WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

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.]
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
certain 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.

(a) Subject to the provisions and limitations elsewhere in this chapter, workers' compensation benefits shall be paid the Workers' Compensation Fund, to the employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of the employees in case death has ensued, according to the provisions hereinafter made: 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, the employees are ineligible to receive compensation while the employees are at the same time and for the same reason drawing sick leave benefits. The state employees may only use sick leave for nonjob-related absences consistent with sick leave use 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 the employees may collect sick leave benefits until receiving temporary total disability benefits. The Division of Personnel shall promulgate rules pursuant to article three, 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 the injury results in lost time from work and the employee for whatever reason uses or obtains sick leave benefits and subsequently receives temporary total disability benefits for the same time period, the 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. The 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 subsection 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 in this subsection prevents an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability 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
date of his or her 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. The commission 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.

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

(d) 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" includes, but is not limited to, such diseases as silicosis, anthracosilicosis, 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 in this section meeting the definition of occupational pneumoconiosis set forth in this subsection.
(e) In determining the presence of occupational pneumoconiosis, X-ray evidence may be considered, but shall not be accorded greater weight than any other type of evidence demonstrating occupational pneumoconiosis.

(f) 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 is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be considered 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 appears 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: Provided, That compensation shall not be payable for an occupational disease or 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. The 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
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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
195 volunteer firefighters; and the overall impact of the risk
196 management programs, wage replacement, premium
197 calculation, the number of hours worked per volunteer,
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
204 joint committee on government and finance no later
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
211 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
217 syndrome.
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

President of the Senate

Speaker House of Delegates

The within bill approved this the 1st Day of April, 2008.

Governor