

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 330

Representative Patton

A BILL

To amend section 4123.68 of the Revised Code
regarding charging workers' compensation
experience in firefighter cancer claims.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4123.68 of the Revised Code be
amended to read as follows:

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Sec. 4123.68. Every employee who is disabled because of
the contraction of an occupational disease or the dependent of
an employee whose death is caused by an occupational disease, is
entitled to the compensation provided by sections 4123.55 to
4123.59 and 4123.66 of the Revised Code subject to the
modifications relating to occupational diseases contained in
this chapter. An order of the administrator issued under this
section is appealable pursuant to sections 4123.511 and 4123.512
of the Revised Code.

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The following diseases are occupational diseases and
compensable as such when contracted by an employee in the course
of the employment in which such employee was engaged and due to
the nature of any process described in this section. A disease
which meets the definition of an occupational disease is

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compensable pursuant to this chapter though it is not	20
specifically listed in this section.	21
SCHEDULE	22
Description of disease or injury and description of	23
process:	24
(A) Anthrax: Handling of wool, hair, bristles, hides, and	25
skins.	26
(B) Glanders: Care of any equine animal suffering from	27
glanders; handling carcass of such animal.	28
(C) Lead poisoning: Any industrial process involving the	29
use of lead or its preparations or compounds.	30
(D) Mercury poisoning: Any industrial process involving	31
the use of mercury or its preparations or compounds.	32
(E) Phosphorous poisoning: Any industrial process	33
involving the use of phosphorous or its preparations or	34
compounds.	35
(F) Arsenic poisoning: Any industrial process involving	36
the use of arsenic or its preparations or compounds.	37
(G) Poisoning by benzol or by nitro-derivatives and amido-	38
derivatives of benzol (dinitro-benzol, anilin, and others): Any	39
industrial process involving the use of benzol or nitro-	40
derivatives or amido-derivatives of benzol or its preparations	41
or compounds.	42
(H) Poisoning by gasoline, benzine, naphtha, or other	43
volatile petroleum products: Any industrial process involving	44
the use of gasoline, benzine, naphtha, or other volatile	45
petroleum products.	46

(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.	47 48 49
(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.	50 51
(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.	52 53 54 55 56 57
(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.	58 59 60 61
(M) Compressed air illness: Any industrial process carried on in compressed air.	62 63
(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.	64 65
(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.	66 67 68
(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.	69 70 71
(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.	72 73 74

(R) Tenosynovitis and prepatellar bursitis: Primary 75
tenosynovitis characterized by a passive effusion or crepitus 76
into the tendon sheath of the flexor or extensor muscles of the 77
hand, due to frequently repetitive motions or vibrations, or 78
prepatellar bursitis due to continued pressure. 79

(S) Chrome ulceration of the skin or nasal passages: Any 80
industrial process involving the use of or direct contact with 81
chromic acid or bichromates of ammonium, potassium, or sodium or 82
their preparations. 83

(T) Potassium cyanide poisoning: Any industrial process 84
involving the use of or direct contact with potassium cyanide. 85

(U) Sulphur dioxide poisoning: Any industrial process in 86
which sulphur dioxide gas is evolved by the expansion of liquid 87
sulphur dioxide. 88

(V) Berylliosis: Berylliosis means a disease of the lungs 89
caused by breathing beryllium in the form of dust or fumes, 90
producing characteristic changes in the lungs and demonstrated 91
by x-ray examination, by biopsy or by autopsy. 92

This chapter does not entitle an employee or the 93
employee's dependents to compensation, medical treatment, or 94
payment of funeral expenses for disability or death from 95
berylliosis unless the employee has been subjected to injurious 96
exposure to beryllium dust or fumes in the employee's employment 97
in this state preceding the employee's disablement and only in 98
the event of such disability or death resulting within eight 99
years after the last injurious exposure; provided that such 100
eight-year limitation does not apply to disability or death from 101
exposure occurring after January 1, 1976. In the event of death 102
following continuous total disability commencing within eight 103

years after the last injurious exposure, the requirement of 104
death within eight years after the last injurious exposure does 105
not apply. 106

