either sick leave benefits or temporary total disability 63 benefits, but not both.

(b) For the purposes of this chapter, the terms "injury" and "personal injury" include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and workers' compensation benefits shall be paid to the employees of the employers in whose employment the 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 the 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 from the disease, 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 or her last exposure to such hazards, or for any five of the fifteen years immediately preceding the

86 date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis 87 shall set forth the name of the employer or employers 88 89 and the time worked for each. The commission may 90 allocate to and divide any charges resulting from such claim among the employers by whom the claimant was 91 92 employed for as much as sixty days during the period of 93 three years immediately preceding the date of last 94 exposure to the hazards of occupational 95 pneumoconiosis. The allocation shall be based upon the 96 time and degree of exposure with each employer.

- 97 (c) For the purposes of this chapter, disability or 98 death resulting from occupational pneumoconiosis, as 99 defined in subsection (d) of this section, shall be treated 100 and compensated as an injury by accident.
- (d) Occupational pneumoconiosis is a disease of the 101 102 lungs caused by the inhalation of minute particles of 103 dust over a period of time due to causes and conditions arising out of and in the course of the employment. The 104 105 term "occupational pneumoconiosis" includes, but is 106 not limited to. such diseases as silicosis. 107 anthracosilicosis, coal worker's pneumoconiosis, 108 commonly known as black lung or miner's asthma, 109 silico-tuberculosis (silicosis accompanied by active 110 tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of 111 112 the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and 113 diseases caused by occupational pneumoconiosis which 114 115 are not specifically designated in this section meeting the definition of occupational pneumoconiosis set forth 116 117 in this subsection.

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- 118 (e) In determining the presence of occupational 119 pneumoconiosis, X-ray evidence may be considered, but 120 shall not be accorded greater weight than any other 121 type of evidence demonstrating occupational 122 pneumoconiosis.
- 123 (f) For the purposes of this chapter, occupational 124 disease means a disease incurred in the course of and 125 resulting from employment. No ordinary disease of life 126 to which the general public is exposed outside of the employment is compensable except when it follows as 127 128 an incident of occupational disease as defined in this 129 Except in the case of occupational pneumoconiosis, a disease shall be considered to have 130 131 been incurred in the course of or to have resulted from 132 the employment only if it is apparent to the rational 133 mind, upon consideration of all the circumstances: (1) 134 That there is a direct causal connection between the conditions under which work is performed and the 135 136 occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of 137 the exposure occasioned by the nature of the 138 139 employment; (3) that it can be fairly traced to the 140 employment as the proximate cause; (4) that it does not 141 come from a hazard to which workmen would have 142 been equally exposed outside of the employment; (5) 143 that it is incidental to the character of the business and not independent of the relation of employer and 144 145 employee; and (6) that it appears to have had its origin 146 in a risk connected with the employment and to have 147 flowed from that source as a natural consequence, though it need not have been foreseen or expected 148 149 before its contraction: Provided, That compensation shall not be payable for an occupational disease or 150 151 death resulting from the disease unless the employee

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

(g) 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 considered to have contracted an occupational disease within the meaning of this subsection if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

(h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury has received an injury or contracted a disease arising out of and in the course of his or her employment exists if: (i) The person has been actively employed by a fire department as a professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; and (ii) the injury or onset of the disease or death occurred within six months of having participated in firefighting

- 185 or a training or drill exercise which actually involved
- 186 firefighting. When the above conditions are met, it
- 187 shall be presumed that sufficient notice of the injury,
- 188 disease or death has been given and that the injury,
- 189 disease or death was not self inflicted.
- 190 (2) The Insurance Commissioner shall study the 191 effects of the rebuttable presumptions created in this 192 subsection on the premiums charged for workers' 193 compensation for professional municipal firefighters; 194 the probable effects of extending these presumptions to volunteer firefighters; and the overall impact of the risk 195 196 management programs, wage replacement, premium calculation, the number of hours worked per volunteer, 197 198 treatment of nonactive or "social" members of a 199 volunteer crew and the feasibility of combining various 200 volunteer departments under a single policy on the 201 availability and cost of providing workers' 202 compensation coverage to volunteer firefighters. The 203 Insurance Commissioner shall file the report with the Joint Committee on Government and Finance no later 204 205 than the first day of December, two thousand eight.
- 206 (i) Claims for occupational disease as defined in 207 subsection (f) of this section, except occupational 208 pneumoconiosis for all workers and pulmonary disease 209 and cardiovascular injury and disease for professional 210 firefighters, shall be processed in like manner as claims for all other personal injuries.
- 212 (j) On or before the first day of January, two thousand 213 four, the Workers' Compensation Commission shall 214 adopt standards for the evaluation of claimants and the 215 determination of a claimant's degree of whole-body 216 medical impairment in claims of carpal tunnel syndrome. 217

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

Chairman Senate Committee
Chairman House Committee
Originated in the Senate.
In effect ninety days from passage. Clerk of the Senate
Clerk of the House of Delegates Al By Jornhu President of the Senate Speaker House of Delegates
The within Us applicated this the Day of April 2008.

PRESENTED TO THE GOVERNOR

MAR 2 5 2008

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