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SB 413/96 - FIN

1997 Regular Session
7r1766
CF 7r2468

By: Senator Della

Introduced and read first time: January 30, 1997

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Construction Carve Out**

3 FOR the purpose of providing that, as part of a collective bargaining agreement, an
4 employer and a recognized or certified exclusive bargaining representative of
5 certain employees may agree to certain terms with respect to workers' compensation
6 under certain circumstances; providing that an agreement is not valid until it has
7 been filed with the Workers' Compensation Commission; providing that once an
8 agreement is approved by the Commission it is binding on the employer and the
9 bargaining unit; imposing certain limitations on an agreement; requiring the
10 Commission and certain parties to provide a certain report to certain committees of
11 the General Assembly; providing for the termination of this Act; and generally
12 relating to collective bargaining agreements with respect to workers' compensation.

13 BY repealing and reenacting, with amendments,
14 Article - Labor and Employment
15 Section 9-104
16 Annotated Code of Maryland
17 (1991 Volume and 1996 Supplement)

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

20 **Article - Labor and Employment**

21 9-104.

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

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

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

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

2

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

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

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

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

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

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

17 2. refers to the applicable federal law; and

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

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

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

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

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

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

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

3

1 (1) voluntarily enters into the contract; and

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

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

8 (I) AN ALTERNATIVE CLAIM RESOLUTION SYSTEM THAT
9 SUPPLEMENTS OR MODIFIES THE CLAIM RESOLUTION PROVISIONS OF § 9-722 OF
10 THIS TITLE AND WHICH MAY INCLUDE MEDIATION AND ARBITRATION, PROVIDED
11 THAT ALL SETTLEMENTS AND RESOLUTIONS OF CLAIMS ARE SUBJECT TO FINAL
12 APPROVAL OF THE COMMISSION;

13 (II) THE USE OF AN AGREED LIST OF HEALTH CARE PROVIDERS OF
14 MEDICAL TREATMENT AND EXPERTISE, WHICH MAY BE THE SOURCE OF ALL
15 MEDICAL AND RELATED EXAMINATIONS, TREATMENT, AND TESTIMONY PROVIDED
16 UNDER THIS TITLE;

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

19 (IV) A LIGHT DUTY, MODIFIED JOB, OR RETURN TO WORK
20 PROGRAM;

21 (V) A VOCATIONAL REHABILITATION OR RETRAINING PROGRAM;
22 AND

23 (VI) A 24-HOUR HEALTH CARE COVERAGE PLAN.

24 (2) AN AGREEMENT UNDER THIS SUBSECTION IS NOT VALID UNTIL IT
25 HAS BEEN FILED WITH THE COMMISSION.

26 (3) ONCE AN AGREEMENT UNDER THIS SUBSECTION HAS BEEN
27 APPROVED BY THE COMMISSION IT IS BINDING ON THE EMPLOYER AND THE
28 BARGAINING UNIT.

29 (4) THIS SUBSECTION DOES NOT ALLOW AN AGREEMENT THAT:

30 (I) EXEMPTS A COVERED EMPLOYEE OR AN EMPLOYER FROM A
31 DUTY OF THE COVERED EMPLOYEE OR EMPLOYER UNDER THIS TITLE; OR

32 (II) WAIVES OR LIMITS A RIGHT OR BENEFIT OF A COVERED
33 EMPLOYEE OR EMPLOYER UNDER THIS TITLE, EXCEPT AS OTHERWISE PROVIDED IN
34 THIS TITLE.

35 (5) AN AGREEMENT THAT VIOLATES PARAGRAPH (4) OF THIS
36 SUBSECTION IS VOID.

37 (6) NOTHING IN THIS SUBSECTION LIMITS THE RIGHT OF AN INJURED
38 EMPLOYEE TO SEEK TREATMENT FROM A HEALTH CARE PROVIDER OF THE
39 EMPLOYEE'S CHOICE.

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

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