

# HOUSE BILL 1085

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CF SB 431

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By: **Delegates Schulz, Clagett, Frank, Glass, Hogan, Hough, McComas, and Wood**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Workers' Compensation – Emergency Responders – Revisions**

3 FOR the purpose of altering the definition of “on duty” in the workers’ compensation  
4 law to include the performance of certain duties assigned to certain individuals  
5 appointed as deputy sheriffs or members of a certain fire police unit; altering  
6 the definition of “volunteer company” to include a volunteer fire police unit;  
7 specifying that a certain yearly stipend to help offset out-of-pocket expenses  
8 that is paid to certain emergency responders may not be used when determining  
9 the average weekly wage of the members for workers’ compensation purposes;  
10 specifying that certain emergency responders who receive a certain membership  
11 benefit may not be considered employees for a certain purpose based on receipt  
12 of a certain membership benefit; and generally relating to workers’  
13 compensation for emergency responders.

14 BY repealing and reenacting, with amendments,  
15 Article – Labor and Employment  
16 Section 9–234 and 9–602(g)  
17 Annotated Code of Maryland  
18 (2008 Replacement Volume and 2011 Supplement)

19 BY repealing and reenacting, without amendments,  
20 Article – Labor and Employment  
21 Section 9–602(a)  
22 Annotated Code of Maryland

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2008 Replacement Volume and 2011 Supplement)

2 ~~BY adding to~~

3 ~~Article – Labor and Employment~~

4 ~~Section 9–604(e)~~

5 ~~Annotated Code of Maryland~~

6 ~~(2008 Replacement Volume and 2011 Supplement)~~

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

9 **Article – Labor and Employment**

10 9–234.

11 (a) (1) In this section the following words have the meanings indicated.

12 (2) (i) “On duty” means:

13 1. fighting a fire;

14 2. performing a duty of a member of an advanced life  
15 support unit or an ambulance, first aid, or rescue squad in a volunteer company;

16 3. except as provided in subparagraph (ii) of this  
17 paragraph, performing a duty that the volunteer company assigns to the member;

18 4. performing a duty that a written bylaw or rule of  
19 government adopted for the volunteer company assigns to the member;

20 5. going to or from performing a duty included under  
21 item 1, 2, 3, or 4 of this subparagraph;

22 6. accompanying an accident or fire victim while being  
23 transported to a hospital in a helicopter; [or]

24 7. returning to the home station of the individual after  
25 accompanying a victim under item 6 of this subparagraph;

26 **8. PERFORMING A DUTY ASSIGNED TO A MEMBER OF**  
27 **A FIRE COMPANY APPOINTED AS A DEPUTY SHERIFF UNDER § 7–302 OR § 7–303**  
28 **OF THE PUBLIC SAFETY ARTICLE; OR**

29 **9. PERFORMING A DUTY ASSIGNED TO AN**  
30 **INDIVIDUAL APPOINTED TO SERVE AS A MEMBER OF THE FIRE POLICE IN**  
31 **WASHINGTON COUNTY UNDER § 7–304 OF THE PUBLIC SAFETY ARTICLE.**

1 (ii) "On duty" does not include attendance of a member of a  
2 volunteer company at a social function unless a written bylaw or rule of government  
3 adopted for the volunteer company requires the attendance or participation of the  
4 member.

5 (3) "Volunteer company" means:

6 (i) a volunteer advanced life support unit;

7 (ii) a volunteer ambulance company or squad;

8 (iii) a volunteer fire company or department; ~~and~~

9 (iv) a volunteer rescue company, department, or squad; **AND**

10 **(V) A VOLUNTEER FIRE POLICE UNIT.**

11 (b) An individual who is a covered employee under subsection (h)(2), (k), (n),  
12 (o)(2), (p)(1)(ii), (r)(3), (v), or (x)(1) of this section continues to be a covered employee  
13 while:

14 (1) accompanying an accident or fire victim who is being transported  
15 to a hospital in a helicopter; and

16 (2) returning to the home station of the individual after accompanying  
17 a victim under item (1) of this subsection.

18 (c) (1) Unless an election is made under paragraph (2) of this subsection,  
19 a member of a volunteer company in Allegany County is not a covered employee.

20 (2) The Board of County Commissioners for Allegany County may  
21 provide by resolution for members of a volunteer company in the county to be covered  
22 employees while on duty.

23 (d) A member of a volunteer company in Anne Arundel County is a covered  
24 employee while on duty.

25 (e) A member of a volunteer company in Baltimore County is a covered  
26 employee while on duty.

27 (f) A member of a volunteer company in Calvert County is a covered  
28 employee while on duty.

