

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4  
5 By: Senator Walters  
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# A Bill

SENATE BILL 17

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 11-9-102(5) TO  
10 REQUIRE CARRIERS TO PAY FOR MEDICAL SERVICES PROVIDED TO  
11 AN INSURED EMPLOYEE PRIOR TO THE DISCOVERY OF THE PRESENCE  
12 OF ALCOHOL, ILLEGAL DRUGS, OR PRESCRIPTION DRUGS UNDER  
13 WORKERS\_ COMPENSATION; AND FOR OTHER PURPOSES."

## Subtitle

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15 "TO REQUIRE CARRIERS TO PAY FOR MEDICAL  
16 SERVICES PROVIDED TO AN INSURED EMPLOYEE  
17 PRIOR TO THE DISCOVERY OF THE PRESENCE OF  
18 ALCOHOL, ILLEGAL DRUGS, OR PRESCRIPTION DRUGS  
19 UNDER WORKERS\_ COMPENSATION"  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Arkansas Code Annotated § 11-9-102 is amended to read as follows:

25 "(5)(A) *\_Compensable injury\_ means:*

26 (i) *An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic*  
27 *appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical*  
28 *services or results in disability or death. An injury is \_accidental\_ only if it is caused by a specific incident and is identifiable by time and place*  
29 *of occurrence;*

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

32 (a) *Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable*  
33 *injury falling within this definition;*

34 (b) *A back injury which is not caused by a specific incident or which is not identifiable by time and place of*  
35 *occurrence;*

36 (c) *Hearing loss which is not caused by a specific incident or which is not identifiable by time and place of*

1 occurrence;

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

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

4 (v) A hernia as set out in § 11-9-523.

5 (B) *\_Compensable injury\_* does not include:

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

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

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

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

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

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

21 (d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that  
22 the alcohol, illegal drugs, or prescription drugs utilized in contravention of the physician's orders did not substantially occasion the injury or  
23 accident; however, the carrier shall be obligated to the providers of any medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing  
24 services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be  
25 reasonably necessary in connection with the injury received by the employee prior to the discovery of the presence of alcohol, illegal drugs, or  
26 prescription drugs used in contravention of a physician's order.

27 (C) The definition of *\_compensable injury\_* as set forth hereinabove shall not be deemed to limit or abrogate the right to recover for  
28 mental injuries as set forth in § 11-9-113 or occupational diseases as hereinafter set forth in § 11-9-601 et seq.

29 (D) A compensable injury must be established by medical evidence, supported by *\_objective findings\_* as defined in § 11-9-102(16).

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

31 (i) For injuries falling within the definition of compensable injury under subdivision (5)(A)(i) of this section, the burden  
32 of proof shall be a preponderance of the evidence;

33 (ii) For injuries falling within the definition of compensable injury under subdivision (5)(A)(ii) of this section, the burden  
34 of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major  
35 cause of the disability or need for treatment.

36 (F) Benefits.

1                   (i) When an employee is determined to have a 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 upon a determination that the compensable injury was the major cause of  
4 the disability or impairment.

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

8                   (iii) Under this subdivision (5)(F), benefits shall not be payable for a condition which results from a nonwork-related  
9 independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related  
10 independent intervening cause does not require negligence or recklessness on the part of a claimant.

11                   (iv) Nothing in this section shall limit the payment of rehabilitation benefits or benefits for disfigurement as set forth in  
12 this chapter;"

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14                   SECTION 2. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated  
15 and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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17                   SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity  
18 shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the  
19 provisions of this act are declared to be severable.

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21                   SECTION 4. All laws and parts of laws in conflict with this act are hereby repealed.

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