

As Passed by the House

131st General Assembly

Regular Session

2015-2016

Sub. S. B. No. 27

Senator Patton

**Cosponsors: Senators LaRose, Skindell, Hughes, Schiavoni, Tavares, Hottinger, Beagle, Jones, Brown, Bacon, Balderson, Burke, Cafaro, Eklund, Faber, Gentile, Hite, Lehner, Manning, Obhof, Oelslager, Sawyer, Thomas, Williams, Yuko
Representatives Bishoff, Kuhns, Anielski, Antonio, Ashford, Boccieri, Boggs, Boyd, Celebrezze, Cera, Clyde, Craig, Driehaus, Fedor, Grossman, Hagan, Henne, Johnson, G., Leland, Lepore-Hagan, Manning, O'Brien, M., O'Brien, S., Patterson, Pelanda, Phillips, Rezabek, Rogers, Ruhl, Sheehy, Smith, K., Strahorn, Sweeney, Sykes, Terhar, Speaker Rosenberger**

A BILL

To amend sections 742.38, 4123.57, and 4123.68 and 1
to enact section 4123.86 of the Revised Code to 2
enact the "Michael Louis Palumbo, Jr. Act" to 3
provide that a firefighter who is disabled as a 4
result of cancer under certain circumstances is 5
presumed for purposes of the laws governing 6
workers' compensation and the Ohio Police and 7
Fire Pension Fund to have incurred the cancer 8
while performing official duties as a 9
firefighter. 10

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

Section 1. That sections 742.38, 4123.57, and 4123.68 be 11
amended and section 4123.86 of the Revised Code be enacted to 12
read as follows: 13

Sec. 742.38. (A) (1) The board of trustees of the Ohio 14
police and fire pension fund shall adopt rules establishing 15
minimum medical testing and diagnostic standards or procedures 16
to be incorporated into physical examinations administered by 17
physicians to prospective members of the fund. The standards or 18
procedures shall include diagnosis and evaluation of the 19
existence of any heart disease, cardiovascular disease, or 20
respiratory disease. The rules shall specify the form of the 21
physician's report and the information to be included in it. 22

The board shall notify all employers of the establishment 23
of the minimum standards or procedures and shall include with 24
the notice a copy of the standards or procedures. The board 25
shall notify all employers of any changes made to the standards 26
or procedures. Once the standards or procedures take effect, 27
employers shall cause each prospective member of the fund to 28
submit to a physical examination that incorporates the standards 29
or procedures. 30

(2) Division (A) (2) of this section applies to an employee 31
who becomes a member of the fund on or after the date the 32
minimum standards or procedures described in division (A) (1) of 33
this section take effect. For each employee described in 34
division (A) (2) of this section, the employer shall forward to 35
the board a copy of the physician's report of a physical 36
examination that incorporates the standards or procedures 37
described in division (A) (1) of this section. If an employer 38
fails to forward the report in the form required by the board on 39
or before the date that is sixty days after the employee becomes 40
a member of the fund, the board shall assess against the 41
employer a penalty determined under section 742.353 of the 42
Revised Code. 43

(B) Application for a disability benefit may be made by a member of the fund or, if the member is incapacitated as defined in rules adopted by the board, by a person acting on the member's behalf. Not later than fourteen days after receiving an application for a disability benefit from a member or a person acting on behalf of a member, the board shall notify the member's employer that an application has been filed. The notice shall state the member's position or rank. Not later than twenty-eight days after receiving the notice or filing an application on behalf of a member, the employer shall forward to the board a statement certifying the member's job description and any other information required by the board to process the application.

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

(C) For purposes of determining under division (D) of this section whether a member of the fund is disabled, the board shall adopt rules establishing objective criteria under which

the board shall make the determination. The rules shall include 75
standards that provide for all of the following: 76

(1) Evaluating a member's illness or injury on which an 77
application for disability benefits is based; 78

(2) Defining the occupational duties of a police officer 79
or firefighter; 80

(3) Providing for the board to assign competent and 81
disinterested physicians and vocational evaluators to conduct 82
examinations of a member; 83

(4) Requiring a written report for each disability 84
application that includes a summary of findings, medical 85
opinions, including an opinion on whether the illness or injury 86
upon which the member's application for disability benefits is 87
based was caused or induced by the actual performance of the 88
member's official duties, and any recommendations or comments 89
based on the medical opinions; 90

(5) Providing for the board to consider the member's 91
potential for retraining or reemployment. 92

(D) This division does not apply to members of the fund 93
who have elected to receive benefits and pensions in accordance 94
with division (A) or (B) of section 742.37 of the Revised Code 95
or from a police relief and pension fund or a firemen's relief 96
and pension fund in accordance with the rules of that fund in 97
force on April 1, 1947. 98

As used in this division: 99

"Totally disabled" means a member of the fund is unable to 100
perform the duties of any gainful occupation for which the 101
member is reasonably fitted by training, experience, and 102

accomplishments. Absolute helplessness is not a prerequisite of 103
being totally disabled. 104

"Permanently disabled" means a condition of disability 105
from which there is no present indication of recovery. 106

"Hazardous duty" has the same meaning as in 5 C.F.R. 107
550.902, as amended. 108

