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1997 Regular Session
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By: Senators Stone, Della, and Young

Introduced and read first time: January 27, 1997

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 1997

CHAPTER ____

1 AN ACT concerning

2 **Workers' Compensation - Average Weekly Wage - Multiple Employers - Serious**

3 **Permanent Partial Disability and Permanent Total Disability**

4 FOR the purpose of providing that if, at the time of an accidental personal injury ~~or last~~
5 ~~injury exposure~~, a covered employee was employed by another employer in
6 addition to the employer in whose employment the accidental personal injury ~~or last~~
7 ~~injury exposure~~ occurred, the average weekly wage of the covered employee shall
8 be based on the wages earned in the other employment under certain
9 circumstances; providing that this Act applies only to covered employees who have
10 suffered certain types of disability under certain circumstances; providing that the
11 payment of certain weekly compensation is payable by a certain employer or
12 insurer; requiring certain additional weekly compensation subject to certain rights
13 to be reimbursed by the Subsequent Injury Fund; providing for the construction of
14 this Act; providing that this Act be construed retroactively to apply to certain
15 accidental personal injuries occurring on or after a certain date; applying certain
16 provisions relating to the payment of additional compensation prospectively from
17 the effective date of this Act under certain circumstances; requiring the Workers'
18 Compensation Commission and the Subsequent Injury Fund to make a certain
19 report to certain committees by a certain date; making provisions of this Act
20 severable under certain circumstances; and generally relating to the computation of
21 the average weekly wage of a covered employee.

22 BY repealing and reenacting, without amendments,

23 Article - Labor and Employment

24 Section 9-602(a)

25 Annotated Code of Maryland

26 (1991 Volume and 1996 Supplement)

2

1 BY adding to

2 Article - Labor and Employment
3 Section 9-602(l)
4 Annotated Code of Maryland
5 (1991 Volume and 1996 Supplement)

6 BY repealing and reenacting, with amendments,

7 Article - Labor and Employment
8 Section 9-630 and 9-637
9 Annotated Code of Maryland
10 (1991 Volume and 1996 Supplement)

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

13 **Article - Labor and Employment**

14 9-602.

15 (a) (1) Except as otherwise provided in this section, the average weekly wage of
16 a covered employee shall be computed by determining the average of the weekly wages of
17 the covered employee:

18 (i) when the covered employee is working on full time; and

19 (ii) at the time of:

20 1. the accidental personal injury; or

21 2. the last injurious exposure of the covered employee to the
22 hazards of an occupational disease.

23 (2) For purposes of a computation under paragraph (1) of this subsection,
24 wages shall include:

25 (i) tips; and

26 (ii) the reasonable value of housing, lodging, meals, rent, and other
27 similar advantages that the covered employee received from the employer.

28 (3) If a covered employee establishes that, because of the age and
29 experience of the covered employee at the time of the accidental personal injury or last
30 injurious exposure to the hazards of the occupational disease, the wages of the covered
31 employee could be expected to increase under normal circumstances, the expected
32 increase may be taken into account when computing the average weekly wage of the
33 covered employee under paragraph (1) of this subsection.

34 (L) (1) THIS SUBSECTION APPLIES ONLY TO A COVERED EMPLOYEE WHO:

35 (1) HAS SUFFERED:

36 ~~(1)~~ 1. A SERIOUS PERMANENT PARTIAL DISABILITY UNDER §
37 9-630 OF THIS TITLE; OR

3

1 ~~(H)~~ 2. A PERMANENT TOTAL DISABILITY UNDER § 9-637 OF THIS
 2 TITLE;

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

5 (III) WORKED, ON AVERAGE, 20 HOURS PER WEEK OR LESS IN THE
 6 EMPLOYMENT IN WHICH THE ACCIDENTAL PERSONAL INJURY OCCURRED; AND

7 (IV) AS A RESULT OF THE ACCIDENTAL PERSONAL INJURY, IS
 8 UNABLE TO WORK AT ANY EMPLOYMENT THE COVERED EMPLOYEE WAS ENGAGED
 9 IN AT THE TIME OF THE ACCIDENTAL PERSONAL INJURY OR ANY SIMILAR TYPE OF
 10 EMPLOYMENT.

