

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2615 SLC SB 162 (FILE 2)

payment of the award, and it shall be its duty to take the proper steps to convert any such award or deposit with the said board, or sufficient thereof into cash, and to pay the same upon the liabilities of said employer, according to the terms of this act, and it shall be its duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds or to collect and liquidate said securities.

7. **When employer to make deposit or security to guarantee payment of compensation.** Within thirty (30) days after the happening of an accident where death or the nature of the disability renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability. In such sums as the board may deem provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

8. **When employer may be relieved from liability.** Any employer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, accumulating interest at five per centum (5%) per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitation provided by law, in any insurance company transacting annuities, and authorized to transact business in this state, subject to the approval of the board.

## COMPENSATION PLAN NUMBER TWO

1. **Employer electing plan No. 2 to insure his liability.** Any employer in the industries, trades, works, occupations, or employments in this act specified as insurable by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any business establishment, in any state or territory of the United States.

2. **Duty of employer electing plan No. 2—amount of insurance necessary.** Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board within any amount of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

3. **Policies to contain what.** All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, in the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the laws, rules, ordinances, or decrees rendered against such insured. When any such policy, or the form and thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars (\$3.00).

4. **Agreement to be contained in policies of insurance—deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments due hereunder, or make payment in this act provided for, and that the obligation shall not be affected by any default of the insured after the commencement or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be consistent to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board bonds of the United States or the State of Montana, or any school district, county, city or town in the State of Montana, in an amount not less than twenty thousand dollars (\$20,000.00) or more than one hundred thousand dollars (\$100,000.00) as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability in the manner hereinafter provided, and there-after said insurer must make an additional deposit to make any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

5. **Policies made subject to this act—form of insurance.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board or otherwise provided by law.

6. **Renewals.** Every renewal of such policy shall be made and delivered to said board at least thirty (30) days prior to the expiration of the expiring policy.

7. **Deposits by insurer with board.** When under this act the happening of an accident which, of its nature, of its direct result renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct, provided that if the board deems the amount so deposited by said insurer under the provisions of paragraph 4 or five (5), in section 92-1231 this act, sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

**9. How insurer relieved from liability.** Any insurer which liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board;

(2) By purchasing an annuity within the limitations provided by law in any other than company stock annuities and authorized to transact business in this state, subject to the approval of the board.

**9. Cancellation of insurance policy.** No policy of insurance issued under the provisions of compensation plan No. 2 shall be cancelled within the time limited for its expiration except upon thirty (30) days' notice to the employer or lover of whom such policy is issued and to the board; and no policy shall be cancelled which shall have been sooner replaced by other insurance.

**10. Report of insurance companies to board.** Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

**11. Policies to contain clause agreeing to do what—approval or change.** Every policy of insurance covering against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this Act.

**12. Deposits under plan No. 2 as security.** Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, or the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawal of the same, or any part thereof, and substitution of other deposits therefor; upon cancel of the first payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such

liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

## COMPENSATION PLAN NUMBER THREE

1. It is the intent and purpose of compensation plan number 3 that each employer subject to and bound by this plan shall be liable and pay for all disability to employees due to occupational diseases coming under the provision of this plan, and that all funds collected by assessments as herein provided shall be paid into one common account, to be known as the Occupational Disease Compensation Account in the agency fund, which account shall be devoted exclusively to the payment of all valid claims for disability from occupational diseases arising out of or in the course of employment coming under the provisions of compensation plan No. 3. Such account shall consist of all assessments and penalties received and paid into the account, or property and securities acquired by and through the use of money belonging to the account, and interest earned upon money belonging to the account, together with any money appropriated by the legislature for the purpose of this act. The accounts of employers insured in such account shall be kept in such a manner as the board may prescribe for the purpose of providing information and statistics necessary for determining any changes in rates of classification of employment. The occupational disease compensation account shall be neither more nor less than self-supporting.

2. Any employer, whether subject to and bound by this act or not, may elect to comply with the provisions of compensation plan No. 3 and pay into the occupational disease compensation account the premiums provided in this act, in which event such employer shall not be liable to respond in damages at common law or by statute for disability or death of an employee due to an occupational disease during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such an employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn.

3. All employments, occupations, or industries affected by the provisions of compensation plan No. 3 shall be divided by the board for the purpose of the occupational disease compensation account into classes whose rates may be set and readjusted at such times as the board may determine. The board may rearrange the classes by withdrawing any employment embraced in one class and transferring it wholly or in part to another class. Separate accounts shall be kept of the amounts collected and expended in each class for determining

rates, but for paying compensation and dividends the account in the agency fund shall be one and indivisible. The board shall determine the hazard of the different classes of occupations or industries, and fix the rates of assessment therefore at a percentage of the annual total payroll of such employer at the lowest rate consistent with the maintenance of a solvent occupational disease compensation account, and the creation of necessary surpluses and reserves, and for such purpose may adopt a system of extra ratemaking in such a manner as to take account of the peculiar hazard of each individual risk. The board, in fixing rates, shall provide for the expenses of administering the account, the disbursements on account of occupational disease to employees in each class, reserves adequate to meet anticipated and unexpected losses, reserves adequate to carry the class to maturity, and such other necessary reserves and surpluses as may be determined by the board. The board is authorized, in its discretion, to apply tentative rates, subject to modification in accordance with the loss experience of such risks.

4. The initial payment of assessments provided for herein by employers, whether presently engaged in a business, occupation or industry, subject to this act, or an employer who enters such business, occupation or industry at some future date, and all subsequent payment of assessments herein provided shall be made at such times and in such amounts as may be ordered and prescribed by the board.

5. Any employer who is in default in the observance of any order of the board issued pursuant to the provisions of this act, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and such advance rate shall continue to be in force until such employer shall have ceased to be in such default.

6. If at the end of any year, it shall be seen that the contribution to the occupational disease compensation account by any class of industry shall be less than the drain upon such account on account of that class, the deficiency shall be made good to the account on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

7. The treasurer of the board shall invest in bonds of the United States, bonds of the State of Montana, or bonds of any county, city, or school district in the State of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid such compensation and benefits as the board may direct; provided, however, that when there is sufficient money in the occupational disease compensation account to meet such compensation

NEBRASKA

CHAPTER 281

CREATE PRESUMPTION IN DEATH OR DISABILITY

Legislative Bill 826

INTRODUCED BY TERRY CARPENTER, 48TH DISTRICT; EUGENE T. MALONEY, 51H DISTRICT; WILLIAM R. SKARDA, JR., 7TH DISTRICT; BILL K. BLOOM, 20TH DISTRICT; HAROLD T. MOYLAN, 6TH DISTRICT

AN ACT relating to public employment; to provide a presumption in certain cases of death or disability of firemen or policemen as prescribed.

*Be it enacted by the people of the State of Nebraska,*

Section 1. Whenever any fireman who has served a total of five years as a member of a paid fire department of any city in this state or any policeman of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of his duty for all purposes of Chapter 15, article 10, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, sections 16-329 to 16-337, Revised Statutes Supplement, 1967, Chapter 35, article 2, Reissue Revised Statutes of Nebraska, 1943, and any firemen's or policemen's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this act to be a matter of general statewide concern. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to the effective date of this act and which has not been processed to final administrative or judicial conclusion prior to such date.

Approved May 5, 1969.

NEVADA

DEFINITIONS. TERMS AND PHRASES

617.060 "Disablement" and "total disablement" defined. "Disablement" and "total disablement" are used interchangeably in this chapter and shall be construed to mean the event of becoming physically incapacitated by reason of an occupational disease, as defined in this chapter, from performing any work for remuneration or profit.

617.070 "Employee" and "workman" defined. "Employee" and "workman" are used interchangeably in this chapter and shall be construed to mean every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and include, but not exclusively:

1. Aliens and minors.
2. All elected and appointed paid public officers.
3. Members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay.
4. Officers of quasi-public or private corporations who receive pay as provided in the charter or bylaws of the corporation for service performed, provided that a paid corporation officer shall be deemed for the purposes of this chapter to receive a minimum pay of \$3,600 per annum and a maximum pay of \$15,600 per annum irrespective of the provisions of a corporation charter or bylaws.
5. A working member of a partnership receiving wages, irrespective of profits from such partnership.
6. Lessees engaged in either mining or operating reduction plants; provided:

- (a) That such lessees shall be deemed employees of the lessor and for the purposes of this chapter shall be deemed to be employed at the average wage paid to miners employed regularly in the same locality; and
- (b) That the lessor shall be relieved from providing and securing compensation under the provisions of this chapter if the lessee has covered itself and its employees under the provisions of this chapter.
- "Silicosis" defined. "Silicosis" shall mean a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by X-ray examination or by autopsy.

617.440 Occupational disease arising in course of employment: Necessary requirements.

1. An occupational disease defined in this chapter shall be deemed to arise out of and in the course of the employment:

(a) Only when the disease was contracted within 12 months previous to the date of disability, except in cases of disability resulting from radium poisoning, or exposure to radioactive properties or substances, or to roentgen rays, or ionizing radiation, in which cases the poisoning or illness resulting in disability must have been contracted in the State of Nevada.

(b) If there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(c) Which 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;

(d) Which can be fairly traced to the employment as the proximate cause; and

(e) Which does not come from a hazard to which workmen would have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the business and not independent of the relation of employer and employee.

3. The disease need not have been foreseen or expected, but after its contraction must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence.

[Part 26:44:1947; A 1949, 365; 1953, 297]- NRS A 1961, 589; 1963, 874; 1967, 685)

617.450 Specific occupational diseases; schedule. The following diseases, as well as other occupational diseases defined in NRS 617.440, shall be considered occupational diseases and shall be compensable as such when contracted by an employee and when arising out of and in the course of the employment in any process described in this section.

SCHEDULE

Description of Disease or Injury	Description of Process
Anthrax.....	Handling of livestock wool, hair, bristles, hides and skins.
Arsenic poisoning.....	Any process involving the production or use of arsenic or its preparations or compounds.
Brass or zinc poisoning.....	Any process involving the manufacture, founding or refining of brass or the melting or smelting of zinc.

Description of Disease or Injury	Description of Process
Poisoning by flour, burned grease, bakery and kitchen fumes and other food products.....	Any process involving the production of or the use of flours for baking purposes, greases used in cooking, and other products used in cafes and bakeries, causing or tending to cause what is commonly called baker's disease, baker's asthma, or baker's tuberculosis.
Poisoning by gasoline, benzene, naphtha or other volatile petroleum products.....	Any process involving the production or use of gasoline, benzene, naphtha or other volatile petroleum products.
Poisoning by wood alcohol.....	Any process involving the production or use of wood alcohol or its preparations.
Potassium cyanide poisoning.....	Any process involving the production or use of or direct contact with potassium cyanide.
Radium poisoning or disability due to radioactive properties or substances, or to roentgen rays (X-rays), or to exposure to ionizing radiation.....	Any process involving the use of or direct contact with radium or a radioactive substance, or the use of or direct exposure to roentgen rays (X-rays) or ionizing radiation.
Sulfur dioxide poisoning.....	Any process in which sulfur dioxide gas is evolved by the expansion of liquid sulfur dioxide.
Tenosynovitis and prepatellar bursitis.....	Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

[Part 26:44:1947; A 1949, 365; 1953, 297]—(NRS A 1961, 590)

2. Claims for compensation on account of silicosis shall be forever barred unless application shall have been made to the commission within 1 year after total disability or within 6 months after death.

3. Nothing in this chapter shall entitle an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation shall be paid in case of silicosis unless, during the 10 years immediately preceding the disablement or death, the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 4 years in employment in Nevada, some portion of which shall have been after July 1, 1947.

5. Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, or death, in accordance with the provisions of chapter 616 of NRS, and only in the event of such disability or death resulting within 2 years after the last injurious exposure; provided, that:

(a) In the event of death following continuous total disability commencing within 2 years after the last injurious exposure, the requirement of death within 2 years after the last injurious exposure shall not apply.

(b) Except as provided in NRS 617.465, 617.466, 617.467 and 617.468, the maximum sum payable, including compensation, medical, nursing and hospital benefits for death or disability due to silicosis shall not exceed \$14,250. Compensation shall be payable in sums provided by chapter 616 of NRS. The sum payable to a claimant may be used for any or all of the following items: Compensation, hospital, medical or nursing benefits; except that the amount payable for hospital, medical or nursing benefits shall not exceed \$50 per month. The commission shall not allow the conversion of the compensation benefits provided for in this section into a lump sum payment notwithstanding the provisions of NRS 616.620. Payment of benefits and compensation shall be limited to the claimant and his dependents.

[Part 26:44:1947; A 1949, 365; 1953, 297]—(NRS A 1957, 307; 1959, 250; 1961, 449; 1963, 84; 1965, 980; 1967, 206; 1969, 898)

**617.465 Silicosis: Supplemental compensation during 1963-1965 authorized.**

1. Any claimant or his dependents who have received the maximum sum payable pursuant to NRS 617.460 prior to March 19, 1963, or who will receive such maximum sum payable after March 19, 1963, and prior to July 1, 1965, shall be entitled to receive supplemental compensation in an amount not to exceed \$3,000 during the period between March 19, 1963, and July 1, 1965.

2. Such supplemental compensation shall be payable to a claimant or his dependents in sums provided by chapter 616 of NRS.

3. In paying the supplemental compensation authorized by this section, the commission may, in addition to any moneys required from the occupational diseases fund and the medical benefits fund, expend:

3. In paying the supplemental compensation authorized by this section, the commission may, in addition to any moneys required from the occupational diseases fund and the medical benefits fund, expend:

(a) All moneys which represent the total remainder of amounts of maximum sums payable under paragraph (b) of subsection 5 of NRS 617.460, 617.465 and 617.466 which were not paid between January 1, 1967, and July 1, 1969, because the claimants thereof died or their dependents became disqualified to receive further benefits prior to receipt of the maximum sums payable; and

(b) All moneys which represent the total remainder of amounts of supplemental compensation payable under this section which were not paid between January 1, 1967, and July 1, 1969, because the claimants thereof died or their dependents became disqualified to receive further supplemental benefits prior to receipt of the maximum supplemental compensation authorized by this section.

(Added to NRS by 1967, 207; A 1969, 899)

**617.468 Silicosis: Supplemental compensation during 1969-1971 authorized; payments limited.**

1. Any claimant or his dependents who have received the maximum sums payable pursuant to NRS 617.460, 617.465, 617.466 and 617.467 prior to January 1, 1969, or who will receive such maximum sum payable after January 1, 1969, and prior to July 1, 1971, shall be entitled to receive supplemental compensation in an amount not to exceed \$6,125 during the period between January 1, 1969, and July 1, 1971.

2. Such supplemental compensation shall be payable to a claimant or his dependents in sums provided by chapter 616 of NRS.

