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SB 563/95 - FIN

1996 Regular Session
6r1684
CF 6r2287

By: Senators Roesser, Derr, Astle, and Dorman

Introduced and read first time: February 2, 1996

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 1996

CHAPTER ____

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~~ the proximate cause of an accidental personal
6 injury, compensable hernia, or occupational disease was the effect on the employee
7 of intoxication or a certain drug; defining a certain term; requiring the Workers'
8 Compensation Commission to report on certain information to certain committees;
9 providing for the termination of this Act; and generally relating to the effects of the
10 use of drugs or alcohol on eligibility for compensation or benefits under the
11 workers' compensation law.

12 BY repealing and reenacting, with amendments,
13 Article - Labor and Employment
14 Section 9-506
15 Annotated Code of Maryland
16 (1991 Volume and 1995 Supplement)

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

19 **Article - Labor and Employment**

20 9-506.

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

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

2

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

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

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

7 (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;
8 or

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

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

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

18 (D) (1) IN THIS SUBSECTION, "PROXIMATE CAUSE" MEANS THE CAUSE THAT
19 IS FIRST IN IMPORTANCE AND BUT FOR WHICH AN INJURY, COMPENSABLE HERNIA,
20 OR OCCUPATIONAL DISEASE WOULD NOT HAVE OCCURRED.

21 (2) EXCEPT FOR MEDICAL BENEFITS UNDER §§ 9-660 AND 9-661 OF THIS
22 TITLE, A COVERED EMPLOYEE OR DEPENDENT OF A COVERED EMPLOYEE IS NOT
23 ENTITLED TO COMPENSATION OR BENEFITS UNDER THIS TITLE AS A RESULT OF AN
24 ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL
25 DISEASE IF:

26 ~~(1)~~ (1) THE PROXIMATE CAUSE OF THE ACCIDENTAL PERSONAL
27 INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE WAS CAUSED
28 SUBSTANTIALLY BY:

29 ~~(1)~~ 1. THE INTOXICATION OF THE COVERED EMPLOYEE WHILE
30 ON DUTY;

31 ~~(2)~~ 2. THE EFFECT ON THE COVERED EMPLOYEE OF A
32 DEPRESSANT, HALLUCINOGENIC, HYPNOTIC, NARCOTIC, OR STIMULANT DRUG
33 THAT WAS NOT ADMINISTERED OR TAKEN IN ACCORDANCE WITH THE
34 PRESCRIPTION OF A PHYSICIAN; OR

35 ~~(3)~~ 3. THE EFFECT ON THE COVERED EMPLOYEE OF ANOTHER
36 DRUG THAT WAS NOT ADMINISTERED OR TAKEN IN ACCORDANCE WITH THE
37 PRESCRIPTION OF A PHYSICIAN AND THAT MAKES THE COVERED EMPLOYEE
38 INCAPABLE OF SATISFACTORY JOB PERFORMANCE;

39 ~~(4)~~ (4) THE COVERED EMPLOYEE'S EMPLOYMENT IS SUBJECT TO THE
40 REQUIREMENTS OF A "DRUG-FREE WORKPLACE PROGRAM" THAT COMPLIES WITH:

3

1 ~~(H)~~ 1. THE GUIDELINES FOR A DRUG-FREE WORKPLACE
2 ~~ESTABLISHED RECOMMENDED~~ BY THE MARYLAND CENTER FOR WORKPLACE
3 SAFETY AND HEALTH ~~AND APPROVED BY THE COMMISSION~~; OR

4 ~~(H)~~ 2. OTHER GUIDELINES APPROVED BY THE COMMISSION;

5 ~~(S)~~ (III) THE DRUG-FREE WORKPLACE PROGRAM IS CERTIFIED ON AN
6 ANNUAL BASIS:

7 ~~(H)~~ 1. BY AN AUTHORITY APPROVED BY THE COMMISSION; AND

8 ~~(H)~~ 2. IN ACCORDANCE WITH GUIDELINES ~~ESTABLISHED BY~~
9 ~~THE MARYLAND CENTER FOR WORKPLACE SAFETY AND HEALTH OR AN ENTITY~~
10 APPROVED BY THE COMMISSION;

11 ~~(H)~~ (IV) THE INTOXICATION OR DRUG WAS DETECTED AND
12 CONFIRMED BY A DRUG OR ALCOHOL TEST:

13 ~~(H)~~ 1. IN ACCORDANCE WITH PROCEDURES SET FORTH IN A
14 CERTIFIED DRUG-FREE WORKPLACE POLICY; AND

15 ~~(H)~~ 2. BY A LABORATORY CERTIFIED BY THE DEPARTMENT OF
16 HEALTH AND MENTAL HYGIENE TO PERFORM THE TESTS; AND

17 ~~(S)~~ (V) THE LEVEL OF INTOXICANT OR DRUG EQUALS OR EXCEEDS
18 THE MINIMUM POSITIVE LEVELS ESTABLISHED BY THE UNITED STATES
19 DEPARTMENT OF TRANSPORTATION.

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

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

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

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

31 (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;
32 or

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

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

37 SECTION 2. AND BE IT FURTHER ENACTED, That the Workers'
38 Compensation Commission shall report to the Workers' Compensation Benefit and

1 Insurance Oversight Committee, the Senate Finance Committee, and the House
2 Economic Matters Committee by October 1, 1999 on the number of workers'
3 compensation cases in which benefits were denied under § 9-506(d) of the Labor and
4 Employment Article as enacted by this Act during the period from October 1, 1996 to
5 September 30, 1999, compared to the number of cases during the same period in which
6 benefits were denied under § 9-506(b) and (c) of the Labor and Employment Article. In
7 addition, the Commission, after consultation with the authority approved by the
8 Commission to certify drug-free workplace programs, shall report to the same committees
9 by October 1, 1999 on the number of drug-free workplace programs that are certified
10 annually.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 1996. It shall remain effective for a period of 4 years and, at the end of
13 September 30, 2000, with no further action required by the General Assembly, this Act
14 shall be abrogated and of no further force and effect.