

Unofficial Copy
K1
SB 413/96 - FIN

1997 Regular Session
7r2468
CF 7r1766

By: Delegate Exum

Introduced and read first time: January 31, 1997
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 28, 1997

CHAPTER _____

1 AN ACT concerning

2 ~~Workers' Compensation - Collective Bargaining Agreement - Construction Carve Out -~~
3 ~~Terms - Limitations~~
4 Workers' Compensation - Construction Carve Out

5 FOR the purpose of providing that, as part of a collective bargaining agreement, an
6 employer and a recognized or certified exclusive bargaining representative of
7 certain employees may agree to certain terms with respect to workers' compensation
8 under certain circumstances; providing that an agreement is not valid until it has
9 been filed with the Workers' Compensation Commission and determined by the
10 Workers' Compensation Commission to be in compliance with certain provisions of
11 law; providing for the review of settlements and resolutions of claims and
12 arbitration decisions under an alternative dispute resolution system; providing that
13 once an agreement is approved determined to be in compliance with certain
14 provisions of law by the Commission it is binding on the employer and the
15 bargaining unit; imposing certain limitations on an agreement; allowing certain
16 employees subject to an agreement governed by this Act to seek treatment from
17 certain health care providers under certain circumstances; requiring an agreement
18 to provide for a certain appeal mechanism for use of certain health care providers;
19 providing that an insurer is not required to underwrite a certain program; requiring
20 the Commission and certain parties to provide a certain report to certain
21 committees of the General Assembly; providing for the termination of this Act; and
22 generally relating to collective bargaining agreements with respect to workers'
23 compensation.

24 BY repealing and reenacting, with amendments,
25 Article - Labor and Employment
26 Section 9-104
27 Annotated Code of Maryland

2

1 (1991 Volume and 1996 Supplement)

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

4 **Article - Labor and Employment**

5 9-104.

6 (a) (1) Except as otherwise provided in this title, a covered employee or an
7 employer of a covered employee may not by agreement, rule, or regulation:

8 (i) exempt the covered employee or the employer from a duty of the
9 covered employee or the employer under this title; or

10 (ii) waive a right of the covered employee or the employer under this
11 title.

12 (2) An agreement, rule, or regulation that violates paragraph (1) of this
13 subsection is void to the extent of the violation.

14 (b) (1) If federal law provides an exclusive remedy and compensation to an
15 employee of a common carrier by railroad in this State or a dependent of the employee
16 for disability or death caused by an accidental personal injury sustained in interstate or
17 foreign commerce, the carrier and the employee may enter into an agreement that
18 provides:

19 (i) for the payment by the carrier of compensation, in accordance with
20 the federal law, to the employee or a dependent of the employee for disability or death
21 caused by an accidental personal injury sustained in intrastate commerce; and

22 (ii) except as otherwise provided in the agreement, that the carrier
23 may not be civilly liable for the disability or death of the employee caused by the
24 accidental personal injury.

25 (2) To enter into an agreement with any employees of a common carrier by
26 railroad under paragraph (1) of this subsection, the carrier shall:

27 (i) submit, under seal, to the Commission a document that:

28 1. offers to enter into an agreement with each of its employees
29 in the State under paragraph (1) of this subsection; and

30 2. refers to the applicable federal law; and

31 (ii) publish notice of the offer once a week for 3 successive weeks after
32 the document is submitted to the Commission:

33 1. in a newspaper published in each county through which the
34 carrier regularly runs a freight or passenger train; and

35 2. if the carrier regularly runs a freight or passenger train within
36 Baltimore City, in 2 newspapers published in Baltimore City.

1 (3) Thirty days after a common carrier by railroad submits to the
2 Commission a document making an offer under paragraph (2) of this subsection, each
3 employee of the carrier shall be conclusively presumed to have entered into the
4 agreement unless, within the 30 days, an employee submits to the Commission a written
5 notice declining the offer.

6 (4) A common carrier by railroad or an employee of the carrier may end an
7 agreement made under this subsection on the part of the carrier or employee by giving
8 the Commission at least 30 days' written notice of intention to end the agreement.

