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By: **Senators DeGrange, Teitelbaum, Currie, Astle, Hafer, and Della**  
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Assigned to: Finance

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Committee Report: Favorable with amendments  
Senate action: Adopted  
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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2                                   **Workers' Compensation - ~~Occupational Disease~~ Award Modification -**  
3                                   **Compensation for Certain ~~Contagious Diseases~~ Viral Hepatitis**

4 FOR the purpose of providing that ~~human immunodeficiency virus, meningococcal~~  
5 ~~meningitis, tuberculosis, mononucleosis, liver cancer, any form of viral hepatitis,~~  
6 ~~diphtheria, hemorrhagic fevers, and rabies are to be considered inherent to the~~  
7 ~~nature of employment under the State workers' compensation laws for certain~~  
8 ~~fire or safety personnel; creating a presumption as to the potential of developing~~  
9 ~~a compensable occupational disease for those personnel who are exposed to one~~  
10 ~~of the listed diseases; providing that an individual filing a claim under this Act~~  
11 ~~has the burden of proving that the exposure occurred, upon termination of a~~  
12 ~~certain time limitation, certain emergency response persons who have a~~  
13 ~~compensable accidental injury based on a certain exposure to certain viral~~  
14 ~~hepatitis may apply for a modification of an award within a certain time;~~  
15 ~~defining a certain term; and generally relating to claims for certain diseases~~  
16 ~~viral hepatitis~~ under the State workers' compensation laws.

17 BY repealing and reenacting, ~~without~~ with amendments,  
18 Article - Labor and Employment  
19 Section ~~9-502~~ 9-736  
20 Annotated Code of Maryland  
21 (1999 Replacement Volume)

22 ~~BY adding to~~  
23 ~~Article - Labor and Employment~~  
24 ~~Section 9-503.1~~  
25 ~~Annotated Code of Maryland~~

1 (~~1999 Replacement Volume~~)

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

4 **Article - Labor and Employment**

5 ~~9-502.~~

6 (a) ~~In this section, "disablement" means the event of a covered employee~~  
7 ~~becoming partially or totally incapacitated:~~

8 (1) ~~because of an occupational disease; and~~

9 (2) ~~from performing the work of the covered employee in the last~~  
10 ~~occupation in which the covered employee was injuriously exposed to the hazards of~~  
11 ~~the occupational disease.~~

12 (b) ~~Subsection (c) of this section applies only to:~~

13 (1) ~~the employer in whose employment the covered employee was last~~  
14 ~~injuriously exposed to the hazards of the occupational disease; and~~

15 (2) ~~the insurer liable for the risk when the covered employee, while~~  
16 ~~employed by the employer, was last injuriously exposed to the hazards of the~~  
17 ~~occupational disease.~~

18 (c) ~~Subject to subsection (d) of this section and except as otherwise provided,~~  
19 ~~an employer and insurer to whom this subsection applies shall provide compensation~~  
20 ~~in accordance with this title to:~~

21 (1) ~~a covered employee of the employer for disability of the covered~~  
22 ~~employee resulting from an occupational disease; or~~

23 (2) ~~the dependents of the covered employee for death of the covered~~  
24 ~~employee resulting from an occupational disease.~~

25 (d) ~~An employer and insurer are liable to provide compensation under~~  
26 ~~subsection (c) of this section only if:~~

27 (1) ~~the occupational disease that caused the death or disability:~~

28 (i) ~~is due to the nature of an employment in which hazards of the~~  
29 ~~occupational disease exist and the covered employee was employed before the date of~~  
30 ~~disablement; or~~

31 (ii) ~~has manifestations that are consistent with those known to~~  
32 ~~result from exposure to a biological, chemical, or physical agent that is attributable to~~  
33 ~~the type of employment in which the covered employee was employed before the date~~  
34 ~~of disablement; and~~

1 (2) on the weight of the evidence, it reasonably may be concluded that  
2 the occupational disease was incurred as a result of the employment of the covered  
3 employee.

4 (e) A covered employee or a dependent of the covered employee is not entitled  
5 to compensation for a disability or death that results from an occupational disease if,  
6 when the covered employee began employment with the employer, the covered  
7 employee falsely represented in writing that the covered employee had not been  
8 disabled, laid off, or compensated in damages or otherwise, due to the occupational  
9 disease for which the covered employee or dependent is seeking compensation.

10 9-503.1.

11 (A) IN THIS SECTION, THE TERM "ANY FORM OF VIRAL HEPATITIS" INCLUDES  
12 THE FORMS HEPATITIS A, HEPATITIS B, HEPATITIS C, HEPATITIS D, HEPATITIS E,  
13 HEPATITIS F, AND HEPATITIS G.