29 (g) A member of a volunteer company in Caroline County is a covered  
30 employee while on duty.

1 (h) (1) Unless an election is made in accordance with this subsection, a  
2 member of a volunteer company in Carroll County is not a covered employee.

3 (2) A volunteer fire company in Carroll County may elect to make its  
4 members covered employees.

5 (3) A volunteer fire company that elects to make its members covered  
6 employees shall pay the premium for the coverage.

7 (i) (1) A member of a volunteer company in Cecil County who meets the  
8 guidelines set under paragraph (2) of this subsection is a covered employee while on  
9 duty.

10 (2) The Board of County Commissioners of Cecil County may set  
11 guidelines to determine the eligibility of members of a volunteer company in the  
12 county for coverage under this subsection.

13 (3) The guidelines under paragraph (2) of this subsection may not  
14 limit the number of covered employees in a volunteer company.

15 (j) (1) Unless an election is made in accordance with this subsection, a  
16 member of a volunteer company in Charles County is not a covered employee.

17 (2) The Board of County Commissioners of Charles County may  
18 provide by resolution for members of a volunteer company in the county to be covered  
19 employees while on duty.

20 (k) A member of a volunteer company in Dorchester County is a covered  
21 employee.

22 (l) A member of a volunteer company in Frederick County is a covered  
23 employee while on duty.

24 (m) (1) Unless an election is made under paragraph (2) of this subsection,  
25 a member of a volunteer company in Garrett County is not a covered employee.

26 (2) The Board of County Commissioners for Garrett County may  
27 provide by resolution for members of a volunteer company in the county to be covered  
28 employees while on duty.

29 (n) A member of a volunteer company in Harford County is a covered  
30 employee.

31 (o) An individual is a covered employee:

32 (1) while on duty as an actively participating member of a volunteer  
33 company in Howard County; or

1                   (2)    if not covered under item (1) of this subsection, while a member of  
2 a volunteer company in Howard County participating in the activities of the volunteer  
3 company.

4           (p)    (1)    An individual is a covered employee:

5                   (i)    while on duty as an actively participating member of a  
6 volunteer company in Kent County; or

7                   (ii)   if not covered under item (i) of this paragraph, while a  
8 member of a volunteer company in Kent County.

9                   (2)    The Board of County Commissioners of Kent County shall impose  
10 annually a tax on assessable property in the county in an amount that is sufficient to  
11 pay for coverage under this subsection.

12                  (3)    The Board of County Commissioners of Kent County may limit the  
13 number of members in a volunteer company in the county.

14           (q)    A member of a volunteer company in Montgomery County is a covered  
15 employee while on duty.

16           (r)    An individual is a covered employee:

17                   (1)    while on duty as a member of the Laurel volunteer rescue squad in  
18 Prince George's County; or

19                   (2)    while a member of a volunteer company in Prince George's County.

20           (s)    A member of a volunteer company in Queen Anne's County is a covered  
21 employee while on duty.

22           (t)    (1)    Unless an election is made under paragraph (2) of this subsection,  
23 a member of a volunteer company in St. Mary's County is not a covered employee.

24                   (2)    The Board of County Commissioners for St. Mary's County may  
25 provide by resolution for the members of a volunteer company in the county to be  
26 covered employees while on duty.

27           (u)    (1)    Unless an election is made under paragraph (2) of this subsection,  
28 a member of a volunteer company in Somerset County is not a covered employee.

29                   (2)    The Board of County Commissioners for Somerset County may  
30 provide by resolution for members of a volunteer company in the county to be covered  
31 employees while on duty.

1 (v) (1) A member of a volunteer company in Talbot County is a covered  
2 employee.

3 (2) The County Council of Talbot County may provide by resolution for  
4 members of a volunteer company in the county to be covered employees while on duty.

5 (w) (1) Unless an election is made under paragraph (2) of this subsection,  
6 a member of a volunteer company in Washington County is not a covered employee.

7 (2) The Board of County Commissioners for Washington County may  
8 provide by resolution for members of a volunteer company in the county to be covered  
9 employees while on duty.

10 (x) (1) A member of a volunteer company in Wicomico County is a covered  
11 employee.

12 (2) The County Council of Wicomico County may provide by resolution  
13 for members of a volunteer company in the county to be covered employees while on  
14 duty.

15 (y) (1) Unless an election is made under paragraph (2) of this subsection,  
16 a member of a volunteer company in Worcester County is not a covered employee.

17 (2) The Board of County Commissioners for Worcester County may  
18 provide by resolution for members of a volunteer company in the county to be covered  
19 employees while on duty.

