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SB 413/96 - FIN

1997 Regular Session
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CF 7r2468

By: Senator Della

Introduced and read first time: January 30, 1997

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 1997

CHAPTER _____

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 and determined by the
8 Workers' Compensation Commission to be in compliance with certain provisions of
9 law; providing for the review of settlements and resolutions of claims and
10 arbitration decisions under an alternative dispute resolution system; providing that
11 once an agreement is approved determined to be in compliance with certain
12 provisions of law by the Commission it is binding on the employer and the
13 bargaining unit; imposing certain limitations on an agreement; providing that an
14 insurer is not required to underwrite a certain program; requiring the Commission
15 and certain parties to provide a certain report to certain committees of the General
16 Assembly; providing for the termination of this Act; and generally relating to
17 collective bargaining agreements with respect to workers' compensation.

18 BY repealing and reenacting, with amendments,

19 Article - Labor and Employment

20 Section 9-104

21 Annotated Code of Maryland

22 (1991 Volume and 1996 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

24 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Labor and Employment**

2 9-104.

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

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

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

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

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

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

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

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

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

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

27 2. refers to the applicable federal law; and

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

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

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

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

3

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

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

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

12 (1) voluntarily enters into the contract; and

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

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

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

28 (II) THE USE OF AN AGREED LIST OF HEALTH CARE PROVIDERS OF
29 MEDICAL TREATMENT AND EXPERTISE, WHICH MAY BE THE SOURCE OF ALL
30 MEDICAL AND RELATED EXAMINATIONS, TREATMENT, AND TESTIMONY PROVIDED
31 UNDER THIS TITLE;

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

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

36 (V) A VOCATIONAL REHABILITATION OR RETRAINING PROGRAM;
37 ~~AND~~

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

39 (2) (I) ALL SETTLEMENTS AND RESOLUTIONS OF CLAIMS UNDER AN
40 ALTERNATIVE DISPUTE RESOLUTION SYSTEM SHALL BE SUBMITTED TO THE
41 COMMISSION FOR APPROVAL. THE COMMISSION SHALL APPROVE SETTLEMENTS

1 AND RESOLUTIONS OF CLAIMS THAT THE COMMISSION DETERMINES ARE IN
2 COMPLIANCE WITH THIS TITLE.

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

6 ~~(2)~~ (3) AN AGREEMENT UNDER THIS SUBSECTION IS NOT VALID
7 UNTIL IT HAS BEEN FILED WITH THE COMMISSION AND DETERMINED BY THE
8 COMMISSION TO BE IN COMPLIANCE WITH THIS SUBSECTION AND THIS TITLE.

9 ~~(3)~~ (4) ONCE AN AGREEMENT UNDER THIS SUBSECTION HAS BEEN
10 ~~APPROVED~~ DETERMINED TO BE IN COMPLIANCE WITH THIS SUBSECTION AND THIS
11 TITLE BY THE COMMISSION IT IS BINDING ON THE EMPLOYER AND THE
12 BARGAINING UNIT.

13 ~~(4)~~ (5) THIS SUBSECTION DOES NOT ALLOW AN AGREEMENT THAT:

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

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

19 (III) AFFECTS THE IMPOSITION OF AN ASSESSMENT ON
20 SETTLEMENTS AND RESOLUTIONS OF CLAIMS, AS DESCRIBED IN §§ 9-806 AND 9-1007
21 OF THIS ARTICLE; OR

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

24 ~~(5)~~ (6) AN AGREEMENT THAT VIOLATES PARAGRAPH ~~(4)~~ (5) OF THIS
25 SUBSECTION IS VOID.

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

29 (7) NOTHING IN THIS SUBSECTION REQUIRES AN INSURER TO
30 UNDERWRITE A PROGRAM ESTABLISHED UNDER PARAGRAPH (1) OF THIS
31 SUBSECTION.

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

38 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
39 October 1, 1997. It shall remain effective for a period of 4 5 years and, at the end of

5

- 1 September 30, ~~2004~~ 2002, with no further action required by the General Assembly, this
- 2 Act shall be abrogated and of no further force and effect.