3. In paying the supplemental compensation authorized by this section, the commission may, in addition to any moneys required from the occupational diseases fund and the medical benefits fund, expend:

(a) All moneys which represent the total remainder of amounts of maximum sums payable under paragraph (b) of subsection 5 of NRS 617.460, 617.465, 617.466 and 617.467 which were not paid between January 1, 1969, and July 1, 1971, because the claimants thereof died or their dependents became disqualified to receive further benefits prior to receipt of the maximum sums payable; and

(b) All moneys which represent the total remainder of amounts of supplemental compensation payable under this section which were not paid between January 1, 1969, and July 1, 1971, because the claimants thereof died or their dependents became disqualified to receive further supplemental benefits prior to receipt of the maximum supplemental compensation authorized by this section.

4. No supplemental compensation shall be paid after July 1, 1971.

(Added to NRS by 1969, 899)

**617.470 Occupational diseases of respiratory tract resulting from exposure to dusts.** All conditions, restrictions, limitations and other provisions of NRS 617.460 with reference to the payment of compensation or benefits on account of silicosis shall be applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposure to dusts.

[28:44:1947; 1943 NCL § 2800.28]

(REPRINTED WITH ADOPTED AMENDMENTS)

THIRD REPRINT

A. B. 137

ASSEMBLY BILL NO. 137—COMMITTEE ON  
LABOR AND MANAGEMENT

FEBRUARY 11, 1981

Referred to Committee on Labor and Management

SUMMARY—Makes various changes in Nevada Industrial Insurance Act and Nevada Occupational Diseases Act. (BDR 53-566)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to occupational diseases; expanding certain provisions of law regarding firemen and police officers; clarifying the procedure for determining the percentage of disability; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

1 SECTION 1. Chapter 617 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 4, inclusive, of this act.

3 SEC. 2. "*Police officer*" includes a sheriff, deputy sheriff, city police-  
4 man, officer of the Nevada highway patrol, field agent or inspector of  
5 the motor carrier division, vehicle emission control officer or field dealer  
6 inspector of the registration division, member of the police department  
7 of the University of Nevada System or a uniformed employee of the  
8 Nevada state prison whose position requires regular and frequent contact  
9 with the offenders imprisoned and subjects the employee to recall in  
10 emergencies.

11 SEC. 3. A person described in this chapter may be determined to be  
12 totally disabled and eligible to receive compensation for disability as a  
13 result of a combination of injuries, illnesses and disabilities arising out  
14 of and in the course of his employment.

15 SEC. 4. 1. The percentage of disability resulting from an occupa-  
16 tional disease of the heart or lungs must be determined jointly by the  
17 claimant's attending physician and the examining physician designated  
18 by the commission, in accordance with the most recent publication of the  
19 American Medical Association entitled "Guides to the Evaluation of  
20 Permanent Impairment."

21 2. If the claimant's attending physician and the designated examin-  
22 ing physician do not agree upon the percentage of disability, they shall

designate a physician specializing in the branch of medicine which pertains to the disease in question to make the determination. If they do not agree upon the designation of such a physician, each shall choose one physician so specializing, and two physicians so chosen shall choose a third specialist in that branch. The resulting panel of three physicians shall, by majority vote, determine the percentage of disability in accordance with "Guides to the Evaluation of Permanent Impairment."

SEC. 5. NRS 617.390 is hereby amended to read as follows:

617.390 1. Compensation [must not] may be awarded [on account of] for both injury and disease.

2. If an employee claims to be suffering from both an occupational disease and an injury, the commission or self-insured employer shall determine [which is causing the disability and] whether the disease or the injury or both are related to the disability and shall order payment of compensation [in accordance with the provisions of chapter 616 of NRS.] from the proper funds.

3. Compensation awarded for both injury and disease must not exceed the amount payable for the total percentage of disability.

SEC. 6. NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent [total] disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in a full-time salaried occupation of firefighting for the benefit or safety of the public;

(b) Acting as a volunteer fireman entitled to the benefits of chapter 616 of NRS pursuant to the provisions of NRS 616.070; or

(c) Employed in a full-time salaried occupation as a [sheriff, deputy sheriff, city policeman, officer of the Nevada highway patrol, field agent or inspector of the motor carrier division, vehicle emission control officer or field dealer inspector of the registration division, member of the University of Nevada System police department or a uniformed employee of the Nevada state prison whose position requires regular and frequent contact with the offenders imprisoned and subjects the employee to recall in emergency situations.] police officer.

2. Except as provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage and thereafter on an annual basis during his employment.

3. A thorough test of the functioning of the lungs is not required for a volunteer fireman.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.

5. A disease of the lungs is presumed to have arisen out of and in the course of the employment of any fireman or [law enforcement]

1 police officer described in this section if [ during the 12 months before  
2 the date of the filing of a claim for compensation, that fireman or law  
3 enforcement officer underwent a medical examination which was evi-  
4 denced by an X-ray picture of the lungs and] *the last physical examina-*  
5 *tion required by subsection 2, as evidenced by a written report of the*  
6 *medical examiner [ and the medical examination] failed to reveal any*  
7 *evidence of [such] the disease.*

8 6. *A person who is determined to be:*

9 (a) *Partially disabled from an occupational disease pursuant to the pro-*  
10 *visions of this section; and*

11 (b) *Incapable of performing, with or without remuneration, work as a*  
12 *fireman or police officer,*

13 *may elect to receive the benefits provided under NRS 616.580 for a per-*  
14 *manent total disability.*

15 Sec. 1. NRS 617.457 is hereby amended to read as follows:

16 617.457 1. Notwithstanding any other provision of this chapter,  
17 diseases of the heart, resulting in either temporary or permanent [total]  
18 disability or death, are occupational diseases and compensable as such  
19 under the provisions of this chapter if caused by extreme overexertion in  
20 times of stress or danger and a causal relationship can be shown by com-  
21 petent evidence that the disability or death arose out of and in the course  
22 of the employment of a person who, for 5 years or more, has been  
23 employed in a full-time continuous, uninterrupted and salaried occupation  
24 as a [firefighter, sheriff, deputy sheriff, city policeman, officer of the  
25 Nevada highway patrol, field agent or inspector of the motor carrier divi-  
26 sion, vehicle emission control officer or field dealer inspector of title regis-  
27 tration division, member of the University of Nevada System police  
28 department or a uniformed employee of the Nevada state prison whose  
29 position requires regular and frequent contact with the offenders impris-  
30 oned and subject the employee to recall in emergency situations.] *fire-*  
31 *man or police officer.*

32 2. Notwithstanding any other provision of this chapter, diseases of  
33 the heart, resulting in either temporary or permanent [total] disability or  
34 death, are occupational diseases and compensable as such under the pro-  
35 visions of this chapter if caused by extreme overexertion in times of stress  
36 or danger and a causal relationship can be shown by competent evidence  
37 that the disability or death arose out of and was caused by the perform-  
38 ance of duties as a volunteer fireman by a person entitled to the benefits  
39 of chapter 616 of NRS pursuant to the provisions of NRS 616.070 and  
40 who, for 5 years or more, has served continuously as a volunteer fireman  
41 and who has not reached the age of 55 years before the onset of [such]  
42 *the disease.*

43 3. Each employee *who is to be* covered for diseases of the heart pur-  
44 suant to the provisions of this section shall submit to [an initial] a  
45 physical examination, including an examination of the heart, upon  
46 *employment, upon commencement of coverage [or commencement of*  
47 *employment, whichever is later. Thereafter, the employee shall submit*  
48 *to such examinations] and thereafter on [a regular,] an annual basis*  
49 *during his employment.*

4. All physical examinations required pursuant to subsection 3 must be paid for by the employer.

5. Failure to correct predisposing physical conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

6. *A person who is determined to be:*

*(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and*

*(b) Incapable of performing, with or without remuneration, work as a fireman or police officer, may elect to receive the benefits provided under NRS 616.580 for a permanent total disability.*

7. *Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.*

SEC. 8. 1. A person whose claim for an occupational disease of the heart or lungs was accepted under the provisions of NRS 617.455 or 617.457 after January 1, 1978, and where the date of disablement occurred before July 1, 1981, may elect to receive benefits under NRS 616.580 for a permanent total disability pursuant to subsection 6 of NRS 617.455 or subsection 6 of NRS 617.457 if he makes a written request to the Nevada industrial commission for the new rating before January 1, 1982.

2. No change of rating made pursuant to subsection 1 may be retroactive.

SEC. 9. Sections 6 and 7 of this act shall become effective at 12:01 a.m. on July 1, 1981.

Research  
Dept

HB 269 Chapter 506  
STATE OF NEW HAMPSHIRE



In the year of Our Lord one thousand  
nine hundred and seventy-three

AN ACT

relative to diseases characteristic of  
the occupation of firefighting.

Be it Enacted by the Senate and House of Represen-  
tatives in General Court convened:

526. 1 New Provision. Amend RSA 281:2 (supp), as amended, by inserting after  
paragraph V the following new paragraph:

V-a. Notwithstanding the provisions of the foregoing paragraph, there shall exist a prima facie presumption that heart or lung disease in a firefighter, whether he is a regular, call, volunteer or retired member of a fire department, is occupationally related; provided, however, that a call or volunteer firefighter shall have the benefit of this prima facie presumption only if there is on record reasonable medical evidence that he was free of such disease at the beginning of his employment. It shall be the duty of the employer of call or volunteer firefighters to provide the said reasonable medical evidence; if the employer fails to do so, the call or volunteer firefighter shall have the benefit of the prima facie presumption regardless of the absence of the said reasonable medical evidence. Provided further, that a retired firefighter who agrees to submit to any physical examination requested by his city, town, or precinct shall have the benefit of the prima facie presumption only during the period of time of five years from the effective date of his retirement. For the purposes of this paragraph,

a call or volunteer firefighter shall mean a firefighter not regularly employed by a fire department of any city, town or precinct in the state, but answering for duty only to alarms of fire, and who has been appointed by the fire department and is a member of the New Hampshire State Firemen's Association, provided however, that the benefits of this section shall not continue in effect beyond one month after a call, volunteer or permanent firefighter, reaches his sixty-fifth birthday.

506. 2 Effective Date. This act shall take effect sixty days after its passage.

*Approved July 2, 1973*  
*Effective Date August 31, 1973*

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GARIBALDI, FLORIO,  
HIGGINS, LEFANTE, ESPOSITO, CONWELL, JACKMAN,  
PARKER, HEALEY, IRWIN, LITTELL, FORAN, BROWN,  
MARIE, SHUSTED, TURNER and AZZOLINA

Referred to Committee on Municipal Government

AN Act providing that any condition or impairment of health to a uniformed full time employed member of a paid or part-paid [ ] or municipal controlled [ ] volunteer fire department, or permanent member of a police department, caused by hypertension, heart disease or tuberculosis of the respiratory system resulting in total or partial disability shall be deemed to be an occupational disease.

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. Any condition or impairment of health of members of a  
2 paid [ ] or part-paid [ ] or municipal controlled [ ] volunteer fire  
3 department or of permanent members of a police department  
4 caused by hypertension, heart disease or tuberculosis of the  
5 respiratory system, including coronary thrombosis, coronary  
6 occlusion and angina pectoris or acute coronary insufficiency, shall  
7 be an occupational disease provided:

8 a. Such disease develops or first manifests itself during a period  
9 while such member is an active member of such department, and

10 b. Said member, upon entering said fire or police service shall  
11 have undergone a medical examination, which examination failed  
12 to disclose the presence of such disease or diseases.

1 2. For the purposes herein expressed, the time of development  
2 or first manifestation of such diseases shall only be determined  
3 by and run from the date of first notice of the existence of such  
4 diseases to such member by a physician, or the date of death as a  
5 result of such disease.

EXPLANATION—Matter enclosed in bold-faced brackets [ ] in the above bill is not enacted and is intended to be omitted in the law.

3 3. In the event that the provisions of section 1 a. hereof should  
2 not be satisfied, this shall not deprive the individual of the right  
3 to establish by other probative means that the disease is occupa-  
4 tional and arose due to his exposure to the cause thereof during  
5 his employment aforesaid.

1 4. This act shall take effect immediately.

INDUSTRIAL DISEASES ACT  
CHAPTER 100, SECTION 100.01

Industrial Diseases Act

Section 100.01. The purpose of this act is to provide a  
method for the determination of occupational diseases and  
to provide for the compensation of individuals who are  
disabled as a result of such diseases.

Section 100.02. The definitions in this section shall apply  
to this act.

Section 100.03. The board shall have the authority to  
investigate and determine the facts in any case.

Section 100.04. The board shall have the authority to  
award compensation to any individual who is found to be  
disabled as a result of an occupational disease.

Section 100.05. The board shall have the authority to  
require the employer to provide medical care for any  
individual who is found to be disabled as a result of an  
occupational disease.

Section 100.06. The board shall have the authority to  
require the employer to provide vocational training for any  
individual who is found to be disabled as a result of an  
occupational disease.

Section 100.07. The board shall have the authority to  
require the employer to provide a reasonable accommodation  
for any individual who is found to be disabled as a result  
of an occupational disease.

Section 100.08. The board shall have the authority to  
require the employer to provide a reasonable accommodation  
for any individual who is found to be disabled as a result  
of an occupational disease.

and the tediousness of going through congested traffic. This together with the lugging of heavy hose, climbing 65- or 100-foot ladders undoubtedly places a severe strain on the heart.

There are other features which make heart disease prevalent among the members of a police department. They, too, are frequently subjected to violent physical strain, chasing, wrestling with and apprehending prisoners and battling bandits, the pursuit of stolen cars, directing modern traffic—all of which certainly predisposes to an unusual amount of strain on the heart.

With regard to the diseases of the lungs or upper respiratory tract, the members of the fire department are subjected to work in the heat of summer, as well as the cold, ice and snow of winter. Their lungs are irritated by smoke and smoke impregnated with different gases and fumes of acids coincidental to modern electrical apparatus.

Police are also subjected to inclement weather, the heat, cold, rain and snow; provocative of colds, bronchitis and pneumonia.

Tuberculosis of the lungs is caused by a germ, but with frequent attacks of bronchitis and other respiratory infections resistance against tuberculosis, especially if it be latent, is lessened; and active pulmonary tuberculosis may follow such attacks.

It is, therefore, only reasonable to assume that such afflictions are acquired by firemen and policemen in the line of duty.

ASSEMBLY, No. 2099

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GARIBALDI, FLORIO,  
HIGGINS, LEFANTE, ESPOSITO, CONWELL, JACKMAN,  
HEALEY, IRWIN, PARKER, LITTELL, FORAN, MARIE,  
BROWN, SHUSTED, TURNER and AZZOLINA

Referred to Committee on Labor Relations

A SUPPLEMENT to "An act for establishment of a police and firemen's retirement system for the police and firemen of a municipality, county or political subdivision thereof," approved May 23, 1944 (P. L. 1944, c. 255).

