

9114

I N A S S E M B L Y

(PREFILED)

January 4, 2006

Introduced by M. of A. BING, STRINGER -- read once and referred to the
Committee on Labor

AN ACT to amend the workers` compensation law, in relation to providing
that any injury or illness, including future manifestations, even
after retirement, for occurrences directly related to the terrorist
attack on September eleventh, two thousand one be presumptively eligi-
ble for compensation under the workers` compensation law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The workers` compensation law is amended by adding a new
2 section 21-b to read as follows:
3 S 21-B. SPECIAL PRESUMPTIONS; INJURY OR ILLNESS DIRECTLY RELATED TO
4 THE TERRORIST ATTACK ON SEPTEMBER ELEVENTH, TWO THOUSAND ONE. 1.
5 NOTWITHSTANDING ANY PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL,
6 SPECIAL, OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE, OR RULE OR REGU-
7 LATION TO THE CONTRARY, ANY DEATH OR CONDITION OR IMPAIRMENT OF HEALTH
8 CAUSED BY A QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH RESULTING IN
9 DEATH OR DISABILITY TO AN EMPLOYEE WHO PARTICIPATED IN WORLD TRADE
10 CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY
11 HOURS SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORM-
12 ANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN
13 ACCIDENT NOT CAUSED BY SUCH EMPLOYEE`S OWN WILLFUL NEGLIGENCE, UNLESS
14 THE CONTRARY BE PROVED BY COMPETENT EVIDENCE. AN EMPLOYEE SHALL BE
15 ELIGIBLE FOR THE PRESUMPTION PROVIDED FOR UNDER THIS SECTION NOTWITH-
16 STANDING THE FACT THAT THE EMPLOYEE DID NOT PARTICIPATE IN WORLD TRADE
17 CENTER RECOVERY AND CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS,
18 PROVIDED THAT: (A) THE EMPLOYEE PARTICIPATED IN THE RESCUE, RECOVERY, OR
19 CLEANUP OPERATIONS AT THE WORLD TRADE CENTER SITE BETWEEN SEPTEMBER

20 ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND ONE; (B)
21 THE EMPLOYEE DIED OR SUSTAINED A DOCUMENTED PHYSICAL INJURY AT THE WORLD
22 TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND
23 SEPTEMBER TWELFTH, TWO THOUSAND ONE THAT IS A QUALIFYING CONDITION OR
24 IMPAIRMENT OF HEALTH RESULTING IN DISABILITY TO THE EMPLOYEE THAT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

{ } is old law to be omitted.

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1 PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE
2 CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY
3 HOURS, OR THE EMPLOYEE DIED AFTER SEPTEMBER TWELFTH, TWO THOUSAND ONE AS
4 A RESULT OF SUSTAINING A DOCUMENTED PHYSICAL INJURY AT THE WORLD TRADE
5 CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER
6 TWELFTH, TWO THOUSAND ONE THAT IS A QUALIFYING CONDITION OR IMPAIRMENT
7 OF HEALTH RESULTING IN DISABILITY TO THE EMPLOYEE THAT PREVENTED THE
8 EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE CENTER RESCUE,
9 RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS; AND (C)
10 THE DEATH OR DOCUMENTED PHYSICAL INJURY THAT RESULTED IN A DISABILITY TO
11 THE EMPLOYEE THAT PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE
12 IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A
13 MINIMUM OF FORTY HOURS IS THE QUALIFYING CONDITION OR IMPAIRMENT OF
14 HEALTH WHICH THE EMPLOYEE SEEKS TO BE ELIGIBLE FOR THE PRESUMPTION
15 PROVIDED FOR UNDER THIS SECTION.

