

1844

2009-2010 Regular Sessions

I N A S S E M B L Y

January 12, 2009

Introduced by M. of A. DINOWITZ, GOTTFRIED, CLARK, MAISEL, JOHN --  
Multi-Sponsored by -- M. of A. ALFANO, BARRA, GALEF, JAFFEE, MAYER-  
SOHN, McDONOUGH, McENENY, SPANO, THIELE -- read once and referred to  
the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to occupa-  
tional disease caused by tobacco smoke in the work place

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 28 of the workers' compensation law, as amended by  
2 chapter 659 of the laws of 1984, is amended to read as follows:  
3 S 28. Limitation of right to compensation. The right to claim compen-  
4 sation under this chapter shall be barred, except as hereinafter  
5 provided, unless within two years after the accident, or if death  
6 results therefrom within two years after such death, a claim for compen-  
7 sation shall be filed with the chairman, but the employer and insurance  
8 carrier shall be deemed to have waived the bar of the statute unless the  
9 objection to the failure to file the claim within two years is raised on  
10 the first hearing on such claim at which all parties in interest are  
11 present. The right of an employee to claim compensation under this  
12 chapter for disablement caused by any occupational disease including but  
13 not limited to compressed air illness or its sequelae, silicosis or  
14 other dust disease, latent or delayed pathological bone, blood or lung  
15 changes or malignancies due to occupational exposure to or contact with  
16 arsenic, benzol, beryllium, zirconium, cadmium, chrome, lead or fluorine  
17 [or], to exposure to x-rays, radium, ionizing radiation, radio-active  
18 substances, or any other chemical compound OR TO OCCUPATIONAL EXPOSURE  
19 TO TOBACCO SMOKE shall not be barred by the failure of the employee to  
20 file a claim within such period of two years, provided such claim shall  
21 be filed after such period of two years and within two years after disa-  
22 blement and after the claimant knew or should have known that the  
23 disease is or was due to the nature of the employment. No case in which

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 an advance payment is made to an employee or to his dependents in case  
2 of death shall be barred by the failure of the employee or his depen-  
3 dents to file a claim, and the board may at any time order a hearing on  
4 any such case in the same manner as though a claim for compensation had  
5 been filed.

6 S 2. This act shall take effect immediately.