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. Notwithstanding the provisions of any law to the contrary,  
2 any condition or impairment of health caused by hypertension,  
3 heart disease or tuberculosis of the respiratory system resulting  
4 in total or partial disability to a full time employed uniformed  
5 member of a paid or part-paid fire department, or the permanent  
6 members of a police department, who successfully passed a physical  
7 examination on entry into such service, which examination failed  
8 to reveal any evidence of such condition, shall be presumed to have  
9 been suffered in the line of duty unless the contrary be shown by  
10 competent evidence.

1 2. This act shall take effect immediately.

STATEMENT

Instances of upper respiratory infections and heart disease are high among firemen and policemen.

The firemen and policemen have a thorough preemployment physical examination, including X-ray of the chest. Therefore, it must be assumed that when a man enters either department he is as free of heart and lung disease as is humanly possible to ascertain.

Undoubtly the high instance of heart disease, among firemen is due, in part, to the startling effect of each alarm of fire sounded over the siren, the speed with which they must drive the apparatus

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# ASSEMBLY, No. 2100

## STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GASIBALDI, FLORIO,  
HIGGINS, LAFANTE, ESPOSITO, CONWELL, JACKMAN,  
LEWIN, PARKER, LITTELL, FORAN, BROWN, MABIE,  
SHUSTED, TURNER and AZZOLINA

Referred to Committee on Labor Relations

A SUPPLEMENT to "An act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including members of the fire departments of any fire district located in any township and including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children, and sole dependent parents of deceased members of said departments, and supplementing Title 43 and amending R. S. 43:16-1, 43:16-2, 43:16-3, 43:16-4, 43:16-5, 43:16-6, 43:16-7 and repealing 43:16-11," approved May 23, 1944 (P. L. 1944, c. 253).

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2 of New Jersey:

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3 heart disease or tuberculosis of the respiratory system resulting  
4 in total or partial disability to a full time employed uniformed  
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6 ber of a police department, who successfully passed a physical  
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Undoubtedly, the high instances of heart disease among firemen is due, in part, to the startling effect of each alarm of fire sounded over the siren, the speed with which they must drive the apparatus and the tenseness of going through congested traffic. This together with the lugging of hose, climbing 65- or 100-foot ladders undoubtedly places a severe strain on the heart.

There are other features which make heart disease prevalent among the members of a police department. They too, are frequently subjected to violent physical strain, chasing, wrestling with and apprehending prisoners and battling bandits, the pursuit of stolen cars, directing modern traffic—all of which certainly predisposes to an unusual amount of strain on the heart.

With regard to the diseases of the lungs or upper respiratory tract, the members of the fire departments are subjected to work in the heat of summer, as well as the cold, rain and snow; provocative of colds, bronchitis and pneumonia.

Tuberculosis of the lungs is caused by a germ, but with frequent attacks of bronchitis and other respiratory infections resistance against tuberculosis especially if it be latent is lessened and active pulmonary tuberculosis may follow such attacks.

It is, therefore, only reasonable to assume that such afflictions are acquired by firemen and policemen in the line of duty.

40A:14-27 Special compensation for permanently disabled members or officers.

If a member or officer of the paid or part-paid fire department or force is permanently disabled from injuries received while in the performance of his duties and the chief or official in charge of such fire department or force shall recommend that special compensation be granted and a physician appointed by the governing body of said municipality shall certify as to the probable permanency of such disability, the governing body of the municipality in their discretion, by ordinance, may provide for special compensation to said disabled member or officer designating the amount thereof and manner of payment, either in a lump sum or by an annual allowance, but such special compensation plus any pension paid and any award for workmen's compensation shall not exceed the salary payable at the time of the sustaining of the injuries. The governing body of said municipality shall include appropriate budget items and provide for the payment of such special compensation.

Source: C.40:47-12.10 (1948, c.304, s. 1); C.40:47-12.11 (1948, c. 304, s. 2); R.S. 40:174-201.

STATE OF NEW YORK

IN SENATE

January 21, 1969

Introduced by Messrs. DONOVAN, FLYNN--read twice and ordered printed, and when presented to be committed to the Committee on Civil Service and Pensions--reported favorably from said committee, committed to the committee of the whole, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT

To amend the retirement and social security law, in relation to benefits payable to, or in behalf of certain firemen and policemen injured or killed in the performance of duty

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The retirement and social security law is hereby  
2 amended by inserting therein a new section, to be section three  
3 hundred sixty-three-a, to read as follows:

4 Section 363-a. Firemen and policemen; certain disabilities. 1. Notwith-  
5 standing any provision of this chapter or of any general, special  
6 or local law to the contrary, any disability or death resulting from  
7 an injury to or impairment of the heart, caused by reason of and  
8 in the performance of duty as a fireman or policeman and not  
1 caused by the wilful negligence of such fireman or policeman, pre-  
2 sumptively shall be deemed to be the natural and proximate result  
3 of an accident, in the absence of substantial evidence to the con-  
4 trary for the purposes of this article, or any general, special or local  
5 law relating to the operation and qualification for benefits under  
6 any municipal pension or retirement plan or system.

7 2. As used in this section, the term "fireman" and "policeman"  
8 means any member who is performing police or fire service, as the

9 phrase police or fire service is defined in paragraphs a, b, c and d  
10 of subdivision eleven of section three hundred two of this article,  
11 and who, prior to entry into service as a fireman or policeman, suc-  
12 cessfully passed a physical examination which failed to disclose  
13 evidence of any disease or other impairment of the heart.

14 Section 2. This act shall take effect on the first day of September next  
15 succeeding the date on which it shall have become a law and shall  
16 remain in force and effect to and including the thirty-first day of  
17 August in the year next succeeding the year in which it shall have  
18 become a law.

NORTH CAROLINA

§ 97-52. Occupational disease made compensable; "accident" defined.—Disablement or death of an employee resulting from an occupational disease described in § 97-53 shall be treated as the happening of an injury by accident within the meaning of the North Carolina Workmen's Compensation Act and the procedure and practice and compensation and other benefits provided by said act shall apply in all such cases except as hereinafter otherwise provided. The word "accident," as used in the Workmen's Compensation Act, shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer and disease attributable to such causes shall be compensable only if culminating in an occupational disease mentioned in and compensable under this article. Provided, however, no compensation shall be payable for asbestosis and/or silicosis as hereinafter defined if the employee, at the time of entering into the employment of the employer by whom compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled or laid off because of asbestosis or silicosis. (1935, c. 123.)

§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.—The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this article:

- (1) Anthrax.
- (2) Arsenic poisoning.
- (3) Brass poisoning.
- (4) Zinc poisoning.
- (5) Manganese poisoning.
- (6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least thirty days in the preceding twelve months' period, and, provided further, only the employer in whose employment such employee was last injuriously exposed shall be liable.
- (7) Mercury poisoning.
- (8) Phosphorous poisoning.

- (9) Poisoning by carbon bisulphide, methanol, naphtha or volatile halogenated hydrocarbons.
- (10) Chrome ulceration.
- (11) Compressed-air illness.
- (12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrobenzol, anilin, and others).
- (13) Infection or inflammation of the skin, eyes, or other external contact surfaces or oral or nasal cavities or any other internal or external organ or organs of the body due to irritating oils, cutting compounds, chemical dust, liquids, fumes, gases or vapors, and any other materials or substances.  
The provisions of this subdivision shall not apply to cases of occupational diseases not included in said subdivision prior to July 1, 1963, unless the last exposure in an occupation subject to the hazards of such disease occurred on or after July 1, 1963.
- (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
- (15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X-rays or exposure to any other source of ionizing radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
- (16) Blisters due to use of tools or appliances in the employment.
- (17) Bursitis due to intermittent pressure in the employment.
- (18) Miner's nystagmus.
- (19) Bone felon due to constant or intermittent pressure in employment.
- (20) Synovitis, caused by trauma in employment.
- (21) Tenosynovitis, caused by trauma in employment.
- (22) Carbon monoxide poisoning.
- (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- (24) Asbestosis.
- (25) Silicosis.
- (26) Psittacosis.
- (27) Undulant fever.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals. (1935, c. 123; 1949, c. 1078; 1953, c. 1112; 1955, c. 1026, s. 10; 1957, c. 1396, s. 6; 1963, c. 553, s. 1; c. 965.)

§ 97-54. "Disablement" defined. — The term "disablement" as used in this article as applied to cases of asbestosis and silicosis means the event of becoming actually incapacitated because of asbestosis or silicosis to earn, in the same or any other employment, the wages which the employee was receiving at the time of his last injurious exposure to asbestosis or silicosis; but in all other cases of occupational disease "disablement" shall be equivalent to "disability" as defined in G. S. 97-2 (9). (1935, c. 123; 1955, c. 525, s. 1.)

§ 97-55. "Disability" defined. — The term "disability" as used in this article means the state of being incapacitated as the term is used in defining "disablement" in § 97-54. (1935, c. 123.)

§ 97-56. Limitation on compensable diseases. — The provisions of this article shall apply only to cases of occupational disease in which the last exposure in an occupation subject to the hazards of such diseases occurred on or after March 26, 1935. (1935, c. 123.)

§ 97-57. Employer liable.—In any case where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, which was on the risk when the employee was so last exposed under such employer, shall be liable.

For the purpose of this section when an employee has been exposed to the hazards of asbestosis or silicosis for as much as thirty working days, or parts thereof, within seven consecutive calendar months, such exposure shall be deemed injurious but any less exposure shall not be deemed injurious; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to the hazards of asbestosis or silicosis, and if after insurance carrier goes off the risk said employee is further exposed to the hazards of asbestosis or silicosis, although not so exposed for a period of thirty (30) days or parts thereof so as to constitute a further injurious exposure, such carrier shall, nevertheless, be liable. (1935, c. 123; 1945, c. 762; 1957, c. 1396, s. 7.)

§ 97-58. Claims for certain diseases restricted; time limit for filing claims.—(a) Except as otherwise provided in G. S. 97-61.6, an employer shall not be liable for any compensation for asbestosis or silicosis or lead poisoning unless disablement or death results within two years after the last exposure to such disease, or, in case of death, unless death follows continuous disablement from such disease, commencing within the period of two years limited herein, and for which compensation has been paid or awarded or timely claim made as hereinafter provided and results within seven years after such last exposure in the case of lead poisoning, or 350 weeks in the case of asbestosis or silicosis.

(b) The report and notice to the employer as required by § 97-22 shall apply in all cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time of notice of an occupational disease shall run from the date that the employee has been advised by competent medical authority that he has same.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within one year after death, disability, or disablement as the case may be. Provided, however, that the right to compensation for radiation injury, disability or death shall be barred unless a claim is filed within one (1) year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 6; 1963, c. 553, s. 2.)

§ 97-59. Employer to provide treatment.—In the event of disability from an occupational disease, the employer shall provide reasonable medical and/or other treatment for such time as in the judgment of the Industrial Commission will tend to lessen the period of disability or provide needed relief; provided, however, medical and/or other treatment for asbestosis and/or silicosis shall not exceed a period of three years nor cost in excess of one thousand (\$1,000.00) dollars in any one year; and, provided further, all such treatment shall be first authorized by the Industrial Commission after consulting with the advisory medical committee. (1935, c. 123; 1945, c. 762.)

§ 97-60. Examination of employees by advisory medical committee; designation of industries with dust hazards.—The compulsory examination of employees and prospective employees as herein provided applies only to persons engaged or about to engage in a occupation which has been found by the Industrial Commission to expose them to the hazards of asbestosis and/or silicosis. The Industrial Commission shall designate by order each industry found subject to any such hazard and shall notify the employers therein before such examinations are required. On and after March 26, 1935, it shall be the duty of

every employer, in the conduct of whose business his employees or any of them are subjected to the hazards of asbestosis and/or silicosis, to provide prior to employment necessary examinations of all new employees for the purpose of ascertaining if any of them are in any degree affected by asbestosis and/or silicosis or peculiarly susceptible thereto; and every such employer shall from time to time, as ordered by the Industrial Commission, provide similar examinations for all of his employees whose employment exposes them to the hazards of asbestosis and/or silicosis. At least one member of the advisory medical committee or other physician designated by the Industrial Commission shall make such examinations or be present when any such examination is made. The refusal of an employee to submit to any such examination shall bar such employee from compensation or other benefits provided by this article in the event of disablement and/or death resulting from exposure to the hazards of asbestosis and/or silicosis subsequent to such refusal. It shall be the duty of the Industrial Commission to make and/or order inspections of employments and to keep a record of all employments subjecting employees to the hazards of asbestosis and/or silicosis, and to notify the employer in any case where such hazard shall have been found to exist. The unreasonable failure of an employer to provide for any examination or his unreasonable refusal to permit any inspection herein authorized shall constitute a misdemeanor and shall be punishable as such. (1935, c. 123.)

(W) Cardiovascular and pulmonary diseases incurred by fire fighters or police officers following exposure to smoke, toxic gases, chemical fumes and other toxic vapors: Any cardiovascular and pulmonary disease of a fire fighter or police officer caused by the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapors in the performance of his duty. For the purpose of this section, "fire fighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

Chapter 4123. of the Revised Code does not entitle a fire fighter, or police officer, or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular and pulmonary disease, unless the fire fighter or police officer has been subject to injurious exposure to smoke, toxic gases, chemical fumes, and other toxic vapors in his employment in this state preceding his disablement, for periods amounting in all to at least three years, some portion of which has been after January 1, 1967, except as provided in the last paragraph of section 4123.57 of the Revised Code.

Compensation and medical, hospital, and nursing expenses on account of cardiovascular and pulmonary diseases of fire fighters and police officers are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with section 4123.56, 4123.58, or 4123.59, of the Revised Code, and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Claims of a fire fighter or police officer for compensation and medical, hospital, and nursing expenses on account of a cardiovascular and pul-

monary disease are forever barred unless application therefor is made to the commission within one year after total disability began or within such longer period as does not exceed six months after diagnosis of such disease by a licensed physician. Claims of dependents of fire fighters or police officers for benefits on account of death from cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within six months after death.

