
By: **Delegate Krysiak**

Introduced and read first time: February 11, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment - Subsequent Injury Fund - Renaming**

3 FOR the purpose of renaming the Subsequent Injury Fund as the Prior Injury Fund;
4 authorizing the publishers of the Annotated Code of Maryland to correct
5 statutory references under certain circumstances; providing for the construction
6 of this Act; and generally relating to the Subsequent Injury Fund.

7 BY repealing and reenacting, with amendments,
8 Article - Labor and Employment
9 Section 9-310.1(a), 9-610(a) and (c), 9-630(b)(4), 9-637(c)(4), 9-722(a) and
10 (d)(2), 9-729(c), 9-730(a), 9-731(b)(2)(ii), 9-737, 9-743, 9-802(b) and (c),
11 9-803(c), 9-804(a) and (b)(1), 9-806, 9-807, 9-808, 9-902, 9-1008(a),
12 10-201, 10-204, and 10-207
13 Annotated Code of Maryland
14 (1999 Replacement Volume and 2004 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - State Government
17 Section 5-102(b)
18 Annotated Code of Maryland
19 (2004 Replacement Volume)

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

22 **Article - Labor and Employment**

23 9-310.1.

24 (a) In any administrative action before the Commission, if it is established by
25 a preponderance of the evidence that a person has knowingly obtained benefits under
26 this title to which the person is not entitled, the Commission shall order the person to
27 reimburse the insurer, self-insured employer, the Injured Workers' Insurance Fund,
28 the Uninsured Employers' Fund, or the [Subsequent] PRIOR Injury Fund for the

1 amount of all benefits that the person knowingly obtained and to which the person is
2 not entitled.

3 9-610.

4 (a) (1) Except for benefits subject to an offset under § 29-118 of the State
5 Personnel and Pensions Article, if a statute, charter, ordinance, resolution,
6 regulation, or policy, regardless of whether part of a pension system, provides a
7 benefit to a covered employee of a governmental unit or a quasi-public corporation
8 that is subject to this title under § 9-201(2) of this title or, in case of death, to the
9 dependents of the covered employee, payment of the benefit by the employer satisfies,
10 to the extent of the payment, the liability of the employer and the [Subsequent]
11 PRIOR Injury Fund for payment of similar benefits under this title.

12 (2) If a benefit paid under paragraph (1) of this subsection is less than
13 the benefits provided under this title, the employer, the [Subsequent] PRIOR Injury
14 Fund, or both shall provide an additional benefit that equals the difference between
15 the benefit paid under paragraph (1) of this subsection and the benefits provided
16 under this title.

17 (c) (1) The Commission may:

18 (i) determine whether any benefit provided by the employer is
19 equal to or greater than any benefit provided for in this title; and

20 (ii) make an award against the employer or the [Subsequent]
21 PRIOR Injury Fund or both to provide an additional benefit that equals the difference
22 between the benefit provided by the employer and the benefits required by this title.

23 (2) A claim that comes under this section is subject to the continuing
24 powers and jurisdiction of the Commission.

25 9-630.

26 (b) (4) Subject to any right of the [Subsequent] PRIOR Injury Fund to be
27 impleaded or any right of the [Subsequent] PRIOR Injury Fund to defend in a case
28 involving payment from the [Subsequent] PRIOR Injury Fund created under Title 10,
29 Subtitle 2 of this article, as allowable under Subtitle 8 of this title, the [Subsequent]
30 PRIOR Injury Fund shall reimburse the employer in whose employment the employee
31 was injured or the employer's insurer the amount of additional weekly compensation
32 paid by the employer or insurer under paragraph (3) of this subsection.

33 9-637.

34 (c) (4) Subject to any right of the [Subsequent] PRIOR Injury Fund to be
35 impleaded or any right of the [Subsequent] PRIOR Injury Fund to defend in a case
36 involving payment from the [Subsequent] PRIOR Injury Fund created under Title 10,
37 Subtitle 2 of this article, as allowable under Subtitle 8 of this title, the [Subsequent]
38 PRIOR Injury Fund shall reimburse the employer in whose employment the employee

1 was injured or the employer's insurer the amount of additional weekly compensation
2 paid by the employer or insurer under paragraph (3) of this subsection.

3 9-722.

4 (a) Subject to approval by the Commission under subsection (b) of this section,
5 after a claim has been filed by a covered employee or the dependents of a covered
6 employee, the covered employee or dependents may enter into an agreement for the
7 final compromise and settlement of any current or future claim under this title with:

8 (1) the employer;

9 (2) the insurer of the employer;

10 (3) the [Subsequent] PRIOR Injury Fund; or

11 (4) the Uninsured Employers' Fund.