(1) A member of the fund who is permanently and totally 109
disabled as the result of the performance of the member's 110
official duties as a member of a police or fire department shall 111
be paid annual disability benefits in accordance with division 112
(A) of section 742.39 of the Revised Code. In determining 113
whether a member of the fund is permanently and totally 114
disabled, the board shall consider standards adopted under 115
division (C) of this section applicable to the determination. 116

(2) A member of the fund who is permanently and partially 117
disabled as the result of the performance of the member's 118
official duties as a member of a police or fire department 119
shall, if the disability prevents the member from performing 120
those duties and impairs the member's earning capacity, receive 121
annual disability benefits in accordance with division (B) of 122
section 742.39 of the Revised Code. In determining whether a 123
member of the fund is permanently and partially disabled, the 124
board shall consider standards adopted under division (C) of 125
this section applicable to the determination. 126

(3) (a) A member of the fund who is permanently disabled as 127
a result of heart disease or any cardiovascular or respiratory 128
disease of a chronic nature, which disease or any evidence of 129
which disease was not revealed by the physical examination 130
passed by the member on entry into the department or another 131

examination specified in rules the board adopts under section 132
742.10 of the Revised Code, is presumed to have incurred the 133
disease while performing the member's official duties, unless 134
the contrary is shown by competent evidence. The board may waive 135
the requirement that the absence of disease be evidenced by a 136
physical examination if competent medical evidence of a type 137
specified in rules adopted under section 742.10 of the Revised 138
Code is submitted documenting that the disease was not evident 139
prior to or at the time of entry into the department. 140

(b) A member of the fund who is a member of a fire 141
department, has been assigned to at least six years of hazardous 142
duty as a member of a fire department, and is disabled as a 143
result of cancer, is presumed to have incurred the cancer while 144
performing the member's official duties if the member was 145
exposed to an agent classified by the international agency for 146
research on cancer or its successor agency as a group 1 or 2A 147
carcinogen. 148

(c) The presumption described in division (D) (3) (b) of 149
this section is rebuttable in any of the following situations: 150

(i) There is evidence that the member incurred the type of 151
cancer being alleged before becoming a member of the department. 152

(ii) There is evidence that the member's exposure, outside 153
the scope of the member's official duties, to cigarettes, 154
tobacco products, or other conditions presenting an extremely 155
high risk for the development of the cancer alleged, was 156
probably a significant factor in the cause or progression of the 157
cancer. 158

(iii) There is evidence that the member was not exposed to 159
an agent classified by the international agency for research on 160

cancer or its successor agency as a group 1 or 2A carcinogen. 161

(iv) The member is seventy years of age or older. 162

(d) The presumption described in division (D) (3) (b) of 163
this section does not apply if it has been more than twenty 164
years since the member was last assigned to hazardous duty as a 165
member of a fire department. 166

(4) A member of the fund who has five or more years of 167
service credit and has incurred a permanent disability not 168
caused or induced by the actual performance of the member's 169
official duties as a member of the department, or by the 170
member's own negligence, shall if the disability prevents the 171
member from performing those duties and impairs the member's 172
earning capacity, receive annual disability benefits in 173
accordance with division (C) of section 742.39 of the Revised 174
Code. In determining whether a member of the fund is permanently 175
disabled, the board shall consider standards adopted under 176
division (C) of this section applicable to the determination. 177

(5) The board shall notify a member of its final action 178
awarding a disability benefit to the member within thirty days 179
of the final action. The notice shall be sent by certified mail, 180
return receipt requested. Not later than ninety days after 181
receipt of notice from the board, the member shall elect, on a 182
form provided by the board, either to accept or waive the 183
disability benefit award. If the member elects to waive the 184
disability benefit award or fails to make an election within the 185
time period, the award is rescinded. A member who later seeks a 186
disability benefit award shall be required to make a new 187
application, which shall be dealt with in accordance with the 188
procedures used for original disability benefit applications. 189

A person is not eligible to apply for or receive 190
disability benefits under this division, section 742.39 of the 191
Revised Code, or division (C) (2), (3), (4), or (5) of former 192
section 742.37 of the Revised Code unless the person is a member 193
of the fund on the date on which the application for disability 194
benefits is submitted to the fund. 195

With the exception of persons who may make application for 196
increased benefits as provided in division (D) (2) or (4) of this 197
section or division (C) (3) or (5) of former section 742.37 of 198
the Revised Code on or after July 24, 1986, or persons who may 199
make application for benefits as provided in section 742.26 of 200
the Revised Code, no person receiving a pension or benefit under 201
this section or division (C) of former section 742.37 of the 202
Revised Code may apply for any new, changed, or different 203
benefit. 204

(E) Notwithstanding the requirement of section 742.41 of 205
the Revised Code that all medical reports and recommendations 206
required are privileged, the board shall submit to the 207
administrator of workers' compensation any data necessary for 208
the report required under section 4123.86 of the Revised Code. 209

Sec. 4123.57. Partial disability compensation shall be 210
paid as follows. 211

Except as provided in this section, not earlier than 212
twenty-six weeks after the date of termination of the latest 213
period of payments under section 4123.56 of the Revised Code, or 214
not earlier than twenty-six weeks after the date of the injury 215
or contraction of an occupational disease in the absence of 216
payments under section 4123.56 of the Revised Code, the employee 217
may file an application with the bureau of workers' compensation 218
for the determination of the percentage of the employee's 219

permanent partial disability resulting from an injury or 220
occupational disease. 221