Chapter 4123. of the Revised Code does not entitle a fire fighter or police officer, or his dependents, to compensation, medical, hospital and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular and pulmonary disease in the event of failure or omission on the part of the fire fighter or police officer truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A fire fighter or police officer shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that a fire fighter or police officer refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialists and the expenses of examination and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

OHIO ASSOCIATION OF  
PROFESSIONAL FIRE FIGHTERS

(Amended House Bill No. 331)

AN ACT

*Handwritten signature*

To amend sections 4123.343, 4123.57, and 4123.63 of the Revised Code, relative to making cardiovascular and pulmonary diseases incurred by fire fighters compensable occupational diseases under the workmen's compensation provisions of the Revised Code.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 4123.343, 4123.57, and 4123.63 of the Revised Code be amended to read as follows:

Sec. 4123.343. This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section handicapped employee means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

- (1) Epilepsy;
- (2) Diabetes;
- (3) Cardiac disease;
- (4) Arthritis;
- (5) Amputated foot, leg, arm or hand;
- (6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally;
- (7) Residual disability from poliomyelitis;
- (8) Cerebral palsy;

- (9) Multiple sclerosis;
- (10) Parkinson's disease;
- (11) Cerebral vascular accident;
- (12) Tuberculosis;
- (13) Silicosis;
- (14) Psycho-neurotic disability following treatment in a recognized medical or mental institution;
- (15) Hemophilia;
- (16) Chronic osteomyelitis;
- (17) Ankylosis of joints;
- (18) Hyper insulinism;
- (19) Muscular dystrophies;
- (20) Arterio-sclerosis;
- (21) Thrombo-phlebitis;
- (22) Varicose veins;
- (23) *Cardiovascular and pulmonary diseases of a fire fighter employed by a municipal corporation or township as a regular member of a lawfully constituted fire department.*

(B) Under the circumstances set forth in this section all or such portion as the commission shall determine of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.24 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer. If the employer is a self-insurer, the proportion of such costs whether charged to such statutory surplus fund in whole or in part shall be by way of direct payment to such employee or his dependents or by way of reimbursement to the self-insurer as the circumstances shall indicate. The provisions of this section are applicable only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division (C) of section 4123.57 of the Revised Code.

(C) Any employer who advises the industrial commission prior to the occurrence of an injury or occupational disease that it has in its employ a handicapped employee as defined in this section shall be entitled, in the event such a person is injured, to a determination hereunder. Any employer who fails to so notify the commission but makes application for a determination hereunder shall be entitled to a determination if the commission finds that the failure to give notice of the employment of such a handicapped employee has not made it impossible for the commission to make the determination required by this section.

Application for such determination shall only be made in cases where a handicapped employee as defined in this section or his dependents claims or is receiving an award of compensation as a result of an injury or occupational disease occurring or contracted after the effective date of this section.

Upon the filing of such an application the industrial commission shall hold a hearing in accordance with rules promulgated by the commission.

(D) The circumstances under and the manner in which such apportionment shall be made are:

(1) Whenever a handicapped employee as defined in this section is injured or disabled or dies as the result of an injury or occupational disease sustained in the course of and arising out of his employment in this state and the industrial commission awards compensation therefor and when it appears to the satisfaction of the industrial commission that the injury or occupational disease or the death resulting therefrom would not have occurred but for the pre-existing physical or mental impairment of such handicapped employee, all compensation and benefits payable on account of such disability or death shall be paid from such surplus fund.

(2) Whenever a handicapped employee as defined in this section is injured or disabled or dies as a result of an injury or occupational disease and the commission finds that said injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting disability or death was caused at least in part through aggravation of such employee's pre-existing disability, the commission shall determine in a manner which is equitable and reasonable and based upon medical evidence the amount of disability or proportion of the cost of the death award which is attributable to the employee's pre-existing disability and the amount so found shall be charged to such statutory surplus fund.

(E) The benefits and provisions of this section shall apply only to employers who have complied with the workmen's compensation act either through insurance with the state fund or by obtaining permission to pay compensation directly under section 4123.35 of the Revised Code.

Sec. 4123.57. Partial disability compensation shall be paid as follows provided, that an employee may elect as between divisions (A) and (B) of this section as to the manner of receiving the compensation set forth in this section:

(A) In case of injury or occupational disease resulting in partial disability other than those exclusively provided for under division (C) of this section, the employee shall receive per week sixty-six and two-thirds per cent of the impairment of his earning

capacity which results from the injury or occupational disease during the continuance thereof, not to exceed a maximum of forty-nine dollars per week but not in a greater sum in the aggregate than ten thousand dollars.

An employee is eligible to file an application with the industrial commission for the determination of the percentage of his permanent partial disability resulting from the injury or occupational disease if he:

(1) Has received compensation for temporary total disability; or

(2) Would have been eligible for compensation for temporary total disability had the employer not paid him wages during the period of disability; or

(3) Has received compensation for partial disability under division (A) of this section.

An employee may file such application upon the expiration of forty weeks after:

(a) The date of the termination of the latest period of temporary total disability, if eligible under (1) above;

(b) The latest period of temporary total disability for which he would have been entitled, if eligible under (2) above;

(c) The date of the injury or the contraction of an occupational disease if eligible under (3) above.

Whenever such application is filed, the commission shall set the application for hearing with written notices to all interested persons. After hearing and determination, the employee shall file his election to receive compensation for partial disability under either division (A) or division (B) of this section, and such election may thereafter be changed upon approval of the industrial commission for good cause shown.

(B) The industrial commission, upon such application, shall determine the percentage of the employee's permanent disability, except such as is subject to division (C) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of his average weekly wage, not to exceed a maximum of forty-nine dollars per week for the number of weeks which equals such percentage of two hundred weeks. Except upon application for reconsideration, review, or modification which is filed within ten days after the date on which notice of such award is mailed to the employee and the employer, in no instance shall the commission modify its former order unless it finds from such medical or clinical findings that the condition of the claimant resulting from the injury has so pro-

gressed as to have increased the percentage of permanent disability. No award shall be made under this division based upon a percentage of disability which, when taken with all other percentages of permanent disability, exceeds one hundred per cent. If the percentage of such permanent disability of the employee equals or exceeds ninety per cent, compensation for permanent partial disability shall be paid for two hundred weeks.

Compensation payable under divisions (A) and (B) of this section shall accrue and be payable to the employee from the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or the date of the diagnosis of the occupational disease.

When an award under this division of this section has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the widow, or if there is no widow surviving, to the dependent children of such employee, and if there are no such children surviving, then to such other dependents as the commission may determine.

(C) In cases included in the following schedule the compensation payable per week to the employee shall be sixty-six and two-thirds per cent of his average weekly wage, but not more than forty-nine dollars per week regardless of the average weekly wage, and not less than twenty-five dollars per week unless the average weekly wage is less than twenty-five dollars in which case the compensation shall be equal to the full wages and shall continue during the periods provided in the following schedule:

For the loss of a thumb, sixty weeks.

For the loss of a first finger, commonly called index finger, thirty-five weeks.

For the loss of a second finger, thirty weeks.

For the loss of a third finger, twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one third of such finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two thirds of such finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no

case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either more than useless, the same number of weeks apply to such members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers and the nature of his employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or disability resulting from such loss of fingers exceeds the normal handicap or disability resulting from such loss of fingers, the commission may take that fact into consideration and increase the award of compensation accordingly, but the award made in such cases shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

For the loss of one of the toes other than the great toe, ten weeks.

The loss of more than two thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, the commission shall determine the number of weeks to be awarded in each case determine, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-

five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the commission shall make such award of compensation as it deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of five thousand dollars. For the purpose of making such award it shall not be material whether such employee is gainfully employed in any occupation or trade at the time of the commission's determination.

When an award under this division of this section has been made prior to the death of an employee from a cause other than the injury or occupational disease on which the award is based, all unpaid installments accrued or to accrue under the provision of the award shall be payable to the widow, or if there is no widow surviving, to the dependent children of such employee and if there are no such children, then to such dependents as the commission may determine.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to his death from a cause other than the injury or occupational disease which caused such severance, the commission shall make an award in accordance with this division of this section for such loss which shall be payable to the widow, or if there is no widow surviving, to the dependent children of such employee and if there be no such children, then to such dependents as the commission may determine.

(D) Compensation for partial disability under divisions (A), (B), and (C) of this section shall be in addition to the compensation paid the employee for the periods of temporary total disability resulting from injury or occupational disease, but the amount of compensation paid for partial disability under division (A) of this section is not in addition to the compensation paid for permanent partial disability under division (B) or (C) of this section and the amount of compensation paid for partial disability under division (A) of this section shall be deducted from the amount of compensation payable for permanent partial disability under division (B) or (C) of this section but only one deduction shall be made if payments are made under both divisions (B) and (C) of this section for permanent partial disability involved in the same claim.

On the first day of January and July of each year the commission shall issue its voucher to the treasurer of state for the purpose of transferring the sum of fifteen thousand dollars from the surplus provided by division (B) of section 4123.34 of the Revised Code, to the credit of the vocational rehabilitation fund of the state board for vocational education, department of education, and said amount, together with such matching amounts as may be allotted to the state by the United States under the act of congress entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," 41 Stat. 735, 29 U.S.C. 32, 1920, as amended, shall be used to furnish living maintenance for injured employees who are entitled to and are receiving rehabilitation pursuant to said act of congress, subject to the following conditions and limitations:

An employee is entitled to receive living maintenance when the bureau of vocational rehabilitation or the state rehabilitation center has certified that vocational rehabilitation for such person is feasible and that he is susceptible of being vocationally rehabilitated and when the commission has approved the payment of such living maintenance by unanimous vote.

Such employee shall undertake the course of instruction within sixty days from the date when he has sufficiently recovered from his injury to permit his so doing, or as soon thereafter as the bureau or the state rehabilitation center provides opportunity for his rehabilitation.

Such employee shall continue in rehabilitation training with such reasonable regularity as his health permits.

Such employee may not have maintenance in excess of forty dollars and twenty-five cents per week during training nor for a maintenance period in excess of fifty-two weeks in all.

The commission shall forthwith refer to the state rehabilitation center or to the bureau of vocational rehabilitation all claimants respecting whom the commission believes that an inquiry into the possibilities of vocational rehabilitation should be made.

In all cases arising under division (C) of this section, if the state rehabilitation center or the bureau determines that an injured or disabled employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether such appliance or repair thereof will be serviceable in the vocational rehabilitation of the injured employee, and regardless of whether such employee has returned to or can ever again return to any gainful employment, the commission may pay the cost of such artificial appliance or repair thereof out of the surplus created by division (B) of section 4123.34 of the Revised Code.

If an employee makes application for a finding and the commission finds that he has contracted silicosis as defined in division (X) of section 4123.68 of the Revised Code, and that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust and if such employee, after such finding, has changed or shall change his occupation to an occupation in which the exposure to silica dust is substantially decreased, the commission shall allow to such employee forty-nine dollars per week for a period of thirty weeks, commencing as of the date of such discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of such period of thirty weeks the commission shall allow such employee sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from such change of occupation but not to exceed a maximum of forty dollars and twenty-five cents per week. No such employee shall be entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which such employee is employed in an occupation in which the exposure to silica dust is not substantially less than the exposure in the occupation in which he was formerly employed or for any period during which such employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis. The commission may accord to such employee medical and other benefits in accordance with section 4123.66 of the Revised Code.

*If a fire fighter makes application for a finding and the commission finds that he has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of such fire fighter's occupation is medically advisable in order to decrease substantially further exposure to smoke gases, chemical fumes, and other toxic vapors, and if such fire fighter, after such finding, has changed or changes his occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the commission shall allow to such fire fighter forty-nine dollars per week for a period of thirty weeks, commencing as of the date of such discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of such period of thirty weeks the commission shall allow such fire fighter sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from such change of occupation but not to exceed a maximum of forty dollars and twenty-five cents per week. No such fire fighter shall be entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which such*

*fire fighter is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which he was formerly employed or for any period during which such fire fighter may be entitled to receive compensation or benefits under section 4123.65 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The commission may accord to such fire fighter medical and other benefits in accordance with section 4123.66 of the Revised Code.*

Sec. 4123.68. Every employee who is disabled because of the contraction of an occupational disease as defined in this section, or the dependent of an employee whose death is caused by an occupational disease as defined in this section, is entitled to the compensation provided by sections 4123.55 to 4123.59, inclusive, and section 4123.66 of the Revised Code, subject to the modifications relating to occupational diseases contained in sections 4123.01 to 4123.94, inclusive, of the Revised Code.

The following diseases shall be considered occupational diseases and compensable as such when contracted by an employee in the course of his employment in which such employee was engaged at any time within twelve months previous to the date of his disablement and due to the nature of any process described in this section.

#### SCHEDULE

Description of disease or injury and description of process:

- (A) Anthrax: Handling of wool, hair, bristles, hides, and skins.
- (B) Glanders: Care of any equine animal suffering from glanders; handling carcass of such animal.
- (C) Lead poisoning: Any industrial process involving the use of lead or its preparation or compounds.
- (D) Mercury poisoning: Any industrial process involving the use of mercury or its preparations or compounds.
- (E) Phosphorous poisoning: Any industrial process involving the use of phosphorous or its preparations or compounds.
- (F) Arsenic poisoning: Any industrial process involving the use of arsenic or its preparations or compounds.
- (G) Poisoning by benzol or by nitro-derivatives and amido-derivatives of benzol (dinitro-benzol, anilin, and others): Any industrial process involving the use of benzol or nitro-derivatives or amido-derivatives of benzol or its preparations or compounds.

(H) Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products: Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.

(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.

(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.

(K) Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, or vapors: Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases, or vapors.

(L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds: Handling or industrial use of carbon, pitch, or tarry compounds.

(M) Compressed air illness: Any industrial process carried on in compressed air.

(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.

(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.

(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.

(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.

(R) Tenosynovitis and prepatellar bursitis: Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

(S) Chrome ulceration of the skin or nasal passages: Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.

(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.

(U) Sulphur dioxide poisoning: Any industrial process in

which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.

(V) **Berylliosis:** Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code, do not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from berylliosis unless the employee has been subject to injurious exposure to beryllium dust or fumes in his employment in this state preceding his disablement and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Before awarding compensation for partial or total disability or death due to berylliosis, the industrial commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of the disability, the nature of the disability, whether permanent or temporary, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to berylliosis fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(W) *Cardiovascular and pulmonary diseases incurred by fire fighters following exposure to smoke, toxic gases, chemical fumes and other toxic vapors: Any cardiovascular and pulmonary disease of a fire fighter caused by the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapors in the performance of his duty. For the purpose of this section, "fire fighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer.*

*Sections 4123.01 to 4123.94, inclusive, of the Revised Code*

do not entitle a fire fighter or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular and pulmonary disease, unless the fire fighter has been subject to injurious exposure to smoke, toxic gases, chemical fumes, and other toxic vapors in his employment in this state preceding his disablement, for periods amounting in all to at least three years, some portion of which has been after January 1, 1967, except as provided in the last paragraph of section 4123.57 of the Revised Code.

