

SENATE BILL 377

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3lr1774
CF 3lr2188

By: **Senator Kramer**

Introduced and read first time: February 1, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Benefits – Offset and Hearing Loss**

3 FOR the purpose of altering the circumstances under which the payment of a benefit by a
4 governmental unit or quasi–public corporation to a covered employee offsets the
5 liability for benefits under the workers' compensation law; altering the method used
6 to determine the deduction required to be made to allow for the average amount of
7 hearing loss from nonoccupational causes in the population for purposes of
8 calculating workers' compensation benefits for occupational deafness; requiring
9 tinnitus to be considered part of a covered employee's hearing loss; requiring that
10 benefits awarded related to hearing loss be awarded without adjustment due to offset
11 against other benefits; and generally relating to workers' compensation benefits.

12 BY repealing and reenacting, with amendments,
13 Article – Labor and Employment
14 Section 9–610 and 9–650
15 Annotated Code of Maryland
16 (2016 Replacement Volume and 2022 Supplement)

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

19 **Article – Labor and Employment**

20 9–610.

21 (a) (1) Except for benefits subject to an offset under § 29–118 of the State
22 Personnel and Pensions Article, if a statute, charter, ordinance, resolution, regulation, or
23 policy, regardless of whether part of a pension system, provides a benefit to a covered
24 employee of a governmental unit or a quasi–public corporation that is subject to this title
25 under § 9–201(2) of this title or, in case of death, to the dependents of the covered employee,
26 payment of the benefit by the employer satisfies, to the extent of the payment, the liability

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of the employer and the Subsequent Injury Fund for payment of [similar] benefits under
2 this title **IF THE PAYMENT OF THE BENEFIT BY THE EMPLOYER AND THE PAYMENT**
3 **FOR BENEFITS UNDER THIS TITLE ARE BASED ON THE SAME ACCIDENTAL INJURY OR**
4 **OCCUPATIONAL DISEASE.**

5 (2) If a benefit paid under paragraph (1) of this subsection is less than the
6 benefits provided under this title, the employer, the Subsequent Injury Fund, or both shall
7 provide an additional benefit that equals the difference between the benefit paid under
8 paragraph (1) of this subsection and the benefits provided under this title.

9 (3) The computation of an additional benefit payable under paragraph (2)
10 of this section shall be done at the time of the initial award and may not include any cost
11 of living adjustment after the initial award.

12 (b) (1) If federal law provides benefits for an individual who is a covered
13 employee of the Military Department of the State under § 9–215 of this title that are equal
14 to or greater than the benefits provided by this title, the covered employee is not entitled
15 to benefits under this title.

16 (2) If federal law provides benefits for a covered employee of the Military
17 Department of the State that are less than the benefits provided by this title, the State and
18 its insurer shall provide an additional benefit that equals the difference between the benefit
19 provided by federal law and the similar benefit provided by this title.

20 (c) (1) The Commission may:

21 (i) determine whether any benefit provided by the employer is equal
22 to or greater than any benefit provided for in this title; and

23 (ii) make an award against the employer or the Subsequent Injury
24 Fund or both to provide an additional benefit that equals the difference between the benefit
25 provided by the employer and the benefits required by this title.

26 (2) A claim that comes under this section is subject to the continuing
27 powers and jurisdiction of the Commission.

28 9–650.

29 (a) (1) Hearing loss shall be measured by audiometric instrumentation that
30 meets the following criteria:

31 (i) ANSI 3.6–1996;

32 (ii) ANSI S3.43–1992; and

33 (iii) ANSI 3.39–1987 or any ANSI standard that supersedes the
34 previous calibration or measurement criteria.

1 (2) Measurements shall be conducted in a sound room that meets the ANSI
2 3.1–1991 criteria for maximum permissible ambient noise for audiometric test rooms.

3 (3) Behavioral psychoacoustic measurements shall be obtained with
4 instrumentation that utilizes insert earphones, as referenced in ANSI 3.6–1996.

5 (4) Electrodiagnostic measurements such as auditory evoked potentials,
6 acoustic emittance measurements, or distortion product otoacoustic emissions may be
7 obtained to determine the nature and extent of workplace hearing loss.

8 (5) Audiologic results shall be used in conjunction with other information
9 to evaluate a claimant’s compensable hearing loss.

10 (b) (1) The percentage of hearing loss for purposes of compensation for
11 occupational deafness shall be determined by calculating the average, in decibels, of the
12 thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 hertz in accordance
13 with paragraph (2) of this subsection.

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

15 (i) adding together the lowest measured losses in each of the 4
16 frequencies; and

17 (ii) dividing the total by 4.

18 (3) To allow for the average amount of hearing loss from nonoccupational
19 causes found in the population at any given age, there shall be deducted from the total
20 average decibel loss determined under paragraphs (1) and (2) of this subsection **THE**
21 **LESSER OF:**

22 **(I) one-half of a decibel for each year of the covered employee’s age**
23 **over 50 [at the time of the last exposure to industrial noise]; OR**

24 **(II) ONE-HALF OF A DECIBEL FOR EACH YEAR SUBSEQUENT TO**
25 **THE DATE OF THE COVERED EMPLOYEE’S LAST INJURIOUS EXPOSURE TO**
26 **INDUSTRIAL NOISE.**

27 (c) (1) If the average hearing loss in the 4 frequencies determined under
28 subsection (b) of this section is 25 decibels or less, the covered employee does not have a
29 compensable hearing loss.

30 (2) If the average hearing loss in the 4 frequencies determined under
31 subsection (b) of this section is 91.7 decibels or more, the covered employee has a 100%
32 compensable hearing loss.

1 (3) For every decibel that the average hearing loss exceeds 25 decibels, the
2 covered employee shall be allowed 1.5% of the compensable hearing loss, up to a maximum
3 of 100% compensable hearing loss at 91.7 decibels.

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

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

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

8 (3) dividing that sum by 6.

9 (e) (1) In determining the percentage of hearing loss under this section,
10 consideration may not be given to whether the use of an amplification device improves the
11 ability of a covered employee to understand speech or enhance behavioral hearing
12 thresholds.

13 (2) (i) In determining a workers' compensation claim for noise-related
14 hearing loss, audiologic data shall use both bone conduction and air conduction results.

15 (ii) If a conductive loss is present, the bone conduction thresholds for
16 each ear, rather than the air conduction levels, shall be used to calculate a claimant's
17 average hearing loss.

18 **(F) (1) TINNITUS SHALL BE CONSIDERED PART OF A COVERED**
19 **EMPLOYEE'S HEARING LOSS UNDER THIS SECTION.**

20 **(2) WHEN DETERMINING THE PERCENTAGE OF HEARING LOSS**
21 **ATTRIBUTABLE TO TINNITUS, THE COMMISSION SHALL:**

22 **(I) CONSIDER THE EVALUATION REQUIRED UNDER § 9-721(A)**
23 **AND (B) OF THIS TITLE; AND**

24 **(II) ADD THE PERCENTAGE OF HEARING LOSS ATTRIBUTABLE**
25 **TO TINNITUS TO THE HEARING LOSS PERCENTAGE DETERMINED UNDER**
26 **SUBSECTION (D) OF THIS SECTION TO DETERMINE THE TOTAL PERCENTAGE OF THE**
27 **COVERED EMPLOYEE'S HEARING LOSS.**

28 **(G) BENEFITS PROVIDED UNDER THIS SECTION SHALL BE AWARDED**
29 **WITHOUT AN ADJUSTMENT BEING MADE UNDER § 9-610 OF THIS SUBTITLE.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2023.