Before awarding compensation for partial or total 107
disability or death due to berylliosis, the administrator of 108
workers' compensation shall refer the claim to a qualified 109
medical specialist for examination and recommendation with 110
regard to the diagnosis, the extent of the disability, the 111
nature of the disability, whether permanent or temporary, the 112
cause of death, and other medical questions connected with the 113
claim. An employee shall submit to such examinations, including 114
clinical and x-ray examinations, as the administrator requires. 115
In the event that an employee refuses to submit to examinations, 116
including clinical and x-ray examinations, after notice from the 117
administrator, or in the event that a claimant for compensation 118
for death due to berylliosis fails to produce necessary consents 119
and permits, after notice from the administrator, so that such 120
autopsy examination and tests may be performed, then all rights 121
for compensation are forfeited. The reasonable compensation of 122
such specialist and the expenses of examinations and tests shall 123
be paid, if the claim is allowed, as part of the expenses of the 124
claim, otherwise they shall be paid from the surplus fund. 125

(W) Cardiovascular, pulmonary, or respiratory diseases 126
incurred by firefighters or police officers following exposure 127
to heat, smoke, toxic gases, chemical fumes and other toxic 128
substances: Any cardiovascular, pulmonary, or respiratory 129
disease of a firefighter or police officer caused or induced by 130
the cumulative effect of exposure to heat, the inhalation of 131
smoke, toxic gases, chemical fumes and other toxic substances in 132
the performance of the firefighter's or police officer's duty 133
constitutes a presumption, which may be refuted by affirmative 134

evidence, that such occurred in the course of and arising out of 135
the firefighter's or police officer's employment. For the 136
purpose of this section, "firefighter" means any regular member 137
of a lawfully constituted fire department of a municipal 138
corporation or township, whether paid or volunteer, and "police 139
officer" means any regular member of a lawfully constituted 140
police department of a municipal corporation, township or 141
county, whether paid or volunteer. 142

This chapter does not entitle a firefighter, or police 143
officer, or the firefighter's or police officer's dependents to 144
compensation, medical treatment, or payment of funeral expenses 145
for disability or death from a cardiovascular, pulmonary, or 146
respiratory disease, unless the firefighter or police officer 147
has been subject to injurious exposure to heat, smoke, toxic 148
gases, chemical fumes, and other toxic substances in the 149
firefighter's or police officer's employment in this state 150
preceding the firefighter's or police officer's disablement, 151
some portion of which has been after January 1, 1967, except as 152
provided in division (E) of section 4123.57 of the Revised Code. 153

Compensation on account of cardiovascular, pulmonary, or 154
respiratory diseases of firefighters and police officers is 155
payable only in the event of temporary total disability, 156
permanent total disability, or death, in accordance with section 157
4123.56, 4123.58, or 4123.59 of the Revised Code. Medical, 158
hospital, and nursing expenses are payable in accordance with 159
this chapter. Compensation, medical, hospital, and nursing 160
expenses are payable only in the event of such disability or 161
death resulting within eight years after the last injurious 162
exposure; provided that such eight-year limitation does not 163
apply to disability or death from exposure occurring after 164
January 1, 1976. In the event of death following continuous 165

total disability commencing within eight years after the last 166
injurious exposure, the requirement of death within eight years 167
after the last injurious exposure does not apply. 168

This chapter does not entitle a firefighter or police 169
officer, or the firefighter's or police officer's dependents, to 170
compensation, medical, hospital, and nursing expenses, or 171
payment of funeral expenses for disability or death due to a 172
cardiovascular, pulmonary, or respiratory disease in the event 173
of failure or omission on the part of the firefighter or police 174
officer truthfully to state, when seeking employment, the place, 175
duration, and nature of previous employment in answer to an 176
inquiry made by the employer. 177

