

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1231 Session of
2009

INTRODUCED BY MURPHY, CALTAGIRONE, ADOLPH, BARRAR, BELFANTI, BOYLE, BRADFORD, BRENNAN, BRIGGS, BROWN, CASORIO, COHEN, CRUZ, DALEY, DEASY, DeLUCA, DePASQUALE, FARRY, FLECK, FREEMAN, GALLOWAY, GEORGE, GIBBONS, GINGRICH, GOODMAN, GRUCELA, HALUSKA, HARKINS, HELM, HENNESSEY, HESS, HORNAMAN, HUTCHINSON, JOSEPHS, W. KELLER, KORTZ, KOTIK, KULA, LENTZ, LONGIETTI, MAHONEY, MANDERINO, MANN, MARKOSEK, MATZIE, McCALL, McGEEHAN, McILVAINE SMITH, MENSCH, MICOZZIE, D. O'BRIEN, M. O'BRIEN, O'NEILL, PETRARCA, PETRI, PHILLIPS, PYLE, READSHAW, REICHLEY, ROCK, SABATINA, SANTONI, SCAVELLO, SEIP, SHAPIRO, SIPTROTH, K. SMITH, SOLOBAY, SONNEY, STABACK, J. TAYLOR, WALKO, WATSON, YOUNGBLOOD, YUDICHAK, BEYER, MURT, DALLY, GEIST, VULAKOVICH, D. COSTA, GERGELY, P. COSTA, KESSLER, BURNS, BARBIN, HOUGHTON, BISHOP, DERMODY, FRANKEL, WAGNER, MIRABITO, SAINATO, HARHAI, PASHINSKI, CAUSER AND M. SMITH, APRIL 7, 2009

SENATOR GORDNER, LABOR AND INDUSTRY, IN SENATE, AS AMENDED,
SEPTEMBER 28, 2010

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," further defining "occupational
8 disease"; and providing for cancer in the occupation of
9 firefighter.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 108 of the act of June 2, 1915 (P.L.736,
13 No.338), known as the Workers' Compensation Act, reenacted and

1 amended June 21, 1939 (P.L.520, No.281), is amended by adding a
2 clause to read:

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

5 * * *

6 (r) Cancer suffered by a firefighter which is caused by
7 exposure to either heat, gas, radiation or a known carcinogen ←
8 which is recognized AS A GROUP 1 CARCINOGEN by the International ←
9 Agency for Research on Cancer which is reasonably linked to the ←
10 cancer.

11 Section 2. Section 301(c) of the act is amended and the
12 section is amended by adding a subsection to read:

13 Section 301. * * *

14 (c) (1) The terms "injury" and "personal injury," as used
15 in this act, shall be construed to mean an injury to an employe,
16 regardless of his previous physical condition, EXCEPT AS ←
17 PROVIDED UNDER SUBSECTION (F), arising in the course of his
18 employment and related thereto, and such disease or infection as
19 naturally results from the injury or is aggravated, reactivated
20 or accelerated by the injury; and wherever death is mentioned as
21 a cause for compensation under this act, it shall mean only
22 death resulting from such injury and its resultant effects, and
23 occurring within three hundred weeks after the injury. The term
24 "injury arising in the course of his employment," as used in
25 this article, shall not include an injury caused by an act of a
26 third person intended to injure the employe because of reasons
27 personal to him, and not directed against him as an employe or
28 because of his employment; nor shall it include injuries
29 sustained while the employe is operating a motor vehicle
30 provided by the employer if the employe is not otherwise in the

1 course of employment at the time of injury; but shall include
2 all other injuries sustained while the employe is actually
3 engaged in the furtherance of the business or affairs of the
4 employer, whether upon the employer's premises or elsewhere, and
5 shall include all injuries caused by the condition of the
6 premises or by the operation of the employer's business or
7 affairs thereon, sustained by the employe, who, though not so
8 engaged, is injured upon the premises occupied by or under the
9 control of the employer, or upon which the employer's business
10 or affairs are being carried on, the employe's presence thereon
11 being required by the nature of his employment.

12 (2) The terms "injury," "personal injury," and "injury
13 arising in the course of his employment," as used in this act,
14 shall include, unless the context clearly requires otherwise,
15 occupational disease as defined in section 108 of this act:
16 Provided, That whenever occupational disease is the basis for
17 compensation, for disability or death under this act, it shall
18 apply only to disability or death resulting from such disease
19 and occurring within three hundred weeks after the last date of
20 employment in an occupation or industry to which he was exposed
21 to hazards of such disease: And provided further, That if the
22 employe's compensable disability has occurred within such
23 period, his subsequent death as a result of the disease shall
24 likewise be compensable. The provisions of this paragraph (2)
25 shall apply only with respect to the disability or death of an
26 employe which results in whole or in part from the employe's
27 exposure to the hazard of occupational disease after June 30,
28 1973 in employment covered by The Pennsylvania Workmen's
29 Compensation Act. The employer liable for compensation provided
30 by section 305.1 or section 108, subsections (k), (l), (m), (o),

1 (p) [or], (q) or (r), shall be the employer in whose employment
2 the employe was last exposed for a period of not less than one
3 year to the hazard of the occupational disease claimed. In the
4 event the employe did not work in an exposure at least one year
5 for any employer during the three hundred week period prior to
6 disability or death, the employer liable for the compensation
7 shall be that employer giving the longest period of employment
8 in which the employe was exposed to the hazards of the disease
9 claimed.

