

CF 7r1190

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**By: Delegates V. Mitchell, Wood, Hutchins, Love, Edwards, Fulton, Bissett, McClenahan, Mossburg, Crumlin, Walkup, Poole, La Vay, Kach, Kelly, Eckardt, W. Baker, Branch, Donoghue, and Schade**

Introduced and read first time: January 31, 1997

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 1997

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Workers' Compensation - Use of ~~Drugs~~ Controlled Dangerous Substances or Alcohol**

3 FOR the purpose of establishing that, under certain circumstances, a covered employee  
 4 or a dependent of a covered employee is not entitled to certain compensation or  
 5 benefits under the workers' compensation law if the primary cause of an accidental  
 6 personal injury, compensable hernia, or occupational disease was the effect on the  
 7 employee of intoxication or a certain ~~drug~~ controlled dangerous substance;  
 8 authorizing use of the primary cause standard under certain specified  
 9 circumstances; requiring a certain certification from the Workers' Compensation  
 10 Commission for a certain workplace program; requiring revocation of the  
 11 certification under certain circumstances; defining a certain term; providing that  
 12 certain benefits shall not be denied under certain circumstances; providing for the  
 13 abrogation of this Act; and generally relating to eligibility for compensation or  
 14 benefits under workers' compensation law.

15 BY repealing and reenacting, with amendments,

16 Article - Labor and Employment

17 Section 9-506

18 Annotated Code of Maryland

19 (1991 Volume and 1996 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

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1 **Article - Labor and Employment**

2 9-506.

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

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

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

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

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

13 (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;  
14 or

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

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

19 (c) 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 an accidental personal injury,  
21 compensable hernia, or occupational disease if the accidental personal injury,  
22 compensable hernia, or occupational disease was caused solely by the intoxication of the  
23 covered employee while on duty.

24 ~~(D) EXCEPT FOR MEDICAL BENEFITS UNDER §§ 9-660 AND 9-661 OF THIS TITLE,~~  
25 ~~A COVERED EMPLOYEE OR DEPENDENT OF A COVERED EMPLOYEE IS NOT~~  
26 ~~ENTITLED TO COMPENSATION OR BENEFITS UNDER THIS TITLE AS A RESULT OF AN~~  
27 ~~ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL~~  
28 ~~DISEASE, IF THE PRIMARY CAUSE OF THE ACCIDENTAL PERSONAL INJURY,~~  
29 ~~COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE WAS:~~

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

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

35 ~~(3) the effect on the covered employee of another drug that was not~~  
36 ~~administered or taken in accordance with the prescription of a physician and that makes~~  
37 ~~the covered employee incapable of satisfactory job performance.~~

38 (D) (1) IN THIS SUBSECTION, "PRIMARY CAUSE" MEANS THE CAUSE THAT IS  
39 FIRST IN IMPORTANCE.

1                   (2) THE PROVISIONS OF THIS SUBSECTION SHALL APPLY ONLY TO AN  
2 EMPLOYER THAT:

3                   (I) OFFERS AN ALCOHOL-FREE AND DRUG-FREE WORKPLACE  
4 PROGRAM:

5                               1. BEFORE OCTOBER 1, 1997; OR

6                               2. ON OR AFTER OCTOBER 1, 1997 THAT COMPLIES WITH THE  
7 GUIDELINES FOR AN ALCOHOL-FREE AND DRUG-FREE WORKPLACE PROGRAM  
8 ESTABLISHED BY THE MARYLAND CENTER FOR WORKPLACE SAFETY AND HEALTH;

9                   (II) REQUIRES EACH COVERED EMPLOYEE TO SIGN AN  
10 AGREEMENT, AFTER COMPLETION OF A DRUG AND ALCOHOL EDUCATION  
11 PROGRAM DEVELOPED IN CONJUNCTION WITH THE MARYLAND CENTER FOR  
12 WORKPLACE SAFETY AND HEALTH, THAT REFLECTS THE EMPLOYEE'S  
13 UNDERSTANDING THAT THE EMPLOYEE WILL BE DENIED COMPENSATION OR  
14 BENEFITS AS PROVIDED UNDER PARAGRAPHS (3) AND (4) OF THIS SUBSECTION IF  
15 THE INTOXICATION OF THE EMPLOYEE OR THE EFFECT OF A CONTROLLED  
16 DANGEROUS SUBSTANCE ON THE EMPLOYEE IS FOUND TO BE THE PRIMARY CAUSE  
17 OF AN ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL  
18 DISEASE; AND

19                   (III) OBTAINS A CERTIFICATION FROM THE COMMISSION THAT THE  
20 PLACE OF EMPLOYMENT IS A DRUG-FREE WORKPLACE.

