

H. B. 3108

(By Delegate Hunt, (By Request))

[Introduced February 11, 2011; 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 subdivision (d), (m) or (n), section six of this article or under section eight-c of this article. This section is not applicable to the receipt of temporary total disability benefits, the receipt of

1 permanent partial disability benefits, the receipt of benefits by
2 partially or wholly dependent persons or to the receipt of benefits
3 pursuant to the provisions of subsection (e), section ten of this
4 article. This section is not applicable to the receipt of medical
5 benefits or the payment for medical benefits.

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

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

17 (2) The proportional amount, based on the ratio of the
18 employer's contributions to the total insurance premiums for the
19 policy period involved, of the after-tax amount of the payments
20 received or being received by the employee pursuant to a disability
21 insurance policy provided by an employer if the employee did
22 contribute directly to the payment of premiums regarding the
23 disability insurance policy: *Provided*, That in no event shall
24 applicable benefits be reduced below the minimum weekly benefits as
25 provided for in subdivisions (b) and (d), section six of this
26 article.

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

5 ~~(e)~~ (d) This section applies to awards of permanent total
6 disability made after the effective date of this section.

7 ~~(d)~~ (e) The board of managers shall promulgate the appropriate
8 rules for the interpretation, processing and enforcement of this
9 section.

10 (f) If any portion of this section or any application of this
11 section is subsequently found to be unconstitutional or in
12 violation of applicable law, it shall not affect the validity of
13 the remainder of this section or the applications of the section
14 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.