

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 27**

**Senator Patton**

**Cosponsors: Senators LaRose, Skindell, Hughes, Schiavoni, Tavares**

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**A BILL**

To amend sections 742.38, 4123.57, and 4123.68 of  
the Revised Code to provide that a firefighter  
who is disabled as a result of specified types  
of cancer is presumed for purposes of the laws  
governing workers' compensation and the Ohio  
Police and Fire Pension Fund to have incurred  
the cancer while performing official duties as a  
firefighter.

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

**Section 1.** That sections 742.38, 4123.57, and 4123.68 of  
the Revised Code be amended to read as follows:

**Sec. 742.38.** (A) (1) The board of trustees of the Ohio  
police and fire pension fund shall adopt rules establishing  
minimum medical testing and diagnostic standards or procedures  
to be incorporated into physical examinations administered by  
physicians to prospective members of the fund. The standards or  
procedures shall include diagnosis and evaluation of the  
existence of any heart disease, cardiovascular disease, or  
respiratory disease. The rules shall specify the form of the  
physician's report and the information to be included in it.

The board shall notify all employers of the establishment 20  
of the minimum standards or procedures and shall include with 21  
the notice a copy of the standards or procedures. The board 22  
shall notify all employers of any changes made to the standards 23  
or procedures. Once the standards or procedures take effect, 24  
employers shall cause each prospective member of the fund to 25  
submit to a physical examination that incorporates the standards 26  
or procedures. 27

(2) Division (A) (2) of this section applies to an employee 28  
who becomes a member of the fund on or after the date the 29  
minimum standards or procedures described in division (A) (1) of 30  
this section take effect. For each employee described in 31  
division (A) (2) of this section, the employer shall forward to 32  
the board a copy of the physician's report of a physical 33  
examination that incorporates the standards or procedures 34  
described in division (A) (1) of this section. If an employer 35  
fails to forward the report in the form required by the board on 36  
or before the date that is sixty days after the employee becomes 37  
a member of the fund, the board shall assess against the 38  
employer a penalty determined under section 742.353 of the 39  
Revised Code. 40

(B) Application for a disability benefit may be made by a 41  
member of the fund or, if the member is incapacitated as defined 42  
in rules adopted by the board, by a person acting on the 43  
member's behalf. Not later than fourteen days after receiving an 44  
application for a disability benefit from a member or a person 45  
acting on behalf of a member, the board shall notify the 46  
member's employer that an application has been filed. The notice 47  
shall state the member's position or rank. Not later than 48  
twenty-eight days after receiving the notice or filing an 49  
application on behalf of a member, the employer shall forward to 50

the board a statement certifying the member's job description 51  
and any other information required by the board to process the 52  
application. 53

If the member applying for a disability benefit becomes a 54  
member of the fund prior to the date the minimum standards or 55  
procedures described in division (A)(1) of this section take 56  
effect, the board may request from the member's employer a copy 57  
of the physician's report of the member's physical examination 58  
taken on entry into the police or fire department or, if the 59  
employer does not have a copy of the report, a written statement 60  
certifying that the employer does not have a copy of the report. 61  
If an employer fails to forward the report or statement in the 62  
form required by the board on or before the date that is twenty- 63  
eight days after the date of the request, the board shall assess 64  
against the employer a penalty determined under section 742.353 65  
of the Revised Code. The board shall maintain the information 66  
submitted under this division and division (A)(2) of this 67  
section in the member's file. 68

(C) For purposes of determining under division (D) of this 69  
section whether a member of the fund is disabled, the board 70  
shall adopt rules establishing objective criteria under which 71  
the board shall make the determination. The rules shall include 72  
standards that provide for all of the following: 73

(1) Evaluating a member's illness or injury on which an 74  
application for disability benefits is based; 75

(2) Defining the occupational duties of a police officer 76  
or firefighter; 77

(3) Providing for the board to assign competent and 78  
disinterested physicians and vocational evaluators to conduct 79

examinations of a member;	80
(4) Requiring a written report for each disability application that includes a summary of findings, medical opinions, including an opinion on whether the illness or injury upon which the member's application for disability benefits is based was caused or induced by the actual performance of the member's official duties, and any recommendations or comments based on the medical opinions;	81 82 83 84 85 86 87
(5) Providing for the board to consider the member's potential for retraining or reemployment.	88 89
(D) This division does not apply to members of the fund who have elected to receive benefits and pensions in accordance with division (A) or (B) of section 742.37 of the Revised Code or from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules of that fund in force on April 1, 1947.	90 91 92 93 94 95
As used in this division:	96
"Totally disabled" means a member of the fund is unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments. Absolute helplessness is not a prerequisite of being totally disabled.	97 98 99 100 101
"Permanently disabled" means a condition of disability from which there is no present indication of recovery.	102 103
<u>"Hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended.</u>	104 105
(1) A member of the fund who is permanently and totally disabled as the result of the performance of the member's	106 107

official duties as a member of a police or fire department shall 108  
be paid annual disability benefits in accordance with division 109  
(A) of section 742.39 of the Revised Code. In determining 110  
whether a member of the fund is permanently and totally 111  
disabled, the board shall consider standards adopted under 112  
division (C) of this section applicable to the determination. 113