21                   (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
22 PARAGRAPH, A COVERED EMPLOYEE OR DEPENDENT OF A COVERED EMPLOYEE IS  
23 NOT ENTITLED TO COMPENSATION OR BENEFITS UNDER THIS TITLE, EXCEPT FOR  
24 PAYMENT OF WAGES UNDER §§ 9-615 AND 9-621 OF THIS TITLE AND MEDICAL  
25 BENEFITS UNDER §§ 9-660 AND 9-661 OF THIS TITLE, AS A RESULT OF AN ACCIDENTAL  
26 PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE, IF THE  
27 PRIMARY CAUSE OF THE ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA,  
28 OR OCCUPATIONAL DISEASE WAS THE EFFECT ON THE COVERED EMPLOYEE OF A  
29 CONTROLLED DANGEROUS SUBSTANCE DEFINED OR LISTED UNDER ARTICLE 27, §§  
30 277 OR 279 OF THE CODE.

31                   (II) COMPENSATION OR BENEFITS SHALL NOT BE DENIED UNDER  
32 SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THE CONTROLLED DANGEROUS  
33 SUBSTANCE WAS ADMINISTERED, TAKEN, OR USED IN ACCORDANCE WITH THE  
34 PRESCRIPTION OF A PHYSICIAN AND THE ADMINISTERING, TAKING, OR USE OF THE  
35 CONTROLLED DANGEROUS SUBSTANCE WAS NOT EXCESSIVE OR ABUSIVE.

36                   (4) EXCEPT FOR PAYMENT OF WAGES UNDER §§ 9-615 AND 9-621 OF THIS  
37 TITLE AND MEDICAL BENEFITS UNDER §§ 9-660 AND 9-661 OF THIS TITLE, A COVERED  
38 EMPLOYEE OR DEPENDENT OF A COVERED EMPLOYEE IS NOT ENTITLED TO  
39 COMPENSATION OR BENEFITS UNDER THIS TITLE AS A RESULT OF AN ACCIDENTAL  
40 PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE, IF THE  
41 PRIMARY CAUSE OF THE ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA,  
42 OR OCCUPATIONAL DISEASE WAS THE INTOXICATION OF THE COVERED EMPLOYEE  
43 WHILE ON DUTY.

1                   (5) A CERTIFICATION FROM THE COMMISSION OBTAINED UNDER  
2 PARAGRAPH (1)(III) OF THIS SUBSECTION SHALL BE REVOKED AND MAY NOT BE  
3 REISSUED FOR A PERIOD OF 1 YEAR FROM THE REVOCATION IF THE PRIMARY  
4 CAUSE OF AN ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR  
5 OCCUPATIONAL DISEASE OF AN EMPLOYEE WAS:

6                   (I) THE INTOXICATION OF THE EMPLOYER WHILE ON DUTY;

7                   (II) THE EFFECT ON THE EMPLOYER OF A DEPRESSANT,  
8 HALLUCINOGENIC, HYPNOTIC, NARCOTIC, OR STIMULANT DRUG THAT WAS NOT  
9 ADMINISTERED OR TAKEN IN ACCORDANCE WITH THE PRESCRIPTION OF A  
10 PHYSICIAN; OR

11                   (III) THE EFFECT ON THE EMPLOYER OF ANOTHER DRUG THAT  
12 WAS NOT ADMINISTERED OR TAKEN IN ACCORDANCE WITH THE PRESCRIPTION OF  
13 A PHYSICIAN AND THAT MAKES THE EMPLOYER INCAPABLE OF SATISFACTORY JOB  
14 PERFORMANCE.

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

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

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

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

26                           (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;  
27 or

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

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

32           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 1997. It shall remain effective for a period of 4 years and, at the end of  
34 September 30, 2001, with no further action required by the General Assembly, this Act  
35 shall be abrogated and of no further force and effect.