20 (z) (1) For the purposes of this title, a member of a volunteer company  
21 who is a covered employee under this section is an employee of the political  
22 subdivision of the State where the volunteer company is organized.

23 (2) A member of a volunteer company shall be covered while on duty  
24 by a policy of workers' compensation insurance.

25 **(AA) A MEMBER OF A VOLUNTEER COMPANY WHO IS NOT A COVERED**  
26 **EMPLOYEE UNDER THIS SECTION MAY NOT OTHERWISE BE CONSIDERED A**  
27 **COVERED EMPLOYEE FOR RECEIVING AS A MEMBERSHIP BENEFIT A YEARLY**  
28 **STIPEND OF \$5,200 OR LESS TO HELP OFFSET OUT-OF-POCKET EXPENSES.**

29 9-602.

30 (a) (1) Except as otherwise provided in this section, the average weekly  
31 wage of a covered employee shall be computed by determining the average of the  
32 weekly wages of the covered employee:

33 (i) when the covered employee is working full time; and

1 (ii) at the time of:

2 1. the accidental personal injury; or

3 2. the last injurious exposure of the covered employee to  
4 the hazards of an occupational disease.

5 (2) For purposes of a computation under paragraph (1) of this  
6 subsection, wages shall include:

7 (i) tips; and

8 (ii) the reasonable value of housing, lodging, meals, rent, and  
9 other similar advantages that the covered employee received from the employer.

10 (3) If a covered employee establishes that, because of the age and  
11 experience of the covered employee at the time of the accidental personal injury or last  
12 injurious exposure to the hazards of the occupational disease, the wages of the covered  
13 employee could be expected to increase under normal circumstances, the expected  
14 increase may be taken into account when computing the average weekly wage of the  
15 covered employee under paragraph (1) of this subsection.

16 (g) **(1) [For] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR**  
17 the purpose of computing the average weekly wage of an individual who is a covered  
18 employee under § 9-234 of this title, the wages of the covered employee shall be:

19 **[(1)] (I)** for a covered employee who received a salary or wages from  
20 other employment at the time of the accidental personal injury or last injurious  
21 exposure, the salary or wages from the other employment; or

22 **[(2)] (II)** for a covered employee who did not receive a salary or wages  
23 from other employment at the time of the accidental personal injury or last injurious  
24 exposure:

25 **[(i)] 1.** if the covered employee derived income from a source  
26 other than salary or wages at the time of the accidental personal injury or last  
27 injurious exposure, an amount that allows the maximum compensation under this  
28 title;

29 **[(ii)] 2.** if the covered employee was not engaged in a business  
30 enterprise at the time of the accidental personal injury or last injurious exposure, the  
31 weekly income last received by the covered employee when engaged in a business  
32 enterprise; or

1                    [(iii)] 3.    if the covered employee had never been engaged in a  
 2 business enterprise at the time of the accidental personal injury or last injurious  
 3 exposure, an amount that allows the minimum compensation under this title.

4                    (2)    A YEARLY STIPEND OF \$5,200 OR LESS TO HELP OFFSET  
 5 OUT-OF-POCKET EXPENSES THAT A VOLUNTEER ~~ADVANCED LIFE SUPPORT~~  
 6 ~~UNIT, VOLUNTEER AMBULANCE COMPANY, VOLUNTEER FIRE COMPANY,~~  
 7 ~~VOLUNTEER FIRE POLICE UNIT, OR VOLUNTEER RESCUE SQUAD COMPANY, AS~~  
 8 ~~DEFINED IN § 9-234 OF THIS TITLE, PAYS TO A MEMBER MAY NOT BE USED~~  
 9 ~~WHEN DETERMINING THE AVERAGE WEEKLY WAGE OF THE MEMBER.~~

10    ~~9-604.~~

11                    ~~(c)    A MEMBER OF A VOLUNTEER ADVANCED LIFE SUPPORT UNIT,~~  
 12 ~~VOLUNTEER AMBULANCE COMPANY, VOLUNTEER FIRE COMPANY, VOLUNTEER~~  
 13 ~~POLICE UNIT, OR VOLUNTEER RESCUE SQUAD WHO RECEIVES AS A~~  
 14 ~~MEMBERSHIP BENEFIT A YEARLY STIPEND OF \$5,200 OR LESS TO HELP OFFSET~~  
 15 ~~OUT-OF-POCKET EXPENSES MAY NOT BE CONSIDERED AN EMPLOYEE FOR THE~~  
 16 ~~PURPOSE OF DETERMINING THE WORKERS' COMPENSATION BENEFITS OWED TO~~  
 17 ~~THE VOLUNTEER.~~

18                    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 19 October 1, 2012.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.