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**By: Delegate Mossburg**

Introduced and read first time: January 31, 1996

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Drug-Free Workplace Program - Use of Drugs or Alcohol**

3 FOR the purpose of establishing that, under certain circumstances, a certain employee or  
4 dependent is not entitled to certain compensation or benefits under the workers'  
5 compensation law if a substantial cause of an accidental personal injury,  
6 compensable hernia, or occupational disease was the effect on the employee of  
7 intoxication or a certain drug; and generally relating to the effects of the use of  
8 drugs or alcohol on eligibility for compensation or benefits under the workers'  
9 compensation law.

10 BY repealing and reenacting, with amendments,  
11 Article - Labor and Employment  
12 Section 9-506  
13 Annotated Code of Maryland  
14 (1991 Volume and 1995 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Labor and Employment**

18 9-506.

19 (a) A covered employee or a dependent of a covered employee is not entitled to  
20 compensation or benefits under this title as a result of:

21 (1) an intentional, self-inflicted accidental personal injury, compensable  
22 hernia, or occupational disease; or

23 (2) an attempt to injure or kill another.

24 (b) A covered employee or a dependent of a covered employee is not entitled to  
25 compensation or benefits under this title as a result of an accidental personal injury,  
26 compensable hernia, or occupational disease if:

27 (1) the accidental personal injury, compensable hernia, or occupational  
28 disease was caused solely by the effect on the covered employee of:

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1 (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;  
2 or

3 (ii) another drug that makes the covered employee incapable of  
4 satisfactory job performance; and

5 (2) the drug was not administered or taken in accordance with the  
6 prescription of a physician.

7 (c) A covered employee or a dependent of a covered employee is not entitled to  
8 compensation or benefits under this title as a result of an accidental personal injury,  
9 compensable hernia, or occupational disease if the accidental personal injury,  
10 compensable hernia, or occupational disease was caused solely by the intoxication of the  
11 covered employee while on duty.

12 (D) EXCEPT FOR MEDICAL BENEFITS UNDER §§ 9-660 AND 9-661 OF THIS TITLE,  
13 A COVERED EMPLOYEE OR DEPENDENT OF A COVERED EMPLOYEE IS NOT  
14 ENTITLED TO COMPENSATION OR BENEFITS UNDER THIS TITLE AS A RESULT OF AN  
15 ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL  
16 DISEASE IF:

17 (1) THE ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR  
18 OCCUPATIONAL DISEASE WAS CAUSED SUBSTANTIALLY BY:

19 (I) THE INTOXICATION OF THE COVERED EMPLOYEE WHILE ON  
20 DUTY;

21 (II) THE EFFECT ON THE COVERED EMPLOYEE OF A DEPRESSANT,  
22 HALLUCINOGENIC, HYPNOTIC, NARCOTIC, OR STIMULANT DRUG THAT WAS NOT  
23 ADMINISTERED OR TAKEN IN ACCORDANCE WITH THE PRESCRIPTION OF A  
24 PHYSICIAN; OR

25 (III) THE EFFECT ON THE COVERED EMPLOYEE OF ANOTHER DRUG  
26 THAT WAS NOT ADMINISTERED OR TAKEN IN ACCORDANCE WITH THE  
27 PRESCRIPTION OF A PHYSICIAN AND THAT MAKES THE COVERED EMPLOYEE  
28 INCAPABLE OF SATISFACTORY JOB PERFORMANCE;

29 (2) THE COVERED EMPLOYEE'S EMPLOYMENT IS SUBJECT TO THE  
30 REQUIREMENTS OF A "DRUG-FREE WORKPLACE PROGRAM" THAT COMPLIES WITH:

31 (I) THE GUIDELINES FOR A DRUG-FREE WORKPLACE  
32 ESTABLISHED BY THE MARYLAND CENTER FOR WORKPLACE SAFETY AND HEALTH;  
33 OR

34 (II) OTHER GUIDELINES APPROVED BY THE COMMISSION;

35 (3) THE DRUG-FREE WORKPLACE PROGRAM IS CERTIFIED ON AN  
36 ANNUAL BASIS:

37 (I) BY AN AUTHORITY APPROVED BY THE COMMISSION; AND

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1 (II) IN ACCORDANCE WITH GUIDELINES ESTABLISHED BY THE  
2 MARYLAND CENTER FOR WORKPLACE SAFETY AND HEALTH OR AN ENTITY  
3 APPROVED BY THE COMMISSION;

4 (4) THE INTOXICATION OR DRUG WAS DETECTED AND CONFIRMED BY  
5 A DRUG OR ALCOHOL TEST:

6 (I) IN ACCORDANCE WITH PROCEDURES SET FORTH IN A  
7 CERTIFIED DRUG-FREE WORKPLACE POLICY; AND

8 (II) BY A LABORATORY CERTIFIED BY THE DEPARTMENT OF  
9 HEALTH AND MENTAL HYGIENE TO PERFORM THE TESTS; AND

10 (5) THE LEVEL OF INTOXICANT OR DRUG EQUALS OR EXCEEDS THE  
11 MINIMUM POSITIVE LEVELS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF  
12 TRANSPORTATION.

13 [(d)] (E) A covered employee or a dependent of a covered employee is not  
14 entitled to compensation or benefits under this title as a result of an accidental personal  
15 injury, compensable hernia, or occupational disease if the accidental personal injury,  
16 compensable hernia, or occupational disease was caused by the willful misconduct of the  
17 covered employee.

18 [(e)] (F) In a proceeding on a claim for compensation, there is, absent substantial  
19 evidence to the contrary, a presumption that an accidental personal injury, compensable  
20 hernia, or occupational disease:

21 (1) was not caused by the intent of the covered employee to injure or kill the  
22 covered employee or another individual;

23 (2) was not caused solely by the effect on the covered employee of:

24 (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;  
25 or

26 (ii) another drug that makes the covered employee incapable of  
27 satisfactory job performance; and

28 (3) was not caused solely by the intoxication of the covered employee while  
29 on duty.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 1996.