Compensation and medical, hospital, and nursing expenses on account of cardiovascular and pulmonary diseases of fire fighters are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with section 4123.56, 4123.58, or 4123.59, of the Revised Code, and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Claims of a fire fighter for compensation and medical, hospital, and nursing expenses on account of a cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within one year after total disability began or within such longer period as does not exceed six months after diagnosis of such disease by a licensed physician. Claims of dependents of fire fighters for benefits on account of death from cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within six months after death.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code, do not entitle a fire fighter or his dependents to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular and pulmonary disease in the event of failure or omission on the part of the fire fighter truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A fire fighter shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that a fire fighter refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commis-

sion, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialists and the expenses of examination and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(X) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code do not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, unless the employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in this state preceding his disablement, for periods amounting in all to at least three years, some portion of which has been after October 12, 1945, except as provided in the second to last paragraph of section 4123.57 of the Revised Code.

Compensation and medical, hospital, and nursing expenses on account of silicosis are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with sections 4123.56, 4123.58, and 4123.59, of the Revised Code, and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Claims of an employee for compensation and medical, hospital, and nursing expenses on account of silicosis are forever barred unless application therefor is made to the commission within one year after total disability began or within such longer period as does not exceed six months after diagnosis of silicosis by a licensed physician. Claims of dependents for benefits on account of death from silicosis are forever barred unless application therefor is made to the commission within six months after death.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code, do not entitle an employee or his dependents to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death due to silicosis, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to silicosis fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

\*\*\* (Y) Radiation illness: Any industrial process involving the use of radioactive materials.

Claims for compensation and benefits due to radiation illness are payable only in the event death or disability occurred within eight years after the last injurious exposure provided, however, that if the death followed continuous disability which commenced within eight years of the last injurious exposure the requirement of death within eight years after the last injurious exposure does not apply.

Claims of an employee for compensation and medical, hospital, and nursing expenses on account of radiation illness are forever barred unless application therefor is made to the commission within one year after disability began or within such longer period as does not exceed six months after diagnosis of radiation illness by a licensed physician. Claims of dependents for benefits on account of death from radiation illness are forever barred unless application therefor is made to the commission within six months after death.

\*\*\* (Z) All other occupational diseases: A disease peculiar to a particular industrial process, trade, or occupation and to which an employee is not ordinarily subjected or exposed outside of or away from his employment.

All conditions, restrictions, limitations, and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis, shall be applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposures to dusts, except berylliosis.

SECTION 2. That existing sections 4123.343, 4123.57, and 4123.68 of the Revised Code are hereby repealed.

CHARLES F. KURFESS,  
*Speaker of the House of Representatives.*

JOHN W. BROWN,  
*President of the Senate.*

Passed July 24, 1967.

Approved August 1, 1967.

JAMES A. RHODES,  
*Governor.*

The sectional numbers herein are in conformity with the Revised Code.

OHIO LEGISLATIVE SERVICE COMMISSION

DAVID A. JOENSTON, *Director*

Filed in the office of the Secretary of State at Columbus, Ohio,  
on the 1st day of August, A. D. 1967.

I hereby certify that the foregoing is a true copy of the enrolled bill.



TED W. BROWN,

*Secretary of State.*

File No. 162.

Effective October 31, 1967.

PENNSYLVANIA

No. 435

BY ACT

HB 505

Amending the act of June 21, 1939 (P. L. 566), entitled "An Act defining the liability of an employer to pay damages for occupational disease contracted by an employe arising out of and in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; imposing duties on the Department of Labor and Industry, the Workmen's Compensation Board, Workmen's Compensation Referees, and deans of medical schools; creating a medical board to determine controverted medical issues; establishing an Occupational Disease Fund in custody of the State Workmen's Insurance Board; imposing upon the Commonwealth a part of the compensation payable for certain occupational diseases; making an appropriation; and prescribing penalties," further defining diseases of fire fighters within the act, and fixing liability for compensation thereunder on the Commonwealth.

The General Assembly of the Commonwealth of ~~the Commonwealth~~ hereby enacts as follows:

Section 1. Clause (o) of section 108, act of June 21, 1939 (P. L. 566), known as "The Pennsylvania Occupational Disease Act," added December 10, 1959 (P. L. 1748), is amended to read:

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases:

(o) Diseases of the ~~respiratory system~~ resulting in either temporary or permanent total or partial disability or death, after four years or more of service in [the full time salaried occupation of] fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment of any such firemen. The Commonwealth shall pay the full amount of compensation for disability under this clause.

APPROVED—The 17th day of December A. D. 1965.

WILLIAM W. SCRANTON

The foregoing is a true and correct copy of Act of the General Assembly No. 435.

*W. Stuart*  
Secretary of the Commonwealth.

74502475

# State of Rhode Island, &c.

## IN GENERAL ASSEMBLY

JANUARY SESSION, A. D. 19 74

### AN ACT

RELATING TO ANNUITIES TO DEPENDENTS OF DECEASED FIREMEN.

*It is enacted by the General Assembly as follows:*

SECTION 1. Section 45-19-12 of the general laws in chapter 45-19 entitled "Relief of firemen and policemen", is hereby amended to read as follows:

"45-19-12. Annuitias to dependents of deceased firemen.- If an active or retired member of the fire force of a city or town or crash rescue crewman of the state of Rhode Island is killed or dies from injuries received while in the performance of his duty as such member; or dies of a heart condition; or dies of respiratory ailments; or dies of any conditions derived from hypertension while still-a member there shall be paid out of the firemen's relief fund of Rhode Island, to the following dependents of such deceased person the following sums of money;

" \* \* "

Sec. 2. This act shall take effect upon its passage.

5 C

*Handwritten signature*

Senate: Bristow and Rubin  
Attorney: Hoilman  
Stenographer: Hall  
Date: 2-1-67  
No.: 137



SOUTH CAROLINA

S. 157  
Gen. Com.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1962, BY ADDING NEW SECTION 72-251.1, SO AS TO CREATE A PRESUMPTION IN FAVOR OF FIRE FIGHTERS THAT CERTAIN CONDITIONS OF HEALTH ARISE OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT FOR THE PURPOSES OF THE SOUTH CAROLINA WORKMEN'S COMPENSATION LAW.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The Code of Laws of South Carolina, 1962, is amended by adding new Section 72-251.1, so as to create a presumption in favor of fire fighters that certain conditions of health arise out of and in the course of their employment, as follows:

"Section 72-251.1. Notwithstanding the provisions of Chapter 5 of Title 72, for purposes of the South Carolina Workmen's Compensation Law, any impairment or injury to the health of a fire fighter caused by tuberculosis, hypertension, heart disease or respiratory disease resulting in total or partial disability, or death, shall be presumed to have arisen out of and in the course of employment, unless the contrary is shown by

competent evidence, if such fire fighter is at the time of such impairment or injury a bona fide member of a fire department in this State. In order to be entitled to the presumption provided for herein, any person becoming a member of a fire department after the effective date of this act must be under the age of thirty-seven years and must have successfully passed a physical examination by a competent physician upon entering into such service, which examination failed to reveal any evidence of such condition or conditions."

SECTION 2. This act shall take effect upon approval by the Governor.

SOUTH DAKOTA

Circulatory or respiratory disease presumed occupational in firemen.

Notwithstanding the provisions of any general or special law to the contrary, any condition of impairment of health caused by hypertension, heart disease, or respiratory disease resulting in total or partial disability to an officer or member of a fire department who successfully passed physical examination on entering into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

TENNESSEE

HOUSE BILL NO. 790

BY

Atkinson  
Galbreath  
Allen  
Bradley  
Agze  
Mrs. Anderson  
Cook  
Pride

AN ACT to provide for a presumption that the impairment of health by lung disease, hypertension or heart disease of Firemen or Fire Fighters regularly employed by the State of Tennessee, any county, city, municipal or other governmental agency in the State of Tennessee, shall be presumed to have occurred, suffered or arose out of and in the course of duty of such employee.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That the State of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular Fire Department manned by regular and full-time employees and has established or hereafter establishes any form of compensation, other than workman's compensation, to be paid to such Firemen or Fire Fighters for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such Firemen caused by disease of the lungs hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary be shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment. Any such condition or impairment of health which results in death shall be presumed (unless the contrary be shown by competent medical evidence) to be a loss of life in line of duty, and to have been in the line and course of employment, and in the actual discharge of the duties of his position, or the sustaining of personal injuries by external and violent means or by accident in the course of employment and in the line of duty. Provided, however, that such firemen shall have successfully passed a physical examination prior to such claimed disability, or upon entering upon his governmental employment and such examination fails to reveal any evidence of the condition or disease of the lungs, hypertension or heart disease.

It is hereby declared to be the legislative intent that this Act is to be remedial in character and to permit and require any municipal corporation maintaining any permanent Fire Department heretofore created or created after the effective date of this Act, to be covered by its provisions.

SECTION 2. BE IT FURTHER ENACTED, That all Acts or parts of Acts in conflict with the provisions of this Act be and the same are hereby repealed, and the provisions of this Act are declared to be severable; and, if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent, now hereby declared, that this Act would have passed even if such unconstitutional or void matter had not been included therein.

SECTION 3. BE IT FURTHER ENACTED, That this Act take effect from and after its passage, the public welfare requiring it.

PASSED: March 19, 1965

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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SPEAKER OF THE SENATE

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GOVERNOR

APPROVED:

TEXAS

HEART AND LUNG ADOPTION PENDING

The Fireman's Heart and Lung Bill, which was effective August 30, 1971, caught the Beaumont Pension Fund in an untimely predicament. The Bill provides that before it can be adopted locally, the fund must obtain an actuarial study showing what effect this will have on the financial condition of the fund. The State Pension Law provides that a pension fund can only pay for an actuarial study every three (3) years. We had an actuary study made in January, 1970, so are therefore unable to pay for another until 1973. The Board of Trustees are presently working to get an estimate of cost from the actuarial firm. When this cost is determined, the only way we will be able to adopt the Heart and Lung provisions at this time is to obtain funds for an actuary study from some other source.

Basically what the Bill provides is "any Fireman who has been employed for as long as six years, and thereafter becomes disabled or dies from Heart or Lung disease, is presumed to have died as a consequence of his duties as a Fireman, if he has previously, at anytime, successfully passed a physical examination without any evidence of Heart or Lung disease."

35-2-15. Benefits for occupational diseases—Computation of benefits—  
Vocational rehabilitation.

The benefits to which a disabled employee or his dependents shall be entitled under this act shall be based upon his average weekly wage computed under the formula set forth in section 35-1-75, Utah Code Annotated 1953, as amended, and are to be limited as follows:

(2) In cases of permanent total disability the award shall be sixty per cent of the average weekly wages for a period of not to exceed five years, beginning with the date total disability began, and thereafter forty-five per cent of such average weekly wages, but not to exceed a maximum of \$54 per week and not less than \$29 per week, plus \$5.00 for a dependent wife and \$5.00 for each dependent minor child under the age of eighteen years up to a maximum of four such dependent minor children; provided, however, that in no case of permanent total disability shall the employer or its insurance carrier be required to pay more than \$24,648; and provided, further, that a finding by the commission of permanent total disability shall in all cases be tentative and not final until such time as the following proceedings have been had:

Where the employee has tentatively been found to be permanently and totally disabled, as in this section provided, it shall be mandatory that the industrial commission of Utah refer such employee to the division of vocational rehabilitation under the state board of education for rehabilitation training and it shall be the duty of the commission to order paid to such vocational rehabilitation division, out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed \$830 for use in the rehabilitation and training of such employee; the rehabilitation and training of such employee shall generally follow the practice applicable under section 35-1-69, Utah Code Annotated 1953, as amended, and relating to the rehabilitation of employees having combined injuries. If and when the division of vocational rehabilitation under the state board of education certifies to the industrial commission of Utah in writing that such employee has fully co-operated with the division of vocational rehabilitation in its efforts to rehabilitate him, and in the opinion of the division the employee may not be rehabilitated, then the commission shall order that there be paid to such employee weekly benefits at the rate of forty-five per cent of his average weekly earnings, but not to exceed \$54 per week out of that special fund provided for by section 35-1-68, Utah Code Anno-

tated 1953, as amended, for such period of time beginning with the time that the payments (as in this section provided) to be made by the employer or its insurance carrier terminate and ending with the death of the employee. No employee, however, shall be entitled to any such payments if he fails or refuses to co-operate with the division of vocational rehabilitation as set forth herein.

The division of vocational rehabilitation shall, at the termination of the vocational training of the employee, certify to the industrial commission of Utah the work the employee is qualified to perform, and thereupon the commission shall, after notice to the employer and an opportunity to be heard, determine whether the employee has notwithstanding such rehabilitation, sustained a loss of bodily function.

In no case shall the employer be required to pay compensation for any combination of disabilities of any kind including loss of function, in excess of \$24,648.

(b) In cases of temporary total disability the award shall be sixty per cent of the average weekly wages as determined under section 35-1-75, Utah Code Annotated 1953, as amended, but not to exceed a maximum of \$54 per week and not less than \$29 per week, plus \$5 for a dependent wife, and \$5 for each dependent minor child under the age of eighteen years up to a maximum of four such dependent minor children, such payment to be made for a period not exceeding 52 weeks; in the event total disability continue in excess of 52 weeks, then the commission shall apply the rehabilitation provisions of this section hereinabove set forth.

(c) In case of death those persons who were wholly dependent upon the employee at the time of death shall be entitled to and shall receive the difference, if any, between \$16,848 and the amounts the employer may have paid to the employee on account of permanent total, total temporary and partial permanent disability provided that if the deceased had a dependent wife or minor [minor] children wholly dependent upon him at the time of death, then said limit of \$16,848 shall be increased by \$1,560 for a dependent wife and \$1,560 for each such dependent minor child up to four wholly dependent minor children or a maximum of \$24,648, in case of a dependent wife and four wholly dependent minor children; the payments to the dependents to be made at the same weekly rate as the payments made to the deceased employee immediately preceding his death. If the dependents of the deceased were but partially dependent upon him at the time of death, then the compensation payable shall be in such amount and at such times as the commission may determine but shall not exceed two-thirds of the amount that would have been payable (as in this paragraph provided) if the dependents had been wholly dependent at the time of death.

(d) In the event the employee becomes totally disabled from an occupational disease, the employer shall furnish and pay for such medical service, hospitalization and medicines as may be reasonable and necessary expenses.

(e) In case death results from such occupational disease the employer shall pay not to exceed \$1,000 burial expenses.

Section 2. Section amended.

Section 35-2-27, Utah Code Annotated 1953, is amended to read:

35-2-27. Diseases considered occupational diseases — Circumstances necessary to claim compensation—Pneumoconiosis.

