

1 HOUSE BILL NO. 1042  
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE  
 3 (Proposed by the House Committee on Commerce and Energy  
 4 on \_\_\_\_\_)  
 5 (Patron Prior to Substitute--Delegate Brewer)

6 A BILL to amend and reenact § 65.2-406 of the Code of Virginia, relating to workers' compensation;  
 7 limitation upon filing a claim.

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

9 **1. That § 65.2-406 of the Code of Virginia is amended and reenacted as follows:**

10 **§ 65.2-406. Limitation upon claim; diseases covered by limitation.**

11 A. The right to compensation under this chapter shall be forever barred unless a claim is filed with  
 12 the Commission within one of the following time periods:

13 1. For coal miners' pneumoconiosis, three years after a diagnosis of the disease, as category 1/0 or  
 14 greater as classified under the current International Labour Office Classification of Radiographs of the  
 15 Pneumoconiosis, is first communicated to the employee or the legal representative of his estate or within  
 16 five years from the date of the last injurious exposure in employment, whichever first occurs;

17 2. For byssinosis, two years after a diagnosis of the disease is first communicated to the employee  
 18 or within seven years from the date of the last injurious exposure in employment, whichever first occurs;

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

20 4. For symptomatic or asymptomatic infection with human immunodeficiency virus including  
 21 acquired immunodeficiency syndrome, two years after a positive test for infection with human  
 22 immunodeficiency virus;

23 5. For diseases directly attributable to the rescue and relief efforts at the Pentagon following the  
 24 terrorist attack of September 11, 2001, two years after a diagnosis of the disease is first communicated to  
 25 the employee; ~~or~~

26           6. For cancers listed in subsection C of § 65.2-402, two years after a diagnosis of the disease is  
27 first communicated to the employee or within 10 years from the date of the last injurious exposure in  
28 employment, whichever occurs first; or

29           7. For all other occupational diseases, two years after a diagnosis of the disease is first  
30 communicated to the employee or within five years from the date of the last injurious exposure in  
31 employment, whichever first occurs.

32           B. If death results from an occupational disease within any of such periods, the right to  
33 compensation under this chapter shall be barred, unless a claim therefor is filed with the Commission  
34 within three years after such death. The limitations imposed by this section as amended shall be applicable  
35 to occupational diseases contracted before and after July 1, 1962, and § 65.2-601 shall not apply to  
36 pneumoconiosis. The limitation on time of filing will cover all occupational diseases except:

37           1. Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such  
38 as infrared;

39           2. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch,  
40 tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products or residues;

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

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

44           5. Mesothelioma due to exposure to asbestos; and

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

46           C. A claim for benefits pursuant to subdivision A 6 made as a result of the diagnosis of a disease  
47 listed in subsection C of § 65-402 shall be barred if the employee is over 65 years of age, regardless of the  
48 date of diagnosis, communication, or last injurious exposure in employment.

49           D. When a claim is made for benefits for a change of condition in an occupational disease, such as  
50 advance from one stage or category to another, a claim for change in condition must be filed with the  
51 Commission within three years from the date for which compensation was last paid for an earlier stage of  
52 the disease, except that a claim for benefits for a change in condition in asbestosis must be filed within

53 two years from the date when diagnosis of the advanced stage is first communicated to the employee and  
54 no claim for benefits for an advanced stage of asbestosis shall be denied on the ground that there has been  
55 no subsequent accident. For a first or an advanced stage of asbestosis or mesothelioma, if the employee is  
56 still employed in the employment in which he was injuriously exposed, the weekly compensation rate  
57 shall be based upon the employee's weekly wage as of the date of communication of the first or advanced  
58 stage of the disease, as the case may be. If the employee is unemployed, or employed in another  
59 employment, the weekly compensation rate shall be based upon the average weekly wage of a person of  
60 the same or similar grade and character in the same class of employment in which the employee was  
61 injuriously exposed and preferably in the same locality or community on the date of communication to  
62 the employee of the advanced stage of the disease or mesothelioma. The weekly compensation rates herein  
63 provided shall be subject to the same maximums and minimums as provided in § 65.2-500.

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