
By: **Delegate Love**
Introduced and read first time: February 11, 2000
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 2000

CHAPTER _____

1 AN ACT concerning

2 **Workers' Compensation - Calculation of Hearing Loss**

3 FOR the purpose of requiring the calculation of hearing loss for workers'
4 compensation to be measured by certain criteria; requiring the measurements to
5 be conducted in a sound room that meets certain criteria; increasing the
6 threshold of hearing for certain frequencies; ~~requiring the Maryland Academy of~~
7 ~~Audiology to develop certain materials for certain businesses to promote their~~
8 ~~awareness of legislative changes; altering the levels of hearing loss for which~~
9 ~~certain employers must provide certain compensation;~~ and generally relating to
10 the calculation of hearing loss in workers' compensation.

11 BY repealing and reenacting, with amendments,
12 Article - Labor and Employment
13 Section 9-505 and 9-650
14 Annotated Code of Maryland
15 (1999 Replacement Volume)

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

18 **Article - Labor and Employment**

19 9-505.

20 (a) Except as otherwise provided, an employer shall provide compensation in
21 accordance with this title to a covered employee for loss of hearing by the covered
22 employee due to industrial noise in the frequencies of 500, 1,000, [and] 2,000, AND
23 3,000 HERTZ [cycles per second].

1 (b) An employer is not liable for compensation for occupational deafness under
 2 subsection (a) of this section unless the covered employee claiming benefits worked
 3 for the employer in employment that exposed the covered employee to harmful noise
 4 for at least 90 days.

5 9-650.

6 (a) (1) Hearing loss shall be measured by [pure tone air conduction
 7 audiometric instruments approved by nationally recognized authorities in the field of
 8 hearing loss.] ~~AN AUDIOLOGIST UTILIZING~~ AUDIOMETRIC INSTRUMENTATION THAT
 9 MEETS THE FOLLOWING CRITERIA:

10 (I) ANSI 3.6-1996;

11 (II) ANSI S3.43-1992; AND

12 (III) ANSI 3.39-1987 OR ANY ANSI STANDARD THAT SUPERSEDES THE
 13 PREVIOUS CALIBRATION OR MEASUREMENT CRITERIA.

14 (2) MEASUREMENTS SHALL BE CONDUCTED IN A SOUND ROOM THAT
 15 MEETS THE ANSI 3.1-1991 CRITERIA FOR MAXIMUM PERMISSIBLE AMBIENT NOISE
 16 FOR AUDIOMETRIC TEST ROOMS.

17 (3) BEHAVIORAL PSYCHOACOUSTIC MEASUREMENTS WILL BE
 18 OBTAINED WITH INSTRUMENTATION THAT UTILIZES INSERT EARPHONES, AS
 19 REFERENCED IN ANSI 3.6-1996.

20 (4) ~~AN AUDIOLOGIST MAY OBTAIN~~ ELECTRODIAGNOSTIC
 21 MEASUREMENTS SUCH AS AUDITORY EVOKED POTENTIALS, ACOUSTIC EMITTANCE
 22 MEASUREMENTS, OR DISTORTION PRODUCT OTOACOUSTIC EMISSIONS MAY BE
 23 OBTAINED TO DETERMINE THE NATURE AND EXTENT OF WORKPLACE HEARING
 24 LOSS.

25 (5) ~~AN AUDIOLOGIST OR PHYSICIAN SHALL USE~~ AUDIOLOGIC RESULTS
 26 SHALL BE USED IN CONJUNCTION WITH OTHER INFORMATION TO EVALUATE A
 27 CLAIMANT'S COMPENSABLE HEARING LOSS.

28 (b) (1) The percentage of hearing loss for purposes of compensation for
 29 occupational deafness shall be determined by calculating the average, in decibels, of
 30 the thresholds of hearing for the frequencies of 500, 1,000, [and] 2,000, AND 3,000
 31 HERTZ [cycles per second] in accordance with [paragraphs] PARAGRAPH (2) [and
 32 (3)] of this subsection.

33 (2) The average of the thresholds in hearing shall be calculated by:

34 (i) adding together the lowest measured losses in each of the [3] 4
 35 frequencies; and

36 (ii) dividing the total by [3] 4.

1 {(3) To allow for the average amount of hearing loss from nonoccupational
2 causes found in the population at any given age, there shall be deducted from the
3 total average decibel loss determined under paragraphs (1) and (2) of this subsection
4 one-half of a decibel for each year of the covered employee's age over 40 at the time of
5 the last exposure to industrial noise.}

6 (c) (1) If the average hearing loss in the [3] 4 frequencies determined under
7 subsection (b) of this section is [15] 25 decibels or less, the covered employee does not
8 have a compensable hearing loss.

9 (2) If the average hearing loss in the [3] 4 frequencies determined under
10 subsection (b) of this section is [82] 91.7 decibels or more, the covered employee has a
11 100% compensable hearing loss.

12 (3) For every decibel that the average hearing loss exceeds [15] 25
13 decibels, the covered employee shall be allowed 1.5% of the compensable hearing loss,
14 up to a maximum of 100% compensable hearing loss at [82] 91.7 decibels.

15 (d) The binaural percentage of hearing loss shall be determined by:

16 (1) multiplying the percentage of hearing loss in the better ear by 5;

17 (2) adding that product to the percentage of hearing loss in the poorer
18 ear; and

19 (3) dividing that sum by 6.

20 (e) (1) In determining the percentage of hearing loss under this section,
21 consideration may not be given to whether the use of [a hearing aid] AN
22 AMPLIFICATION DEVICE improves the ability of a covered employee to understand
23 speech OR ENHANCE BEHAVIORAL HEARING THRESHOLDS.

24 (2) (I) IN DETERMINING A WORKERS' COMPENSATION COMPLAINT
25 FOR NOISE-RELATED HEARING LOSS, AUDIOLOGIC DATA SHALL USE BOTH BONE
26 CONDUCTION AND AIR CONDUCTION RESULTS.

27 (II) IF A CONDUCTIVE LOSS IS PRESENT, THE BONE CONDUCTION
28 THRESHOLDS FOR EACH EAR, RATHER THAN THE AIR CONDUCTION LEVELS, SHALL
29 BE USED TO CALCULATE A CLAIMANT'S AVERAGE HEARING LOSS.

30 ~~SECTION 2. AND BE IT FURTHER ENACTED, That, in conjunction with~~
31 ~~interested business entities, the Maryland Academy of Audiology shall develop a plan~~
32 ~~to reach the small business community and encourage the initiation of hearing~~
33 ~~conservation programs which include early employment hearing assessments and~~
34 ~~other currently available preventive measures. The Maryland Academy of Audiology~~
35 ~~will participate in developing educational materials to be disseminated to these~~
36 ~~businesses in order to promote their awareness of the legislative changes.~~

37 SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
38 effect October 1, 2000.

