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SENATE BILL NO. 1489

Offered January 18, 2017

A BILL to amend and reenact § 65.2-513 of the Code of Virginia, relating to workers' compensation; presumptions; coal workers' pneumoconiosis.

Patrons—Chafin, Barker, Carrico, Deeds, Ebbin, Edwards, Favola, Lewis, Marsden, Mason, McClellan, McPike, Petersen, Surovell and Wexton

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-513 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-513. Compensation for death from coal worker's pneumoconiosis; determining whether death was due to pneumoconiosis or any chronic occupational lung disease.

A. If death results from coal worker's pneumoconiosis or if the employee was totally disabled by coal worker's pneumoconiosis at the time of his death and claim for compensation is made within three years after such death, the employer shall pay or cause to be paid to the surviving spouse of the deceased employee until his death or remarriage or the minor dependents of the employee until such minor dependents reach the age of eighteen (or twenty-three, so long as they remain as full-time students in a generally accredited institution of learning) or such other legal dependents as the deceased employee might have had at the time of his death for the duration of such dependency, 66 2/3 percent of the employee's average weekly wage during the last three years that he worked in the coal mines, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500 without any specific limit as to the number of such weeks. However, any claim for compensation of an employee who was totally disabled by coal worker's pneumoconiosis at the time of his death shall be paid only to the extent required by federal law.

B. The Commission shall, by regulation duly drawn and published after notice and hearing, prescribe standards, not inconsistent with those prescribed by the Secretary of Health and Human Services under the 1969 Federal Coal Mine Health and Safety Act, as amended *by § 1556(a) of P.L. 111-148*, for determining whether the death or total disability of an employee was due to pneumoconiosis or any chronic occupational lung disease.

C. In prescribing such standards the following factors shall be included:

1. If an employee who died from a respirable (respiratory) disease was employed for ~~ten~~ *10* years or more in an environment where he was injuriously exposed to such a disease, there shall be a rebuttable presumption that his disease arose out of such employment, or if he became totally disabled from coal worker's pneumoconiosis or if such disease significantly contributed to his death or disability, there shall be a rebuttable presumption that his death or disability was due to such disease.

2. Where there is clear evidence of exposure to an occupational lung disease, the Commission may make its determination whether compensation is payable to the dependents based on the description of the employee's symptoms, X-rays, and other competent medical evidence, and the opinion of experts as to whether those symptoms reasonably described the symptoms of such an occupational disease.

3. The statement as to the cause of death on a death certificate may be considered as evidence in any such cases but shall not be controlling on the Commission's findings.

4. If an employee who is or was employed in an underground coal mine is suffering or suffered from a chronic dust disease of the lung that (i) when diagnosed by chest roentgenogram, yields one or more large opacities greater than one centimeter in diameter and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (ii) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (iii) when diagnosed by other means, would be a condition that could reasonably be expected to yield results described in clause (i) or (ii) if diagnosis had been made in the manner prescribed in clause (i) or (ii), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis, as the case may be.

5. If an employee was employed for 15 years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his surviving spouse's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this chapter and it is interpreted as negative with respect to the requirements of subdivision 4, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such employee is totally disabled due to pneumoconiosis, that his death

was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living employee, a spouse's affidavit shall not be used by itself to establish the presumption. The Commission shall not apply all or a portion of the requirement of this subdivision that the employee work in an underground mine where the Commission determines that conditions of an employee's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The employer may rebut such presumption only by establishing that (i) the employee does not, or did not, have pneumoconiosis or that (ii) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

D. The Commission may also, by regulation, establish standards, not inconsistent with those prescribed by the Secretary of Labor under the 1969 Federal Coal Mine Health and Safety Act as amended, for apportioning liability for benefits under this section and under *subdivision A 4 of* § 65.2-504 ~~A~~ **4** among more than one operator, where such apportionment is appropriate, provided that no apportionment shall operate to deprive an employee of the full benefits due him under this title.