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## SENATE BILL NO. 574

Offered January 22, 1996

*A BILL to amend and reenact §§ 65.2-406, 65.2-601 and 65.2-708 of the Code of Virginia, relating to workers' compensation; statutes of limitation.*

Patrons—Edwards, Lambert, Marye, Maxwell, Ticer and Whipple; Delegates: Cranwell and Woodrum

Referred to the Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 65.2-406, 65.2-601 and 65.2-708 of the Code of Virginia are amended and reenacted as follows:**

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

A. *Except as may be otherwise agreed to by an employee and his employer, 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 Except as may be otherwise agreed to by an employer and a deceased employee's representative, 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 Except as may be otherwise agreed to by an employee and his employer, 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*

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SB574

60 herein provided shall be subject to the same maximums and minimums as provided in § 65.2-500.

61 § 65.2-601. Time for filing claim.

62 ~~The~~ *Except as may be otherwise agreed to by an employee and his employer, the right to*  
63 compensation under this title shall be forever barred, unless a claim be filed with the Commission within  
64 two years after the accident. Death benefits payable under this title shall be payable only if: (i) death  
65 results from the accident, (ii) a claim for benefits under this title has been filed within two years after  
66 the accident, and (iii) the claim for such death benefits is filed within two years from the date of death.

67 § 65.2-708. Review of award on change in condition.

68 A. Upon its own motion or upon the application of any party in interest, on the ground of a change  
69 in condition, the Commission may review any award and on such review may make an award ending,  
70 diminishing or increasing the compensation previously awarded, subject to the maximum or minimum  
71 provided in this title, and shall immediately send to the parties a copy of the award. No application filed  
72 by a party alleging a change in condition shall be docketed for hearing by the Commission unless any  
73 medical reports upon which the party is relying are submitted to the Commission. No such review shall  
74 affect such award as regards any moneys paid except pursuant to §§ 65.2-712, 65.2-1105, and  
75 65.2-1205. ~~No~~ *Except as may be otherwise agreed to by an employee and his employer, no* such review  
76 shall be made after twenty-four months from the last day for which compensation was paid, pursuant to  
77 an award under this title, except: (i) thirty-six months from the last day for which compensation was  
78 paid shall be allowed for the filing of claims payable under § 65.2-503 and certain claims under  
79 subsection B of § 65.2-406 or (ii) twenty-four months from the day that the claimant undergoes any  
80 surgical procedure compensable under § 65.2-603 to repair or replace a prosthesis or orthosis.

81 B. In those cases where no compensation has been paid, the Commission may make an award under  
82 § 65.2-503 within thirty-six months from the date of the accident.

83 C. All wages paid, for a period not exceeding twenty-four consecutive months, to an employee (i)  
84 who is physically unable to return to his pre-injury work due to a compensable injury and (ii) who is  
85 provided work within his capacity at a wage equal to or greater than his pre-injury wage, shall be  
86 considered compensation.