14 (B) NOTWITHSTANDING § 9-502 OF THIS SUBTITLE, THE HAZARDS OF  
15 EXPOSURE TO HUMAN IMMUNODEFICIENCY VIRUS (HIV), MENINGOCOCCAL  
16 MENINGITIS, TUBERCULOSIS, MONONUCLEOSIS, LIVER CANCER, ANY FORM OF VIRAL  
17 HEPATITIS, DIPHTHERIA, HEMORRHAGIC FEVERS, AND HYDROPHOBIA (RABIES)  
18 EXIST AND ARE INHERENT TO THE NATURE OF EMPLOYMENT FOR THE FOLLOWING  
19 INDIVIDUALS:

20 (1) A PAID FIREFIGHTER;

21 (2) A PAID FIRE FIGHTING INSTRUCTOR;

22 (3) A SWORN MEMBER OF THE OFFICE OF THE STATE FIRE MARSHAL  
23 EMPLOYED BY:

24 (I) AN AIRPORT AUTHORITY;

25 (II) A COUNTY;

26 (III) A FIRE CONTROL DISTRICT;

27 (IV) A MUNICIPALITY; OR

28 (V) THE STATE; OR

29 (4) ANY OF THE FOLLOWING INDIVIDUALS WHO QUALIFY AS A COVERED  
30 EMPLOYEE UNDER § 9-234 OF THIS TITLE:

31 (I) A VOLUNTEER FIREFIGHTER;

32 (II) A VOLUNTEER FIRE FIGHTING INSTRUCTOR;

33 (III) A VOLUNTEER RESCUE SQUAD MEMBER; OR

34 (IV) A VOLUNTEER ADVANCED SUPPORT UNIT MEMBER.

~~1 (C) (1) AN INDIVIDUAL LISTED IN SUBSECTION (B) OF THIS SECTION WHO IS  
2 EXPOSED ONE OR MORE TIMES TO A DISEASE LISTED IN SUBSECTION (B) OF THIS  
3 SECTION SHALL BE PRESUMED TO HAVE THE POTENTIAL OF DEVELOPING A  
4 COMPENSABLE OCCUPATIONAL DISEASE.~~

~~5 (2) AN INDIVIDUAL FILING A CLAIM FOR COMPENSATION FOR AN  
6 OCCUPATIONAL DISEASE UNDER THIS SECTION SHALL HAVE THE BURDEN OF  
7 DEMONSTRATING ONE OR MORE OCCUPATIONAL EXPOSURES TO THE DISEASE  
8 INCURRED.~~

9 9-736.

10 (a) If aggravation, diminution, or termination of disability takes place or is  
11 discovered after the rate of compensation is set or compensation is terminated, the  
12 Commission, on the application of any party in interest or on its own motion, may:

13 (1) readjust for future application the rate of compensation; or

14 (2) if appropriate, terminate the payments.

15 (b) (1) The Commission has continuing powers and jurisdiction over each  
16 claim under this title.

17 (2) Subject to paragraph (3) of this subsection, the Commission may  
18 modify any finding or order as the Commission considers justified.

19 (3) Except as provided in [subsection] SUBSECTIONS (c) AND (D) of this  
20 section, the Commission may not modify an award unless the modification is applied  
21 for within 5 years after the last compensation payment.

22 (c) (1) If it is established that a party failed to file an application for  
23 modification of an award because of fraud or facts and circumstances amounting to an  
24 estoppel, the party shall apply for modification of an award within 1 year after:

25 (i) the date of discovery of the fraud; or

26 (ii) the date when the facts and circumstances amounting to an  
27 estoppel ceased to operate.

28 (2) Failure to file an application for modification in accordance with  
29 paragraph (1) of this subsection bars modification under this title.

30 (D) (1) IN THIS SUBSECTION, "EMERGENCY RESPONSE PERSON" MEANS A  
31 PAID FIREFIGHTER, PAID FIRE FIGHTING INSTRUCTOR, PAID EMERGENCY MEDICAL  
32 SERVICES (EMS) PROVIDER, VOLUNTEER FIREFIGHTER, VOLUNTEER FIRE FIGHTING  
33 INSTRUCTOR, VOLUNTEER RESCUE SQUAD MEMBER, VOLUNTEER ADVANCED LIFE  
34 SUPPORT UNIT MEMBER, OR VOLUNTEER EMERGENCY MEDICAL SERVICES (EMS)  
35 PROVIDER.

1           (2)     UPON EXPIRATION OF THE TIME LIMITATION PROVIDED IN  
2 SUBSECTION (B) OF THIS SECTION, AN EMERGENCY RESPONSE PERSON WHO HAS A  
3 COMPENSABLE ACCIDENTAL INJURY BASED ON AN EXPOSURE TO ANY OF THE  
4 FORMS OF BLOOD BORNE VIRAL HEPATITIS, AS IDENTIFIED BY THE CENTERS FOR  
5 DISEASE CONTROL, THE EMERGENCY RESPONSE PERSON MAY APPLY FOR A  
6 MODIFICATION OF AN AWARD WITHIN 1 YEAR AFTER THE DATE WHEN THE FACTS  
7 AND CIRCUMSTANCES ARE SUCH THAT A REASONABLE PERSON WOULD HAVE  
8 KNOWN OR SHOULD HAVE KNOWN OF THE MANIFESTATION OF THE VIRAL  
9 CONDITION WHICH MAY BE CASUALLY RELATED TO THE EXPOSURE.

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