

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 170

BY SENATORS WELD, TAKUBO, PHILLIPS, TARR,
OLIVERIO, DEEDS, SWOPE, HAMILTON, QUEEN,
WOODRUM, STUART, JEFFRIES, AND GRADY

[Passed March 8, 2024; in effect from passage]

2024 MAR 26 P 2:23
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED

SB170

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1 AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating
2 to compensable diseases of certain firefighters covered by workers' compensation;
3 establishing rebuttable presumption of injury arising out of, and in the course of,
4 employment for certain covered firefighters that develop bladder cancer, mesothelioma,
5 and testicular cancer; providing for conditions of the presumption; and providing that the
6 rebuttable presumption expires on July 1, 2027, unless extended by the Legislature.

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.

1 (a) Subject to the provisions and limitations elsewhere in this chapter, workers'
2 compensation benefits shall be paid to the employees of employers subject to this chapter who
3 have received personal injuries in the course of and resulting from their covered employment or
4 to the dependents, if any, of the employees in case death has ensued, according to the provisions
5 hereinafter made: *Provided*, That in the case of any employees of the state and its political
6 subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or
7 instrumentality established by one or more counties, cities or towns as permitted by law; any
8 corporation or instrumentality supported in most part by counties, cities or towns; any public
9 corporation charged by law with the performance of a governmental function and whose
10 jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization
11 established by the Department of Mental Health, or its successor agencies, for the provision of
12 community health or intellectual and developmental disability services and which is supported, in
13 whole or in part, by state, county, or municipal funds; board, agency, commission, department, or

14 spending unit, including any agency created by rule of the Supreme Court of Appeals, who have
15 received personal injuries in the course of, and resulting from, their covered employment, the
16 employees are ineligible to receive compensation while the employees are at the same time, and
17 for the same reason, drawing sick leave benefits. The state employees may only use sick leave
18 for nonjob-related absences consistent with sick leave use and may draw workers' compensation
19 benefits only where there is a job-related injury. This proviso does not apply to permanent
20 benefits: *Provided, however,* That the employees may collect sick leave benefits until receiving
21 temporary total disability benefits. The Division of Personnel shall propose rules for legislative
22 approval pursuant to §29A-3-1 *et seq.* of this code relating to use of sick leave benefits by
23 employees receiving personal injuries in the course of, and resulting from, covered employment:
24 *Provided further,* That if an employee is injured in the course of and resulting from covered
25 employment and the injury results in lost time from work and the employee, for whatever reason,
26 uses or obtains sick leave benefits and subsequently receives temporary total disability benefits
27 for the same time period, the employee may be restored sick leave time taken by him or her as a
28 result of the compensable injury by paying to his or her employer the temporary total disability
29 benefits received or an amount equal to the temporary total disability benefits received. The
30 employee shall be restored sick leave time on a day-for-day basis which corresponds to
31 temporary total disability benefits paid to the employer: *And provided further,* That since the intent
32 of this subsection is to prevent an employee of the state or any of its political subdivisions from
33 collecting both temporary total disability benefits and sick leave benefits for the same time period,
34 nothing in this subsection prevents an employee of the state or any of its political subdivisions
35 from electing to receive either sick leave benefits or temporary total disability benefits, but not
36 both.

37 (b) For the purposes of this chapter, the terms "injury" and "personal injury" include
38 occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and
39 workers' compensation benefits shall be paid to the employees of the employers in whose

40 employment the employees have been exposed to the hazards of occupational pneumoconiosis
41 or other occupational disease and have contracted occupational pneumoconiosis or other
42 occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis
43 or other occupational disease, or to the dependents, if any, of the employees, in case death has
44 ensued, according to the provisions hereinafter made: *Provided*, That compensation is not
45 payable for the disease of occupational pneumoconiosis, or death resulting from the disease,
46 unless the employee has been exposed to the hazards of occupational pneumoconiosis in the
47 State of West Virginia over a continuous period of not less than two years during the 10 years
48 immediately preceding the date of his or her last exposure to such hazards, or for any five of the
49 15 years immediately preceding the date of his or her last exposure. An application for benefits
50 on account of occupational pneumoconiosis shall set forth the name of the employer or employers
51 and the time worked for each. The commission may allocate to and divide any charges resulting
52 from such claim among the employers by whom the claimant was employed for as much as 60
53 days during the period of three years immediately preceding the date of last exposure to the
54 hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree
55 of exposure with employer.

