

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 632**

BY SENATORS SMITH, TAKUBO, STOLLINGS,  
PITSENBARGER, HARDESTY, HAMILTON, JEFFRIES,  
IHLENFELD, TRUMP, CLEMENTS, BEACH, WOELFEL, CLINE,  
PLYMALE, PREZIOSO, ROBERTS, ROMANO, AND LINDSAY

[Introduced January 28, 2020; referred  
to the Committee Banking and Insurance]

1 A BILL to amend and reenact §23-4-15 of the Code of West Virginia, 1931, as amended, relating  
2 to clarifying that the time limitations provided for filing occupational pneumoconiosis claims  
3 do not apply or otherwise limit the ability of a claimant to obtain an evaluation from the  
4 Occupational Pneumoconiosis Board.

*Be it enacted by the Legislature of West Virginia:*

#### **ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

##### **§23-4-15. Application for benefits.**

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

12 (b) To entitle any employee to compensation for occupational pneumoconiosis under the  
13 provisions of this subsection, the application for compensation shall be made on the form or forms  
14 prescribed by the Insurance Commissioner, and filed with the Insurance Commissioner, private  
15 carrier or self-insured employer, whichever is applicable, within three years from and after the last  
16 day of the last continuous period of 60 days or more during which the employee was exposed to  
17 the hazards of occupational pneumoconiosis or within three years from and after a diagnosed  
18 impairment due to occupational pneumoconiosis was made known to the employee by a physician  
19 and unless filed within the three-year period, the right to compensation under this chapter is

20 forever barred, such time limitation being hereby declared to be a condition of the right and hence  
21 jurisdictional, or, in the case of death, the application shall be filed by the dependent of the  
22 employee within two years from and after the employee's death, and such time limitation is a  
23 condition of the right and hence jurisdictional: Provided, That nothing in this section shall limit the  
24 time within which a claimant may obtain an evaluation from the Occupational Pneumoconiosis  
25 Board nor limit the applicability of §23-4-8c of this code.

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

NOTE: The purpose of this bill is to clarify that the time limitations provided for filing occupational pneumoconiosis claims in this section does not apply to or otherwise limit the ability of a claimant to obtain an evaluation from the Occupational Pneumoconiosis Board.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.