(2) A member of the fund who is permanently and partially 114  
disabled as the result of the performance of the member's 115  
official duties as a member of a police or fire department 116  
shall, if the disability prevents the member from performing 117  
those duties and impairs the member's earning capacity, receive 118  
annual disability benefits in accordance with division (B) of 119  
section 742.39 of the Revised Code. In determining whether a 120  
member of the fund is permanently and partially disabled, the 121  
board shall consider standards adopted under division (C) of 122  
this section applicable to the determination. 123

(3) (a) A member of the fund who is permanently disabled as 124  
a result of heart disease or any cardiovascular or respiratory 125  
disease of a chronic nature, which disease or any evidence of 126  
which disease was not revealed by the physical examination 127  
passed by the member on entry into the department or another 128  
examination specified in rules the board adopts under section 129  
742.10 of the Revised Code, is presumed to have incurred the 130  
disease while performing the member's official duties, unless 131  
the contrary is shown by competent evidence. The board may waive 132  
the requirement that the absence of disease be evidenced by a 133  
physical examination if competent medical evidence of a type 134  
specified in rules adopted under section 742.10 of the Revised 135  
Code is submitted documenting that the disease was not evident 136  
prior to or at the time of entry into the department. 137

(b) A member of the fund who is a member of a fire department, has been assigned to at least three years of hazardous duty as a member of a fire department, and is disabled as a result of any of the following types of cancer, is presumed to have incurred the cancer while performing the member's official duties: 138  
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(i) Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate; 144  
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(ii) Non-Hodgkins lymphoma; 146

(iii) Leukemia; 147

(iv) Multiple myeloma; 148

(v) Testicular or colorectal cancer. 149

The presumption described in division (D)(3)(b) of this section does not apply if competent evidence to the contrary of the presumption is shown or if the cancer that resulted in the member's disability, or any evidence of that cancer, was revealed by the physical examination passed by the member on entry into the department. 150  
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(4) A member of the fund who has five or more years of service credit and has incurred a permanent disability not caused or induced by the actual performance of the member's official duties as a member of the department, or by the member's own negligence, shall if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (C) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination. 156  
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(5) The board shall notify a member of its final action 167  
awarding a disability benefit to the member within thirty days 168  
of the final action. The notice shall be sent by certified mail, 169  
return receipt requested. Not later than ninety days after 170  
receipt of notice from the board, the member shall elect, on a 171  
form provided by the board, either to accept or waive the 172  
disability benefit award. If the member elects to waive the 173  
disability benefit award or fails to make an election within the 174  
time period, the award is rescinded. A member who later seeks a 175  
disability benefit award shall be required to make a new 176  
application, which shall be dealt with in accordance with the 177  
procedures used for original disability benefit applications. 178

A person is not eligible to apply for or receive 179  
disability benefits under this division, section 742.39 of the 180  
Revised Code, or division (C) (2), (3), (4), or (5) of former 181  
section 742.37 of the Revised Code unless the person is a member 182  
of the fund on the date on which the application for disability 183  
benefits is submitted to the fund. 184

With the exception of persons who may make application for 185  
increased benefits as provided in division (D) (2) or (4) of this 186  
section or division (C) (3) or (5) of former section 742.37 of 187  
the Revised Code on or after July 24, 1986, or persons who may 188  
make application for benefits as provided in section 742.26 of 189  
the Revised Code, no person receiving a pension or benefit under 190  
this section or division (C) of former section 742.37 of the 191  
Revised Code may apply for any new, changed, or different 192  
benefit. 193

**Sec. 4123.57.** Partial disability compensation shall be 194  
paid as follows. 195

Except as provided in this section, not earlier than 196

twenty-six weeks after the date of termination of the latest 197  
period of payments under section 4123.56 of the Revised Code, or 198  
not earlier than twenty-six weeks after the date of the injury 199  
or contraction of an occupational disease in the absence of 200  
payments under section 4123.56 of the Revised Code, the employee 201  
may file an application with the bureau of workers' compensation 202  
for the determination of the percentage of the employee's 203  
permanent partial disability resulting from an injury or 204  
occupational disease. 205

Whenever the application is filed, the bureau shall send a 206  
copy of the application to the employee's employer or the 207  
employer's representative and shall schedule the employee for a 208  
medical examination by the bureau medical section. The bureau 209  
shall send a copy of the report of the medical examination to 210  
the employee, the employer, and their representatives. 211  
Thereafter, the administrator of workers' compensation shall 212  
review the employee's claim file and make a tentative order as 213  
the evidence before the administrator at the time of the making 214  
of the order warrants. If the administrator determines that 215  
there is a conflict of evidence, the administrator shall send 216  
the application, along with the claimant's file, to the district 217  
hearing officer who shall set the application for a hearing. 218