9 (5) If a common carrier by railroad or an employee of the carrier gives the
10 Commission notice of intention to end the agreement in accordance with paragraph (4) of
11 this subsection, the agreement shall end on the part of the carrier or employee on the
12 effective date of the notice.

13 (c) A covered employee who has sustained an injury or partial disability may
14 waive by written contract the rights of the covered employee under this title for any
15 subsequent injury that is naturally and proximately caused by the previous injury or
16 disability if the covered employee:

17 (1) voluntarily enters into the contract; and

18 (2) executes the contract in the presence of 2 individuals who sign the
19 contract as witnesses.

20 (D) (1) SUBJECT TO PARAGRAPH ~~(4)~~ (5) OF THIS SUBSECTION, AS PART OF A
21 COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYER AND A RECOGNIZED OR
22 CERTIFIED EXCLUSIVE BARGAINING REPRESENTATIVE OF EMPLOYEES UNDER THE
23 PURVIEW OF THE BUILDING AND CONSTRUCTION TRADE COUNCIL MAY AGREE TO:

24 ~~(I) AN ALTERNATIVE CLAIM RESOLUTION SYSTEM THAT~~
25 ~~SUPPLEMENTS OR MODIFIES THE CLAIM RESOLUTION PROVISIONS OF § 9-722 OF~~
26 ~~THIS TITLE AND WHICH MAY INCLUDE MEDIATION AND ARBITRATION, PROVIDED~~
27 ~~THAT ALL SETTLEMENTS AND RESOLUTIONS OF CLAIMS ARE SUBJECT TO FINAL~~
28 ~~APPROVAL OF THE COMMISSION~~ AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM
29 THAT MODIFIES, SUPPLEMENTS, OR REPLACES ALL OR PART OF THE DISPUTE
30 PREVENTION AND DISPUTE RESOLUTION PROCESSES CONTAINED IN THIS TITLE,
31 AND THAT MAY INCLUDE BUT IS NOT LIMITED TO MEDIATION AND BINDING
32 ARBITRATION;

33 (II) THE USE OF AN AGREED LIST OF HEALTH CARE PROVIDERS OF
34 MEDICAL TREATMENT AND EXPERTISE, WHICH MAY BE THE SOURCE OF ALL
35 MEDICAL AND RELATED EXAMINATIONS, TREATMENT, AND TESTIMONY PROVIDED
36 UNDER THIS TITLE;

37 (III) THE USE OF AN AGREED LIST OF HEALTH CARE PROVIDERS TO
38 CONDUCT INDEPENDENT MEDICAL EXAMINATIONS;

39 (IV) A LIGHT DUTY, MODIFIED JOB, OR RETURN TO WORK
40 PROGRAM; AND

4

1 (V) A VOCATIONAL REHABILITATION OR RETRAINING PROGRAM;
2 ~~AND~~

3 ~~(VI) A 24 HOUR HEALTH CARE COVERAGE PLAN.~~

4 (2) (I) ALL SETTLEMENTS AND RESOLUTIONS OF CLAIMS UNDER AN
5 ALTERNATIVE DISPUTE RESOLUTION SYSTEM SHALL BE SUBMITTED TO THE
6 COMMISSION FOR APPROVAL. THE COMMISSION SHALL APPROVE SETTLEMENTS
7 AND RESOLUTIONS OF CLAIMS THAT THE COMMISSION DETERMINES ARE IN
8 COMPLIANCE WITH THIS TITLE. ALL SETTLEMENTS AND RESOLUTIONS OF CLAIMS
9 APPROVED BY THE COMMISSION ARE SUBJECT TO ASSESSMENTS UNDER §§ 9-806
10 AND 9-1007 OF THIS TITLE.

11 (II) ALL ARBITRATION DECISIONS UNDER AN ALTERNATIVE
12 DISPUTE RESOLUTION SYSTEM SHALL BE REVIEWABLE IN THE SAME MANNER AND
13 UNDER THE SAME PROCEDURES AS A DECISION OF A COMMISSIONER.

