
By: **Delegates Exum and Pendergrass**
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Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Personal Responsibility Act of 1998**

3 FOR the purpose of establishing that, under certain circumstances, a covered
4 employee or a dependent of a covered employee is not entitled to certain
5 compensation or benefits under the workers' compensation law if the primary
6 cause of an accidental personal injury, compensable hernia, or occupational
7 disease was the effect on the employee of intoxication or a certain controlled
8 dangerous substance; authorizing use of the primary cause standard under
9 certain specified circumstances; providing for a certain workplace program
10 under certain guidelines; providing that in a proceeding on a certain claim there
11 is a certain presumption, absent substantial evidence to the contrary; providing
12 that certain benefits may not be denied under certain circumstances; providing
13 that, in addition to bringing a workers' compensation claim, a covered employee
14 may bring an action for damages against the employer of the covered employee
15 if the covered employee has certain permanent partial disability that was the
16 result of a violation of an occupational safety and health standard or failure to
17 comply with a citation, notice, order, injunction, or temporary restraining order
18 issued under the Maryland Occupational Safety and Health Act; defining a
19 certain term; and generally relating to responsibilities of employers and
20 employees under the workers' compensation law.

21 BY repealing and reenacting, with amendments,
22 Article - Labor and Employment
23 Section 9-506 and 9-509
24 Annotated Code of Maryland
25 (1991 Volume and 1997 Supplement)

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

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
14 drug; or15 (ii) another drug that makes the covered employee incapable of
16 satisfactory job performance; and17 (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
23 the covered employee while on duty.24 (D) (1) IN THIS SUBSECTION, "PRIMARY CAUSE" MEANS THE CAUSE THAT IS
25 FIRST IN IMPORTANCE.26 (2) THE PROVISIONS OF THIS SUBSECTION SHALL APPLY ONLY TO AN
27 EMPLOYER THAT:28 (I) OFFERS AN ALCOHOL-FREE AND DRUG-FREE WORKPLACE
29 PROGRAM:

30 1. BEFORE OCTOBER 1, 1998; OR

31 2. ON OR AFTER OCTOBER 1, 1998 THAT COMPLIES WITH THE
32 GUIDELINES FOR AN ALCOHOL-FREE AND DRUG-FREE WORKPLACE PROGRAM
33 APPROVED BY THE COMMISSION; AND34 (II) REQUIRES EACH COVERED EMPLOYEE TO SIGN AN
35 AGREEMENT, AFTER COMPLETION OF AN APPROVED DRUG AND ALCOHOL

1 EDUCATION PROGRAM, THAT REFLECTS THE EMPLOYEE'S UNDERSTANDING THAT
2 THE EMPLOYEE WILL BE DENIED COMPENSATION OR BENEFITS AS PROVIDED
3 UNDER PARAGRAPHS (3) AND (4) OF THIS SUBSECTION IF THE INTOXICATION OF THE
4 EMPLOYEE OR THE EFFECT OF A CONTROLLED DANGEROUS SUBSTANCE ON THE
5 EMPLOYEE IS FOUND TO BE THE PRIMARY CAUSE OF AN ACCIDENTAL PERSONAL
6 INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE.

7 (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
8 PARAGRAPH, A COVERED EMPLOYEE OR DEPENDENT OF A COVERED EMPLOYEE IS
9 NOT ENTITLED TO COMPENSATION OR BENEFITS UNDER THIS TITLE, EXCEPT FOR
10 PAYMENT OF WAGES AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH AND
11 MEDICAL BENEFITS UNDER §§ 9-660 AND 9-661 OF THIS TITLE, AS A RESULT OF AN
12 ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL
13 DISEASE, IF THE PRIMARY CAUSE OF THE ACCIDENTAL PERSONAL INJURY,
14 COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE WAS THE EFFECT ON THE
15 COVERED EMPLOYEE OF A CONTROLLED DANGEROUS SUBSTANCE DEFINED OR
16 LISTED UNDER ARTICLE 27, §§ 277 OR 279 OF THE CODE.

17 (II) COMPENSATION OR BENEFITS MAY NOT BE DENIED UNDER
18 SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THE CONTROLLED DANGEROUS
19 SUBSTANCE WAS ADMINISTERED, TAKEN, OR USED IN ACCORDANCE WITH THE
20 PRESCRIPTION OF A PHYSICIAN AND THE ADMINISTERING, TAKING, OR USE OF THE
21 CONTROLLED DANGEROUS SUBSTANCE WAS NOT EXCESSIVE OR ABUSIVE.

22 (III) IF A COVERED EMPLOYEE REQUESTS AN EMERGENCY HEARING
23 WITHIN 10 DAYS AFTER THE ACCIDENTAL PERSONAL INJURY AND THE COMMISSION
24 DETERMINES, BASED ON THE REQUEST, THAT THE LOSS OF TEMPORARY BENEFITS
25 WOULD CREATE A SUBSTANTIAL HARDSHIP ON THE EMPLOYEE, THE EMPLOYEE IS
26 ENTITLED TO PAYMENT OF WAGES UNDER §§ 9-615 AND 9-621 OF THIS TITLE UNTIL
27 THE COMMISSION HOLDS A HEARING AND MAKES A FINAL DETERMINATION.