The administrator shall notify the employee, the employer, 219  
and their representatives, in writing, of the tentative order 220  
and of the parties' right to request a hearing. Unless the 221  
employee, the employer, or their representative notifies the 222  
administrator, in writing, of an objection to the tentative 223  
order within twenty days after receipt of the notice thereof, 224  
the tentative order shall go into effect and the employee shall 225  
receive the compensation provided in the order. In no event 226  
shall there be a reconsideration of a tentative order issued 227



under this division. 228

If the employee, the employer, or their representatives 229  
timely notify the administrator of an objection to the tentative 230  
order, the matter shall be referred to a district hearing 231  
officer who shall set the application for hearing with written 232  
notices to all interested persons. Upon referral to a district 233  
hearing officer, the employer may obtain a medical examination 234  
of the employee, pursuant to rules of the industrial commission. 235

(A) The district hearing officer, upon the application, 236  
shall determine the percentage of the employee's permanent 237  
disability, except as is subject to division (B) of this 238  
section, based upon that condition of the employee resulting 239  
from the injury or occupational disease and causing permanent 240  
impairment evidenced by medical or clinical findings reasonably 241  
demonstrable. The employee shall receive sixty-six and two- 242  
thirds per cent of the employee's average weekly wage, but not 243  
more than a maximum of thirty-three and one-third per cent of 244  
the statewide average weekly wage as defined in division (C) of 245  
section 4123.62 of the Revised Code, per week regardless of the 246  
average weekly wage, for the number of weeks which equals the 247  
percentage of two hundred weeks. Except on application for 248  
reconsideration, review, or modification, which is filed within 249  
ten days after the date of receipt of the decision of the 250  
district hearing officer, in no instance shall the former award 251  
be modified unless it is found from medical or clinical findings 252  
that the condition of the claimant resulting from the injury has 253  
so progressed as to have increased the percentage of permanent 254  
partial disability. A staff hearing officer shall hear an 255  
application for reconsideration filed and the staff hearing 256  
officer's decision is final. An employee may file an application 257  
for a subsequent determination of the percentage of the 258

employee's permanent disability. If such an application is 259  
filed, the bureau shall send a copy of the application to the 260  
employer or the employer's representative. No sooner than sixty 261  
days from the date of the mailing of the application to the 262  
employer or the employer's representative, the administrator 263  
shall review the application. The administrator may require a 264  
medical examination or medical review of the employee. The 265  
administrator shall issue a tentative order based upon the 266  
evidence before the administrator, provided that if the 267  
administrator requires a medical examination or medical review, 268  
the administrator shall not issue the tentative order until the 269  
completion of the examination or review. 270

The employer may obtain a medical examination of the 271  
employee and may submit medical evidence at any stage of the 272  
process up to a hearing before the district hearing officer, 273  
pursuant to rules of the commission. The administrator shall 274  
notify the employee, the employer, and their representatives, in 275  
writing, of the nature and amount of any tentative order issued 276  
on an application requesting a subsequent determination of the 277  
percentage of an employee's permanent disability. An employee, 278  
employer, or their representatives may object to the tentative 279  
order within twenty days after the receipt of the notice 280  
thereof. If no timely objection is made, the tentative order 281  
shall go into effect. In no event shall there be a 282  
reconsideration of a tentative order issued under this division. 283  
If an objection is timely made, the application for a subsequent 284  
determination shall be referred to a district hearing officer 285  
who shall set the application for a hearing with written notice 286  
to all interested persons. No application for subsequent 287  
percentage determinations on the same claim for injury or 288  
occupational disease shall be accepted for review by the 289

district hearing officer unless supported by substantial 290  
evidence of new and changed circumstances developing since the 291  
time of the hearing on the original or last determination. 292

No award shall be made under this division based upon a 293  
percentage of disability which, when taken with all other 294  
percentages of permanent disability, exceeds one hundred per 295  
cent. If the percentage of the permanent disability of the 296  
employee equals or exceeds ninety per cent, compensation for 297  
permanent partial disability shall be paid for two hundred 298  
weeks. 299

Compensation payable under this division accrues and is 300  
payable to the employee from the date of last payment of 301  
compensation, or, in cases where no previous compensation has 302  
been paid, from the date of the injury or the date of the 303  
diagnosis of the occupational disease. 304

When an award under this division has been made prior to 305  
the death of an employee, all unpaid installments accrued or to 306  
accrue under the provisions of the award are payable to the 307  
surviving spouse, or if there is no surviving spouse, to the 308  
dependent children of the employee, and if there are no children 309  
surviving, then to other dependents as the administrator 310  
determines. 311

(B) For purposes of this division, "payable per week" 312  
means the seven-consecutive-day period in which compensation is 313  
paid in installments according to the schedule associated with 314  
the applicable injury as set forth in this division. 315

