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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4459

(By Delegates Caputo, Perdue, Fleischauer,
Butcher, Eldridge, Guthrie, Mahan, Longstreth,
Manchin, Marshall And Boggs)

—●—
Passed March 10, 2010

In Effect Ninety Days From Passage

HB 4459

ENROLLED

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COMMITTEE SUBSTITUTE

FOR

CITIZENSHIP
SECRETARY OF STATE

H. B. 4459

(BY DELEGATES CAPUTO, PERDUE, FLEISCHAUER,
BUTCHER, ELDRIDGE, GUTHRIE, MAHAN, LONGSTRETH,
MANCHIN, MARSHALL AND BOGGS)

[Passed March 10, 2010; in effect ninety days from passage]

AN ACT to amend and reenact §23-4-10 and §23-4-15 of the Code of West Virginia, 1931, as amended, all relating to Workers Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death; requiring notice of need to file for certain death benefits; and increasing from one year to two years the time in which a dependent may apply for Workers Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death.

Be it enacted by the Legislature of West Virginia:

That §23-4-10 and §23-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational
2 pneumoconiosis or other occupational disease, suffered by an
3 employee in the course of and resulting from his or her
4 employment, causes death, and disability is continuous from
5 the date of the injury until the date of death, or if death results
6 from occupational pneumoconiosis or from any other
7 occupational disease, the benefits shall be in the amounts and
8 to the persons as follows:

9 (a) If there are no dependents, the disbursements shall be
10 limited to the expense provided for in sections three and four
11 of this article;

12 (b) If there are dependents as defined in subdivision (d)
13 of this section, the dependents shall be paid for as long as
14 their dependency continues in the same amount that was paid
15 or would have been paid the deceased employee for total
16 disability had he or she lived. The order of preference of
17 payment and length of dependence shall be as follows:

18 (1) A dependent widow or widower until death or
19 remarriage of the widow or widower, and any child or
20 children dependent upon the decedent until each child
21 reaches eighteen years of age or where the child after
22 reaching eighteen years of age continues as a full-time
23 student in an accredited high school, college, university,
24 business or trade school, until the child reaches the age of
25 twenty-five years, or if an invalid child, to continue as long
26 as the child remains an invalid. All persons are jointly
27 entitled to the amount of benefits payable as a result of
28 employee's death;

29 (2) A wholly dependent father or mother until death; and

30 (3) Any other wholly dependent person for a period of six
31 years after the death of the deceased employee;

32 (c) If the deceased employee leaves no wholly dependent
33 person, but there are partially dependent persons at the time
34 of death, the payment shall be fifty dollars a month to
35 continue for the portion of the period of six years after the
36 death, determined by the commission, successor to the
37 commission, other private carrier or self-insured employer,
38 whichever is applicable, but no partially dependent person
39 shall receive compensation payments as a result of the death
40 of more than one employee.

41 Compensation under this subdivision and subdivision (b)
42 of this section shall, except as may be specifically provided
43 to the contrary in those subdivisions, cease upon the death of
44 the dependent, and the right to the compensation shall not
45 vest in his or her estate.

46 (d) "Dependent", as used in this chapter, means a widow,
47 widower, child under eighteen years of age, or under twenty-
48 five years of age when a full-time student as provided in this
49 section, invalid child or posthumous child, who, at the time
50 of the injury causing death, is dependent, in whole or in part,
51 for his or her support upon the earnings of the employee,
52 stepchild under eighteen years of age, or under twenty-five
53 years of age when a full-time student as provided in this
54 section, child under eighteen years of age legally adopted
55 prior to the injury causing death, or under twenty-five years
56 of age when a full-time student as provided in this section,
57 father, mother, grandfather or grandmother, who, at the time
58 of the injury causing death, is dependent, in whole or in part,
59 for his or her support upon the earnings of the employee; and
60 invalid brother or sister wholly dependent for his or her
61 support upon the earnings of the employee at the time of the
62 injury causing death; and

63 (e) If a person receiving permanent total disability
64 benefits dies from a cause other than a disabling injury

65 leaving any dependents as defined in subdivision (d) of this
66 section, an award shall be made to the dependents in an
67 amount equal to one hundred four times the weekly benefit
68 the worker was receiving at the time of his or her death and
69 be paid either as a lump sum or in periodic payments, at the
70 option of the dependent or dependents.