Whenever the application is filed, the bureau shall send a 222
copy of the application to the employee's employer or the 223
employer's representative and shall schedule the employee for a 224
medical examination by the bureau medical section. The bureau 225
shall send a copy of the report of the medical examination to 226
the employee, the employer, and their representatives. 227
Thereafter, the administrator of workers' compensation shall 228
review the employee's claim file and make a tentative order as 229
the evidence before the administrator at the time of the making 230
of the order warrants. If the administrator determines that 231
there is a conflict of evidence, the administrator shall send 232
the application, along with the claimant's file, to the district 233
hearing officer who shall set the application for a hearing. 234

The administrator shall notify the employee, the employer, 235
and their representatives, in writing, of the tentative order 236
and of the parties' right to request a hearing. Unless the 237
employee, the employer, or their representative notifies the 238
administrator, in writing, of an objection to the tentative 239
order within twenty days after receipt of the notice thereof, 240
the tentative order shall go into effect and the employee shall 241
receive the compensation provided in the order. In no event 242
shall there be a reconsideration of a tentative order issued 243
under this division. 244

If the employee, the employer, or their representatives 245
timely notify the administrator of an objection to the tentative 246
order, the matter shall be referred to a district hearing 247
officer who shall set the application for hearing with written 248
notices to all interested persons. Upon referral to a district 249

hearing officer, the employer may obtain a medical examination 250
of the employee, pursuant to rules of the industrial commission. 251

(A) The district hearing officer, upon the application, 252
shall determine the percentage of the employee's permanent 253
disability, except as is subject to division (B) of this 254
section, based upon that condition of the employee resulting 255
from the injury or occupational disease and causing permanent 256
impairment evidenced by medical or clinical findings reasonably 257
demonstrable. The employee shall receive sixty-six and two- 258
thirds per cent of the employee's average weekly wage, but not 259
more than a maximum of thirty-three and one-third per cent of 260
the statewide average weekly wage as defined in division (C) of 261
section 4123.62 of the Revised Code, per week regardless of the 262
average weekly wage, for the number of weeks which equals the 263
percentage of two hundred weeks. Except on application for 264
reconsideration, review, or modification, which is filed within 265
ten days after the date of receipt of the decision of the 266
district hearing officer, in no instance shall the former award 267
be modified unless it is found from medical or clinical findings 268
that the condition of the claimant resulting from the injury has 269
so progressed as to have increased the percentage of permanent 270
partial disability. A staff hearing officer shall hear an 271
application for reconsideration filed and the staff hearing 272
officer's decision is final. An employee may file an application 273
for a subsequent determination of the percentage of the 274
employee's permanent disability. If such an application is 275
filed, the bureau shall send a copy of the application to the 276
employer or the employer's representative. No sooner than sixty 277
days from the date of the mailing of the application to the 278
employer or the employer's representative, the administrator 279
shall review the application. The administrator may require a 280

medical examination or medical review of the employee. The 281
administrator shall issue a tentative order based upon the 282
evidence before the administrator, provided that if the 283
administrator requires a medical examination or medical review, 284
the administrator shall not issue the tentative order until the 285
completion of the examination or review. 286

The employer may obtain a medical examination of the 287
employee and may submit medical evidence at any stage of the 288
process up to a hearing before the district hearing officer, 289
pursuant to rules of the commission. The administrator shall 290
notify the employee, the employer, and their representatives, in 291
writing, of the nature and amount of any tentative order issued 292
on an application requesting a subsequent determination of the 293
percentage of an employee's permanent disability. An employee, 294
employer, or their representatives may object to the tentative 295
order within twenty days after the receipt of the notice 296
thereof. If no timely objection is made, the tentative order 297
shall go into effect. In no event shall there be a 298
reconsideration of a tentative order issued under this division. 299
If an objection is timely made, the application for a subsequent 300
determination shall be referred to a district hearing officer 301
who shall set the application for a hearing with written notice 302
to all interested persons. No application for subsequent 303
percentage determinations on the same claim for injury or 304
occupational disease shall be accepted for review by the 305
district hearing officer unless supported by substantial 306
evidence of new and changed circumstances developing since the 307
time of the hearing on the original or last determination. 308

No award shall be made under this division based upon a 309
percentage of disability which, when taken with all other 310
percentages of permanent disability, exceeds one hundred per 311

cent. If the percentage of the permanent disability of the 312
employee equals or exceeds ninety per cent, compensation for 313
permanent partial disability shall be paid for two hundred 314
weeks. 315

Compensation payable under this division accrues and is 316
payable to the employee from the date of last payment of 317
compensation, or, in cases where no previous compensation has 318
been paid, from the date of the injury or the date of the 319
diagnosis of the occupational disease. 320

When an award under this division has been made prior to 321
the death of an employee, all unpaid installments accrued or to 322
accrue under the provisions of the award are payable to the 323
surviving spouse, or if there is no surviving spouse, to the 324
dependent children of the employee, and if there are no children 325
surviving, then to other dependents as the administrator 326
determines. 327

