

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 600

An Act to amend and reenact § 65.2-306 of the Code of Virginia, relating to workers' compensation; employee intoxication.

[S 162]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-306 of the Code of Virginia is amended and reenacted as follows:

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

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

1. The employee's willful misconduct or intentional self-inflicted injury;
2. The employee's attempt to injure another;
3. The employee's intoxication;
4. The employee's willful failure or refusal to use a safety appliance or perform a duty required by statute;
5. The employee's willful breach of any reasonable rule or regulation adopted by the employer and brought, prior to the accident, to the knowledge of the employee; or
6. The employee's use of a nonprescribed controlled substance identified as such in Chapter 34 of Title 54.1.

B. The person or entity asserting any of the defenses in this section shall have the burden of proof with respect thereto. *However, if the employer raises as a defense the employee's intoxication or use of a nonprescribed controlled substance identified as such in Chapter 34 of Title 54.1, and there was at the time of the injury or death an amount of alcohol or nonprescribed controlled substance in the bodily fluids of the employee which (i) is equal to or greater than the standard set forth in § 18.2-266, or (ii) in the case of use of a nonprescribed controlled substance, yields a positive test result from a National Institute on Drug Abuse (NIDA) certified laboratory, there shall be a rebuttable presumption that the employee was intoxicated or using a nonprescribed controlled substance at the time of his injury or death.*