

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 324

An Act to amend and reenact § 65.2-406 of the Code of Virginia, relating to workers' compensation; limitation upon filing a claim.

[H 2068]

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-406 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-406. Limitation upon claim; diseases covered by limitation.

A. The right to compensation under this chapter shall be forever barred unless a claim is filed with the Commission within one of the following time periods:

1. For coal miners' pneumoconiosis, three years after a diagnosis of the disease, as category 1/0 or greater as classified under the International Labour Office Classification of Radiographs of the Pneumoconiosis (1980), is first communicated to the employee *or the legal representative of his estate* or within five years from the date of the last injurious exposure in employment, whichever first occurs;

2. For byssinosis, two years after a diagnosis of the disease is first communicated to the employee or within seven years from the date of the last injurious exposure in employment, whichever first occurs;

3. For asbestosis, two years after a diagnosis of the disease is first communicated to the employee;

4. For symptomatic or asymptomatic infection with human immunodeficiency virus including acquired immunodeficiency syndrome, two years after a positive test for infection with human immunodeficiency virus; or

5. For all other occupational diseases, two years after a diagnosis of the disease is first communicated to the employee or within five years from the date of the last injurious exposure in employment, whichever first occurs.

B. If death results from an occupational disease within any of such periods, the right to compensation under this chapter shall be barred, unless a claim therefor is filed with the Commission within three years after such death. The limitations imposed by this section as amended shall be applicable to occupational diseases contracted before and after July 1, 1962, and § 65.2-601 shall not apply to pneumoconiosis. The limitation on time of filing will cover all occupational diseases except:

1. Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infrared;

2. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products or residues;

3. Radium disability or disability due to exposure to radioactive substances and X-rays;

4. Ulceration due to chrome compound or to caustic chemical acids or alkalies and undulant fever caused by the industrial slaughtering and processing of livestock and handling of hides;

5. Mesothelioma due to exposure to asbestos; and

6. Angiosarcoma of the liver due to vinyl chloride exposure.

C. When a claim is made for benefits for a change of condition in an occupational disease, such as advance from one stage or category to another, a claim for change in condition must be filed with the Commission within three years from the date for which compensation was last paid for an earlier stage of the disease, except that a claim for benefits for a change in condition in asbestosis must be filed within two years from the date when diagnosis of the advanced stage is first communicated to the employee and no claim for benefits for an advanced stage of asbestosis shall be denied on the ground that there has been no subsequent accident. For a first or an advanced stage of asbestosis or mesothelioma, if the employee is still employed in the employment in which he was injuriously exposed, the weekly compensation rate shall be based upon the employee's weekly wage as of the date of communication of the first or advanced stage of the disease, as the case may be. If the employee is unemployed, or employed in another employment, the weekly compensation rate shall be based upon the average weekly wage of a person of the same or similar grade and character in the same class of employment in which the employee was injuriously exposed and preferably in the same locality or community on the date of communication to the employee of the advanced stage of the disease or mesothelioma. The weekly compensation rates herein provided shall be subject to the same maximums and minimums as provided in § 65.2-500.