10 * * *

11 (f) Compensation pursuant to cancer suffered by a
12 firefighter shall only be to those firefighters who have served
13 four or more years in CONTINUOUS firefighting duties and, who ←
14 can establish direct exposure to ~~factors~~ A CARCINOGEN referred ←
15 to in section 108(r) relating to cancer by a firefighter AND ←
16 HAVE SUCCESSFULLY PASSED A PHYSICAL EXAMINATION PRIOR TO
17 ASSERTING A CLAIM UNDER THIS PARAGRAPH OR PRIOR TO ENGAGING IN
18 FIREFIGHTING DUTIES AND THE EXAMINATION FAILED TO REVEAL ANY
19 EVIDENCE OF THE CONDITION OF CANCER. The presumption of this
20 ~~section~~ SUBSECTION may be rebutted by ~~substantial~~ A ←
21 PREPONDERANCE OF THE evidence that shows that the firefighter
22 engaged in conduct or activities outside of firefighting duties
23 that posed a substantial risk of causing the cancer, INCLUDING ←
24 THE CONTINUOUS USE OF TOBACCO PRODUCTS FOR TWO OR MORE YEARS FOR
25 CANCERS PRIMARILY CAUSED BY SMOKING OR A TOBACCO PRODUCT. A
26 claim made by a member of a volunteer fire company ~~must~~ SHALL be ←
27 based on evidence of ~~exposure to causal factors~~ DIRECT EXPOSURE ←
28 TO A CARCINOGEN REFERRED TO IN SECTION 108(R) as documented by
29 reports filed pursuant to the Pennsylvania Fire Information
30 Reporting System, if such fire company participates in the ←

1 ~~system,~~ and provided that the member's claim is based on being ←
2 ~~exposed to causal factors~~ DIRECT EXPOSURE TO A CARCINOGEN ←
3 REFERRED TO IN SECTION 108(R) on or after the date the fire
4 company began to utilize the reporting system. The limitation in
5 subsection (c)(2) with respect to disability or death resulting
6 from an occupational disease having to occur within three
7 hundred weeks after the last date of employment in an occupation
8 or industry to which a claimant was exposed to hazards of
9 disease shall ~~not~~ apply to claims filed pursuant to cancer ←
10 suffered by the firefighter under section 108(r) AND INVOKING ←
11 THE PRESUMPTION PROVIDED UNDER THIS SUBSECTION. NOTWITHSTANDING
12 THE LIMITATION UNDER SUBSECTION (C)(2) WITH RESPECT TO
13 DISABILITY OR DEATH RESULTING FROM AN OCCUPATIONAL DISEASE
14 HAVING TO OCCUR WITHIN THREE HUNDRED WEEKS AFTER THE LAST DATE
15 OF EMPLOYMENT IN AN OCCUPATION OR INDUSTRY TO WHICH A CLAIMANT
16 WAS EXPOSED TO THE HAZARDS OF DISEASE, CLAIMS FILED PURSUANT TO
17 CANCER SUFFERED BY THE FIREFIGHTER UNDER SECTION 108(R) MAY BE
18 MADE WITHIN SIX HUNDRED WEEKS AFTER THE LAST DATE OF EMPLOYMENT
19 IN AN OCCUPATION OR INDUSTRY TO WHICH A CLAIMANT WAS EXPOSED TO
20 THE HAZARDS OF DISEASE. THE PRESUMPTION PROVIDED FOR UNDER THIS
21 PARAGRAPH SHALL ONLY APPLY TO CLAIMS MADE WITHIN THE FIRST THREE
22 HUNDRED WEEKS.

23 SECTION 3. THE DEPARTMENT OF LABOR AND INDUSTRY SHALL SUBMIT ←
24 DATA ON THE AMOUNT OF SUCCESSFUL CLAIMS PROCESSED UNDER SECTION
25 301(F) TO THE CHAIRMAN AND MINORITY CHAIRMAN OF THE LABOR AND
26 INDUSTRY COMMITTEE OF THE SENATE AND TO THE CHAIRMAN AND
27 MINORITY CHAIRMAN OF THE LABOR RELATIONS COMMITTEE OF THE HOUSE
28 OF REPRESENTATIVES TWO YEARS FOLLOWING THE ADOPTION OF THIS ACT
29 AND EVERY TWO YEARS THEREAFTER.

30 Section ~~3~~ 4. The provisions of this act shall apply to ←

1 claims filed on or after the effective date of this section.

2 Section 4 5. This act shall take effect immediately.