(B) For purposes of this division, "payable per week" 328
means the seven-consecutive-day period in which compensation is 329
paid in installments according to the schedule associated with 330
the applicable injury as set forth in this division. 331

Compensation paid in weekly installments according to the 332
schedule described in this division may only be commuted to one 333
or more lump sum payments pursuant to the procedure set forth in 334
section 4123.64 of the Revised Code. 335

In cases included in the following schedule the 336
compensation payable per week to the employee is the statewide 337
average weekly wage as defined in division (C) of section 338
4123.62 of the Revised Code per week and shall be paid in 339
installments according to the following schedule: 340

For the loss of a first finger, commonly known as a thumb,	341
sixty weeks.	342
For the loss of a second finger, commonly called index	343
finger, thirty-five weeks.	344
For the loss of a third finger, thirty weeks.	345
For the loss of a fourth finger, twenty weeks.	346
For the loss of a fifth finger, commonly known as the	347
little finger, fifteen weeks.	348
The loss of a second, or distal, phalange of the thumb is	349
considered equal to the loss of one half of such thumb; the loss	350
of more than one half of such thumb is considered equal to the	351
loss of the whole thumb.	352
The loss of the third, or distal, phalange of any finger	353
is considered equal to the loss of one-third of the finger.	354
The loss of the middle, or second, phalange of any finger	355
is considered equal to the loss of two-thirds of the finger.	356
The loss of more than the middle and distal phalanges of	357
any finger is considered equal to the loss of the whole finger.	358
In no case shall the amount received for more than one finger	359
exceed the amount provided in this schedule for the loss of a	360
hand.	361
For the loss of the metacarpal bone (bones of the palm)	362
for the corresponding thumb, or fingers, add ten weeks to the	363
number of weeks under this division.	364
For ankylosis (total stiffness of) or contractures (due to	365
scars or injuries) which makes any of the fingers, thumbs, or	366
parts of either useless, the same number of weeks apply to the	367

members or parts thereof as given for the loss thereof. 368

If the claimant has suffered the loss of two or more 369
fingers by amputation or ankylosis and the nature of the 370
claimant's employment in the course of which the claimant was 371
working at the time of the injury or occupational disease is 372
such that the handicap or disability resulting from the loss of 373
fingers, or loss of use of fingers, exceeds the normal handicap 374
or disability resulting from the loss of fingers, or loss of use 375
of fingers, the administrator may take that fact into 376
consideration and increase the award of compensation 377
accordingly, but the award made shall not exceed the amount of 378
compensation for loss of a hand. 379

For the loss of a hand, one hundred seventy-five weeks. 380

For the loss of an arm, two hundred twenty-five weeks. 381

For the loss of a great toe, thirty weeks. 382

For the loss of one of the toes other than the great toe, 383
ten weeks. 384

The loss of more than two-thirds of any toe is considered 385
equal to the loss of the whole toe. 386

The loss of less than two-thirds of any toe is considered 387
no loss, except as to the great toe; the loss of the great toe 388
up to the interphalangeal joint is co-equal to the loss of one- 389
half of the great toe; the loss of the great toe beyond the 390
interphalangeal joint is considered equal to the loss of the 391
whole great toe. 392

For the loss of a foot, one hundred fifty weeks. 393

For the loss of a leg, two hundred weeks. 394

For the loss of the sight of an eye, one hundred twenty- 395
five weeks. 396

For the permanent partial loss of sight of an eye, the 397
portion of one hundred twenty-five weeks as the administrator in 398
each case determines, based upon the percentage of vision 399
actually lost as a result of the injury or occupational disease, 400
but, in no case shall an award of compensation be made for less 401
than twenty-five per cent loss of uncorrected vision. "Loss of 402
uncorrected vision" means the percentage of vision actually lost 403
as the result of the injury or occupational disease. 404

For the permanent and total loss of hearing of one ear, 405
twenty-five weeks; but in no case shall an award of compensation 406
be made for less than permanent and total loss of hearing of one 407
ear. 408

For the permanent and total loss of hearing, one hundred 409
twenty-five weeks; but, except pursuant to the next preceding 410
paragraph, in no case shall an award of compensation be made for 411
less than permanent and total loss of hearing. 412

In case an injury or occupational disease results in 413
serious facial or head disfigurement which either impairs or may 414
in the future impair the opportunities to secure or retain 415
employment, the administrator shall make an award of 416
compensation as it deems proper and equitable, in view of the 417
nature of the disfigurement, and not to exceed the sum of ten 418
thousand dollars. For the purpose of making the award, it is not 419
material whether the employee is gainfully employed in any 420
occupation or trade at the time of the administrator's 421
determination. 422

When an award under this division has been made prior to 423

the death of an employee all unpaid installments accrued or to 424
accrue under the provisions of the award shall be payable to the 425
surviving spouse, or if there is no surviving spouse, to the 426
dependent children of the employee and if there are no such 427
children, then to such dependents as the administrator 428
determines. 429

When an employee has sustained the loss of a member by 430
severance, but no award has been made on account thereof prior 431
to the employee's death, the administrator shall make an award 432
in accordance with this division for the loss which shall be 433
payable to the surviving spouse, or if there is no surviving 434
spouse, to the dependent children of the employee and if there 435
are no such children, then to such dependents as the 436
administrator determines. 437