71 (f) The Insurance Commissioner shall prescribe a form
72 notice to be sent by the commissioner, private carrier or self-
73 insured employer, as applicable, to the dependent with the
74 first payment and six months prior to the last payment of the
75 benefits provided in subsection (e) of this section, that
76 advises the dependent that the benefits will stop as of a date
77 certain. The notice shall also advise the dependent that he or
78 she may be eligible for additional benefits under section
79 fifteen of this article and how to apply for those benefits.
80 The notices shall be written in plain English in a manner that
81 is easily understood by the general public.

§23-4-15. Application for benefits.

1 (a) To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than for
3 occupational pneumoconiosis or other occupational disease,
4 the application for compensation shall be made on the form
5 or forms prescribed by the Insurance Commissioner, and
6 filed with the Insurance Commissioner, private carrier or
7 self-insured employer, whichever is applicable, within six
8 months from and after the injury or death, as the case may be,
9 and unless filed within the six months period, the right to
10 compensation under this chapter is forever barred, such time
11 limitation being hereby declared to be a condition of the right
12 and hence jurisdictional, and all proofs of dependency in fatal
13 cases must also be filed with the commission within six
14 months from and after the death. In case the employee is
15 mentally or physically incapable of filing the application, it

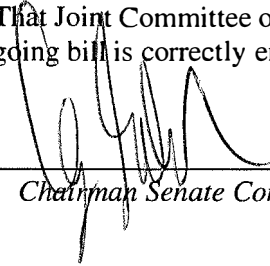
16 may be filed by his or her attorney or by a member of his or
17 her family.

18 (b) To entitle any employee to compensation for
19 occupational pneumoconiosis under the provisions of this
20 subsection, the application for compensation shall be made
21 on the form or forms prescribed by the Insurance
22 Commissioner, and filed with the Insurance Commissioner,
23 private carrier or self-insured employer, whichever is
24 applicable, within three years from and after the last day of
25 the last continuous period of sixty days or more during which
26 the employee was exposed to the hazards of occupational
27 pneumoconiosis or within three years from and after a
28 diagnosed impairment due to occupational pneumoconiosis
29 was made known to the employee by a physician and unless
30 filed within the three-year period, the right to compensation
31 under this chapter is forever barred, such time limitation
32 being hereby declared to be a condition of the right and hence
33 jurisdictional, or, in the case of death, the application shall be
34 filed by the dependent of the employee within two years from
35 and after the employee's death, and such time limitation is a
36 condition of the right and hence jurisdictional.

37 (c) To entitle any employee to compensation for
38 occupational disease other than occupational pneumoconiosis
39 under the provisions of this section, the application for
40 compensation shall be made on the form or forms prescribed
41 by the Insurance Commissioner, and filed with the Insurance
42 Commissioner, private carrier or self-insured employer,
43 whichever is applicable, within three years from and after the
44 day on which the employee was last exposed to the particular
45 occupational hazard involved or within three years from and
46 after the employee's occupational disease was made known
47 to him or her by a physician or which he or she should
48 reasonably have known, whichever last occurs, and unless
49 filed within the three-year period, the right to compensation

50 under this chapter shall be forever barred, such time limitation
51 being hereby declared to be a condition of the right and
52 therefore jurisdictional, or, in case of death, the application
53 shall be filed as aforesaid by the dependent of the employee
54 within one year from and after the employee's death, and
55 such time limitation is a condition of the right and hence
56 jurisdictional.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



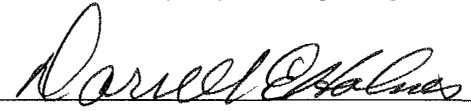
Chairman Senate Committee



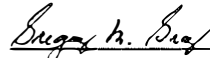
Chairman House Committee

Originating in the House.

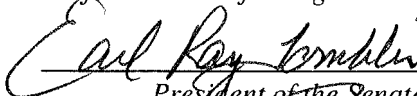
In effect ninety days from passage.



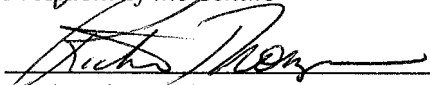
Clerk of the Senate



Clerk of the House of Delegates

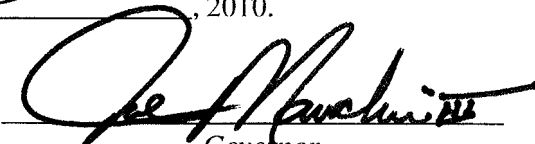


President of the Senate



Speaker of the House of Delegates

The within is approved this the 17th
day of March, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2010

Time 3:00