

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 370

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “or” in line 4 down through “exposure” in line 5; strike beginning with “or” in line 6 down through “exposure” in line 7; in line 10, after “disability” insert “under certain circumstances; providing that the payment of certain weekly compensation is payable by a certain employer or insurer; requiring certain additional weekly compensation subject to certain rights to be reimbursed by the Subsequent Injury Fund”; in line 10, after “Act;” insert “providing that this Act be construed retroactively to apply to certain accidental personal injuries occurring on or after a certain date; applying certain provisions relating to the payment of additional compensation prospectively from the effective date of this Act under certain circumstances; requiring the Workers’ Compensation Commission and the Subsequent Injury Fund to make a certain report to certain committees by a certain date; making provisions of this Act severable under certain circumstances;”; after line 22, insert:

“BY repealing and reenacting, with amendments,

Article - Labor and Employment

Section 9-630 and 9-637

Annotated Code of Maryland

(1991 Volume and 1996 Supplement)”.

AMENDMENT NO. 2

On page 2, in line 16, after “WHO” insert a colon; in line 17, before “HAS” insert “(I)”; in line 18, strike “(I)” and substitute “1.”; in line 20, strike “(II)” and substitute “2.”; in line 21, after “TITLE” insert “;”

(II) WAS CONCURRENTLY EMPLOYED BY MORE THAN ONE EMPLOYER AT THE TIME OF THE ACCIDENTAL PERSONAL INJURY;

(Over)

(III) WORKED, ON AVERAGE, 20 HOURS PER WEEK OR LESS IN THE EMPLOYMENT IN WHICH THE ACCIDENTAL PERSONAL INJURY OCCURED; AND
(IV) AS A RESULT OF THE ACCIDENTAL PERSONAL INJURY, IS UNABLE TO WORK AT ANY EMPLOYMENT THE COVERED EMPLOYEE WAS ENGAGED IN AT THE TIME OF THE ACCIDENTAL PERSONAL INJURY OR ANY SIMILAR TYPE OF EMPLOYMENT”;

strike in their entirety lines 22 through 38, inclusive, and substitute:

“(2) (I) IF THE COVERED EMPLOYEE EARNED WEEKLY WAGES FROM ANOTHER EMPLOYMENT THAT EXCEEDED THE WEEKLY WAGES THE COVERED EMPLOYEE EARNED FROM THE EMPLOYMENT IN WHICH THE ACCIDENTAL PERSONAL INJURY OCCURRED, THE AVERAGE WEEKLY WAGE OF THE COVERED EMPLOYEE SHALL BE BASED ON THE WEEKLY WAGES THE COVERED EMPLOYEE EARNED IN THE OTHER EMPLOYMENT.

(II) IF THE COVERED EMPLOYEE EARNED WEEKLY WAGES FROM TWO OR MORE OTHER EMPLOYMENTS AND, FOR MORE THAN ONE OF SUCH EMPLOYMENTS, THE WEEKLY WAGES EARNED BY THE EMPLOYEE EXCEEDED THE WEEKLY WAGES OF THE COVERED EMPLOYEE FROM THE EMPLOYMENT IN WHICH THE ACCIDENTAL PERSONAL INJURY OCCURRED, THE AVERAGE WEEKLY WAGE OF THE COVERED EMPLOYEE SHALL BE BASED ON WEEKLY WAGES OF THE EMPLOYMENT WHERE THE EMPLOYEE EARNED THE HIGHEST WAGES.”.

AMENDMENT NO. 3

On page 3, in line 1, after “(I)” insert “EXCEPT AS PROVIDED IN §§ 9-630 AND 9-637 OF THIS SUBTITLE.”; strike beginning with “OR” in line 2 down through “EXPOSURE” in line 3; in line 6, strike “OR LAST INJURIOUS EXPOSURE”; in line 5, strike “THE OTHER” and substitute “ANOTHER”; and in line 7, before “WAGES” insert “WEEKLY”; in the same line, strike “TWO EMPLOYMENTS” and substitute “EMPLOYMENTS THE EMPLOYEE WAS ENGAGED IN AT THE TIME OF THE ACCIDENTAL PERSONAL INJURY”.

AMENDMENT NO. 4

On page 3, after line 9, insert:

“9-630.

(a) (1) Except as provided in paragraph (2) of this subsection, if a covered employee is given an award or a combination of awards resulting from 1 accidental personal injury or occupational disease for 250 weeks or more under § 9-627 of this subtitle:

(i) the Commission shall increase the award or awards by one-third the number of weeks in the award or awards, computed to the nearest whole number; and

(ii) the employer or its insurer shall pay the covered employee weekly compensation that equals two-thirds of the average weekly wage of the covered employee, but does not exceed 75% of the State average weekly wage.

(2) An award for disfigurement or mutilation under § 9-627(i) of this subtitle may not be used to make up the 250 weeks under paragraph (1) of this subsection.

(b) (1) THIS SUBSECTION APPLIES TO THE PAYMENT OF WEEKLY COMPENSATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION IF THE AVERAGE WEEKLY WAGE OF A COVERED EMPLOYEE IS COMPUTED UNDER § 9-602(L) OF THIS SUBTITLE.