11 ~~(2) IF, AT THE TIME OF AN ACCIDENTAL PERSONAL INJURY OR LAST~~
 12 ~~INJURIOUS EXPOSURE, A COVERED EMPLOYEE WAS EMPLOYED BY ANOTHER~~
 13 ~~EMPLOYER IN ADDITION TO THE EMPLOYER IN WHOSE EMPLOYMENT THE~~
 14 ~~ACCIDENTAL PERSONAL INJURY OR LAST INJURIOUS EXPOSURE OCCURRED, THE~~
 15 ~~AVERAGE WEEKLY WAGE OF THE COVERED EMPLOYEE SHALL BE BASED ON THE~~
 16 ~~WAGES EARNED IN THE OTHER EMPLOYMENT IF:~~

17 ~~(I) THE COVERED EMPLOYEE WORKED, ON AVERAGE, 20 HOURS~~
 18 ~~PER WEEK OR LESS IN THE EMPLOYMENT IN WHICH THE ACCIDENTAL PERSONAL~~
 19 ~~INJURY OR LAST INJURIOUS EXPOSURE OCCURRED;~~

20 ~~(II) THE COVERED EMPLOYEE EARNED WAGES FROM THE OTHER~~
 21 ~~EMPLOYMENT THAT EXCEEDED THE WAGES EARNED FROM THE EMPLOYMENT IN~~
 22 ~~WHICH THE ACCIDENTAL PERSONAL INJURY OR LAST INJURIOUS EXPOSURE~~
 23 ~~OCCURRED; AND~~

24 ~~(III) AS A RESULT OF THE ACCIDENTAL PERSONAL INJURY OR~~
 25 ~~OCCUPATIONAL DISEASE, THE COVERED EMPLOYEE IS UNABLE TO WORK AT ANY~~
 26 ~~EMPLOYMENT THE COVERED EMPLOYEE HELD AT THE TIME OF THE ACCIDENTAL~~
 27 ~~PERSONAL INJURY OR LAST INJURIOUS EXPOSURE OR ANY SIMILAR EMPLOYMENT.~~

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

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

41 (3) THIS SUBSECTION MAY NOT BE INTERPRETED AS:

4

1 (I) EXCEPT AS PROVIDED IN §§ 9-630 AND 9-637 OF THIS SUBTITLE,
 2 RELIEVING FROM LIABILITY TO PAY COMPENSATION THE EMPLOYER IN WHOSE
 3 EMPLOYMENT THE ACCIDENTAL PERSONAL INJURY ~~OR LAST INJURIOUS EXPOSURE~~
 4 OCCURRED;

5 (II) CREATING ANY LIABILITY TO PAY COMPENSATION ON THE
 6 PART OF ~~THE OTHER~~ ANOTHER EMPLOYER IN WHOSE EMPLOYMENT THE
 7 ACCIDENTAL PERSONAL INJURY ~~OR LAST INJURIOUS EXPOSURE~~ DID NOT OCCUR;
 8 OR

9 (III) REQUIRING THE WEEKLY WAGES FROM THE ~~TWO~~
 10 ~~EMPLOYMENTS~~ EMPLOYMENTS THE EMPLOYEE WAS ENGAGED IN AT THE TIME OF
 11 THE ACCIDENTAL PERSONAL INJURY TO BE COMBINED FOR PURPOSES OF
 12 COMPUTING THE AVERAGE WEEKLY WAGE OF THE COVERED EMPLOYEE.

13 9-630.

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

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

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

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

26 (b) (1) THIS SUBSECTION APPLIES TO THE PAYMENT OF WEEKLY
 27 COMPENSATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION IF THE
 28 AVERAGE WEEKLY WAGE OF A COVERED EMPLOYEE IS COMPUTED UNDER §
 29 9-602(L) OF THIS SUBTITLE.

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

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

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

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

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

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

16 9-637.

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

22 (i) exceed the State average weekly wage; or

23 (ii) be less than \$25.

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

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

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

33 (C) (1) THIS SUBSECTION APPLIES TO THE PAYMENT OF WEEKLY
34 COMPENSATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION IF THE
35 AVERAGE WEEKLY WAGE OF A COVERED EMPLOYEE IS COMPUTED UNDER §
36 9-602(L) OF THIS SUBTITLE.

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

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

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

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

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

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

37 ~~SECTION 2: 5.~~ AND BE IT FURTHER ENACTED, That this Act shall take effect
 38 ~~October~~ July 1, 1997.