For the purpose of this act only the diseases enumerated in this section shall be deemed to be occupational diseases:

- (1) Anthrax.
- (2) Glanders.
- (3) Poisoning by acetaldehyde or its compounds.
- (4) Poisoning by acetanilide or its compounds.
- (5) Poisoning by cyanogen and its compounds.
- (6) Poisoning by chlorine and its compounds.
- (7) Poisoning by arsenic or its compounds.
- (8) Poisoning by antimony or its compounds.
- (9) Poisoning by cadmium or its compounds.
- (10) Poisoning by lead or its compounds.
- (11) Poisoning by manganese or its compounds.
- (12) Poisoning by mercury or its compounds.
- (13) Poisoning by selenium or its compounds.
- (14) Poisoning by tellurium or its compounds.
- (15) Poisoning by vanadium or its compounds.
- (16) Poisoning by phosphorous or its compounds.
- (17) Poisoning by hydrogen sulphide or carbon by-sulphide.
- (18) Chrome ulceration and poisoning.
- (19) Poisoning by toxic halogenated hydro-carbons.
- (20) Poisoning by benzol or its derivatives, including toluol, xylol, and the nitro, nitroso, and amino derivatives of these substances.
- (21) Methanol poisoning.
- (22) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
- (23) Gastrointestinal disorders due to contact with petroleum products and their fumes.
- (24) Dermatitis (Venenata) excluding any dermatitis of which the primary cause is infectious or parasitic in nature.
- (25) Synovitis, or tenosynovitis, or bursitis, or cellulitis, of the wrist, elbow, knee, or hand, due to continual pressure or friction or to repeated trauma or vibration of tools.
- (26) Ulceration of the skin or destruction of tissue due to the prolonged exposure to roentgen rays or radium emanations.
- (27) Silicosis.
- (28) Such other diseases or injuries to health which directly arise as a natural incident of the exposure occasioned by the employment, provided however, that such a disease or injury to health shall be compensable only in those instances where it is shown by the employee or his dependents that all of the following named circumstances were present:
  - (1) a direct causal connection between the conditions under which the work is performed and the disease or injury to health;
  - (2) the disease or injury to health can be seen to have followed as a natural incident

of the work as a result of the exposure occasioned by the employment; (3) the disease or injury to health can be fairly traced to the employment as to the proximate cause; (4) the disease or injury to health is not of a character to which the employee may have had substantial exposure outside of the employment; (5) the disease or injury to health is incidental to the character of the business and not independent of the relation of the employer and employee; and (6) the disease or injury to health must appear 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 discovery. No disease or injury to health shall be found compensable where it is of a character to which the general public is commonly exposed.

(29) Pneumoconiosis as defined by Title IV of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173) and all regulations pertaining thereto causing total disability as determined by the medical panel shall be paid benefits as provided by this act. This subparagraph shall become effective and apply to all persons who become totally disabled after January 1, 1973.

**Section 3. Section amended.**

Section 35-2-48, Utah Code Annotated 1953, is amended to read:

**35-2-48. Requirements and procedure for filing a written claim.**

The right to compensation under this act for disability or death from an occupational disease shall be forever barred unless written claim is filed with the commission within the time as in this section hereinafter provided:

(a) If the claim is made by an employee and based upon silicosis it must be filed within one year after the cause of action arises.

(b) If the claim is made by an employee and based upon a disease other than silicosis it must be filed within six months after the cause of action arises.

(c) If the claim is made by a dependent of an employee and based upon death resulting from silicosis or any other occupational disease it must be filed within six months after the cause of action arises.

**Section 4. Section amended.**

Section 35-2-56, Utah Code Annotated 1953, as amended by Chapter 59, Laws of Utah 1955, as amended by Chapter 63, Laws of Utah 1957, as amended by Chapter 56, Laws of Utah 1959, as amended by Chapter 72, Laws of Utah 1961, as amended by Chapter 50, Laws of Utah 1963, as amended by Chapter 70, Laws of Utah 1965, as amended by Chapter 67, Laws of Utah 1967, as amended by Chapter 87, Laws of Utah 1969, is amended to read:

**35-2-56. Conditions for employer's liability for payment of benefits due to partial or permanent disability—Form for report of medical panel—Computation of benefits.**

(1) There is imposed upon the employer a liability for the payment of benefits, as hereinafter provided, to every employee who becomes partially and permanently disabled and such disability is primarily

caused or contributed to by a disease or injury to health arising out of or in the course of employment, subject however to the following conditions:

(a) No compensation shall be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease shall have occurred prior to July 1, 1941.

(b) No compensation shall be paid unless such partial disability results within two years prior to the day upon which claim for such compensation was filed with the industrial commission of Utah.

(c) No compensation shall be paid unless the partial disability results within two years of the last day in which the employee was exposed to the occupational disease.

(d) The time limit prescribed by paragraphs (b) and (c) shall not apply in the case of an employee whose disablement was due to occupational exposure to ionizing radiation; provided, that a claim for such compensation shall be filed within one year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment.

(2) It is recognized that the measurement of partial permanent disability is a highly technical and difficult task and should be placed in the hands of physicians specially trained for the care and treatment of the occupational disease involved, and that particularly in cases of silicosis such determination should be by physicians limiting largely their practice to diseases of the chest; that the measurement of the extent of such disability should not be determined by physicians in general practice nor by laymen. Where a claim for compensation based upon partial permanent disability due to an occupational disease is filed with the commission, the commission shall appoint an impartial medical panel to consist of not less than three physicians specializing in the treatment of the disease or condition involved in the claim, and such medical panel shall make such study, take such X-rays and perform such tests as the panel may determine and certify to the commission the extent, if any, of the permanent disability of the claimant from performing work for remuneration or profit, and whether the sole cause of such partial permanent disability, in the opinion of the panel, results from the occupational disease and whether any other cause or causes have aggravated, prolonged, accelerated or in anywise contributed to the disability, and if so, the extent (in percentage) to which such other cause or causes has contributed to the disability. The report of the panel shall be made to the commission in writing and shall be in substantially the following form:

REPORT OF MEDICAL PANEL

Partial Permanent Disability Cases

To the Industrial Commission of Utah  
State Capitol Building  
Salt Lake City, Utah

Re: \_\_\_\_\_, Claimant

Claim No. \_\_\_\_\_

The medical panel, composed of the undersigned physicians, has completed its study and examination of the above named claimant with respect to the measurement of the ability of the claimant to perform physical labor\* (but without regard to the education, experience or training of the claimant) and on the assumption that the normal person functions at 100%, finds as follows:

	Percentage	Percentage
(1) Extent of Permanent Partial Disability from all causes (if any)		_____
** (2) Specific causes of such disability:		
a. Occupational Disease (if any)		
Name of Occupational disease _____	_____	
b. Other diseases or injuries		
Names of such diseases or injuries _____	_____	
c. Other contributing factors		
_____		
_____		
_____		
TOTAL		_____

Dated \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Medical Panel)

\*Section 35-2-12(e), defines partial permanent disability as: "Partial permanent disability," as herein used, is defined as that pathological condition directly resulting from an occupational disease and causing substantial physical impairment, evidenced by objective medical and clinical findings readily demonstrable, and which has reduced the earning capacity of the employee, excluding, however, total disability cases.

\*\*The sum of the percentage under (2) a, b, and c should equal the percentage of (1) and the commission shall promptly distribute by mail full copies of such report to the claimant, employer against whom compensation is claimed and the insurance carrier. Thereafter any such party shall have ten days to object, in writing, to such report, and if no objections are filed with the commission within such period, the percentage of partial disability caused solely by the occupational disease and so certified by the medical panel shall be deemed accepted. The expense of such study and certification shall be paid out of the fund provided for by 35-1-68, Utah Code Annotated 1953, as amended and such study and certification shall be a part of the record. If objections to such report are filed, then it shall be the duty of the commission to determine the percentage of such partial permanent disability after formal hearing, and at such formal hearing the party objecting must show by the weight of the evidence the extent of such claimed partial permanent disability and on appeal the evidence shall be reviewed as in equity cases, notwithstanding section 35-2-38, Utah Code Annotated 1953.

(3) Where an employee has been found to be partially and permanently disabled by reason of an occupational disease, as in subsections (1) (2) (3) and (4) provided, and the commission further finds that the employee is unable to obtain employment in his usual trade or occupation, or on application of either the employee or employer the commission finds that it is to the best interest of the employee so partially and permanently disabled by reason of an occupational disease that he no longer works at his usual trade or occupation, then it shall be the duty of the commission to order that there be paid to the division of vocational rehabilitation of the state board of education out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed \$390 for use in the rehabilitation and training of such employee, such rehabilitation to be directed and controlled by such division of rehabilitation acting in conjunction with the industrial commission of Utah and shall generally follow the practice applicable under section 35-1-69, Utah Code Annotated 1953, as amended, and relating to the rehabilitation of employees having combined injuries.

(4) The benefits imposed upon the employer and to which an employee found, as in this section above provided, to be partially permanently disabled, shall be entitled under this act, are limited to the following:

During those weeks in which the employee is actively in training under the division of rehabilitation, as in this section above referred to, the employee shall receive \$54 per week for not to exceed 20 weeks, or a total of \$1,000 such payment to be made at four-week intervals and upon the filing with the commission at two-week intervals of a certificate by the division of rehabilitation that the employee is co-operating with such division in his rehabilitation training.

At the termination of such training in rehabilitation, the employee shall be paid \$27 a week at four-week intervals until such time as the total payments so made, plus the weekly payments received by the employee during the rehabilitation training, equals a sum equivalent to that amount determined under the following formula:

By applying the percentage of partial permanent disability resulting:

from the occupational disease and determined by the medical panel (or in case of formal hearing, then by the commission) to the amount of \$7,000. For example: Assume a finding by the medical panel that the employee has sustained partial permanent disability from an occupational disease to the extent of twenty per cent loss of bodily function. Twenty per cent of \$7,000 equal \$1,400. The amount payable would therefore be:

20 weeks rehabilitation .....	\$1,000
Balance at intervals of 4 weeks .....	400
<b>TOTAL .....</b>	<b>1,400</b>

Notwithstanding anything hereinabove provided, payments for partial permanent disability shall not exceed in any one case an aggregate of \$7,000 and all payments so made shall be credited to the employer and deducted from any award which might ultimately be made should the employee subsequently become totally and permanently disabled.

Section 5. Section repealed.

Section 35-2-20, Utah Code Annotated 1953, is hereby repealed.

Section 6. Effective date.

This act shall take effect on July 1, 1971.

Approved March 22, 1971.

VERMONT WORKMEN'S COMPENSATION LAW

DEFINITION: "Personal injury by accident arising out of and in the course of such employment" includes an injury caused by the wilful act of a third person directed against an employee because of his employment; it also includes, in the case of a fire fighter, disability or death from a heart injury or disease incurred or aggravated and proximately caused by service in the line of duty but does not include other disease unless it results from the injury;

(1) "Line of duty", as applied to fire fighters shall mean:

Service as a fireman in his town or district, in answer to a call of his department, including but not limited to going to and returning from a fire or participating in a fire drill, parade, test or trial of any fire-fighting equipment.

Similar service as a fireman in another town or district to which his department has been called for fire-fighting purposes, and

Service under orders of any fire department, officer in any other emergency to which his department is called in the town or district where his department is established;

A heart injury or disease symptomatic within twenty-four hours from the date of last service in the line of duty at a fire shall be presumed to be incurred in the line of duty.

An Act to amend and reenact § 15.1-136.2, as amended, of the Code of Virginia, relating to definitions under the Line of Duty Act.

[S 31]

Approved MAR 7 1974

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-136.2, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 15.1-136.2. Definitions.—For the purposes of this article the following words shall have the meaning herein ascribed to them:

(a) "Deceased" shall mean any person whose death occurs on or after April eight, nineteen hundred seventy-two, as the direct or proximate result of the performance of his duty as a law-enforcement officer of this State or any of its political subdivisions, or as sheriff, deputy sheriff, or as a member of any fire company or department or rescue squad which shall have been recognized by an ordinance or a resolution of the governing body of any county, city or town of this State as an integral part of the official safety program of such county, city or town.

(b) "Beneficiary" shall mean the spouse of the deceased and such person or persons as are entitled to take under the will of the deceased if testate, or as his heir at law if intestate, and was a dependent of the deceased for tax purposes.

2. That an emergency exists and this act is in force from its passage.

.....  
President of the Senate

.....  
Speaker of the House of Delegates

Approved:

.....  
Governor

CHAPTER 442

An Act to amend and reenact § 15.1-136.6 of the Code of Virginia, relating to the order of court directing payment of benefits under Line of Duty Act.

[S 420]

Approved APR 5 1974

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-136.6 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-136.6. Order of court.—If it shall appear to the court that the requirements of this article shall have been satisfied, the judge thereof shall enter a proper order to that effect, which order also shall direct the Comptroller to issue his warrant for the payment out of the General Fund of the State treasury of such sums, not to exceed ten thousand dollars in the aggregate, to such persons and subject to such conditions as may be proper and in the event there is no beneficiary, the judge shall direct such payment to the estate of the deceased.

.....  
President of the Senate

.....  
Speaker of the House of Delegates

Approved:

.....  
Governor

CHAPTER 543

*Handwritten:* Amend Title  
An Act to amend and reenact §§ 27-39, 27-40.1 and 27-40.2, as amended, of the Code of Virginia and to further amend the Code of Virginia by adding a section numbered 27-40.1:1 the amended and new sections relating to certain benefits for firemen.

[S 864]



Approved MAR 20 1973

Be it enacted by the General Assembly of Virginia:

1. That §§ 27-39, 27-40.1 and 27-40.2, as amended, of the Code of Virginia be amended and reenacted and to further amend the Code of Virginia by adding a section numbered 27-40.1:1 as follows:

§ 27-39. Counties, cities and towns authorized to provide relief.— Any county, city or town which operates fire-fighting equipment may provide for the relief of (1) any children and widow of any fireman injured who dies (2) and for the relief of any fireman who is disabled by injury or illness while in the service of the county, city or town or any political subdivision with which it contracts or has contracted for fire protection, whether such fireman be a member of a fire company of the county in which the injury occurred or of a political subdivision with which it contracts for fire protection.

