

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

**Act 1250 of the Regular Session**

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: H3/17/05*

**A Bill**

HOUSE BILL 1011

5 By: Representative L. Smith  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO PROVIDE INCREASED WORKERS' COMPENSATION  
10 COVERAGE FOR CERTAIN INJURIES TO THE NECK; TO  
11 AMEND A PORTION OF ARKANSAS CODE WHICH RESULTED  
12 FROM INITIATED ACT 4 OF 1948; AND FOR OTHER  
13 PURPOSES.  
14  
15

**Subtitle**

16 TO PROVIDE INCREASED WORKERS'  
17 COMPENSATION COVERAGE FOR CERTAIN  
18 INJURIES TO THE NECK; TO AMEND A PORTION  
19 OF ARKANSAS CODE WHICH RESULTED FROM  
20 INITIATED ACT 4 OF 1948.  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 11-9-102(4)(A), concerning the workers'  
27 compensation definition of "compensable injury" and derived from Initiated  
28 Act 4 of 1948, is amended to read as follows:

29 (4)(A) "Compensable injury" means:

30 (i) An accidental injury causing internal or  
31 external physical harm to the body or accidental injury to prosthetic  
32 appliances, including eyeglasses, contact lenses, or hearing aids, arising  
33 out of and in the course of employment and which requires medical services or  
34 results in disability or death. An injury is "accidental" only if it is  
35 caused by a specific incident and is identifiable by time and place of



1 occurrence;

2 (ii) An injury causing internal or external physical  
3 harm to the body and arising out of and in the course of employment if it is  
4 not caused by a specific incident or is not identifiable by time and place of  
5 occurrence, if the injury is:

6 (a) Caused by rapid repetitive motion. Carpal  
7 tunnel syndrome is specifically categorized as a compensable injury falling  
8 within this definition;

9 (b) A *back or neck* injury which is not caused  
10 by a specific incident or which is not identifiable by time and place of  
11 occurrence; or

12 (c) Hearing loss which is not caused by a  
13 specific incident or which is not identifiable by time and place of  
14 occurrence;

15 (iii) Mental illness as set out in § 11-9-113;

16 (iv) Heart or cardiovascular injury, accident, or  
17 disease as set out in § 11-9-114;

18 (v) A hernia as set out in § 11-9-523; or

19 (vi) An adverse reaction experienced by any employee  
20 of the Department of Health or any employee of a hospital licensed by the  
21 Department of Health related to vaccination with Vaccinia vaccines for  
22 smallpox, including the Dryvax vaccine, regardless of whether the adverse  
23 reaction is the result of voluntary action by the injured employee.

24 (B) "Compensable injury" does not include:

25 (i) Injury to any active participant in assaults or  
26 combats which, although they may occur in the workplace, are the result of  
27 nonemployment-related hostility or animus of one, both, or all of the  
28 combatants and which said assault or combat amounts to a deviation from  
29 customary duties; further, except for innocent victims, injuries caused by  
30 horseplay shall not be considered to be compensable injuries;

31 (ii) Injury incurred while engaging in or performing  
32 or as the result of engaging in or performing any recreational or social  
33 activities for the employee's personal pleasure;

34 (iii) Injury which was inflicted upon the employee  
35 at a time when employment services were not being performed or before the  
36 employee was hired or after the employment relationship was terminated; or

1 (iv)(a) Injury where the accident was substantially  
2 occasioned by the use of alcohol, illegal drugs, or prescription drugs used  
3 in contravention of physician's orders.

4 (b) The presence of alcohol, illegal drugs, or  
5 prescription drugs used in contravention of a physician's orders shall create  
6 a rebuttable presumption that the injury or accident was substantially  
7 occasioned by the use of alcohol, illegal drugs, or prescription drugs used  
8 in contravention of physician's orders.

9 (c) Every employee is deemed by his or her  
10 performance of services to have impliedly consented to reasonable and  
11 responsible testing by properly trained medical or law enforcement personnel  
12 for the presence of any of the aforementioned substances in the employee's  
13 body.

14 (d) An employee shall not be entitled to  
15 compensation unless it is proved by a preponderance of the evidence that the  
16 alcohol, illegal drugs, or prescription drugs utilized in contravention of  
17 the physician's orders did not substantially occasion the injury or accident.

18 (C) The definition of "compensable injury" as set forth in  
19 this subdivision (4) shall not be deemed to limit or abrogate the right to  
20 recover for mental injuries as set forth in § 11-9-113 or occupational  
21 diseases as set forth in § 11-9-601 et seq.

22 (D) A compensable injury must be established by medical  
23 evidence supported by objective findings as defined in subdivision (16) of  
24 this section.

25 (E) Burden of Proof. The burden of proof of a compensable  
26 injury shall be on the employee and shall be as follows:

27 (i) For injuries falling within the definition of  
28 compensable injury under subdivision (4)(A)(i) of this section, the burden of  
29 proof shall be a preponderance of the evidence; or

30 (ii) For injuries falling within the definition of  
31 compensable injury under subdivision (4)(A)(ii) of this section, the burden  
32 of proof shall be by a preponderance of the evidence, and the resultant  
33 condition is compensable only if the alleged compensable injury is the major  
34 cause of the disability or need for treatment.

35 (F) Benefits.

36 (i) When an employee is determined to have a

1 compensable injury, the employee is entitled to medical and temporary  
2 disability as provided by this chapter.

3 (ii)(a) Permanent benefits shall be awarded only  
4 upon a determination that the compensable injury was the major cause of the  
5 disability or impairment.

6 (b) If any compensable injury combines with a  
7 preexisting disease or condition or the natural process of aging to cause or  
8 prolong disability or a need for treatment, permanent benefits shall be  
9 payable for the resultant condition only if the compensable injury is the  
10 major cause of the permanent disability or need for treatment.

11 (iii) Under this subdivision (4)(F), benefits shall  
12 not be payable for a condition which results from a nonwork-related  
13 independent intervening cause following a compensable injury which causes or  
14 prolongs disability or a need for treatment. A nonwork-related independent  
15 intervening cause does not require negligence or recklessness on the part of  
16 a claimant.

17 (iv) Nothing in this section shall limit the payment  
18 of rehabilitation benefits or benefits for disfigurement as set forth in this  
19 chapter;

20  
21 /s/ L. Smith  
22  
23

24 APPROVED: 3/29/2005  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

1