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HOUSE BILL NO. 6

Offered January 10, 1996

Prefiled December 14, 1995

A BILL to amend and reenact § 65.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 65.2-300.1, relating to workers' compensation; disclosure of claims history; disqualification for benefits.

 Patron—Marshall

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-306 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 65.2-300.1 as follows:

§ 65.2-300.1. Employer may require disclosure of prior benefit claims.

A. Except to the extent prohibited by the Americans with Disabilities Act (42 U.S.C. § 12101), an employer may require a prospective employee to disclose information about all prior claims for benefits under this Act or for workers' compensation benefits under the laws of any other state or territory, or of the District of Columbia.

B. Information disclosed pursuant to subsection A (i) shall be used solely for the purpose of determining whether a prospective employee has made fraudulent claims for workers' compensation benefits, and (ii) shall not be disclosed by any employer requiring and receiving such information to any other person.

§ 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 (§ 54.1-3400 et seq.) 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.

C. No compensation shall be awarded to the employee or his dependents for an injury or death resulting principally from causes related to any injury for which the employee made a claim for workers' compensation benefits prior to his employment by the employer if (i) the employer properly requested the employee's workers' compensation claims history pursuant to § 65.2-300.1, and (ii) such claim was not disclosed by the employee.

INTRODUCED

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