Before awarding compensation for disability or death under 178
this division, the administrator shall refer the claim to a 179
qualified medical specialist for examination and recommendation 180
with regard to the diagnosis, the extent of disability, the 181
cause of death, and other medical questions connected with the 182
claim. A firefighter or police officer shall submit to such 183
examinations, including clinical and x-ray examinations, as the 184
administrator requires. In the event that a firefighter or 185
police officer refuses to submit to examinations, including 186
clinical and x-ray examinations, after notice from the 187
administrator, or in the event that a claimant for compensation 188
for death under this division fails to produce necessary 189
consents and permits, after notice from the administrator, so 190
that such autopsy examination and tests may be performed, then 191
all rights for compensation are forfeited. The reasonable 192
compensation of such specialists and the expenses of examination 193
and tests shall be paid, if the claim is allowed, as part of the 194
expenses of the claim, otherwise they shall be paid from the 195
surplus fund. 196

(X) (1) Cancer contracted by a firefighter: Cancer 197
contracted by a firefighter who has been assigned to at least 198
six years of hazardous duty as a firefighter constitutes a 199
presumption that the cancer was contracted in the course of and 200
arising out of the firefighter's employment if the firefighter 201
was exposed to an agent classified by the international agency 202
for research on cancer or its successor organization as a group 203
1 or 2A carcinogen. 204

(2) The presumption described in division (X) (1) of this 205
section is rebuttable in any of the following situations: 206

(a) There is evidence that the firefighter's exposure, 207
outside the scope of the firefighter's official duties, to 208
cigarettes, tobacco products, or other conditions presenting an 209
extremely high risk for the development of the cancer alleged, 210
was probably a significant factor in the cause or progression of 211
the cancer. 212

(b) There is evidence that shows, by a preponderance of 213
competent scientific evidence, that exposure to the type of 214
carcinogen alleged did not or could not have caused the cancer 215
being alleged. 216

(c) There is evidence that the firefighter was not exposed 217
to an agent classified by the international agency for research 218
on cancer as a group 1 or 2A carcinogen. 219

(d) There is evidence that the firefighter incurred the 220
type of cancer alleged before becoming a member of the fire 221
department. 222

(e) The firefighter is seventy years of age or older. 223

(3) The presumption described in division (X) (1) of this 224
section does not apply if it has been more than fifteen years 225

since the firefighter was last assigned to hazardous duty as a 226
firefighter. 227

(4) Compensation for cancer contracted by a firefighter in 228
the course of hazardous duty under division (X) of this section 229
is payable only in the event of temporary total disability, 230
working wage loss, permanent total disability, or death, in 231
accordance with division (A) or (B) (1) of section 4123.56 and 232
sections 4123.58 and 4123.59 of the Revised Code. 233

(5) (a) The administrator shall charge all compensation and 234
benefits paid from the state insurance fund on account of cancer 235
contracted by a firefighter in the course of hazardous duty as 236
described in division (X) of this section to the surplus fund 237
account created under section 4123.34 of the Revised Code; 238

(b) A self-insuring employer shall deduct all compensation 239
and benefits payable on account of cancer contracted by a 240
firefighter in the course of hazardous duty as described in 241
division (X) of this section from the paid compensation the 242
self-insuring employer reports to the administrator under 243
division (L) of section 4123.35 of the Revised Code. 244

(6) As used in division (X) of this section, "hazardous 245
duty" has the same meaning as in 5 C.F.R. 550.902, as amended. 246

(Y) Silicosis: Silicosis means a disease of the lungs 247
caused by breathing silica dust (silicon dioxide) producing 248
fibrous nodules distributed through the lungs and demonstrated 249
by x-ray examination, by biopsy or by autopsy. 250

(Z) Coal miners' pneumoconiosis: Coal miners' 251
pneumoconiosis, commonly referred to as "black lung disease," 252
resulting from working in the coal mine industry and due to 253
exposure to the breathing of coal dust, and demonstrated by x- 254

ray examination, biopsy, autopsy or other medical or clinical 255
tests. 256

This chapter does not entitle an employee or the 257
employee's dependents to compensation, medical treatment, or 258
payment of funeral expenses for disability or death from 259
silicosis, asbestosis, or coal miners' pneumoconiosis unless the 260
employee has been subject to injurious exposure to silica dust 261
(silicon dioxide), asbestos, or coal dust in the employee's 262
employment in this state preceding the employee's disablement, 263
some portion of which has been after October 12, 1945, except as 264
provided in division (E) of section 4123.57 of the Revised Code. 265