(C) Compensation for partial impairment under divisions 438
(A) and (B) of this section is in addition to the compensation 439
paid the employee pursuant to section 4123.56 of the Revised 440
Code. A claimant may receive compensation under divisions (A) 441
and (B) of this section. 442

In all cases arising under division (B) of this section, 443
if it is determined by any one of the following: (1) the amputee 444
clinic at University hospital, Ohio state university; (2) the 445
opportunities for Ohioans with disabilities agency; (3) an 446
amputee clinic or prescribing physician approved by the 447
administrator or the administrator's designee, that an injured 448
or disabled employee is in need of an artificial appliance, or 449
in need of a repair thereof, regardless of whether the appliance 450
or its repair will be serviceable in the vocational 451
rehabilitation of the injured employee, and regardless of 452
whether the employee has returned to or can ever again return to 453

any gainful employment, the bureau shall pay the cost of the 454
artificial appliance or its repair out of the surplus created by 455
division (B) of section 4123.34 of the Revised Code. 456

In those cases where an opportunities for Ohioans with 457
disabilities—~~agency~~ agency's recommendation that an injured or 458
disabled employee is in need of an artificial appliance would 459
conflict with their state plan, adopted pursuant to the 460
"Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the 461
administrator or the administrator's designee or the bureau may 462
obtain a recommendation from an amputee clinic or prescribing 463
physician that they determine appropriate. 464

(D) If an employee of a state fund employer makes 465
application for a finding and the administrator finds that the 466
employee has contracted silicosis as defined in division ~~(X)~~ (Y), 467
or coal miners' pneumoconiosis as defined in division ~~(Y)~~ (Z), or 468
asbestosis as defined in division ~~(AA)~~ (BB) of section 4123.68 of 469
the Revised Code, and that a change of such employee's 470
occupation is medically advisable in order to decrease 471
substantially further exposure to silica dust, asbestos, or coal 472
dust and if the employee, after the finding, has changed or 473
shall change the employee's occupation to an occupation in which 474
the exposure to silica dust, asbestos, or coal dust is 475
substantially decreased, the administrator shall allow to the 476
employee an amount equal to fifty per cent of the statewide 477
average weekly wage per week for a period of thirty weeks, 478
commencing as of the date of the discontinuance or change, and 479
for a period of one hundred weeks immediately following the 480
expiration of the period of thirty weeks, the employee shall 481
receive sixty-six and two-thirds per cent of the loss of wages 482
resulting directly and solely from the change of occupation but 483
not to exceed a maximum of an amount equal to fifty per cent of 484

the statewide average weekly wage per week. No such employee is 485
entitled to receive more than one allowance on account of 486
discontinuance of employment or change of occupation and 487
benefits shall cease for any period during which the employee is 488
employed in an occupation in which the exposure to silica dust, 489
asbestos, or coal dust is not substantially less than the 490
exposure in the occupation in which the employee was formerly 491
employed or for any period during which the employee may be 492
entitled to receive compensation or benefits under section 493
4123.68 of the Revised Code on account of disability from 494
silicosis, asbestosis, or coal miners' pneumoconiosis. An award 495
for change of occupation for a coal miner who has contracted 496
coal miners' pneumoconiosis may be granted under this division 497
even though the coal miner continues employment with the same 498
employer, so long as the coal miner's employment subsequent to 499
the change is such that the coal miner's exposure to coal dust 500
is substantially decreased and a change of occupation is 501
certified by the claimant as permanent. The administrator may 502
accord to the employee medical and other benefits in accordance 503
with section 4123.66 of the Revised Code. 504

(E) If a firefighter or police officer makes application 505
for a finding and the administrator finds that the firefighter 506
or police officer has contracted a cardiovascular and pulmonary 507
disease as defined in division (W) of section 4123.68 of the 508
Revised Code, and that a change of the firefighter's or police 509
officer's occupation is medically advisable in order to decrease 510
substantially further exposure to smoke, toxic gases, chemical 511
fumes, and other toxic vapors, and if the firefighter, or police 512
officer, after the finding, has changed or changes occupation to 513
an occupation in which the exposure to smoke, toxic gases, 514
chemical fumes, and other toxic vapors is substantially 515

decreased, the administrator shall allow to the firefighter or 516
police officer an amount equal to fifty per cent of the 517
statewide average weekly wage per week for a period of thirty 518
weeks, commencing as of the date of the discontinuance or 519
change, and for a period of seventy-five weeks immediately 520
following the expiration of the period of thirty weeks the 521
administrator shall allow the firefighter or police officer 522
sixty-six and two-thirds per cent of the loss of wages resulting 523
directly and solely from the change of occupation but not to 524
exceed a maximum of an amount equal to fifty per cent of the 525
statewide average weekly wage per week. No such firefighter or 526
police officer is entitled to receive more than one allowance on 527
account of discontinuance of employment or change of occupation 528
and benefits shall cease for any period during which the 529
firefighter or police officer is employed in an occupation in 530
which the exposure to smoke, toxic gases, chemical fumes, and 531
other toxic vapors is not substantially less than the exposure 532
in the occupation in which the firefighter or police officer was 533
formerly employed or for any period during which the firefighter 534
or police officer may be entitled to receive compensation or 535
benefits under section 4123.68 of the Revised Code on account of 536
disability from a cardiovascular and pulmonary disease. The 537
administrator may accord to the firefighter or police officer 538
medical and other benefits in accordance with section 4123.66 of 539
the Revised Code. 540

