

2000 SESSION

HOUSE SUBSTITUTE

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HOUSE BILL NO. 410

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on January 31, 2000)

(Patron Prior to Substitute—Delegate Phillips)

A BILL to amend and reenact §§ 65.2-503 and 65.2-504 of the Code of Virginia, relating to workers compensation for disability from coal worker's pneumoconiosis; defining average weekly wage.

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-503 and 65.2-504 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-503. Permanent loss.

A. Compensation for permanent partial and permanent total loss and disfigurement shall be awarded as provided in this section.

B. The following losses shall be compensated for the period specified at the rate of 66 2/3 percent of the average weekly wage *as defined in § 65.2-101*:

Loss	Compensation Period
1. Thumb	60 weeks.
2. First finger (index finger)	35 weeks.
3. Second finger	30 weeks.
4. Third finger	20 weeks.
5. Fourth finger (little finger)	15 weeks.
6. First phalanx of the thumb or any finger	one-half compensation for loss of entire thumb or finger.

The loss of more than one phalanx of a thumb or finger is deemed the loss of the entire thumb or finger. Amounts received for loss of more than one finger shall not exceed compensation provided for the loss of a hand.

7. Great toe	30 weeks.
8. A toe other than a great toe	10 weeks.
9. First phalanx of any toe	one-half compensation for loss of entire toe.

The loss of more than one phalanx of a toe is deemed the loss of the entire toe.

10. Hand	150 weeks.
11. Arm	200 weeks.
12. Foot	125 weeks.
13. Leg	175 weeks.
14. Permanent total loss of the vision of an eye	100 weeks.
15. Permanent total loss of hearing of an ear	50 weeks.
16. Severely marked disfigurement of the body resulting from an injury not otherwise compensated by this section	not exceeding 60 weeks.
17. Pneumoconiosis, including but not limited to silicosis and asbestosis, medically determined to be in the	
a. First stage	50 weeks.
b. Second stage	100 weeks.
c. Third stage	300 weeks.
18. Byssinosis	50 weeks.

C. Compensation shall be awarded pursuant to § 65.2-500 for permanent and total incapacity when there is:

1. Loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in the same

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57 accident;

58 2. Injury for all practical purposes resulting in total paralysis, as determined by the Commission
59 based on medical evidence; or

60 3. Injury to the brain which is so severe as to render the employee permanently unemployable in
61 gainful employment.

62 D. In construing this section, the permanent loss of the use of a member shall be equivalent to the
63 loss of such member, and for the permanent partial loss or loss of use of a member, compensation may
64 be proportionately awarded. Compensation shall also be awarded proportionately for partial loss of
65 vision or hearing.

66 E. Except as provided in subsection C, the weekly compensation payments referred to in this section
67 shall be subject to the same limitations as to maximum and minimum as set out in § 65.2-500.

68 1. Compensation awarded pursuant to this section shall be payable after payments for temporary total
69 incapacity pursuant to § 65.2-500.

70 2. Compensation pursuant to this section may be paid simultaneously with payments for partial
71 incapacity pursuant to § 65.2-502. Where compensation pursuant to this section is paid simultaneously
72 with payments for partial incapacity pursuant to § 65.2-502, each combined payment shall count as two
73 weeks against the total maximum allowable period of 500 weeks.

74 § 65.2-504. Compensation for disability from coal worker's pneumoconiosis; insurance of coal
75 operator.

76 A. An employee eligible for an award for coal worker's pneumoconiosis benefits shall be
77 compensated according to the following schedule:

78 1. For first stage coal worker's pneumoconiosis medically determined from radiographic evidence and
79 classified under International Labour Office Classification of Radiographs of the Pneumoconioses (1980)
80 where there is no present impairment for work, 66 2/3 percent of the average weekly wage ~~during the~~
81 ~~three years prior to the filing date~~ *as defined in § 65.2-101*, for fifty weeks, up to 100 percent of the
82 average weekly wage of the Commonwealth as defined in § 65.2-500.

83 2. For second stage coal worker's pneumoconiosis medically determined from radiographic evidence
84 and classified under International Labour Office Classification of Radiographs of the Pneumoconioses
85 (1980) where there is no present impairment for work, 66 2/3 percent of the average weekly ~~wages~~
86 ~~wage as defined in § 65.2-101~~ for 100 weeks, up to 100 percent of the average weekly wage of the
87 Commonwealth as defined in § 65.2-500.

88 3. For third stage coal worker's pneumoconiosis medically determined from radiographic evidence
89 and classified under International Labour Office Classification of Radiographs of the Pneumoconioses
90 (1980) and involving progressive massive fibrosis or medically classified as being A, B or C under the
91 International Labour Office (hereafter referred to as I.L.O.) classifications but where there is no apparent
92 impairment for work, 66 2/3 percent of the average weekly ~~wages~~ *wage as defined in § 65.2-101*, for 300
93 weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

94 4. For coal worker's pneumoconiosis medically determined to be A, B or C under the I.L.O.
95 classifications or which involves progressive massive fibrosis, or for any stage of coal worker's
96 pneumoconiosis when it is accompanied by sufficient pulmonary function loss as shown by approved
97 medical tests and standards to render an employee totally unable to do manual labor in a dusty
98 environment and the employee is instructed by competent medical authority not to attempt to do work in
99 any mine or dusty environment and if he is in fact not working, it shall be deemed that he has a
100 permanent disability and he shall receive 66 2/3 percent of his average weekly ~~wages~~ *wage as defined in*
101 *§ 65.2-101* during the three years prior to the date of filing of the claim, up to 100 percent of the
102 average weekly wage of the Commonwealth as defined in § 65.2-500 for his lifetime without limit as to
103 the total amount.

104 B. In any case where partial disability as mentioned in subsection A of this section later results in
105 total disability, the employer shall receive credit on any permanent disability payments by being allowed
106 to deduct 25 percent of each weekly payment until payments for partial disability hereunder have been
107 fully accounted for.

108 C. In any case where there is a question of whether a claimant with pneumoconiosis is suffering
109 from coal worker's pneumoconiosis or from some other type of pneumoconiosis such as silicosis, it shall
110 be conclusively presumed that he is suffering from coal worker's pneumoconiosis if he has had injurious
111 exposure to coal dust.

112 D. In the event that any coal operator wishes to insure himself under standard workers' compensation
113 insurance rather than be self-insured against the risks and liabilities imposed by this section or by
114 § 65.2-513, any such insurance issued in this Commonwealth covering such risks shall be rated
115 separately for premium purposes and shall not affect workers' compensation rates for any other
116 employers not exposed to such risks.