

Throughout this section, the word "insurer" is substituted for the former words "insurance company, association, the Injured Workers' Insurance Fund", for brevity.

In subsection (a) of this section, the language "bring an action for damages" is substituted for the former language "enforce for their benefit", for clarity.

In subsection (b) of this section, the former word "surgical" is deleted as included in the word "medical".

In subsection (c) of this section, the language "bring an action" is substituted for the former language "enforce the liability", for clarity.

In subsection (d) of this section, the references to the dependents of a covered employee are added to conform to subsection (c) of this section.

Also in subsection (d) of this section, the second clause of the third sentence of former Art. 101, § 58, which was enacted by Ch. 814, Acts of 1958, is deleted as obsolete.

The Labor and Employment Article Review Committee notes, for consideration by the General Assembly, that it is unclear how to measure the 2-month period in subsection (c) of this section, since the length of a month varies. The General Assembly may wish to consider substituting "60 days" for "2 months".

The Committee also notes, for consideration by the General Assembly, that subsection (d) of this section, consistent with former Art. 101, § 58, provides that "[t]he period of limitations for the right of action of a covered employee or the dependents of a covered employee against the third party does not begin to run until 2 months after the first award of compensation ...". However, in Smith v. Bethlehem Steel Corp., the Court of Appeals held that this does not mean that the period of limitations does not begin to run until 2 months after the first award of compensation but it means that the statute of limitations is tolled for 2 months after the first award of compensation. Smith v. Bethlehem Steel Corp., 303 Md. 213, 229 (1985). This opinion has been criticized for being contrary to the plain language of the statute. The dissenting opinion states that "the majority's interpretation is directly contrary to the language used by the General Assembly." Id. at 235. The dissenting opinion goes on to state:

The majority fails to give any effect to this language specifying when limitations shall begin to run. Instead, it holds that the statutory language refers to a tolling of the limitations period set forth in § 5-101 of the Courts and Judicial Proceedings Article. This is a blatant substitution of the Court's language for that employed by the Legislature. When the Legislature intends to enact a tolling provision, it knows how to do so. Id. (emphasis in original).