Compensation paid in weekly installments according to the 316  
schedule described in this division may only be commuted to one 317  
or more lump sum payments pursuant to the procedure set forth in 318

section 4123.64 of the Revised Code. 319

In cases included in the following schedule the 320  
compensation payable per week to the employee is the statewide 321  
average weekly wage as defined in division (C) of section 322  
4123.62 of the Revised Code per week and shall be paid in 323  
installments according to the following schedule: 324

For the loss of a first finger, commonly known as a thumb, 325  
sixty weeks. 326

For the loss of a second finger, commonly called index 327  
finger, thirty-five weeks. 328

For the loss of a third finger, thirty weeks. 329

For the loss of a fourth finger, twenty weeks. 330

For the loss of a fifth finger, commonly known as the 331  
little finger, fifteen weeks. 332

The loss of a second, or distal, phalange of the thumb is 333  
considered equal to the loss of one half of such thumb; the loss 334  
of more than one half of such thumb is considered equal to the 335  
loss of the whole thumb. 336

The loss of the third, or distal, phalange of any finger 337  
is considered equal to the loss of one-third of the finger. 338

The loss of the middle, or second, phalange of any finger 339  
is considered equal to the loss of two-thirds of the finger. 340

The loss of more than the middle and distal phalanges of 341  
any finger is considered equal to the loss of the whole finger. 342  
In no case shall the amount received for more than one finger 343  
exceed the amount provided in this schedule for the loss of a 344  
hand. 345

For the loss of the metacarpal bone (bones of the palm) 346  
for the corresponding thumb, or fingers, add ten weeks to the 347  
number of weeks under this division. 348

For ankylosis (total stiffness of) or contractures (due to 349  
scars or injuries) which makes any of the fingers, thumbs, or 350  
parts of either useless, the same number of weeks apply to the 351  
members or parts thereof as given for the loss thereof. 352

If the claimant has suffered the loss of two or more 353  
fingers by amputation or ankylosis and the nature of the 354  
claimant's employment in the course of which the claimant was 355  
working at the time of the injury or occupational disease is 356  
such that the handicap or disability resulting from the loss of 357  
fingers, or loss of use of fingers, exceeds the normal handicap 358  
or disability resulting from the loss of fingers, or loss of use 359  
of fingers, the administrator may take that fact into 360  
consideration and increase the award of compensation 361  
accordingly, but the award made shall not exceed the amount of 362  
compensation for loss of a hand. 363

For the loss of a hand, one hundred seventy-five weeks. 364

For the loss of an arm, two hundred twenty-five weeks. 365

For the loss of a great toe, thirty weeks. 366

For the loss of one of the toes other than the great toe, 367  
ten weeks. 368

The loss of more than two-thirds of any toe is considered 369  
equal to the loss of the whole toe. 370

The loss of less than two-thirds of any toe is considered 371  
no loss, except as to the great toe; the loss of the great toe 372  
up to the interphalangeal joint is co-equal to the loss of one- 373

half of the great toe; the loss of the great toe beyond the 374  
interphalangeal joint is considered equal to the loss of the 375  
whole great toe. 376

For the loss of a foot, one hundred fifty weeks. 377

For the loss of a leg, two hundred weeks. 378

For the loss of the sight of an eye, one hundred twenty- 379  
five weeks. 380

For the permanent partial loss of sight of an eye, the 381  
portion of one hundred twenty-five weeks as the administrator in 382  
each case determines, based upon the percentage of vision 383  
actually lost as a result of the injury or occupational disease, 384  
but, in no case shall an award of compensation be made for less 385  
than twenty-five per cent loss of uncorrected vision. "Loss of 386  
uncorrected vision" means the percentage of vision actually lost 387  
as the result of the injury or occupational disease. 388

For the permanent and total loss of hearing of one ear, 389  
twenty-five weeks; but in no case shall an award of compensation 390  
be made for less than permanent and total loss of hearing of one 391  
ear. 392

For the permanent and total loss of hearing, one hundred 393  
twenty-five weeks; but, except pursuant to the next preceding 394  
paragraph, in no case shall an award of compensation be made for 395  
less than permanent and total loss of hearing. 396

In case an injury or occupational disease results in 397  
serious facial or head disfigurement which either impairs or may 398  
in the future impair the opportunities to secure or retain 399  
employment, the administrator shall make an award of 400  
compensation as it deems proper and equitable, in view of the 401  
nature of the disfigurement, and not to exceed the sum of ten 402

thousand dollars. For the purpose of making the award, it is not  
material whether the employee is gainfully employed in any  
occupation or trade at the time of the administrator's  
determination.

When an award under this division has been made prior to  
the death of an employee all unpaid installments accrued or to  
accrue under the provisions of the award shall be payable to the  
surviving spouse, or if there is no surviving spouse, to the  
dependent children of the employee and if there are no such  
children, then to such dependents as the administrator  
determines.

When an employee has sustained the loss of a member by  
severance, but no award has been made on account thereof prior  
to the employee's death, the administrator shall make an award  
in accordance with this division for the loss which shall be  
payable to the surviving spouse, or if there is no surviving  
spouse, to the dependent children of the employee and if there  
are no such children, then to such dependents as the  
administrator determines.