(2) THE EMPLOYER IN WHOSE EMPLOYMENT THE ACCIDENTAL PERSONAL INJURY OCCURRED OR THE EMPLOYER'S INSURER SHALL PAY THE COVERED EMPLOYEE WEEKLY COMPENSATION THAT IS BASED ON THE WEEKLY WAGES OF THE COVERED EMPLOYEE AT THE EMPLOYMENT IN WHICH THE COVERED EMPLOYEE WAS INJURED;

(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, ANY ADDITIONAL WEEKLY COMPENSATION RESULTING FROM COMPUTING THE AVERAGE WEEKLY WAGE BASED ON WEEKLY WAGES EARNED BY THE COVERED EMPLOYEE IN OTHER EMPLOYMENT SHALL BE PAYABLE IN THE FIRST INSTANCE BY THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS INJURED OR THE EMPLOYER'S INSURER;
AND

(4) SUBJECT TO ANY RIGHT OF THE SUBSEQUENT INJURY FUND TO BE

(Over)

IMPLEADED OR ANY RIGHT OF THE SUBSEQUENT INJURY FUND TO DEFEND IN A CASE INVOLVING PAYMENT FROM THE SUBSEQUENT INJURY FUND CREATED UNDER TITLE 10, SUBTITLE 2 OF THIS ARTICLE, AS ALLOWABLE UNDER SUBTITLE 8 OF THIS TITLE, THE SUBSEQUENT INJURY FUND SHALL REIMBURSE THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS INJURED OR THE EMPLOYER'S INSURER THE AMOUNT OF ADDITIONAL WEEKLY COMPENSATION PAID BY THE EMPLOYER OR INSURER UNDER PARAGRAPH (3) OF THIS SUBSECTION.

(C) (1) Except as provided in paragraph (2) of this subsection, § 9-627 of this subtitle applies to covered employees who are covered by this section.

(2) To the extent of any inconsistency, this section prevails over § 9-627 of this subtitle.

[(c)] (D) If a covered employee receives additional compensation for a disability on a petition to reopen for serious disability, the additional compensation may not increase the amount of compensation previously awarded and paid.

9-637.

(a) (1) Except as provided in paragraph (2) of this subsection, if a covered employee has a permanent total disability resulting from an accidental personal injury or an occupational disease, the employer or its insurer shall pay the covered employee compensation that equals two-thirds of the average weekly wage of the covered employee, but may not:

(i) exceed the State average weekly wage; or

(ii) be less than \$25.

(2) If the average weekly wage of the covered employee is less than \$25 at the time of the accidental personal injury or last injurious exposure to the hazards of the occupational disease, the employer or its insurer shall pay the covered employee weekly compensation that equals the average weekly wage of the covered employee.

(3) Payments under paragraph (1) or (2) of this subsection may not exceed a total of \$45,000.

(b) Notwithstanding the \$45,000 limitation in subsection (a)(3) of this section, the employer or its insurer shall pay the benefit for the period that the covered employee is permanently totally disabled.

(C) (1) THIS SUBSECTION APPLIES TO THE PAYMENT OF WEEKLY COMPENSATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION IF THE AVERAGE WEEKLY WAGE OF A COVERED EMPLOYEE IS COMPUTED UNDER § 9-602(L) OF THIS SUBTITLE.

(2) THE EMPLOYER IN WHOSE EMPLOYMENT THE ACCIDENTAL PERSONAL INJURY OCCURRED OR THE EMPLOYER'S INSURER SHALL PAY THE COVERED EMPLOYEE WEEKLY COMPENSATION THAT IS BASED ON THE WEEKLY WAGES OF THE COVERED EMPLOYEE AT THE EMPLOYMENT IN WHICH THE COVERED EMPLOYEE WAS INJURED;

(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, ANY ADDITIONAL WEEKLY COMPENSATION RESULTING FROM COMPUTING THE AVERAGE WEEKLY WAGE BASED ON WEEKLY WAGES EARNED BY THE COVERED EMPLOYEE IN OTHER EMPLOYMENT SHALL BE PAYABLE IN THE FIRST INSTANCE BY THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS INJURED OR THE EMPLOYER'S INSURER; AND

(4) SUBJECT TO ANY RIGHT OF THE SUBSEQUENT INJURY FUND TO BE IMPEADED OR ANY RIGHT OF THE SUBSEQUENT INJURY FUND TO DEFEND IN A CASE INVOLVING PAYMENT FROM THE SUBSEQUENT INJURY FUND CREATED UNDER TITLE 10, SUBTITLE 2 OF THIS ARTICLE, AS ALLOWABLE UNDER SUBTITLE 8 OF THIS TITLE, THE SUBSEQUENT INJURY FUND SHALL REIMBURSE THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS INJURED OR THE EMPLOYER'S INSURER THE AMOUNT OF ADDITIONAL WEEKLY COMPENSATION PAID BY THE EMPLOYER OR INSURER UNDER PARAGRAPH (3) OF THIS SUBSECTION."

AMENDMENT NO. 5

On page 3, before line 10, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That § 9-602(l) of the Labor and Employment Article and the changes made to §§ 9-630 and 9-637 of the Labor and Employment Article as enacted by this Act shall be construed retroactively to apply to accidental personal injuries which occurred on or after July 17, 1995 and shall be applied to applications for modification filed on or after the effective date of this Act. If a covered employee whose accidental personal injury occurred on or after July 17, 1995, but before the effective date of this Act, files an application for modification on or after the effective date of this Act, the Workers’ Compensation Commission shall apply the provisions of this Act relating to the payment of additional compensation prospectively from the effective date of this Act as if the modification was filed on the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That the Workers’ Compensation Commission and the Subsequent Injury Fund shall report to the Workers’ Compensation Benefit and Insurance Oversight Committee, the Senate Finance Committee, and the House Economic Matters Committee of the General Assembly by December 1, 1998 on the nature and extent of additional compensation that resulted from claims where the average weekly wage of the covered employee was computed based on weekly wages from a concurrent employment of the covered employee.

SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.”;

in line 10, strike “2.” and substitute “5.”; and in line 11, strike “October” and substitute “July”.