

**As Passed by the House**

**CORRECTED VERSION**

**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, Bocchieri, 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**

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**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:

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**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.

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

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

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Revised Code. 43

(B) Application for a disability benefit may be made by a 44  
member of the fund or, if the member is incapacitated as defined 45  
in rules adopted by the board, by a person acting on the 46  
member's behalf. Not later than fourteen days after receiving an 47  
application for a disability benefit from a member or a person 48  
acting on behalf of a member, the board shall notify the 49  
member's employer that an application has been filed. The notice 50  
shall state the member's position or rank. Not later than 51  
twenty-eight days after receiving the notice or filing an 52  
application on behalf of a member, the employer shall forward to 53  
the board a statement certifying the member's job description 54  
and any other information required by the board to process the 55  
application. 56

If the member applying for a disability benefit becomes a 57  
member of the fund prior to the date the minimum standards or 58  
procedures described in division (A)(1) of this section take 59  
effect, the board may request from the member's employer a copy 60  
of the physician's report of the member's physical examination 61  
taken on entry into the police or fire department or, if the 62  
employer does not have a copy of the report, a written statement 63  
certifying that the employer does not have a copy of the report. 64  
If an employer fails to forward the report or statement in the 65  
form required by the board on or before the date that is twenty- 66  
eight days after the date of the request, the board shall assess 67  
against the employer a penalty determined under section 742.353 68  
of the Revised Code. The board shall maintain the information 69  
submitted under this division and division (A)(2) of this 70  
section in the member's file. 71

(C) For purposes of determining under division (D) of this 72

section whether a member of the fund is disabled, the board 73  
shall adopt rules establishing objective criteria under which 74  
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 an agent classified by the international agency for research on cancer or its successor agency as a group 1 or 2A carcinogen. 159  
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(iv) The member is seventy years of age or older. 162

(d) The presumption described in division (D) (3) (b) of this section does not apply if it has been more than twenty years since the member was last assigned to hazardous duty as a member of a fire department. 163  
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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. 167  
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(5) The board shall notify a member of its final action awarding a disability benefit to the member within thirty days of the final action. The notice shall be sent by certified mail, return receipt requested. Not later than ninety days after receipt of notice from the board, the member shall elect, on a form provided by the board, either to accept or waive the disability benefit award. If the member elects to waive the disability benefit award or fails to make an election within the time period, the award is rescinded. A member who later seeks a disability benefit award shall be required to make a new application, which shall be dealt with in accordance with the 178  
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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-five weeks.	395 396
For the permanent partial loss of sight of an eye, the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.	397 398 399 400 401 402 403 404
For the permanent and total loss of hearing of one ear, twenty-five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.	405 406 407 408
For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.	409 410 411 412
In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the administrator shall make an award of compensation as it deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of ten 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.	413 414 415 416 417 418 419 420 421 422

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 the use of arsenic or its preparations or compounds.	574 575
(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 evolution or resulting in the escape of carbon dioxide.	602 603
(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	627 628 629

by x-ray examination, by biopsy or by autopsy. 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  
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(c) There is evidence that the firefighter incurred the type of cancer alleged before becoming a member of the fire department. 756  
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(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  
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(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  
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(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  
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(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  
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~~(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 775  
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tests. 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

<u>(4) The cost related to claims described in divisions (A)</u>	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
<b>Section 2.</b> That existing sections 742.38, 4123.57, and	884
4123.68 of the Revised Code are hereby repealed.	885
<b>Section 3.</b> 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
<b>Section 4.</b> 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
<b>Section 5.</b> This act shall be referred to as the "Michael	894
Louis Palumbo, Jr. Act."	895