(C) Compensation for partial impairment under divisions  
(A) and (B) of this section is in addition to the compensation  
paid the employee pursuant to section 4123.56 of the Revised  
Code. A claimant may receive compensation under divisions (A)  
and (B) of this section.

In all cases arising under division (B) of this section,  
if it is determined by any one of the following: (1) the amputee  
clinic at University hospital, Ohio state university; (2) the  
opportunities for Ohioans with disabilities agency; (3) an  
amputee clinic or prescribing physician approved by the  
administrator or the administrator's designee, that an injured

or disabled employee is in need of an artificial appliance, or 433  
in need of a repair thereof, regardless of whether the appliance 434  
or its repair will be serviceable in the vocational 435  
rehabilitation of the injured employee, and regardless of 436  
whether the employee has returned to or can ever again return to 437  
any gainful employment, the bureau shall pay the cost of the 438  
artificial appliance or its repair out of the surplus created by 439  
division (B) of section 4123.34 of the Revised Code. 440

In those cases where an opportunities for Ohioans with 441  
disabilities ~~agency~~agency's recommendation that an injured or 442  
disabled employee is in need of an artificial appliance would 443  
conflict with their state plan, adopted pursuant to the 444  
"Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the 445  
administrator or the administrator's designee or the bureau may 446  
obtain a recommendation from an amputee clinic or prescribing 447  
physician that they determine appropriate. 448

(D) If an employee of a state fund employer makes 449  
application for a finding and the administrator finds that the 450  
employee has contracted silicosis as defined in division ~~(X)~~(Y), 451  
or coal miners' pneumoconiosis as defined in division ~~(Y)~~(Z), or 452  
asbestosis as defined in division ~~(AA)~~(BB) of section 4123.68 of 453  
the Revised Code, and that a change of such employee's 454  
occupation is medically advisable in order to decrease 455  
substantially further exposure to silica dust, asbestos, or coal 456  
dust and if the employee, after the finding, has changed or 457  
shall change the employee's occupation to an occupation in which 458  
the exposure to silica dust, asbestos, or coal dust is 459  
substantially decreased, the administrator shall allow to the 460  
employee an amount equal to fifty per cent of the statewide 461  
average weekly wage per week for a period of thirty weeks, 462  
commencing as of the date of the discontinuance or change, and 463



for a period of one hundred weeks immediately following the 464  
expiration of the period of thirty weeks, the employee shall 465  
receive sixty-six and two-thirds per cent of the loss of wages 466  
resulting directly and solely from the change of occupation but 467  
not to exceed a maximum of an amount equal to fifty per cent of 468  
the statewide average weekly wage per week. No such employee is 469  
entitled to receive more than one allowance on account of 470  
discontinuance of employment or change of occupation and 471  
benefits shall cease for any period during which the employee is 472  
employed in an occupation in which the exposure to silica dust, 473  
asbestos, or coal dust is not substantially less than the 474  
exposure in the occupation in which the employee was formerly 475  
employed or for any period during which the employee may be 476  
entitled to receive compensation or benefits under section 477  
4123.68 of the Revised Code on account of disability from 478  
silicosis, asbestosis, or coal miners' pneumoconiosis. An award 479  
for change of occupation for a coal miner who has contracted 480  
coal miners' pneumoconiosis may be granted under this division 481  
even though the coal miner continues employment with the same 482  
employer, so long as the coal miner's employment subsequent to 483  
the change is such that the coal miner's exposure to coal dust 484  
is substantially decreased and a change of occupation is 485  
certified by the claimant as permanent. The administrator may 486  
accord to the employee medical and other benefits in accordance 487  
with section 4123.66 of the Revised Code. 488

(E) If a firefighter or police officer makes application 489  
for a finding and the administrator finds that the firefighter 490  
or police officer has contracted a cardiovascular and pulmonary 491  
disease as defined in division (W) of section 4123.68 of the 492  
Revised Code, and that a change of the firefighter's or police 493  
officer's occupation is medically advisable in order to decrease 494

substantially further exposure to smoke, toxic gases, chemical 495  
fumes, and other toxic vapors, and if the firefighter, or police 496  
officer, after the finding, has changed or changes occupation to 497  
an occupation in which the exposure to smoke, toxic gases, 498  
chemical fumes, and other toxic vapors is substantially 499  
decreased, the administrator shall allow to the firefighter or 500  
police officer an amount equal to fifty per cent of the 501  
statewide average weekly wage per week for a period of thirty 502  
weeks, commencing as of the date of the discontinuance or 503  
change, and for a period of seventy-five weeks immediately 504  
following the expiration of the period of thirty weeks the 505  
administrator shall allow the firefighter or police officer 506  
sixty-six and two-thirds per cent of the loss of wages resulting 507  
directly and solely from the change of occupation but not to 508  
exceed a maximum of an amount equal to fifty per cent of the 509  
statewide average weekly wage per week. No such firefighter or 510  
police officer is entitled to receive more than one allowance on 511  
account of discontinuance of employment or change of occupation 512  
and benefits shall cease for any period during which the 513  
firefighter or police officer is employed in an occupation in 514  
which the exposure to smoke, toxic gases, chemical fumes, and 515  
other toxic vapors is not substantially less than the exposure 516  
in the occupation in which the firefighter or police officer was 517  
formerly employed or for any period during which the firefighter 518  
or police officer may be entitled to receive compensation or 519  
benefits under section 4123.68 of the Revised Code on account of 520  
disability from a cardiovascular and pulmonary disease. The 521  
administrator may accord to the firefighter or police officer 522  
medical and other benefits in accordance with section 4123.66 of 523  
the Revised Code. 524