§ 27-40.1. The death of, or any condition or impairment of health of salaried or volunteer firemen caused by respiratory diseases, hypertension or heart disease resulting in total or partial disability shall be presumed to have been suffered in the line of duty unless the contrary be shown by competent evidence; provided that prior to making any claim based upon such presumption for retirement, sickness or other benefits on account of such death or total or partial disability, such salaried or volunteer firemen shall have been found free from cardiovascular or respiratory disease respiratory diseases, hypertension or heart disease, as the case may be, by a physical examination which shall include such appropriate laboratory and other diagnostic studies as such governing body may shall prescribe and which shall have been conducted by physicians whose qualifications shall have been prescribed by such governing body; and provided, further, that any such fireman or, in the case of his death, any person entitled to make a claim for such benefits, claiming that his death or disability was suffered in the line of duty shall, if requested by such governing body or its authorized representative submit himself, in the case of a claim for disability benefits, to physical examination by any physician designated by such governing body which examination may include such tests or studies as may reasonably be prescribed by the physician so designated or, in the case of a claim for death benefits, submit the body of the deceased fireman to a post-mortem examination to be performed by the medical examiner for the county, city or town appointed under § 19.1-40. Such fireman or claimant shall have the right to have present at such examination, at his own expense, any qualified physician he may designate. Nothing herein shall be construed to extend or otherwise affect the provisions of Title 65.1, Code of Virginia, relating to workmen's compensation.

§ 27-40.1:1. Any county, city or town providing death, retirement, sickness or other benefits pursuant to the authority granted by § 27-39, or pursuant to any other provision of law or the charter of any city or town, or otherwise, shall by ordinance make provision for the employment of physicians and the performance of the physical examination required by § 27-40.1 and shall cause such examination to be made within ninety days after the effective date of this act of every fireman in its service or

*the service of a political subdivision with which it has contracted for fire protection and of every fireman entering upon such service thereafter at the time of such entry.*

§ 27-40.2. Employing such presumption in determining eligibility for benefits.—Such presumption, subject to the provisions of § 27-40.1, shall be employed in determining eligibility for *death, retirement, sickness and other benefits provided pursuant to the authority granted by §§ 27-39, 27-40, or pursuant to any other provision of law or the charter of any city or town, or otherwise for persons who die or become totally or partially disabled.*

.....  
President of the Senate

.....  
Speaker of the House of Delegates

Approved:

.....  
Governor

WISCONSIN

WORKMEN'S COMPENSATION

66.191 Special death and disability benefits for certain public employes subject to Wisconsin retirement act and conservation warden fund. (1) Whenever a policeman, constable, coroner, county undersheriff, deputy sheriff, county traffic policeman, conservation warden, state forest ranger, field conservation employe of the department of natural resources who is subject to call for forest fire control or warden duty, member of the state traffic patrol, university of Wisconsin full-time policeman, guard or any other employe whose principal duties are supervision and discipline of inmates at a state penal institution including central state hospital, investigator employed by the division of criminal investigation of the department of justice who is a participating employe under subch. I of ch. 41 shall, while engaged in the performance of duty, be injured or contract a disease due to his occupation, and be found upon examination to be so disabled by a disability which is likely to be permanent, as to render necessary his retirement from any of the aforesaid services, the department of industry, labor and human relations shall order payment to him monthly, under s. 20.865 (1) (d) or 102.21, of a sum equal to one-half his monthly salary in such service at the time that he became so disabled. A disability of such a nature as to require reduction in pay or position or assignment to light duty, or which adversely affect promotional opportunities within the service shall be deemed sufficient to permit the employe the option of retirement.

(2) If such injury or disease shall cause the death of such person, or the death of a conservation warden who is a member of the conservation warden pension fund under subch. II of ch. 41, and he dies leaving surviving a widow or an unmarried child under the age of 18 years, the department shall order monthly payments as follows:

(a) To the widow, unless she shall have married the deceased after he sustained such injury or contracted such disease, one-third of the monthly salary being paid to the

deceased in such service at the time of his disability or death, until she marries again.

(b) To the guardian of each such child, \$15 until he becomes 18 years of age; provided that the total monthly payments ordered under this subsection shall not exceed 65 per cent of the monthly salary being paid to the deceased in such service at the time of his disability or death, and there shall be a pro rata reduction in the benefits paid hereunder, if necessary, in order to comply with such limitation. On or before January 15 in each year any widow entitled to a benefit under this subsection shall file with the municipality which makes payments hereunder an affidavit stating that she has not married again. The monthly payment ordered to any widow under this subsection shall begin in each calendar year only after such affidavit shall have been filed with the clerk of such municipality, and no payment shall be made for any month in such year prior to the one in which such affidavit was filed.

(c) If any person entitled to death benefit payments under this subsection is also entitled to death benefits under ch. 102 because of the death of such participating employe, the death benefit payments due under this subsection shall be reduced by an amount equal to the total weekly death benefits payable under ch. 102.

(3) Any policeman, fireman or conservation warden who has fulfilled all other requirements for inclusion as a participating employe under the Wisconsin retirement fund shall be eligible to the benefits payable under this section during the qualifying period established pursuant to s. 41.02 (6) (c).

(4) This section shall be administered by the department of industry, labor and human relations, which may adopt necessary rules relating to investigations and other matters in connection with applications for benefits under this section. *In case of dispute the procedure for hearing, award and appeal shall be as set forth in ss. 102.16 to 102.26.*

(5) Any person entitled to disability benefit payments under this section may file with the department of industry, labor and human relations and the board of trustees of the Wisconsin retirement fund a written election to waive such payments and accept in lieu thereof such payments as may otherwise be due under s. 41.13; but no person shall receive disability benefit payments under both s. 41.13 and this section.

(6) Any city, village, town or county liable to pay special death and disability benefits provided for by this section may insure payment of such benefits in any insurance company authorized to transact business in this state.

891.45 Presumption of employment connected disease. in any proceeding involving the application by a municipal fireman or his beneficiary for disability or death benefits under s. 66.191 or any pension or retirement system applicable to firemen, where at the time of death or filing of application for disability benefits the deceased or disabled fireman had served a total of 5 years as a fireman and a qualifying medical examination given prior to the time of his joining the department showed no evidence of heart or respiratory defect or disease, and where the disability or death is found to be caused by heart or respiratory defect or disease, such finding shall be presumptive evidence that such defect or disease was caused by such employment.

OCCUPATIONAL DISEASE LAW.

Sec.	Sec.
27-283. Citation.	27-299. Willful misconduct or self-exposure.
27-289. Definitions.	27-300. Effect of compensation from industrial accident fund.
27-290. Authorized compensable occupational diseases.	27-301. Employer not liable for payment to subsequent injury fund.
27-291. Occupational disease fund created; division thereof into occupational disease general fund and occupational disease reserve fund.	27-302. Benefits for cardiac conditions.
27-292. Allocations into industrial accident fund and occupational disease fund.	27-303. Autopsy.
27-293. Liability of employer's account.	27-304. Medical advisory panel.
27-294. Notice to employer; employee's report.	27-305. Appointment of impartial and expert physicians; fees and expenses.
27-295. Employer's report.	27-306. Medical and hospital expenses.
27-296. Limitations.	27-307. Amounts of compensation; administration thereof.
27-297. Burden of proof; evidence.	27-308. Injurious exposure prior to effective date of act.
27-298. Reduction of compensation.	27-309. Applicability of Workmen's Compensation Act.

§ 27-288. Citation.—This act [§§ 27-288 to 27-309] shall be known as the Wyoming Occupational Disease Law. (Laws 1969, ch. 200, § 1.)

§ 27-289. Definitions.—(a) "Occupational disease" means a disease contracted secondary to injurious exposure to environmental factors or hazards that are part of the employee's working conditions in extra-hazardous occupations and that due to toxic materials or work conditions which would, independently of any other cause produce the disease for which a claim is sought.

(b) "Extra-hazardous" means those occupations heretofore set out in sections 27-55 and 27-57 of the Wyoming Statutes as they have heretofore or may hereinafter be enacted as part of the Workmen's Compensation Law.

(c) "Compensable occupational disease" means only those occupational diseases, subject to the requirements and limitations set out elsewhere in the act [§§ 27-288 to 27-309], duly authorized and listed herein.

(d) "Injurious exposure" used in this act means an exposure to such disease which is reasonably calculated to bring on the disease in question. (Laws 1969, ch. 200, § 2.)

§ 27-290. Authorized compensable occupational diseases.—(a) The list of authorized compensable occupational diseases shall include:

- (i) Poisoning by aldehyde compounds
- (ii) Poisoning by cyanogen or its compounds
- (iii) Poisoning by chlorine, iodine, fluorine, bromine or their compounds
- (iv) Chrome poisoning
- (v) Poisoning by arsenic or its compounds
- (vi) Poisoning by antimony or its compounds
- (vii) Poisoning by cadmium or its compounds
- (viii) Poisoning by lead or its compounds
- (ix) Poisoning by mercury or its compounds
- (x) Poisoning by manganese or its compounds
- (xi) Poisoning by selenium or its compounds
- (xii) Poisoning by tellurium or its compounds



- (xiii) Poisoning by vanadium or its compounds
- (xiv) Poisoning by phosphorus compounds
- (xv) Poisoning by sulphur compounds
- (xvi) Poisoning by carbon monoxide
- (xvii) Poisoning by oxides of nitrogen, nitric acid and ammonias
- (xviii) Poisoning by toxic hydrocarbons and other organic solvents
- (xix) Methanol poisoning
- (xx) Occupational pneumoconiosis
- (xxi) Asbestosis
- (xxii) Ionizing radiation, radiation poisoning or malignancy caused thereby
- (xxiii) Anthrax
- (xxiv) Dermatitis due to oils, cutting compounds, lubricants, solvents, synthetic cleaning compounds and detergents, and chemicals
- (xxv) Poisoning by zinc and its compounds
- (xxvi) Glanders and tularemia
- (xxvii) Squamous cell carcinoma due to tar, pitch, bitumen, mineral oil, paraffin or shale oil or to any product of these substances
- (xxviii) Poisoning by nickel or its compounds
- (xxix) Poisoning by aluminum or its compounds
- (xxx) Poisoning by beryllium or its compounds
- (xxxi) Poisoning [by] copper or its compounds
- (xxxii) Poisoning by thallium or its compounds
- (xxxiii) Poisoning by barium or its compounds
- (xxxiv) Poisoning by boron or its compounds
- (xxxv) Poisoning by magnesium or its compounds
- (xxxvi) Poisoning by osmium or its compounds
- (xxxvii) Poisoning by plutonium or its compounds
- (xxxviii) Poisoning by titanium or its compounds
- (xxxix) Poisoning by zirconium or its compounds
- (xi) Pemphigus and erysipeloid (due to handling of meat products)
- (xii) Brucellosis (due to handling meat products)
- (xiii) Anthracosis
- (xliii) Poisoning by sodium or its compounds
- (xdiv) Peripheral neurovascular disorders resulting from prolonged manual use of tools
- (xlv) Poisoning by pesticides
- (xvi) Employment-related coronary diseases.

(b) "Occupational pneumoconiosis" as a compensable occupational disease shall not mean any pulmonary disease with a diagnosis of emphysema that cannot be fairly traced to the employment, but shall mean silicosis, silicotuberculosis, asbestosis, anthracosis, anthracosilicosis, siderosis and other diseases of the lungs, which are the direct result of the inhalation of dust, fibers or particulates including cement dust, bentonite dust, bituminous coal dust, grain dust, stone or rock dust, wood dust and dust or fibers from gypsum, talc and trona, arising out of the employment. (Laws 1969, ch. 200, § 3; 1971, ch. 195, § 6.)

The 1971 amendment substituted "Occupational pneumoconiosis" for "Silicosis and silicotuberculosis" in subdivision (a) of subsection (a) and added subsection (b).

Effective date.—Section 8, ch. 195, Laws 1971, makes the act effective from and after April 1, 1971.

§ 27-291. Occupational disease fund created; division thereof into occupational disease general fund and occupational disease reserve fund.—(c) There is hereby created a fund to be known as the "occupational disease fund"; and all monies received by the state treasurer under the provisions

of this act [ §§ 27-288 to 27-309 ] allocable to occupational diseases shall become a part of the occupational disease fund, said fund to be held by the state treasurer and by him deposited in such banks as are authorized to receive deposits of the funds of the state. The treasurer in making such deposits shall divide the said occupational disease fund into two (2) distinct funds, known as the "occupational disease general fund" and the other to be known as the "occupational disease reserve fund."

(b) The occupational disease general fund, created out of the occupational disease fund, as far as possible, shall be used for payment of all awards, claims and items of expense chargeable against the occupational disease fund. All premiums collected and allocated to occupational diseases shall be placed in the occupational disease general fund; and the occupational disease reserve fund shall not be used for any said payments unless the general fund at the time is insufficient to meet the demands upon it, in which case the treasurer shall transfer from the occupational disease reserve fund to the occupational disease general fund a sufficient amount to meet the immediate demands upon said occupational disease general fund.

(c) The purpose of creating said occupational disease reserve fund from the occupational disease fund is to provide a fund within the occupational disease fund sufficiently enlarged to pay great and unusual demands upon the occupational disease fund which might be caused by a large disaster or by several such disasters occurring within a short time, and the occupational disease reserve fund shall be kept apart from the occupational disease general fund and insofar as possible be unused in accordance with said purpose. The state treasurer shall set aside in the occupational disease reserve fund at the end of each month all money in the occupational disease general fund in excess of five hundred thousand dollars (\$500,000.00)

(d) The state treasurer shall keep the occupational disease reserve fund invested in any one or more of the following securities;

(i) United States government bonds; state, county, school district and municipal bonds;

(ii) Bonds, notes and debentures, or either of them, which are issued by any one or more of the following United States government corporations: banks for cooperatives, federal home loan banks, federal housing administration, federal intermediate credit banks, federal land banks, and federal national mortgage associations; or

(iii) Said treasurer may invest not to exceed fifteen per centum (15%) in value of the total of such reserve fund in notes, bonds, or debentures which are direct obligations of corporations organized and existing under the laws of any state of the United States, provided, that said obligations must be, at the time of purchase, designated as investment securities as defined by the regulations of the comptroller of the currency of the United States governing purchases for its own account of investment securities by a national bank or a state member bank of the federal reserve system.

(e) There shall initially be borrowed from the industrial accident reserve fund the sum of five hundred thousand dollars (\$500,000.00) which shall be placed by the state treasurer into the occupational disease reserve fund. There shall be paid each year from the occupational disease reserve fund interest on the unpaid balance thereof at the rate of two percent (2%) per annum to the industrial accident reserve fund.

(f) If, at the end of any fiscal year beginning July 1 and ending June 30, the occupational disease reserve fund shall exceed five hundred thousand dollars (\$500,000.00), and there remains a balance due the industrial accident reserve fund, the amount in excess of five hundred thousand dollars (\$500,000.00) in the

occupational disease reserve fund shall be paid to the industrial accident reserve fund, and the balance due from the occupational disease reserve fund to the industrial accident reserve fund shall be reduced by each amount.