Compensation on account of silicosis, asbestosis, or coal 266
miners' pneumoconiosis are payable only in the event of 267
temporary total disability, permanent total disability, or 268
death, in accordance with sections 4123.56, 4123.58, and 4123.59 269
of the Revised Code. Medical, hospital, and nursing expenses are 270
payable in accordance with this chapter. Compensation, medical, 271
hospital, and nursing expenses are payable only in the event of 272
such disability or death resulting within eight years after the 273
last injurious exposure; provided that such eight-year 274
limitation does not apply to disability or death occurring after 275
January 1, 1976, and further provided that such eight-year 276
limitation does not apply to any asbestosis cases. In the event 277
of death following continuous total disability commencing within 278
eight years after the last injurious exposure, the requirement 279
of death within eight years after the last injurious exposure 280
does not apply. 281

This chapter does not entitle an employee or the 282
employee's dependents to compensation, medical, hospital and 283
nursing expenses, or payment of funeral expenses for disability 284

or death due to silicosis, asbestosis, or coal miners' 285
pneumoconiosis in the event of the failure or omission on the 286
part of the employee truthfully to state, when seeking 287
employment, the place, duration, and nature of previous 288
employment in answer to an inquiry made by the employer. 289

Before awarding compensation for disability or death due 290
to silicosis, asbestosis, or coal miners' pneumoconiosis, the 291
administrator shall refer the claim to a qualified medical 292
specialist for examination and recommendation with regard to the 293
diagnosis, the extent of disability, the cause of death, and 294
other medical questions connected with the claim. An employee 295
shall submit to such examinations, including clinical and x-ray 296
examinations, as the administrator requires. In the event that 297
an employee refuses to submit to examinations, including 298
clinical and x-ray examinations, after notice from the 299
administrator, or in the event that a claimant for compensation 300
for death due to silicosis, asbestosis, or coal miners' 301
pneumoconiosis fails to produce necessary consents and permits, 302
after notice from the commission, so that such autopsy 303
examination and tests may be performed, then all rights for 304
compensation are forfeited. The reasonable compensation of such 305
specialist and the expenses of examinations and tests shall be 306
paid, if the claim is allowed, as a part of the expenses of the 307
claim, otherwise they shall be paid from the surplus fund. 308

(AA) Radiation illness: Any industrial process involving 309
the use of radioactive materials. 310

Claims for compensation and benefits due to radiation 311
illness are payable only in the event death or disability 312
occurred within eight years after the last injurious exposure 313
provided that such eight-year limitation does not apply to 314

disability or death from exposure occurring after January 1, 315
1976. In the event of death following continuous disability 316
which commenced within eight years of the last injurious 317
exposure the requirement of death within eight years after the 318
last injurious exposure does not apply. 319

(BB) Asbestosis: Asbestosis means a disease caused by 320
inhalation or ingestion of asbestos, demonstrated by x-ray 321
examination, biopsy, autopsy, or other objective medical or 322
clinical tests. 323

All conditions, restrictions, limitations, and other 324
provisions of this section, with reference to the payment of 325
compensation or benefits on account of silicosis or coal miners' 326
pneumoconiosis apply to the payment of compensation or benefits 327
on account of any other occupational disease of the respiratory 328
tract resulting from injurious exposures to dust. 329

The refusal to produce the necessary consents and permits 330
for autopsy examination and testing shall not result in 331
forfeiture of compensation provided the administrator finds that 332
such refusal was the result of bona fide religious convictions 333
or teachings to which the claimant for compensation adhered 334
prior to the death of the decedent. 335

Section 2. That existing section 4123.68 of the Revised 336
Code is hereby repealed. 337