(F) An order issued under this section is appealable 525

pursuant to section 4123.511 of the Revised Code but is not 526  
appealable to court under section 4123.512 of the Revised Code. 527

**Sec. 4123.68.** Every employee who is disabled because of 528  
the contraction of an occupational disease or the dependent of 529  
an employee whose death is caused by an occupational disease, is 530  
entitled to the compensation provided by sections 4123.55 to 531  
4123.59 and 4123.66 of the Revised Code subject to the 532  
modifications relating to occupational diseases contained in 533  
this chapter. An order of the administrator issued under this 534  
section is appealable pursuant to sections 4123.511 and 4123.512 535  
of the Revised Code. 536

The following diseases are occupational diseases and 537  
compensable as such when contracted by an employee in the course 538  
of the employment in which such employee was engaged and due to 539  
the nature of any process described in this section. A disease 540  
which meets the definition of an occupational disease is 541  
compensable pursuant to this chapter though it is not 542  
specifically listed in this section. 543

SCHEDULE 544

Description of disease or injury and description of 545  
process: 546

(A) Anthrax: Handling of wool, hair, bristles, hides, and 547  
skins. 548

(B) Glanders: Care of any equine animal suffering from 549  
glanders; handling carcass of such animal. 550

(C) Lead poisoning: Any industrial process involving the 551  
use of lead or its preparations or compounds. 552

(D) Mercury poisoning: Any industrial process involving 553

the use of mercury or its preparations or compounds.	554
(E) Phosphorous poisoning: Any industrial process involving the use of phosphorous or its preparations or compounds.	555 556 557
(F) Arsenic poisoning: Any industrial process involving the use of arsenic or its preparations or compounds.	558 559
(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.	560 561 562 563 564
(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.	565 566 567 568
(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.	569 570 571
(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.	572 573
(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.	574 575 576 577 578 579
(L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry	580 581

compounds: Handling or industrial use of carbon, pitch, or tarry compounds.	582 583
(M) Compressed air illness: Any industrial process carried on in compressed air.	584 585
(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.	586 587
(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.	588 589 590
(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.	591 592 593
(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.	594 595 596
(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.	597 598 599 600 601
(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.	602 603 604 605
(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.	606 607
(U) Sulphur dioxide poisoning: Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid	608 609

sulphur dioxide. 610

(V) Berylliosis: Berylliosis means a disease of the lungs 611  
caused by breathing beryllium in the form of dust or fumes, 612  
producing characteristic changes in the lungs and demonstrated 613  
by x-ray examination, by biopsy or by autopsy. 614

This chapter does not entitle an employee or ~~his~~the 615  
employee's dependents to compensation, medical treatment, or 616  
payment of funeral expenses for disability or death from 617  
berylliosis unless the employee has been subjected to injurious 618  
exposure to beryllium dust or fumes in ~~his~~the employee's 619  
employment in this state preceding ~~his~~the employee's disablement 620  
and only in the event of such disability or death resulting 621  
within eight years after the last injurious exposure; provided 622  
that such eight-year limitation does not apply to disability or 623  
death from exposure occurring after January 1, 1976. In the 624  
event of death following continuous total disability commencing 625  
within eight years after the last injurious exposure, the 626  
requirement of death within eight years after the last injurious 627  
exposure does not apply. 628

Before awarding compensation for partial or total 629  
disability or death due to berylliosis, the administrator of 630  
workers' compensation shall refer the claim to a qualified 631  
medical specialist for examination and recommendation with 632  
regard to the diagnosis, the extent of the disability, the 633  
nature of the disability, whether permanent or temporary, the 634  
cause of death, and other medical questions connected with the 635  
claim. An employee shall submit to such examinations, including 636  
clinical and x-ray examinations, as the administrator requires. 637  
In the event that an employee refuses to submit to examinations, 638  
including clinical and x-ray examinations, after notice from the 639

administrator, or in the event that a claimant for compensation 640  
for death due to berylliosis fails to produce necessary consents 641  
and permits, after notice from the administrator, so that such 642  
autopsy examination and tests may be performed, then all rights 643  
for compensation are forfeited. The reasonable compensation of 644  
such specialist and the expenses of examinations and tests shall 645  
be paid, if the claim is allowed, as part of the expenses of the 646  
claim, otherwise they shall be paid from the surplus fund. 647