(F) An order issued under this section is appealable 541
pursuant to section 4123.511 of the Revised Code but is not 542
appealable to court under section 4123.512 of the Revised Code. 543

Sec. 4123.68. Every employee who is disabled because of 544
the contraction of an occupational disease or the dependent of 545
an employee whose death is caused by an occupational disease, is 546

entitled to the compensation provided by sections 4123.55 to 547
4123.59 and 4123.66 of the Revised Code subject to the 548
modifications relating to occupational diseases contained in 549
this chapter. An order of the administrator issued under this 550
section is appealable pursuant to sections 4123.511 and 4123.512 551
of the Revised Code. 552

The following diseases are occupational diseases and 553
compensable as such when contracted by an employee in the course 554
of the employment in which such employee was engaged and due to 555
the nature of any process described in this section. A disease 556
which meets the definition of an occupational disease is 557
compensable pursuant to this chapter though it is not 558
specifically listed in this section. 559

SCHEDULE 560

Description of disease or injury and description of 561
process: 562

(A) Anthrax: Handling of wool, hair, bristles, hides, and 563
skins. 564

(B) Glanders: Care of any equine animal suffering from 565
glanders; handling carcass of such animal. 566

(C) Lead poisoning: Any industrial process involving the 567
use of lead or its preparations or compounds. 568

(D) Mercury poisoning: Any industrial process involving 569
the use of mercury or its preparations or compounds. 570

(E) Phosphorous poisoning: Any industrial process 571
involving the use of phosphorous or its preparations or 572
compounds. 573

(F) Arsenic poisoning: Any industrial process involving 574

the use of arsenic or its preparations or compounds.	575
(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.	576 577 578 579 580
(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.	581 582 583 584
(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.	585 586 587
(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.	588 589
(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.	590 591 592 593 594 595
(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.	596 597 598 599
(M) Compressed air illness: Any industrial process carried on in compressed air.	600 601
(N) Carbon dioxide poisoning: Any process involving the	602

evolution or resulting in the escape of carbon dioxide.	603
(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.	604 605 606
(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.	607 608 609
(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.	610 611 612
(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.	613 614 615 616 617
(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.	618 619 620 621
(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.	622 623
(U) Sulphur dioxide poisoning: Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.	624 625 626
(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.	627 628 629 630

This chapter does not entitle an employee or ~~his~~ the 631
employee's dependents to compensation, medical treatment, or 632
payment of funeral expenses for disability or death from 633
berylliosis unless the employee has been subjected to injurious 634
exposure to beryllium dust or fumes in ~~his~~ the employee's 635
employment in this state preceding ~~his~~ the employee's 636
disablement and only in the event of such disability or death 637
resulting within eight years after the last injurious exposure; 638
provided that such eight-year limitation does not apply to 639
disability or death from exposure occurring after January 1, 640
1976. In the event of death following continuous total 641
disability commencing within eight years after the last 642
injurious exposure, the requirement of death within eight years 643
after the last injurious exposure does not apply. 644

Before awarding compensation for partial or total 645
disability or death due to berylliosis, the administrator of 646
workers' compensation shall refer the claim to a qualified 647
medical specialist for examination and recommendation with 648
regard to the diagnosis, the extent of the disability, the 649
nature of the disability, whether permanent or temporary, the 650
cause of death, and other medical questions connected with the 651
claim. An employee shall submit to such examinations, including 652
clinical and x-ray examinations, as the administrator requires. 653
In the event that an employee refuses to submit to examinations, 654
including clinical and x-ray examinations, after notice from the 655
administrator, or in the event that a claimant for compensation 656
for death due to berylliosis fails to produce necessary consents 657
and permits, after notice from the administrator, so that such 658
autopsy examination and tests may be performed, then all rights 659
for compensation are forfeited. The reasonable compensation of 660
such specialist and the expenses of examinations and tests shall 661

be paid, if the claim is allowed, as part of the expenses of the 662
claim, otherwise they shall be paid from the surplus fund. 663

(W) Cardiovascular, pulmonary, or respiratory diseases 664
incurred by ~~fire fighters~~ firefighters or police officers 665
following exposure to heat, smoke, toxic gases, chemical fumes 666
and other toxic substances: Any cardiovascular, pulmonary, or 667
respiratory disease of a ~~fire fighter~~ firefighter or police 668
officer caused or induced by the cumulative effect of exposure 669
to heat, the inhalation of smoke, toxic gases, chemical fumes 670
and other toxic substances in the performance of ~~his the~~ 671
firefighter's or police officer's duty constitutes a 672
presumption, which may be refuted by affirmative evidence, that 673
such occurred in the course of and arising out of ~~his the~~ 674
firefighter's or police officer's employment. For the purpose of 675
this section, "~~fire fighter~~firefighter" means any regular member 676
of a lawfully constituted fire department of a municipal 677
corporation or township, whether paid or volunteer, and "police 678
officer" means any regular member of a lawfully constituted 679
police department of a municipal corporation, township or 680
county, whether paid or volunteer. 681