(g) If the balance owed to the industrial accident reserve fund by the occupational disease reserve fund is less than five hundred thousand dollars (\$500,000.00) and if the balance of the occupational disease reserve fund shall be reduced to the sum of less than two hundred fifty thousand dollars (\$250,000.00), the state treasurer may transfer from the industrial accident reserve fund, to the occupational disease reserve fund, as a loan, subject to the same requirements as the initial loan, including payment of interest, any amount the state treasurer finds is necessary to provide the occupational disease reserve fund with an adequate operating balance, which amount, however, shall not exceed an amount which will bring the total balance owed to the industrial accident reserve fund by the occupational disease reserve fund to five hundred thousand dollars (\$500,000.00). (Laws 1969, ch. 200, § 4.)

§ 27-292. Allocations into industrial accident fund and occupational disease fund.—Except in those instances where the five percent (5%) provision set out in section 27-63 is applicable it shall be the duty of the state treasurer to allocate and place into the industrial accident fund one percent (1%) of the money earned by each employee and collected as premiums, and to allocate one-quarter of one percent ( $\frac{1}{4}$  of 1%) of all monies earned by each employee to the occupational disease fund, in those instances wherein section 27-63 is applicable it shall be the duty of the state treasurer to allocate four and three-fourths percent ( $4\frac{3}{4}\%$ ) of the money earned by each employee into the industrial accident fund and one-quarter of one percent ( $\frac{1}{4}$  of 1%) to the occupational disease fund. The normal premium for the industrial accident fund where section 27-63 and the provisions relating to exempt accounts contained in section 27-64 do not apply will be one percent (1%) of the monies earned by an employee. The normal premium for the occupational disease fund, except where exempt as set out in section 27-64, shall be one-quarter percent ( $\frac{1}{4}$  of 1%) of all monies earned by employees. (Laws 1969, ch. 200, § 5; 1971, ch. 13, § 2.)

The 1971 amendment substituted "one-quarter of one percent ( $\frac{1}{4}$  of 1%)" for "one half of one percent ( $\frac{1}{2}$  of 1%)" in two places in the first sentence and near the end of the third sentence. The amendment also substituted "four and three-fourths percent ( $4\frac{3}{4}\%$ )" for "four and one-half percent ( $4\frac{1}{2}\%$ )" in the first sentence.

§ 27-293. Liability of employer's account.—When an employee has suffered a compensable occupational disease covered by this act [§§ 27-288 to 27-309], the employer's account in whose employment said employee was last injuriously exposed to the hazards of the disease at the time of exposure shall alone be liable therefore [thereof], without right to contribution from any prior employer. (Laws 1969, ch. 200, § 6.)

§ 27-294. Notice to employer; employee's report. — Within twenty (20) days after a diagnosis of a compensable occupational disease is first communicated to the employee, he or someone in his behalf, shall give notice thereof to the employer and shall file a report of an occupational disease in the office of the clerk of the district court of the county wherein an employee has reason to believe he was last injuriously exposed and employed. Said reports of disease under the Occupational Disease Law may be made upon printed forms prepared by the state treasurer for that purpose. (Laws 1969, ch. 200, § 7.)

§ 27-295. Employer's report.—Whenever an occupational disease occurs to any workman engaged in any of the extra-hazardous employments as defined by this act [§§ 27-288 to 27-309], it shall be the duty of the employer to file a report

in triplicate with the clerk of the district court of the county wherein the employment and the last injurious exposure occurred, within twenty (20) days after the date of notice by the employee. Said employer's report shall be made on such forms and shall provide such information as shall be provided and requested by the workmen's compensation department. (Laws 1969, ch. 200, § 8.)

§ 27-296. *Limitations.*—The right of compensation under the occupational disease law shall be forever barred unless a claim for benefits shall be filed with the clerk of the district court within one (1) year after a diagnosis of an occupational disease is first communicated to the employer [employee], or within three (3) years from the date of last injurious exposure to the disease in the employment, whichever first occurs; except that in the cases of a disease alleged to have been caused by ionizing radiation the claim shall be filed within one (1) year after the diagnosis of the occupational disease is first communicated to the employee, and if death results from an occupational disease within either of these periods, a claim therefor must be filed with the clerk of the district court as aforesaid within one (1) year after such date. (Laws 1969, ch. 200, § 9; 1971, ch. 195, § 7.)

The 1971 amendment deleted, following the word "within" in the exception clause relating to disease alleged to have been caused by ionizing radiation, "ten (10) years from the date of last injurious exposure of the disease in the employment, or," deleted "whichever first occurs" following "communicated to the employee" in

the same clause, and substituted "a claim therefor must be filed" for "unless a claim therefor be filed" near the end of the section.

Effective date.—Section 8, ch. 195, Laws 1971, makes the act effective from and after April 1, 1971.

§ 27-297. *Burden of proof; evidence.*—(a) The burden in contested cases shall be upon the employee to make proper proof of his claim by a preponderance of the evidence, and to likewise prove by competent medical authority that this claim arose out of and in the course of his employment by showing by a preponderance of such evidence that:

- (i) There is a direct causal connection between the condition under which the work is performed and the occupational disease,
- (ii) The disease 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,
- (iii) The disease can be fairly traced to the employment as the proximate cause,
- (iv) The disease does not come from a hazard to which workmen would have been equally exposed outside of the employment,
- (v) And the disease is incidental to the character of the business and not independent of the relation of employer and employee.

(b) All written reports, claims, and other writings filed with the clerk of the district court shall be considered as evidence in a claim, whether or not the same has been formally introduced into the court in a contested proceeding. (Laws 1969, ch. 200, § 10.)

§ 27-298. *Reduction of compensation.*—Where a compensable occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disablement or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by a compensable occupational disease, the compensation payable under this act [§§ 27-298 to 27-300] shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of disablement or death, as such occupational disease as a causative factor bears to all causes of such disablement or death; such reduction to be effected by reducing the disability payments therefore [thereof]. (Laws 1969, ch. 200, § 11.)

§ 27-299. **Willful misconduct or self-exposure.**—Notwithstanding anything herein contained, no employee or dependent of any employee, or personal representative of a deceased employee, or other person shall be entitled to receive compensation for disability or death from an occupational disease when such disability or death, wholly or in part, was caused by the willful misconduct or willful self-exposure of such employee or by his disobedience to such reasonable rules and regulations as may be adopted by the employer, and which rules and regulations have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of such employee. As used in this section, willful self-exposure shall be conclusively presumed where any of the following occur:

(i) An employee or applicant for employment shall fail to state in writing to the best of his knowledge in answer to any material inquiry made by the employer, the place, duration and nature of his previous employment.

(ii) An applicant for employment shall fail to state in writing to the best of his knowledge in answer to any material inquiry made by the employer, as to whether or not he had been previously disabled, laid off, or compensated in damages or otherwise because of any physical disability.

(iii) Any employee or applicant for employment shall fail to give in writing to the best of his knowledge in answer to any material inquiry made by the employer, full information about the previous status of his health, previous medical and hospital attention, and exposure to tuberculosis.

(iv) An employee or applicant for employment shall fail or refuse to submit to medical or X-ray examination when requested so to do by the employer at the employer's expense.

(v) An employee shall willfully fail to use protective and safety devices provided by the employer. (Laws 1969, ch. 200, § 12.)

§ 27-300. **Effect of compensation from industrial accident fund.**—The compensation provided under this article [§§ 27-288 to 27-309] is not in addition to compensation which may be payable as an "injury" incurred by industrial accident in cases where injury results by reason of an accident arising out of or in the course of the employment, and wherein compensation is payable therefore [thereof] from the industrial accident fund, in all such cases no compensation under the Occupational Disease Law shall be allowed or payable. (Laws 1969, ch. 200, § 13.)

§ 27-301. **Employer not liable for payment to subsequent injury fund.**—For the purposes of the Occupational Disease Law, an employer shall not be liable for payment to the subsequent injury fund, so called, as set out in sections 27-149 through 27-155 of the Wyoming Statutes. (Laws 1969, ch. 200, § 14.)

§ 27-302. **Benefits for cardiac conditions.**—No benefits for cardiac conditions, except those directly and solely caused by a traumatic accident, shall be compensable unless the employee establishes by competent medical authority that there is a direct causal connection between the condition under which the work was performed and the cardiac condition, and then only if the causative exertion occurs during the actual period of employment stress clearly unusual to, or abnormal for, the individual employee in that particular employment, and further that the acute symptoms of such cardiac condition are clearly manifested not later than thirty (30) minutes after the alleged causative exertion. (Laws 1969, ch. 200, § 15.)

§ 27-303. **Autopsy.**—Upon the filing of a claim for compensation for death from an occupational disease wherein an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the court. The court may designate a duly licensed physician, who is a

specialist in such examinations, to perform or attend such autopsy and to certify his findings thereon. Such findings shall be filed with the clerk of the district court wherein the claim for compensation has been filed and shall be a public record. The court may also exercise such authority on its own motion or on an application made to it at any time by any party in interest, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any compensable occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants, their representative or representatives, to permit such autopsy when so ordered, and no compensation shall be payable during the continuance of such refusal. (Laws 1969, ch. 200, § 16.)

§ 27-304. Medical advisory panel. — There is hereby created a medical advisory panel composed of three (3) physicians licensed to practice medicine in the State of Wyoming which panel shall advise the department on matters pertaining to occupational disease when requested by the department. The panel shall serve from January 1 to December 31 of each consecutive year and said panel shall be appointed annually by the Wyoming medical society in accordance with such society's appointive procedure [procedure]. (Laws 1969, ch. 200, § 17.)

§ 27-305. Appointment of impartial and expert physicians; fees and expenses. — On request of a party, or on its own motion the court, may in an occupational disease case appoint one or more competent and impartial physicians from the specified list of competent and expert physicians, their reasonable fees and expenses to be fixed and paid by the court. The specified list of impartial and expert physicians shall be designated and appointed by the Wyoming medical society in accordance with such society's appointment procedure from licensed physicians within the State of Wyoming, provided however, that where an expert or competent physician in a specific field of medicine is not available within the State of Wyoming, or extraordinary circumstances justify other appointment, the court may on its own motion select a nonresident competent or impartial physician. (Laws 1969, ch. 200, § 18.)

§ 27-306. Medical and hospital expenses. — Medical and hospital expenses, and additional hospitalization and medical expenses shall be paid and administered under the Occupational Disease Law in the same manner as those claims are paid and administered under the industrial accident fund for industrial injuries. (Laws 1969, ch. 200, § 19.)

§ 27-307. Amounts of compensation; administration thereof. — Compensation payable under the Occupational Disease Law for temporary total disability, permanent partial disability, permanent total disability, or death benefit shall be in such amounts, and administered in the same manner, including deferred payment accounting, as is heretofore provided under the industrial accident fund. (Laws 1969, ch. 200, § 20.)

§ 27-308. Injurious exposure prior to effective date of act. — The provisions of the Occupational Disease Law do not apply to cases of incapacity or death resulting from a disease in which the last injurious exposure to the hazards of such disease occurred before the date on which this act [ §§ 27-288 to 27-309 ] takes effect. (Laws 1969, ch. 200, § 21.)

Effective date. — Section 33, ch. 200, Laws 1969, makes the act effective from and after July 1, 1969.

§ 27-309. Applicability of Workmen's Compensation Act. — Except as herein provided in the Occupational Disease Law, all of the provisions of the Workmen's Compensation Act for the State of Wyoming relating to rights, notices,

filings, remedies, proceedings, benefits, awards, penalties, assessments, and all other liabilities and limitations whatsoever, insofar as they may be pertinent and applicable and not inconsistent with the provisions of the Occupational Disease Law, shall apply under said Occupational Disease Law. (Laws 1969, ch. 200, § 22.)

Effective date. — Section 33, ch. 200, Laws 1969, makes the act effective from and after July 1, 1968.

FLORIDA

175.231 Diseases of firemen suffered in line of duty; presumption.--Any condition or impairment of health of a fireman caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence, provided, however, that such fireman shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section shall be applicable to all firemen employed in Florida only with reference to pension and retirement benefits under this chapter.

In its discussion, the Florida Supreme Court quoted extensively from Volume 20 American Jurisprudence, Evidence, Sections 133 and 136. One final note of caution or clarification is necessary. We realize that the firemen are not lawyers and we have tried to make this memorandum as clear as possible. We do not wish, however, to leave the idea that the "presumption of accident" makes it absolutely impossible for the city to win a case against a fireman or that the "presumption of accident" actually shifts the burden of proof on the city. Lawyers themselves have argued for centuries on the difference between the legal effect of "going forward with the evidence" and "shifting of the burden of proof". It so happens, however, that the "Heart Bill" is drawn in such a way, and the circumstances of the fireman is such that it is very difficult for the city to offer enough evidence to "rebut" the presumption of accident to such an extent that the burden of proof and the burden of going forward with the evidence will shift back to the fireman after he has once introduced evidence of service, clear beginning examination, and present disability from tuberculosis, hypertension, or heart disease. The fact that the fireman is engaged in a type of work creating occupational hazards of smoke asphyxiation, sudden unusual stresses and strains, repeated exposures to excitement, and sudden atmospheric changes, which are all directly contributory to the infirmities set forth in the "Heart Bill", create such a strong evidentiary rationale so as to make it particularly difficult for the city to prove a case against a fireman for the reason outlined above.

Respectfully submitted,

EATON & ACHOR  
1125 DuPont Building  
Miami, Florida

By s/ Joe Eaton

Note: Mr. Eaton was a former Attorney for the Fire Fighters; Assistant State Attorney, Circuit Court Judge; now a Federal District Court Judge.

Tory

P. S. Mr. Eaton was State Senator for four years.

Became law May 27, 1969  
with Governor's approval

Death Benefit Law

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A bill to be entitled

An act relating to death benefits of firemen; amending section 112.191(1)(b), Florida Statutes, relating to the definition of the term "fireman"; amending section 112.191(2)(a), Florida Statutes, relating to conditions for receiving death benefits; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 112.191, Florida Statutes, is amended to read:

112.191 Firemen; death benefits.--

(1) Whenever used in this act:

(b). The term "fireman" means any duly employed uniformed fireman employed by an employer, whose primary duty is to extinguish the prevention and extinguishing of fires, and to protect the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, as a member of a duly constituted fire department of such employer, and who is not a volunteer fireman.

Section 2. Paragraph (a) of subsection (2) of section 112.191, Florida Statutes, is amended to

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112.191 Firemen; death benefits.--

(2)(a) The sum of ten thousand dollars (\$10,000) shall be paid as hereinafter provided when a fireman, while under seventy (70) years of age and while engaged in the performance of any of the duties mentioned in paragraph (b) of subsection (1), or in the performance of any other duty that is within the scope of his employment as a fireman. is killed or receives bodily injury which results in the loss of his life within one hundred eighty (180) days after being received, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. Such payment shall be in addition to any workmen's compensation or pension benefits and shall be exempt from the claims and demands of creditors of such fireman.

Section 3. This act shall be effective upon becoming a law.