28 (4) (I) EXCEPT FOR PAYMENT OF WAGES AS PROVIDED IN
29 SUBPARAGRAPH (II) OF THIS PARAGRAPH AND MEDICAL BENEFITS UNDER §§ 9-660
30 AND 9-661 OF THIS TITLE, A COVERED EMPLOYEE OR DEPENDENT OF A COVERED
31 EMPLOYEE IS NOT ENTITLED TO COMPENSATION OR BENEFITS UNDER THIS TITLE
32 AS A RESULT OF AN ACCIDENTAL PERSONAL INJURY, COMPENSABLE HERNIA, OR
33 OCCUPATIONAL DISEASE, IF THE PRIMARY CAUSE OF THE ACCIDENTAL PERSONAL
34 INJURY, COMPENSABLE HERNIA, OR OCCUPATIONAL DISEASE WAS THE
35 INTOXICATION OF THE COVERED EMPLOYEE WHILE ON DUTY.

36 (II) IF A COVERED EMPLOYEE REQUESTS AN EMERGENCY HEARING
37 WITHIN 10 DAYS AFTER THE ACCIDENTAL PERSONAL INJURY AND THE COMMISSION
38 DETERMINES, BASED ON THE REQUEST, THAT THE LOSS OF TEMPORARY BENEFITS
39 WOULD CREATE A SUBSTANTIAL HARDSHIP ON THE EMPLOYEE, THE EMPLOYEE IS
40 ENTITLED TO PAYMENT OF WAGES UNDER §§ 9-615 AND 9-621 OF THIS TITLE UNTIL
41 THE COMMISSION HOLDS A HEARING AND MAKES A FINAL DETERMINATION.

42 [(d)] (E) A covered employee or a dependent of a covered employee is not
43 entitled to compensation or benefits under this title as a result of an accidental

1 personal injury, compensable hernia, or occupational disease if the accidental
2 personal injury, compensable hernia, or occupational disease was caused by the
3 willful misconduct of the covered employee.

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

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

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

10 (i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant
11 drug; or

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

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

16 9-509.

17 (a) Except as otherwise provided in this title, the liability of an employer
18 under this title is exclusive.

19 (b) Except as otherwise provided in this title, the compensation provided
20 under this title to a covered employee or the dependents of a covered employee is in
21 place of any right of action against any person.

22 (c) (1) If an employer fails to secure compensation in accordance with this
23 title, a covered employee who has sustained an accidental personal injury,
24 compensable hernia, or occupational disease or, in case of death, the personal
25 representative of the covered employee may:

26 (i) bring a claim for compensation under this title; or

27 (ii) bring an action for damages.

28 (2) In an action of a covered employee or personal representative under
29 this subsection, an employer may not plead as a defense that:

30 (i) the covered employee assumed the risk of employment;

31 (ii) the covered employee was contributorily negligent; or

32 (iii) the negligence of a fellow servant caused the accidental
33 personal injury, compensable hernia, or occupational disease.

1 (d) If a covered employee is injured or killed as the result of the deliberate
2 intent of the employer to injure or kill the covered employee, the covered employee or,
3 in the case of death, a surviving spouse, child, or dependent of the covered employee
4 may:

5 (1) bring a claim for compensation under this title; or

6 (2) bring an action for damages against the employer.

7 (E) IN ADDITION TO BRINGING A CLAIM FOR COMPENSATION UNDER THIS
8 TITLE, A COVERED EMPLOYEE OR, IN THE CASE OF DEATH, A SURVIVING SPOUSE,
9 CHILD, OR DEPENDENT OF THE COVERED EMPLOYEE, MAY BRING AN ACTION FOR
10 DAMAGES AGAINST THE EMPLOYER OF THE COVERED EMPLOYEE IF:

11 (1) THE COVERED EMPLOYEE HAS A PERMANENT PARTIAL DISABILITY
12 DUE TO AN ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE;

13 (2) THE PERMANENT PARTIAL DISABILITY EQUALS A 25% OR GREATER
14 LOSS OF A FINGER, TOE, HAND, FOOT, ARM, LEG, OR THE BODY AS A WHOLE; AND

15 (3) THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE
16 THAT CAUSED THE DISABILITY WAS THE RESULT OF:

17 (I) A VIOLATION OF AN OCCUPATIONAL SAFETY AND HEALTH
18 STANDARD ADOPTED BY THE COMMISSIONER OF LABOR AND INDUSTRY UNDER
19 TITLE 5 OF THIS ARTICLE;

20 (II) A FAILURE TO COMPLY WITH A CITATION OR A NOTICE
21 PROHIBITING USE OF AN APPARATUS ISSUED TO THE EMPLOYER BY THE
22 COMMISSIONER OF LABOR AND INDUSTRY OR AN AUTHORIZED REPRESENTATIVE OF
23 THE COMMISSIONER UNDER TITLE 5 OF THIS ARTICLE;

24 (III) A FAILURE TO COMPLY WITH AN ORDER PASSED BY THE
25 COMMISSIONER OF LABOR AND INDUSTRY UNDER TITLE 5 OF THIS ARTICLE; OR

26 (IV) A FAILURE TO COMPLY WITH AN INJUNCTION OR TEMPORARY
27 RESTRAINING ORDER ISSUED BY A CIRCUIT COURT UNDER TITLE 5 OF THIS ARTICLE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect October 1, 1998.