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

59 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of
60 minute particles of dust over a period of time due to causes and conditions arising out of, and in
61 the course of, the employment. The term "occupational pneumoconiosis" includes, but is not
62 limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly
63 known as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active
64 tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of
65 the lungs, asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and

66 conditions and diseases caused by occupational pneumoconiosis which are not specifically
67 designated in this section meeting the definition of occupational pneumoconiosis set forth in this
68 subsection.

69 (e) In determining the presence of occupational pneumoconiosis, x-ray evidence may be
70 considered, but may not be accorded greater weight than any other type of evidence
71 demonstrating occupational pneumoconiosis.

72 (f) For the purposes of this chapter, occupational disease means a disease incurred in the
73 course of and resulting from employment. No ordinary disease of life to which the general public
74 is exposed outside of the employment is compensable except when it follows as an incident of
75 occupational disease as defined in this chapter. Except in the case of occupational
76 pneumoconiosis, a disease is considered to have been incurred in the course of, or to have
77 resulted from, the employment only if it is apparent to the rational mind, upon consideration of all
78 the circumstances: (1) That there is a direct causal connection between the conditions under
79 which work is performed and the occupational disease; (2) that it can be seen to have followed
80 as a natural incident of the work as a result of the exposure occasioned by the nature of the
81 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it
82 does not come from a hazard to which workmen would have been equally exposed outside of the
83 employment; (5) that it is incidental to the character of the business and not independent of the
84 relation of employer and employee; and (6) that it appears to have had its origin in a risk
85 connected with the employment and to have flowed from that source as a natural consequence,
86 though it need not have been foreseen or expected before its contraction: *Provided*, That
87 compensation is not payable for an occupational disease or death resulting from the disease
88 unless the employee has been exposed to the hazards of the disease in the State of West Virginia
89 over a continuous period that is determined to be sufficient, by rule of the Insurance Commissioner
90 and Industrial Council, for the disease to have occurred in the course of and resulting from the
91 employee's employment. An application for benefits on account of an occupational disease shall

92 set forth the name of the employer or employers and the time worked for each. The commission
93 may allocate to and divide any charges resulting from the claim among the employers by whom
94 the claimant was employed. The allocation shall be based upon the time and degree of exposure
95 with each employer.

96 (g) No award may be made under the provisions of this chapter for any occupational
97 disease contracted prior to July 1, 1949. An employee has contracted an occupational disease
98 within the meaning of this subsection if the disease or condition has developed to such an extent
99 that it can be diagnosed as an occupational disease.

100 (h) For purposes of this chapter, a rebuttable presumption that a professional firefighter
101 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury
102 or who has developed leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma,
103 or testicular cancer arising out of, and in the course of, employment as a firefighter has received
104 an injury or contracted a disease arising out of, and in the course of, his or her employment exists
105 if: (A) The person has been actively employed by a fire department as a professional firefighter
106 for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or
107 pulmonary disease or death; (B) the injury or onset of the disease or death occurred within six
108 months of having participated in firefighting or a training or drill exercise which actually involved
109 firefighting; and (C) in the case of the development of leukemia, lymphoma, multiple myeloma,
110 bladder cancer, mesothelioma, or testicular cancer, the person has been actively employed by a
111 fire department as a professional firefighter for a minimum of five years in the state prior to the
112 development of leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or
113 testicular cancer, has not used tobacco products more than six times in a calendar year for at
114 least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall
115 be presumed that sufficient notice of the injury, disease, or death has been given and that the
116 injury, disease, or death was not self-inflicted. The amendments made to this section during the
117 regular session of the Legislature, 2024, to include bladder cancer, mesothelioma or testicular

118 cancer arising out of, and in the course of, employment as a firefighter as a rebuttable presumption
119 expire on July 1, 2027, unless extended by the Legislature.

120 (i) Claims for occupational disease as defined in §23-4-1(f) of this code, except
121 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
122 and disease for professional firefighters, shall be processed in like manner as claims for all other
123 personal injuries.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

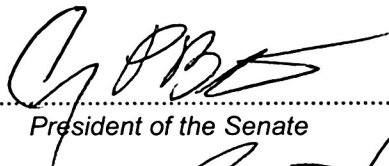

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Clerk of the Senate


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Clerk of the House of Delegates

FILED
2024 MAR 26 P 2:23
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect from passage.


.....
President of the Senate


.....
Speaker of the House of Delegates

The within is approved this the 26th
Day of March 2024.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 12 2024

Time 3:48 pm