

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 65.2-306 of the Code of Virginia, relating to grounds for denial of*
 3 *workers' compensation benefits.*

4
 5 Approved

[H 568]

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 65.2-306 of the Code of Virginia is amended and reenacted as follows:**

8 § 65.2-306. When compensation not allowed for injury or death; burden of proof.

9 A. No compensation shall be awarded to the employee or his dependents for an injury or death
 10 caused by:

11 1. The employee's willful misconduct or intentional self-inflicted injury;

12 2. The employee's attempt to injure another;

13 3. The employee's intoxication;

14 4. The employee's willful failure or refusal to use a safety appliance or perform a duty required by
 15 statute;

16 5. The employee's willful breach of any reasonable rule or regulation adopted by the employer and
 17 brought, prior to the accident, to the knowledge of the employee; or

18 6. The employee's use of a nonprescribed controlled substance identified as such in Chapter 34
 19 (§ 54.1-3400 et seq.) of Title 54.1.

20 B. The person or entity asserting any of the defenses in this section shall have the burden of proof
 21 with respect thereto. However, if the employer raises as a defense the employee's intoxication or use of
 22 a nonprescribed controlled substance identified as such in Chapter 34 of Title 54.1, and there was at the
 23 time of the injury ~~or death~~ an amount of alcohol or nonprescribed controlled substance in the bodily
 24 fluids of the employee which (i) is equal to or greater than the standard set forth in § 18.2-266, or (ii) in
 25 the case of use of a nonprescribed controlled substance, yields a positive test result from a Substance
 26 Abuse and Mental Health Services Administration (SAMHSA) certified laboratory, there shall be a
 27 rebuttable presumption, *which presumption shall not be available if the employee dies as a result of his*
 28 *injuries*, that the employee was intoxicated *due to the consumption of alcohol* or using a nonprescribed
 29 controlled substance at the time of his injury ~~or death~~. *The employee may overcome such a presumption*
 30 *by clear and convincing evidence.*

ENROLLED

HB568ER