This chapter does not entitle a ~~fire fighter~~ firefighter, 682
or police officer, or ~~his the firefighter's or police officer's~~ 683
dependents to compensation, medical treatment, or payment of 684
funeral expenses for disability or death from a cardiovascular, 685
pulmonary, or respiratory disease, unless the ~~fire fighter~~ 686
firefighter or police officer has been subject to injurious 687
exposure to heat, smoke, toxic gases, chemical fumes, and other 688
toxic substances in ~~his the firefighter's or police officer's~~ 689
employment in this state preceding ~~his the firefighter's or~~ 690
police officer's disablement, some portion of which has been 691
after January 1, 1967, except as provided in division (E) of 692

section 4123.57 of the Revised Code. 693

Compensation on account of cardiovascular, pulmonary, or 694
respiratory diseases of ~~fire fighters~~ firefighters and police 695
officers is payable only in the event of temporary total 696
disability, permanent total disability, or death, in accordance 697
with section 4123.56, 4123.58, or 4123.59 of the Revised Code. 698
Medical, hospital, and nursing expenses are payable in 699
accordance with this chapter. Compensation, medical, hospital, 700
and nursing expenses are payable only in the event of such 701
disability or death resulting within eight years after the last 702
injurious exposure; provided that such eight-year limitation 703
does not apply to disability or death from exposure occurring 704
after January 1, 1976. In the event of death following 705
continuous total disability commencing within eight years after 706
the last injurious exposure, the requirement of death within 707
eight years after the last injurious exposure does not apply. 708

This chapter does not entitle a ~~fire fighter~~ firefighter 709
or police officer, or ~~his~~ the firefighter's or police officer's 710
dependents, to compensation, medical, hospital, and nursing 711
expenses, or payment of funeral expenses for disability or death 712
due to a cardiovascular, pulmonary, or respiratory disease in 713
the event of failure or omission on the part of the ~~fire fighter~~ 714
firefighter or police officer truthfully to state, when seeking 715
employment, the place, duration, and nature of previous 716
employment in answer to an inquiry made by the employer. 717

Before awarding compensation for disability or death under 718
this division, the administrator shall refer the claim to a 719
qualified medical specialist for examination and recommendation 720
with regard to the diagnosis, the extent of disability, the 721
cause of death, and other medical questions connected with the 722

claim. A ~~fire fighter~~ firefighter or police officer shall submit 723
to such examinations, including clinical and x-ray examinations, 724
as the administrator requires. In the event that a ~~fire fighter~~ 725
firefighter or police officer refuses to submit to examinations, 726
including clinical and x-ray examinations, after notice from the 727
administrator, or in the event that a claimant for compensation 728
for death under this division fails to produce necessary 729
consents and permits, after notice from the administrator, so 730
that such autopsy examination and tests may be performed, then 731
all rights for compensation are forfeited. The reasonable 732
compensation of such specialists and the expenses of examination 733
and tests shall be paid, if the claim is allowed, as part of the 734
expenses of the claim, otherwise they shall be paid from the 735
surplus fund. 736

(X) (1) Cancer contracted by a firefighter: Cancer 737
contracted by a firefighter who has been assigned to at least 738
six years of hazardous duty as a firefighter constitutes a 739
presumption that the cancer was contracted in the course of and 740
arising out of the firefighter's employment if the firefighter 741
was exposed to an agent classified by the international agency 742
for research on cancer or its successor organization as a group 743
1 or 2A carcinogen. 744

(2) The presumption described in division (X) (1) of this 745
section is rebuttable in any of the following situations: 746

(a) There is evidence that the firefighter's exposure, 747
outside the scope of the firefighter's official duties, to 748
cigarettes, tobacco products, or other conditions presenting an 749
extremely high risk for the development of the cancer alleged, 750
was probably a significant factor in the cause or progression of 751
the cancer. 752

(b) There is evidence that the firefighter was not exposed to an agent classified by the international agency for research on cancer as a group 1 or 2A carcinogen. 753
754
755

(c) There is evidence that the firefighter incurred the type of cancer alleged before becoming a member of the fire department. 756
757
758

(d) The firefighter is seventy years of age or older. 759

(3) The presumption described in division (X)(1) of this section does not apply if it has been more than twenty years since the firefighter was last assigned to hazardous duty as a firefighter. 760
761
762
763

(4) Compensation for cancer contracted by a firefighter in the course of hazardous duty under division (X) of this section is 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. 764
765
766
767
768

(5) As used in division (X) of this section, "hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended. 769
770

(Y) 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. 771
772
773
774

~~(Y)~~(Z) Coal miners' pneumoconiosis: 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. 775
776
777
778
779
780

This chapter does not entitle an employee or ~~his~~ the 781
employee's dependents to compensation, medical treatment, or 782
payment of funeral expenses for disability or death from 783
silicosis, asbestosis, or coal miners' pneumoconiosis unless the 784
employee has been subject to injurious exposure to silica dust 785
(silicon dioxide), asbestos, or coal dust in ~~his~~ the employee's 786
employment in this state preceding ~~his~~ the employee's 787
disablement, some portion of which has been after October 12, 788
1945, except as provided in division (E) of section 4123.57 of 789
the Revised Code. 790