16 2. FOR PURPOSES OF THIS SECTION, "QUALIFYING CONDITION OR IMPAIRMENT
17 OF HEALTH" SHALL INCLUDE:

18 (A) DISEASES OF THE UPPER RESPIRATORY TRACT AND MUCOSAE, INCLUDING
19 CONDITIONS SUCH AS CONJUNCTIVITIS, RHINITIS, SINUSITIS, PHARYNGITIS,
20 LARYNGITIS, VOCAL CORD DISEASE, UPPER AIRWAY HYPER-REACTIVITY AND
21 TRACHEO-BRONCHITIS, OR A COMBINATION OF SUCH CONDITIONS;

22 (B) DISEASES OF THE LOWER RESPIRATORY TRACT, INCLUDING BUT NOT LIMITED
23 TO BRONCHITIS, ASTHMA, REACTIVE AIRWAY DYSFUNCTION SYNDROME, AND DIFFER-

24 ENT TYPES OF PNEUMONITIS, SUCH AS HYPERSENSITIVITY, GRANULOMATOUS, OR
25 EOSINOPHILIC;

26 (C) DISEASES OF THE GASTROESOPHAGEAL TRACT, INCLUDING ESOPHAGITIS AND
27 REFLUX DISEASE, EITHER ACUTE OR CHRONIC, CAUSED BY EXPOSURE OR AGGRA-
28 VATED BY EXPOSURE;

29 (D) DISEASES OF THE PSYCHOLOGICAL AXIS, INCLUDING POST-TRAUMATIC
30 STRESS DISORDER, ANXIETY, DEPRESSION, OR ANY COMBINATION OF SUCH CONDI-
31 TIONS;

32 (E) DISEASES OF THE SKIN SUCH AS CONTACT DERMATITIS OR BURNS, EITHER
33 ACUTE OR CHRONIC IN NATURE, INFECTIOUS, IRRITANT, ALLERGIC, IDIOPATHIC
34 OR NON-SPECIFIC REACTIVE IN NATURE, CAUSED BY EXPOSURE OR AGGRAVATED BY
35 EXPOSURE; OR

36 (F) NEW ONSET DISEASES RESULTING FROM EXPOSURE AS SUCH DISEASES OCCUR
37 IN THE FUTURE, INCLUDING CANCER, CHRONIC OBSTRUCTIVE PULMONARY DISEASE,
38 ASBESTOS-RELATED DISEASE, HEAVY METAL POISONING, MUSCULOSKELETAL
39 DISEASE, AND CHRONIC PSYCHOLOGICAL DISEASE.

40 3. FOR PURPOSES OF THIS SECTION, "PARTICIPATED IN WORLD TRADE CENTER
41 RESCUE, RECOVERY, OR CLEANUP OPERATIONS" SHALL MEAN ANY EMPLOYEE WHO:

42 (A) PARTICIPATED IN THE RESCUE, RECOVERY, OR CLEANUP OPERATIONS AT THE
43 WORLD TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE

AND

44 SEPTEMBER TWELFTH, TWO THOUSAND TWO, OR

45 (B) WORKED AT THE FRESH KILLS LAND FILL IN NEW YORK BETWEEN SEPTEMBER
46 ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO, OR

47 (C) WORKED AT THE NEW YORK CITY MORGUE OR THE TEMPORARY MORGUE ON PIER
48 LOCATIONS ON THE WEST SIDE OF MANHATTAN BETWEEN SEPTEMBER ELEVENTH,

TWO

49 THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO, OR

50 (D) WORKED ON THE BARGES BETWEEN THE WEST SIDE OF MANHATTAN AND THE
51 FRESH KILLS LAND FILL IN NEW YORK BETWEEN SEPTEMBER ELEVENTH, TWO THOU-
52 SAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO. FOR THE PURPOSES OF

53 THIS SECTION, "WORLD TRADE CENTER SITE" SHALL MEAN ANYWHERE BELOW A LINE
54 STARTING FROM THE HUDSON RIVER AND CANAL STREET; EAST ON CANAL STREET TO
55 PIKE STREET; SOUTH ON PIKE STREET TO THE EAST RIVER; AND EXTENDING TO
56 THE LOWER TIP OF MANHATTAN.

1 4. FOR THE PURPOSES OF THIS SECTION, THE TERM "EMPLOYEE" SHALL BE
2 DEEMED TO INCLUDE ANY PERSON DEFINED AS A "VOLUNTEER" FOR ANY OF THE
3 PURPOSES OF THIS CHAPTER AND ANY PERSON NOT SO DEFINED WHO ACTED IN A
4 VOLUNTARY CAPACITY IN WHICH SUCH PERSON, IN LIKE MANNER AS AN EMPLOYEE,
5 PARTICIPATED IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPER-
6 ATIONS, AS DEFINED IN SUBDIVISION THREE OF THIS SECTION, UPON PRESENTA-
7 TION TO THE BOARD OF EVIDENCE THEREOF SATISFACTORY TO THE BOARD.

