

SENATE BILL 179

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2000 Regular Session  
(01r1294)

**ENROLLED BILL**  
-- Finance/Economic Matters --

Introduced by **Senator Hafer**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

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; *altering the levels of hearing loss for*  
7 *which certain employers must provide certain compensation*; and generally  
8 relating to the calculation of hearing loss in workers' compensation.

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

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

1 **Article - Labor and Employment**2 9-505.

3 (a) Except as otherwise provided, an employer shall provide compensation in  
 4 accordance with this title to a covered employee for loss of hearing by the covered  
 5 employee due to industrial noise in the frequencies of 500, 1,000, [and] 2,000, AND  
 6 3,000 HERTZ [cycles per second].

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

11 9-650.

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

16 (I) ANSI 3.6-1996;

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

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

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

23 ~~(3) AN AUDIOLOGIST MAY OBTAIN:~~

24 ~~(4) BEHAVIORAL PSYCHOACOUSTIC MEASUREMENTS WITH~~  
 25 ~~INSTRUMENTATION THAT USES INSERT EARPHONES, REFERENCED IN ANSI 3.6-1996.~~

26 ~~(H) ELECTRODIAGNOSTIC MEASUREMENTS SUCH AS AUDITORY~~  
 27 ~~EVOKED POTENTIALS OR DISTORTION PRODUCT OTOACOUSTIC EMISSIONS TO~~  
 28 ~~DETERMINE THE NATURE AND EXTENT OF WORKPLACE HEARING LOSS.~~

29 (3) BEHAVIORAL PSYCHOACOUSTIC MEASUREMENTS SHALL BE  
 30 OBTAINED WITH INSTRUMENTATION THAT UTILIZES INSERT EARPHONES, AS  
 31 REFERENCED IN ANSI 3.6-1996.

32 (4) AN AUDIOLOGIST MAY OBTAIN ELECTRODIAGNOSTIC  
 33 MEASUREMENTS SUCH AS AUDITORY EVOKED POTENTIALS, ACOUSTIC EMITTANCE  
 34 MEASUREMENTS, OR DISTORTION PRODUCT OTOACOUSTIC EMISSIONS MAY BE  
 35 OBTAINED TO DETERMINE THE NATURE AND EXTENT OF WORKPLACE HEARING  
 36 LOSS.

1           (4)   (5)   ~~IN ACCORDANCE WITH THEIR SCOPES OF PRACTICES AS~~  
 2 ~~DEFINED IN THE HEALTH OCCUPATIONS ARTICLE, AN AUDIOLOGIST OR PHYSICIAN~~  
 3 ~~SHALL USE~~ AUDIOLOGIC RESULTS ~~SHALL BE USED~~ IN CONJUNCTION WITH ~~OTHER~~  
 4 ~~INFORMATION~~ ~~OTHER INFORMATION~~ ~~MEDICAL DATA FROM THE PHYSICIAN'S~~  
 5 ~~HISTORY, PHYSICAL, AND LABORATORY TESTS~~ TO EVALUATE A CLAIMANT'S  
 6 COMPENSABLE HEARING LOSS.

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

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

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

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

16           {(3)   To allow for the average amount of hearing loss from nonoccupational  
 17 causes found in the population at any given age, there shall be deducted from the  
 18 total average decibel loss determined under paragraphs (1) and (2) of this subsection  
 19 one-half of a decibel for each year of the covered employee's age over 40 50 at the time  
 20 of the last exposure to industrial noise.}

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

24           (2)   If the average hearing loss in the [3] 4 frequencies determined under  
 25 subsection (b) of this section is [82] 91.7 decibels or more, the covered employee has a  
 26 100% compensable hearing loss.

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

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

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

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

34                   (3)   dividing that sum by 6.

35           (e)   (1)   In determining the percentage of hearing loss under this section,  
 36 consideration may not be given to whether the use of [a hearing aid] AN

1 AMPLIFICATION DEVICE improves the ability of a covered employee to understand  
2 speech OR ENHANCE BEHAVIORAL HEARING THRESHOLDS.

3 (2) (I) IN DETERMINING A WORKERS' COMPENSATION ~~COMPLAINT~~  
4 ~~CLAIM FOR NOISE-RELATED~~ NOISE-RELATED HEARING LOSS, AUDIOLOGIC DATA  
5 ~~MUST UTILIZE~~ SHALL USE BOTH BONE CONDUCTION AND AIR CONDUCTION  
6 RESULTS.

7 (II) IF A CONDUCTIVE LOSS IS PRESENT, THE BONE CONDUCTION  
8 THRESHOLDS FOR EACH EAR, RATHER THAN THE AIR CONDUCTION LEVELS, ~~SHOULD~~  
9 ~~SHALL BE UTILIZED~~ USED TO CALCULATE A CLAIMANT'S AVERAGE HEARING LOSS.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2000.