14 ~~(2)~~ (3) AN AGREEMENT UNDER THIS SUBSECTION IS NOT VALID
15 UNTIL IT HAS BEEN FILED WITH THE COMMISSION AND DETERMINED BY THE
16 COMMISSION TO BE IN COMPLIANCE WITH THIS SUBSECTION AND THIS TITLE.

17 ~~(3)~~ (4) ONCE AN AGREEMENT UNDER THIS SUBSECTION HAS BEEN
18 ~~APPROVED~~ DETERMINED TO BE IN COMPLIANCE WITH THIS SUBSECTION AND THIS
19 TITLE BY THE COMMISSION IT IS BINDING ON THE EMPLOYER AND THE
20 BARGAINING UNIT.

21 ~~(4)~~ (5) THIS SUBSECTION DOES NOT ALLOW AN AGREEMENT THAT:

22 (I) EXEMPTS A COVERED EMPLOYEE OR AN EMPLOYER FROM A
23 DUTY OF THE COVERED EMPLOYEE OR EMPLOYER UNDER THIS TITLE; ~~OR~~

24 (II) WAIVES OR LIMITS A RIGHT OR BENEFIT OF A COVERED
25 EMPLOYEE OR EMPLOYER UNDER THIS TITLE, EXCEPT AS OTHERWISE ~~PROVIDED~~
26 SET FORTH IN THIS TITLE. SUBSECTION;

27 (III) AFFECTS THE IMPOSITION OF AN ASSESSMENT ON
28 SETTLEMENTS AND RESOLUTIONS OF CLAIMS, AS DESCRIBED IN §§ 9-806 AND 9-1007
29 OF THIS TITLE; OR

30 (IV) AFFECTS CLAIMS MADE UNDER SUBTITLE 8 OR 10 OF THIS
31 TITLE OR CLAIMS MADE UNDER TITLE 10, SUBTITLE 2 OF THIS ARTICLE.

32 ~~(5)~~ (6) AN AGREEMENT THAT VIOLATES PARAGRAPH ~~(4)~~ (5) OF THIS
33 SUBSECTION IS VOID.

34 ~~(6) NOTHING IN THIS SUBSECTION LIMITS THE RIGHT OF AN INJURED~~
35 ~~EMPLOYEE TO SEEK TREATMENT FROM A HEALTH CARE PROVIDER OF THE~~
36 ~~EMPLOYEE'S CHOICE.~~

37 (7) NOTWITHSTANDING PARAGRAPH (1)(II) OF THIS SUBSECTION, AN
38 INJURED EMPLOYEE WHOSE INJURY OR TREATMENT IS RELATED TO A MEDICAL
39 CONDITION FOR WHICH THE EMPLOYEE IS BEING OR HAS BEEN TREATED MAY

5

1 CONTINUE TO SEEK TREATMENT FROM THE HEALTH CARE PROVIDER WHO IS
2 TREATING OR HAS TREATED THE CONDITION.

3 (8) AN AGREEMENT UNDER THIS SUBSECTION SHALL PROVIDE FOR AN
4 APPEAL MECHANISM FOR A COVERED EMPLOYEE WHO WISHES TO USE A HEALTH
5 CARE PROVIDER WHO IS NOT ON THE AGREED LIST OF HEALTH CARE PROVIDERS.

6 (9) NOTHING IN THIS SUBSECTION REQUIRES AN INSURER TO
7 UNDERWRITE A PROGRAM ESTABLISHED UNDER PARAGRAPH (1) OF THIS
8 SUBSECTION.

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Workers'
10 Compensation Commission and representatives from the parties involved with collective
11 bargaining agreements with respect to workers' compensation as authorized under this
12 Act shall report to the Senate Finance Committee and the House Economic Matters
13 Committee of the General Assembly by October 1, 1999 on the status of using such
14 collective bargaining agreements with respect to workers' compensation.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 1997. It shall remain effective for a period of ~~4~~ 5 years and, at the end of
17 September 30, ~~2001~~ 2002, with no further action required by the General Assembly, this
18 Act shall be abrogated and of no further force and effect.