8 5. IN ORDER TO BE ELIGIBLE FOR CONSIDERATION FOR SUCH PRESUMPTION,
9 SUCH EMPLOYEE MUST FILE A WRITTEN AND SWORN STATEMENT WITH THE BOARD ON
10 A FORM PROVIDED BY THE BOARD INDICATING THE DATES AND LOCATIONS OF
11 EMPLOYMENT. SUCH STATEMENT MUST BE FILED NOT LATER THAN (A) SIX MONTHS
12 FOLLOWING THE EFFECTIVE DATE OF THIS SECTION OR (B) SIX MONTHS AFTER THE
13 QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH, AS DEFINED IN SUBDIVISION
14 TWO OF THIS SECTION, IS DISCOVERED OR THE DATE OF DISCOVERY OF FACTS
15 WHICH WOULD REASONABLY LEAD TO SUCH DISCOVERY, WHICHEVER IS EARLIER. THE
16 FILING OF SUCH A STATEMENT WITH THE BOARD SHALL BE DEEMED TO BE SUFFI-
17 CIENT NOTICE TO THE EMPLOYER OR OTHER PARTY ENTITLED TO SUCH NOTICE, AS
18 THE CASE MAY BE, AND THE BOARD SHALL THEREUPON FORTHWITH TRANSMIT A COPY
19 OF SUCH STATEMENT TO THE EMPLOYER OR OTHER PARTY ENTITLED TO SUCH
20 NOTICE.

21 6. UPON ITS OWN MOTION OR UPON THE APPLICATION OF ANY PARTY IN INTER-
22 EST, THE BOARD SHALL REVIEW AND RE-HEAR CLAIMS FOR COMPENSATION INVOLV-
23 ING DEATH, INJURY, OR ILLNESS SUSTAINED OR RESULTING FROM A QUALIFYING
24 CONDITION OR IMPAIRMENT OF HEALTH WHILE IN THE COURSE OF PARTICIPATION
25 IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS BETWEEN
26 SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO
THOUSAND

27 TWO; PROVIDED THAT SUCH CLAIMS WERE DECIDED BY THE BOARD PRIOR TO JANU-
28 ARY FIRST, TWO THOUSAND SIX AND WERE DETERMINED ADVERSELY TO THE CLAIM-
29 ANT ON THE ISSUES OF ACCIDENT, NOTICE, CAUSAL RELATIONSHIP, OR THE STAT-
30 UTE OF LIMITATIONS. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO
31 LIMIT OR OTHERWISE AFFECT THE CONTINUING JURISDICTION OF THE BOARD TO

32 REVIEW OR RE-HEAR CLAIMS ON ANY OTHER ISSUE.

33 7. WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION, THE BOARD
34 SHALL TRANSMIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE,
35 AND THE SPEAKER OF THE ASSEMBLY A REPORT ADDRESSING THE PROJECTED COSTS
36 OF WORKERS` COMPENSATION BENEFITS FOR VOLUNTEERS, BOTH THOSE WHOSE
37 CLAIMS HAVE BEEN APPROVED AND THOSE WHOSE CLAIMS ARE PENDING DECISION,
38 AND FOR VOLUNTEERS WHO WOULD BE ELIGIBLE FOR SUCH BENEFITS WERE THE
39 PERIOD OF LIMITATION FOR APPLYING THEREFOR EXTENDED BY FURTHER LEGIS-
40 LATION.

41 8. THE CHAIRPERSON IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGU-
42 LATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

43 9. THE PROVISIONS OF THIS SECTION SHALL SUPERSEDE ANY OTHER PROVISION
44 OF THIS CHAPTER OR OF ANY OTHER LAW TO THE EXTENT THAT THE PROVISIONS OF
45 THIS SECTION ARE INCONSISTENT WITH SUCH OTHER PROVISION OF THIS CHAPTER
46 OR OF ANY OTHER LAW.

47 S 2. This act shall take effect immediately and shall be deemed to
48 have been in full force and effect on and after September 11, 2001;
49 provided that the chairperson of the workers` compensation board is
50 authorized to promulgate any and all rules and regulations and take any
51 other measures necessary to implement this act on an emergency basis