

SENATE BILL 522

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2002 Regular Session
2r1844

By: **Senators Exum, Bromwell, DeGrange, Della, Dorman, Kelley, Pinsky,
and Teitelbaum**

Introduced and read first time: February 1, 2002

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of repealing a certain termination provision that governs certain
4 types of collective bargaining agreements between an employer and a certified
5 exclusive bargaining representative regarding workers' compensation; and
6 generally relating to collective bargaining agreements with respect to workers'
7 compensation.

8 BY repealing and reenacting, without amendments,
9 Article - Labor and Employment
10 Section 9-104
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 2001 Supplement)

13 BY repealing and reenacting, with amendments,
14 Chapter 591 of the Acts of the General Assembly of 1997
15 Section 3

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

18 **Article - Labor and Employment**

19 9-104.

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

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

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

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

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

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

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

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

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

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

19 2. refers to the applicable federal law; and

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

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

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

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

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

35 (5) If a common carrier by railroad or an employee of the carrier gives
36 the Commission notice of intention to end the agreement in accordance with

1 paragraph (4) of this subsection, the agreement shall end on the part of the carrier or
2 employee on the effective date of the notice.

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

7 (1) voluntarily enters into the contract; and

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

10 (d) (1) Subject to paragraph (5) of this subsection, as part of a collective
11 bargaining agreement, an employer and a recognized or certified exclusive bargaining
12 representative of employees under the purview of the Building and Construction
13 Trade Council may agree to:

14 (i) an alternative dispute resolution system that modifies,
15 supplements, or replaces all or part of the dispute prevention and dispute resolution
16 processes contained in this title, and that may include but is not limited to mediation
17 and binding arbitration;

18 (ii) the use of an agreed list of health care providers of medical
19 treatment and expertise, which may be the source of all medical and related
20 examinations, treatment, and testimony provided under this title;

21 (iii) the use of an agreed list of health care providers to conduct
22 independent medical examinations;

23 (iv) a light duty, modified job, or return to work program; and

24 (v) a vocational rehabilitation or retraining program.

25 (2) (i) All settlements and resolutions of claims under an alternative
26 dispute resolution system shall be submitted to the Commission for approval. The
27 Commission shall approve settlements and resolutions of claims that the Commission
28 determines are in compliance with this title.

29 (ii) All arbitration decisions under an alternative dispute resolution
30 system shall be reviewable in the same manner and under the same procedures as a
31 decision of a commissioner.

32 (3) An agreement under this subsection is not valid until it has been
33 filed with the Commission and determined by the Commission to be in compliance
34 with this subsection and this title.

35 (4) Once an agreement under this subsection has been determined to be
36 in compliance with this subsection and this title by the Commission it is binding on
37 the employer and the bargaining unit.

- 1 (5) This subsection does not allow an agreement that:
- 2 (i) exempts a covered employee or an employer from a duty of the
3 covered employee or employer under this title;
- 4 (ii) waives or limits a right or benefit of a covered employee or
5 employer under this title, except as otherwise set forth in this subsection;
- 6 (iii) affects the imposition of an assessment on settlements and
7 resolutions of claims, as described in §§ 9-806 and 9-1007 of this article; or
- 8 (iv) affects claims made under Subtitle 8 or Subtitle 10 of this title
9 or claims made under Title 10, Subtitle 2 of this article.
- 10 (6) An agreement that violates paragraph (5) of this subsection is void.
- 11 (7) Notwithstanding paragraph (1)(ii) of this subsection, an injured
12 employee whose injury or treatment is related to a medical condition for which the
13 employee is being or has been treated may continue to seek treatment from the health
14 care provider who is treating or has treated the condition.
- 15 (8) An agreement under this subsection shall provide for an appeal
16 mechanism for a covered employee who wishes to use a health care provider who is
17 not on the agreed list of health care providers.
- 18 (9) Nothing in this subsection requires an insurer to underwrite a
19 program established under paragraph (1) of this subsection.

20

Chapter 591 of the Acts of 1997

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 1997. [It shall remain effective for a period of 5 years and, at the end of
23 September 30, 2002, with no further action required by the General Assembly, this
24 Act shall be abrogated and of no further force and effect.]

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2002.