WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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

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

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

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

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

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

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

(d) "Dependent", as used in this chapter, means a widow,
widower, child under eighteen years of age, or under twenty-
five years of age when a full-time student as provided in this
section, invalid child or posthumous child, who, at the time
of the injury causing death, is dependent, in whole or in part,
for his or her support upon the earnings of the employee,
stepchild under eighteen years of age, or under twenty-five
years of age when a full-time student as provided in this
section, child under eighteen years of age legally adopted
prior to the injury causing death, or under twenty-five years
of age when a full-time student as provided in this section,
father, mother, grandfather or grandmother, who, at the time
of the injury causing death, is dependent, in whole or in part,
for his or her support upon the earnings of the employee; and
invalid brother or sister wholly dependent for his or her
support upon the earnings of the employee at the time of the
injury causing death; and

(e) If a person receiving permanent total disability
benefits dies from a cause other than a disabling injury
leaving any dependents as defined in subdivision (d) of this section, an award shall be made to the dependents in an amount equal to one hundred four times the weekly benefit the worker was receiving at the time of his or her death and be paid either as a lump sum or in periodic payments, at the option of the dependent or dependents.

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


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

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

(c) To entitle any employee to compensation for
occupational disease other than occupational pneumoconiosis
under the provisions of this section, the application for
compensation shall be made on the form or forms prescribed
by the Insurance Commissioner, and filed with the Insurance
Commissioner, private carrier or self-insured employer,
whichever is applicable, within three years from and after the
day on which the employee was last exposed to the particular
occupational hazard involved or within three years from and
after the employee’s occupational disease was made known
to him or her by a physician or which he or she should
reasonably have known, whichever last occurs, and unless
filed within the three-year period, the right to compensation
under this chapter shall be forever barred, such time limitation
being hereby declared to be a condition of the right and
therefore jurisdictional, or, in case of death, the application
shall be filed as aforesaid by the dependent of the employee
within one year from and after the employee's death, and
such time limitation is a condition of the right and hence
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