

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 65.2-406 and 65.2-504 of the Code of Virginia, relating to workers'*  
 3 *compensation; coverage for pneumoconiosis.*

4 [H 2477]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 65.2-406 and 65.2-504 of the Code of Virginia are amended and reenacted as follows:**

8 § 65.2-406. Limitation upon claim; diseases covered by limitation.

9 A. The right to compensation under this chapter shall be forever barred unless a claim is filed with  
 10 the Commission within one of the following time periods:11 1. For coal miners' pneumoconiosis, three years after a diagnosis of the disease, as category 1/0 or  
 12 greater as classified under the *current* International Labour Office Classification of Radiographs of the  
 13 Pneumoconiosis (1980), is first communicated to the employee or the legal representative of his estate or  
 14 within five years from the date of the last injurious exposure in employment, whichever first occurs;15 2. For byssinosis, two years after a diagnosis of the disease is first communicated to the employee or  
 16 within seven years from the date of the last injurious exposure in employment, whichever first occurs;

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

18 4. For symptomatic or asymptomatic infection with human immunodeficiency virus including  
 19 acquired immunodeficiency syndrome, two years after a positive test for infection with human  
 20 immunodeficiency virus;21 5. For diseases directly attributable to the rescue and relief efforts at the Pentagon following the  
 22 terrorist attack of September 11, 2001, two years after a diagnosis of the disease is first communicated  
 23 to the employee; or24 6. For all other occupational diseases, two years after a diagnosis of the disease is first  
 25 communicated to the employee or within five years from the date of the last injurious exposure in  
 26 employment, whichever first occurs.27 B. If death results from an occupational disease within any of such periods, the right to  
 28 compensation under this chapter shall be barred, unless a claim therefor is filed with the Commission  
 29 within three years after such death. The limitations imposed by this section as amended shall be  
 30 applicable to occupational diseases contracted before and after July 1, 1962, and § 65.2-601 shall not  
 31 apply to pneumoconiosis. The limitation on time of filing will cover all occupational diseases except:32 1. Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such  
 33 as infrared;34 2. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch,  
 35 tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products or residues;

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

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

39 5. Mesothelioma due to exposure to asbestos; and

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

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

57 § 65.2-504. Compensation for disability from coal worker's pneumoconiosis; insurance of coal  
58 operator.

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

61 1. For first stage coal worker's pneumoconiosis medically determined from radiographic evidence and  
62 classified under *the current* International Labour Office Classification of Radiographs of the  
63 Pneumoconioses (~~1980~~) where there is no present impairment for work, 66 2/3 percent of the average  
64 weekly wage as defined in § 65.2-101, for fifty weeks, up to 100 percent of the average weekly wage of  
65 the Commonwealth as defined in § 65.2-500.

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

71 3. For third stage coal worker's pneumoconiosis medically determined from radiographic evidence  
72 and classified under *the current* International Labour Office Classification of Radiographs of the  
73 Pneumoconioses (~~1980~~) and involving progressive massive fibrosis or medically classified as being A, B  
74 or C under the International Labour Office (hereafter referred to as I.L.O.) classifications but where  
75 there is no apparent impairment for work, 66 2/3 percent of the average weekly wage as defined in  
76 § 65.2-101, for 300 weeks, up to 100 percent of the average weekly wage of the Commonwealth as  
77 defined in § 65.2-500.

78 4. For coal worker's pneumoconiosis medically determined to be A, B or C under the I.L.O.  
79 classifications or which involves progressive massive fibrosis, or for any stage of coal worker's  
80 pneumoconiosis when it is accompanied by sufficient pulmonary function loss as shown by approved  
81 medical tests and standards to render an employee totally unable to do manual labor in a dusty  
82 environment and the employee is instructed by competent medical authority not to attempt to do work in  
83 any mine or dusty environment and if he is in fact not working, it shall be deemed that he has a  
84 permanent disability and he shall receive 66 2/3 percent of his average weekly wage as defined in  
85 § 65.2-101 during the three years prior to the date of filing of the claim, up to 100 percent of the  
86 average weekly wage of the Commonwealth as defined in § 65.2-500 for his lifetime without limit as to  
87 the total amount.

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

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

96 D. In the event that any coal operator wishes to insure himself under standard workers' compensation  
97 insurance rather than be self-insured against the risks and liabilities imposed by this section or by  
98 § 65.2-513, any such insurance issued in this Commonwealth covering such risks shall be rated  
99 separately for premium purposes and shall not affect workers' compensation rates for any other  
100 employers not exposed to such risks.

101 E. All members of any panel or committee required to interpret or classify a chest roentgenogram for  
102 purposes of diagnosing a coal worker's pneumoconiosis shall be B-readers approved by the National  
103 Institute for Occupational Safety and Health.