(W) Cardiovascular, pulmonary, or respiratory diseases 648  
incurred by ~~fire fighters~~firefighters or police officers 649  
following exposure to heat, smoke, toxic gases, chemical fumes 650  
and other toxic substances: Any cardiovascular, pulmonary, or 651  
respiratory disease of a ~~fire fighter~~firefighter or police 652  
officer caused or induced by the cumulative effect of exposure 653  
to heat, the inhalation of smoke, toxic gases, chemical fumes 654  
and other toxic substances in the performance of ~~his~~the 655  
firefighter's or police officer's duty constitutes a 656  
presumption, which may be refuted by affirmative evidence, that 657  
such occurred in the course of and arising out of ~~his~~the 658  
firefighter's or police officer's employment. For the purpose of 659  
this section, "~~fire fighter~~firefighter" means any regular member 660  
of a lawfully constituted fire department of a municipal 661  
corporation or township, whether paid or volunteer, and "police 662  
officer" means any regular member of a lawfully constituted 663  
police department of a municipal corporation, township or 664  
county, whether paid or volunteer. 665

This chapter does not entitle a ~~fire fighter~~firefighter, 666  
or police officer, or ~~his~~the firefighter's or police officer's 667  
dependents to compensation, medical treatment, or payment of 668  
funeral expenses for disability or death from a cardiovascular, 669  
pulmonary, or respiratory disease, unless the ~~fire-~~ 670

~~fighter~~firefighter or police officer has been subject to 671  
injurious exposure to heat, smoke, toxic gases, chemical fumes, 672  
and other toxic substances in ~~his~~the firefighter's or police 673  
officer's employment in this state preceding ~~his~~the 674  
firefighter's or police officer's disablement, some portion of 675  
which has been after January 1, 1967, except as provided in 676  
division (E) of section 4123.57 of the Revised Code. 677

Compensation on account of cardiovascular, pulmonary, or 678  
respiratory diseases of ~~fire fighters~~firefighters and police 679  
officers is payable only in the event of temporary total 680  
disability, permanent total disability, or death, in accordance 681  
with section 4123.56, 4123.58, or 4123.59 of the Revised Code. 682  
Medical, hospital, and nursing expenses are payable in 683  
accordance with this chapter. Compensation, medical, hospital, 684  
and nursing expenses are payable only in the event of such 685  
disability or death resulting within eight years after the last 686  
injurious exposure; provided that such eight-year limitation 687  
does not apply to disability or death from exposure occurring 688  
after January 1, 1976. In the event of death following 689  
continuous total disability commencing within eight years after 690  
the last injurious exposure, the requirement of death within 691  
eight years after the last injurious exposure does not apply. 692

This chapter does not entitle a ~~fire fighter~~firefighter or 693  
police officer, or ~~his~~the firefighter's or police officer's 694  
dependents, to compensation, medical, hospital, and nursing 695  
expenses, or payment of funeral expenses for disability or death 696  
due to a cardiovascular, pulmonary, or respiratory disease in 697  
the event of failure or omission on the part of the ~~fire fighter~~ 698  
firefighter or police officer truthfully to state, when seeking 699  
employment, the place, duration, and nature of previous 700  
employment in answer to an inquiry made by the employer. 701



Before awarding compensation for disability or death under 702  
this division, the administrator shall refer the claim to a 703  
qualified medical specialist for examination and recommendation 704  
with regard to the diagnosis, the extent of disability, the 705  
cause of death, and other medical questions connected with the 706  
claim. A ~~fire fighter~~firefighter or police officer shall submit 707  
to such examinations, including clinical and x-ray examinations, 708  
as the administrator requires. In the event that a ~~fire-~~ 709  
~~fighter~~firefighter or police officer refuses to submit to 710  
examinations, including clinical and x-ray examinations, after 711  
notice from the administrator, or in the event that a claimant 712  
for compensation for death under this division fails to produce 713  
necessary consents and permits, after notice from the 714  
administrator, so that such autopsy examination and tests may be 715  
performed, then all rights for compensation are forfeited. The 716  
reasonable compensation of such specialists and the expenses of 717  
examination and tests shall be paid, if the claim is allowed, as 718  
part of the expenses of the claim, otherwise they shall be paid 719  
from the surplus fund. 720

(X) Cancer contracted by a firefighter: Any of the 721  
following types of cancer contracted by a firefighter who has 722  
been assigned to at least three years of hazardous duty as a 723  
firefighter, constitutes a presumption, which may be refuted by 724  
affirmative evidence, that the cancer was contracted in the 725  
course of and arising out of the firefighter's employment: 726

(1) Cancer of the lung, brain, kidney, bladder, rectum, 727  
stomach, skin, or prostate; 728