Compensation on account of silicosis, asbestosis, or coal 791
miners' pneumoconiosis are payable only in the event of 792
temporary total disability, permanent total disability, or 793
death, in accordance with sections 4123.56, 4123.58, and 4123.59 794
of the Revised Code. Medical, hospital, and nursing expenses are 795
payable in accordance with this chapter. Compensation, medical, 796
hospital, and nursing expenses are payable only in the event of 797
such disability or death resulting within eight years after the 798
last injurious exposure; provided that such eight-year 799
limitation does not apply to disability or death occurring after 800
January 1, 1976, and further provided that such eight-year 801
limitation does not apply to any asbestosis cases. In the event 802
of death following continuous total disability commencing within 803
eight years after the last injurious exposure, the requirement 804
of death within eight years after the last injurious exposure 805
does not apply. 806

This chapter does not entitle an employee or ~~his~~ the 807
employee's dependents to compensation, medical, hospital and 808
nursing expenses, or payment of funeral expenses for disability 809
or death due to silicosis, asbestosis, or coal miners' 810
pneumoconiosis in the event of the failure or omission on the 811

part of the employee truthfully to state, when seeking 812
employment, the place, duration, and nature of previous 813
employment in answer to an inquiry made by the employer. 814

Before awarding compensation for disability or death due 815
to silicosis, asbestosis, or coal miners' pneumoconiosis, the 816
administrator shall refer the claim to a qualified medical 817
specialist for examination and recommendation with regard to the 818
diagnosis, the extent of disability, the cause of death, and 819
other medical questions connected with the claim. An employee 820
shall submit to such examinations, including clinical and x-ray 821
examinations, as the administrator requires. In the event that 822
an employee refuses to submit to examinations, including 823
clinical and x-ray examinations, after notice from the 824
administrator, or in the event that a claimant for compensation 825
for death due to silicosis, asbestosis, or coal miners' 826
pneumoconiosis fails to produce necessary consents and permits, 827
after notice from the commission, so that such autopsy 828
examination and tests may be performed, then all rights for 829
compensation are forfeited. The reasonable compensation of such 830
specialist and the expenses of examinations and tests shall be 831
paid, if the claim is allowed, as a part of the expenses of the 832
claim, otherwise they shall be paid from the surplus fund. 833

~~(Z)~~ (AA) Radiation illness: Any industrial process 834
involving the use of radioactive materials. 835

Claims for compensation and benefits due to radiation 836
illness are payable only in the event death or disability 837
occurred within eight years after the last injurious exposure 838
provided that such eight-year limitation does not apply to 839
disability or death from exposure occurring after January 1, 840
1976. In the event of death following continuous disability 841

which commenced within eight years of the last injurious 842
exposure the requirement of death within eight years after the 843
last injurious exposure does not apply. 844

~~(AA)~~ (BB) Asbestosis: Asbestosis means a disease caused by 845
inhalation or ingestion of asbestos, demonstrated by x-ray 846
examination, biopsy, autopsy, or other objective medical or 847
clinical tests. 848

All conditions, restrictions, limitations, and other 849
provisions of this section, with reference to the payment of 850
compensation or benefits on account of silicosis or coal miners' 851
pneumoconiosis apply to the payment of compensation or benefits 852
on account of any other occupational disease of the respiratory 853
tract resulting from injurious exposures to dust. 854

The refusal to produce the necessary consents and permits 855
for autopsy examination and testing shall not result in 856
forfeiture of compensation provided the administrator finds that 857
such refusal was the result of bona fide religious convictions 858
or teachings to which the claimant for compensation adhered 859
prior to the death of the decedent. 860

Sec. 4123.86. (A) The administrator of workers' 861
compensation shall prepare a report containing the following 862
information regarding presumed cancer claims under division (D) 863
(3) (b) of section 742.38 and division (X) of section 4123.68 of 864
the Revised Code: 865

(1) The number of approved claims; 866

(2) The number of disapproved claims; 867

(3) The number of active claims; 868

(4) The cost related to claims described in divisions (A) 869

<u>(1) and (3) of this section.</u>	870
<u>(B) The administrator shall submit the initial report</u>	871
<u>required under division (A) of this section not later than two</u>	872
<u>years after the effective date of this section, and an updated</u>	873
<u>report every two years thereafter, to all of the following:</u>	874
<u>(1) The speaker and the minority leader of the house of</u>	875
<u>representatives;</u>	876
<u>(2) The president and minority leader of the senate;</u>	877
<u>(3) The Ohio fire chiefs' association or its successor</u>	878
<u>organization;</u>	879
<u>(4) The Ohio association of professional fire fighters or</u>	880
<u>its successor organization;</u>	881
<u>(5) The Ohio municipal league or its successor</u>	882
<u>organization.</u>	883
Section 2. That existing sections 742.38, 4123.57, and	884
4123.68 of the Revised Code are hereby repealed.	885
Section 3. The amendment made by this act to section	886
742.38 of the Revised Code applies only to an application for a	887
disability benefit that is filed on or after the effective date	888
of this act.	889
Section 4. The amendments made by this act to sections	890
4123.57 and 4123.68 of the Revised Code apply only to claims	891
pursuant to Chapters 4121. and 4123. of the Revised Code arising	892
on or after the effective date of this act.	893
Section 5. This act shall be referred to as the "Michael	894
Louis Palumbo, Jr. Act."	895