

H. B. 2445

(By Delegate Hunt)

[Introduced February 14, 2013; referred to the Committee on Energy, Industry and Labor, Economic Development and Small Business then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §23-4-23 of the Code of West Virginia, 1931, as amended, relating to workers' compensation; disability and death benefits; permanent total disability; and providing for cost-of-living allowances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-23. Permanent total disability benefits; reduction of disability benefits; reduction of benefits; application of section; cost-of-living allowances; severability.

(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under

1 subdivision (d), (m) or (n), section six of this article or under
2 section eight-c of this article. This section is not applicable to
3 the receipt of temporary total disability benefits, the receipt of
4 permanent partial disability benefits, the receipt of benefits by
5 partially or wholly dependent persons or to the receipt of benefits
6 pursuant to the provisions of subsection (e), section ten of this
7 article. This section is not applicable to the receipt of medical
8 benefits or the payment for medical benefits.

9 (b) Whenever applicable benefits are paid to a beneficiary
10 with respect to the same time period for which payments under a
11 self-insurance plan, a wage continuation plan or a disability
12 insurance policy provided by an employer are also received or being
13 received by the beneficiary, the applicable benefits shall be
14 reduced by these amounts:

15 (1) The after-tax amount of the payments received or being
16 received under a self-insurance plan, a wage continuation plan or
17 under a disability insurance policy provided by an employer if the
18 employee did not contribute directly to the plan or to the payment
19 of premiums regarding the disability insurance policy; or

20 (2) The proportional amount, based on the ratio of the
21 employer's contributions to the total insurance premiums for the
22 policy period involved, of the after-tax amount of the payments
23 received or being received by the employee pursuant to a disability
24 insurance policy provided by an employer if the employee did

1 contribute directly to the payment of premiums regarding the
2 disability insurance policy: *Provided*, That in no event shall
3 applicable benefits be reduced below the minimum weekly benefits as
4 provided for in subdivisions (b) and (d), section six of this
5 article.

6 (c) Claimants eligible for and receiving permanent total
7 benefits under the provisions of this article shall be awarded
8 annual cost-of-living allowances based upon the Consumer Price
9 Index published by the United States Department of Labor.

10 ~~(c)~~ (d) This section applies to awards of permanent total
11 disability made after the effective date of this section.

12 ~~(d)~~ (e) The board of managers shall promulgate the appropriate
13 rules for the interpretation, processing and enforcement of this
14 section.

15 (f) If any portion of this section or any application of this
16 section is subsequently found to be unconstitutional or in
17 violation of applicable law, it shall not affect the validity of
18 the remainder of this section or the applications of the section
19 that are not unconstitutional or in violation.

NOTE: The purpose of this bill is to provide permanent total disability recipients annual cost-of-living allowances based upon the Consumer Price Index published by the United States Department of Labor.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.