(2) Non-Hodgkins lymphoma; 729

(3) Leukemia; 730

<u>(4) Multiple myeloma;</u>	731
<u>(5) Testicular or colorectal cancer.</u>	732
<u>As used in this division, "hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended.</u>	733 734
<u>(Y) Silicosis:</u> 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.	735 736 737 738
<del>(Y)</del> <u>(Z) Coal miners' pneumoconiosis:</u> Coal miners' pneumoconiosis, commonly referred to as "black lung disease," resulting from working in the coal mine industry and due to exposure to the breathing of coal dust, and demonstrated by x-ray examination, biopsy, autopsy or other medical or clinical tests.	739 740 741 742 743 744
This chapter does not entitle an employee or <del>his</del> <u>the</u> <del>employee's</del> dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, asbestosis, or coal miners' pneumoconiosis unless the employee has been subject to injurious exposure to silica dust (silicon dioxide), asbestos, or coal dust in <del>his</del> <u>the employee's</u> employment in this state preceding <del>his</del> <u>the employee's</u> disablement, some portion of which has been after October 12, 1945, except as provided in division (E) of section 4123.57 of the Revised Code.	745 746 747 748 749 750 751 752 753 754
Compensation on account of silicosis, asbestosis, or coal miners' pneumoconiosis 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. Medical, hospital, and nursing expenses are	755 756 757 758 759

payable in accordance with this chapter. Compensation, medical, 760  
hospital, and nursing expenses are payable only in the event of 761  
such disability or death resulting within eight years after the 762  
last injurious exposure; provided that such eight-year 763  
limitation does not apply to disability or death occurring after 764  
January 1, 1976, and further provided that such eight-year 765  
limitation does not apply to any asbestosis cases. In the event 766  
of death following continuous total disability commencing within 767  
eight years after the last injurious exposure, the requirement 768  
of death within eight years after the last injurious exposure 769  
does not apply. 770

This chapter does not entitle an employee or ~~his~~the 771  
employee's dependents to compensation, medical, hospital and 772  
nursing expenses, or payment of funeral expenses for disability 773  
or death due to silicosis, asbestosis, or coal miners' 774  
pneumoconiosis in the event of the failure or omission on the 775  
part of the employee truthfully to state, when seeking 776  
employment, the place, duration, and nature of previous 777  
employment in answer to an inquiry made by the employer. 778

Before awarding compensation for disability or death due 779  
to silicosis, asbestosis, or coal miners' pneumoconiosis, the 780  
administrator shall refer the claim to a qualified medical 781  
specialist for examination and recommendation with regard to the 782  
diagnosis, the extent of disability, the cause of death, and 783  
other medical questions connected with the claim. An employee 784  
shall submit to such examinations, including clinical and x-ray 785  
examinations, as the administrator requires. In the event that 786  
an employee refuses to submit to examinations, including 787  
clinical and x-ray examinations, after notice from the 788  
administrator, or in the event that a claimant for compensation 789  
for death due to silicosis, asbestosis, or coal miners' 790

pneumoconiosis fails to produce necessary consents and permits, 791  
after notice from the commission, so that such autopsy 792  
examination and tests may be performed, then all rights for 793  
compensation are forfeited. The reasonable compensation of such 794  
specialist and the expenses of examinations and tests shall be 795  
paid, if the claim is allowed, as a part of the expenses of the 796  
claim, otherwise they shall be paid from the surplus fund. 797

~~(Z)~~ (AA) Radiation illness: Any industrial process 798  
involving the use of radioactive materials. 799

Claims for compensation and benefits due to radiation 800  
illness are payable only in the event death or disability 801  
occurred within eight years after the last injurious exposure 802  
provided that such eight-year limitation does not apply to 803  
disability or death from exposure occurring after January 1, 804  
1976. In the event of death following continuous disability 805  
which commenced within eight years of the last injurious 806  
exposure the requirement of death within eight years after the 807  
last injurious exposure does not apply. 808

~~(AA)~~ (BB) Asbestosis: Asbestosis means a disease caused by 809  
inhalation or ingestion of asbestos, demonstrated by x-ray 810  
examination, biopsy, autopsy, or other objective medical or 811  
clinical tests. 812

All conditions, restrictions, limitations, and other 813  
provisions of this section, with reference to the payment of 814  
compensation or benefits on account of silicosis or coal miners' 815  
pneumoconiosis apply to the payment of compensation or benefits 816  
on account of any other occupational disease of the respiratory 817  
tract resulting from injurious exposures to dust. 818

The refusal to produce the necessary consents and permits 819

for autopsy examination and testing shall not result in 820  
forfeiture of compensation provided the administrator finds that 821  
such refusal was the result of bona fide religious convictions 822  
or teachings to which the claimant for compensation adhered 823  
prior to the death of the decedent. 824

**Section 2.** That existing sections 742.38, 4123.57, and 825  
4123.68 of the Revised Code are hereby repealed. 826

**Section 3.** The amendment made by this act to section 827  
742.38 of the Revised Code applies only to an application for a 828  
disability benefit that is filed on or after the effective date 829  
of this act. 830

**Section 4.** The amendments made by this act to sections 831  
4123.57 and 4123.68 of the Revised Code apply only to claims 832  
pursuant to Chapters 4121. and 4123. of the Revised Code arising 833  
on or after the effective date of this act. 834