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

Introduced and read first time: February 1, 2002

Assigned to: Finance

Committee Report: Favorable

Senate action: Adopted

Read second time: March 13, 2002

CHAPTER _____

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:

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
8 this 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
14 or 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
17 with the federal law, to the employee or a dependent of the employee for disability or
18 death 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
23 by 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
26 employees 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
29 after the document is submitted to the Commission:

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

32 2. if the carrier regularly runs a freight or passenger train
33 within 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

1 employee of the carrier shall be conclusively presumed to have entered into the
2 agreement unless, within the 30 days, an employee submits to the Commission a
3 written notice declining the offer.

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

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

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

16 (1) voluntarily enters into the contract; and

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

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

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

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

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

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

33 (v) a vocational rehabilitation or retraining program.

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

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

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

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

10 (5) This subsection does not allow an agreement that:

11 (i) exempts a covered employee or an employer from a duty of the
12 covered employee or employer under this title;

13 (ii) waives or limits a right or benefit of a covered employee or
14 employer under this title, except as otherwise set forth in this subsection;

15 (iii) affects the imposition of an assessment on settlements and
16 resolutions of claims, as described in §§ 9-806 and 9-1007 of this article; or

17 (iv) affects claims made under Subtitle 8 or Subtitle 10 of this title
18 or claims made under Title 10, Subtitle 2 of this article.

19 (6) An agreement that violates paragraph (5) of this subsection is void.

20 (7) Notwithstanding paragraph (1)(ii) of this subsection, an injured
21 employee whose injury or treatment is related to a medical condition for which the
22 employee is being or has been treated may continue to seek treatment from the health
23 care provider who is treating or has treated the condition.

24 (8) An agreement under this subsection shall provide for an appeal
25 mechanism for a covered employee who wishes to use a health care provider who is
26 not on the agreed list of health care providers.

27 (9) Nothing in this subsection requires an insurer to underwrite a
28 program established under paragraph (1) of this subsection.

29 **Chapter 591 of the Acts of 1997**

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

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

