

HOUSE BILL 203

D3, K1

71r0773

By: **Delegates Smigiel, Conaway, Costa, Dwyer, Eckardt, Elmore, Frank, George, Haddaway, McConkey, and Simmons**

Introduced and read first time: January 26, 2007

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Appeals – Admissibility of Medical Records**

3 FOR the purpose of providing for the admissibility of certain records for appeals of an
4 order of the Workers' Compensation Commission; providing for the application
5 of this Act; and generally relating to an appeal of an order of the Workers'
6 Compensation Commission.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 10–104(b)
10 Annotated Code of Maryland
11 (2006 Replacement Volume)

12 BY repealing and reenacting, without amendments,
13 Article – Courts and Judicial Proceedings
14 Section 10–104(c), (d), (e), (f)
15 Annotated Code of Maryland
16 (2006 Replacement Volume)

17 BY repealing and reenacting, without amendments,
18 Article – Labor and Employment
19 Section 9–409, 9–737, 9–745, and 9–750
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Courts and Judicial Proceedings**
4 10–104.

5 (b) (1) The provisions of this section apply only to a claim for:

6 (i) Damages for personal injury;

7 (ii) Medical, hospital, or disability benefits under §§ 19–505 and
8 19–506 of the Insurance Article;

9 (iii) First party motor vehicle benefits under §§ 19–509 and
10 19–510 of the Insurance Article; and

11 (iv) First party health insurance benefits.

12 (2) This section does not apply to an action for damages filed under
13 Title 3, Subtitle 2A of this article.

14 (3) Subject to the provisions of paragraphs (1) and (2) of this
15 subsection, the provisions of this section apply to a proceeding in:

16 (i) The District Court; [or]

17 (ii) A circuit court if the amount in controversy in the action in
18 the circuit court does not exceed the amount specified in § 4–401 of this article for that
19 type of action; **OR**

20 **(III) A CIRCUIT COURT IN WHICH A PETITION FOR JUDICIAL**
21 **REVIEW IS FILED IN ACCORDANCE WITH § 9–737 OF THE LABOR AND**
22 **EMPLOYMENT ARTICLE.**

23 (c) (1) A writing or record of a health care provider described in this
24 section is admissible under this section if:

25 (i) The writing or record is offered in the trial of a civil action in
26 the District Court or a circuit court;

1 (ii) At least 60 days, except as provided in paragraph (2) of this
2 subsection, before the beginning of the trial, the party who intends to introduce the
3 writing or record:

4 1. Serves notice of the party's intent to introduce the
5 writing or record without the support of a health care provider's testimony, a list that
6 identifies each writing or record, and a copy of the writing or record on all other
7 parties as provided under Maryland Rule 1-321; and

8 2. Files notice of service and the list that identifies each
9 writing or record with the court; and

10 (iii) The writing or record is otherwise admissible.

11 (2) A party who receives a notice under paragraph (1) of this
12 subsection and intends to introduce another writing or record of a health care provider
13 without a health care provider's testimony shall:

14 (i) Serve a notice of intent, a list that identifies each writing or
15 record, and a copy of the writing or record at least 30 days before the beginning of the
16 trial; and

17 (ii) File notice of service and the list that identifies each writing
18 or record with the court.

19 (3) The list required under paragraphs (1) and (2) of this subsection
20 shall include:

21 (i) The name of the health care provider for each writing or
22 record; and

23 (ii) The date of each writing or record of the health care provider
24 or each date of treatment by the health care provider.

25 (d) (1) A writing or record of a health care provider made to document a
26 medical, dental, or other health condition, a health care provider's opinion, or the
27 providing of health care is admissible without the support of the testimony of a health
28 care provider as the maker or the custodian of the writing or record as evidence of the
29 existence of a medical, dental, or health condition, the opinion, and the necessity and
30 the providing of health care.

31 (2) A finder of fact may attach whatever weight to a writing or record
32 that the finder of fact deems appropriate.

1 (e) (1) A written statement or bill for health care expenses is admissible
2 without the support of the testimony of a health care provider as the maker or the
3 custodian of the statement or bill as evidence of the amount, fairness, and
4 reasonableness of the charges for the services or materials provided.

5 (2) A finder of fact may attach whatever weight to a writing or record
6 that the finder of fact deems appropriate.

7 (f) Nothing contained in this section may be construed to limit the right of a
8 party to:

9 (1) Request a summons to compel the attendance of a witness;

10 (2) Examine a witness who appears at trial; or

11 (3) Engage in discovery as provided under the Maryland Rules.

12 **Article – Labor and Employment**

13 9–409.

14 An employer may appeal any decision of the Commission under this subtitle to
15 the circuit court for the county in which the employer resides.

16 9–737.

17 An employer, covered employee, dependent of a covered employee, or any other
18 interested person aggrieved by a decision of the Commission, including the
19 Subsequent Injury Fund and the Uninsured Employers' Fund, may appeal from the
20 decision of the Commission provided the appeal is filed within 30 days after the date of
21 the mailing of the Commission's order by:

22 (1) filing a petition for judicial review in accordance with Title 7 of the
23 Maryland Rules;

24 (2) attaching to or including in the petition a certificate of service
25 verifying that on the date of the filing a copy of the petition has been sent by first class
26 mail to the Commission and to each other party of record; and

27 (3) on the date of the filing, serving copies of the petition by first class
28 mail on the Commission and each other party of record.

1 9-745.

2 (a) The proceedings in an appeal shall:

3 (1) be informal and summary; and

4 (2) provide each party a full opportunity to be heard.

5 (b) In each court proceeding under this title:

6 (1) the decision of the Commission is presumed to be prima facie
7 correct; and

8 (2) the party challenging the decision has the burden of proof.

9 (c) The court shall determine whether the Commission:

10 (1) justly considered all of the facts about the accidental personal
11 injury, occupational disease, or compensable hernia;

12 (2) exceeded the powers granted to it under this title; or

13 (3) misconstrued the law and facts applicable in the case decided.

14 (d) On a motion of any party filed with the clerk of the court in accordance
15 with the practice in civil cases, the court shall submit to a jury any question of fact
16 involved in the case.

17 (e) (1) If the court determines that the Commission acted within its
18 powers and correctly construed the law and facts, the court shall confirm the decision
19 of the Commission.

20 (2) If the court determines that the Commission did not act within its
21 powers or did not correctly construe the law and facts, the court shall reverse or
22 modify the decision or remand the case to the Commission for further proceedings.

23 9-750.

24 A party may appeal from a decision of the circuit court to the Court of Special
25 Appeals as provided for other civil cases.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed to apply only prospectively and may not be applied or interpreted to have

1 any effect on or application to any appeal filed in circuit court before the effective date
2 of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2007.