WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 82

SENATORS FERNS AND CLINE, original sponsors

[Passed March 9, 2018; in effect 90 days from passage]
Committed Substitute
for

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[Passed March 9, 2018; in effect 90 days from passage]
AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to whom Workers’ Compensation Fund is disbursed; including rebuttable presumptions for certain injuries and diseases for professional firefighters; setting eligibility criteria for rebuttable presumptions; setting expiration of rebuttable presumption regarding leukemia, lymphoma, or multiple myeloma arising out of, and in the course of, employment as a firefighter on July 1, 2023, absent legislative action to the contrary; and eliminating outdated and obsolete language.

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.

(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, or its successor agencies, for the provision of community health or intellectual and developmental disability
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 does 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 propose rules for legislative approval pursuant to §29A-3-1 et seq. 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 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 is not
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 10 years
immediately preceding the date of his or her last exposure to such hazards, or for any five of the
15 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 60
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 §23-4-1(d) of this code, 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, silicotuberculosis (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 may 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 is 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 is not 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 the 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 may be made under the provisions of this chapter for any occupational disease contracted prior to July 1, 1949. An employee has 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 or who has developed leukemia, lymphoma, or multiple myeloma arising out of and in the course of employment as a firefighter has received an injury or contracted a disease arising out of and in the course of his or her employment exists if: (A) 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; (B) the injury or onset of the disease or death occurred within six months of having participated in firefighting or a training or drill exercise which actually involved firefighting; and (C) in the case of the development of leukemia, lymphoma, or multiple myeloma the person has been actively employed by a fire department as a professional firefighter for a minimum of five years in the state prior to the development of leukemia, lymphoma, or multiple myeloma, has not used tobacco products for at least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall be presumed that sufficient notice of the injury, disease, or death has been given and that the injury, disease, or death was not self inflicted.

(2) The amendments made to this section during the 2018 regular session of the Legislature to include leukemia, lymphoma, or multiple myeloma arising out of and in the course
of employment as a firefighter as a rebuttable presumption shall expire on July 1, 2023, unless
extended by the Legislature.

(i) Claims for occupational disease as defined in §23-4-1(f) of this code, except
occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
and disease for professional firefighters, 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

Vice-Chairman, House Committee

Originated in the Senate.

In effect 90 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 bill is approved this the... day of March... 2018.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2018

Time 11:57 a.m.