

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.

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
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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.
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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.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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
36 occurrence;



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

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

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

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

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

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

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

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

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

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

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

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

36 (iv)(a) Injury where the accident was substantially

1 occasioned by the use of alcohol, illegal drugs, or prescription drugs used
2 in contravention of physician's orders.

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

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

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

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

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

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

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

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

34 (F) Benefits.

35 (i) When an employee is determined to have a
36 compensable injury, the employee is entitled to medical and temporary

1 disability as provided by this chapter.

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

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

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

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

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20 /s/ L. Smith
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