12 (d) (2) Unless the Commission orders otherwise, a final compromise and
13 settlement agreement between a covered employee or the dependents of a covered
14 employee and the employer or its insurer precludes the right of the covered employee
15 or the dependents of the covered employee to proceed against the [Subsequent]
16 PRIOR Injury Fund on the claim.

17 9-729.

18 (c) If the Commission grants a lump-sum payment under this section in a
19 claim involving permanent total disability or death, the Commission shall:

20 (1) reduce the weekly rate of compensation until the amount of the lump
21 sum would have been paid if it had been paid in weekly payments; and

22 (2) determine in the award:

23 (i) the dollar amount and the number of weeks to be paid by the
24 employer or its insurer at the reduced weekly rate; and

25 (ii) if payments are made from the [Subsequent] PRIOR Injury
26 Fund, the dollar amount and the number of weeks to be paid by the [Subsequent]
27 PRIOR Injury Fund at the reduced weekly rate.

28 9-730.

29 (a) This section does not apply to compensation:

30 (1) for a serious disability under § 9-630 of this subtitle; or

31 (2) payable by the [Subsequent] PRIOR Injury Fund.

1 9-731.

2 (b) (2) If the Commission grants a lump-sum payment under paragraph (1)
3 of this subsection, the Commission shall:

4 (ii) state in the award the dollar amount and the number of weeks
5 that the reduced rate shall be paid by:

6 1. the employer or its insurer; or

7 2. if payments are made from the [Subsequent] PRIOR
8 Injury Fund, the [Subsequent] PRIOR Injury Fund.

9 9-737.

10 An employer, covered employee, dependent of a covered employee, or any other
11 interested person aggrieved by a decision of the Commission, including the
12 [Subsequent] PRIOR Injury Fund and the Uninsured Employers' Fund, may appeal
13 from the decision of the Commission provided the appeal is filed within 30 days after
14 the date of the mailing of the Commission's order by:

15 (1) filing a petition for judicial review in accordance with Title 7 of the
16 Maryland Rules;

17 (2) attaching to or including in the petition a certificate of service
18 verifying that on the date of the filing a copy of the petition has been sent by first
19 class mail to the Commission and to each other party of record; and

20 (3) on the date of the filing, serving copies of the petition by first class
21 mail on the Commission and each other party of record.

22 9-743.

23 Unless the [Subsequent] PRIOR Injury Fund is a party to an appeal and is
24 represented by counsel, the court to which the appeal is taken may not make an
25 award against the Fund.

26 9-802.

27 (b) In addition to the compensation for which an employer or its insurer is
28 liable, the covered employee is entitled to compensation from the [Subsequent]
29 PRIOR Injury Fund if:

30 (1) the covered employee has a permanent impairment due to a previous
31 accident, disease, or congenital condition that is or is likely to be a hindrance or
32 obstacle to the employment of the covered employee;

33 (2) the covered employee suffers a subsequent compensable accidental
34 personal injury, occupational disease, or compensable hernia resulting in permanent
35 partial or permanent total disability that is substantially greater due to the combined

1 effects of the previous impairment and the subsequent compensable event than it
2 would have been from the subsequent compensable event alone;

3 (3) the combined effects of the previous impairment and the subsequent
4 accidental personal injury, occupational disease, or compensable hernia result in a
5 permanent disability exceeding 50% of the body as a whole; and

6 (4) the previous impairment, as determined by the Commission at the
7 time of the subsequent compensable event, and the subsequent accidental personal
8 injury, occupational disease, or compensable hernia are each compensable for at least
9 125 weeks.

10 (c) Compensation from the [Subsequent] PRIOR Injury Fund shall be paid
11 after the completion of payments of compensation by the employer or its insurer.

12 9-803.

13 (c) The [Subsequent] PRIOR Injury Fund is liable for the remainder of the
14 compensation payable as in cases of death resulting solely from an accidental
15 personal injury, occupational disease, or compensable hernia.

16 9-804.

17 (a) In an award against the [Subsequent] PRIOR Injury Fund, the
18 Commission shall find specifically:

19 (1) the amount of the weekly payments to the covered employee;

20 (2) the number of weeks of compensation to be paid;

21 (3) the date when the [Subsequent] PRIOR Injury Fund shall begin
22 payments; and

23 (4) if possible, the period for which payments are to continue.

24 (b) (1) When the Commission makes an award against the [Subsequent]
25 PRIOR Injury Fund, if the prior permanent disability contributes to the covered
26 employee's current permanent disability, the Commission shall deduct from the
27 award the amount of all prior permanent disability payments received by the covered
28 employee under:

29 (i) each prior award for permanent disability made by the
30 Commission or a similar unit in another state; or

31 (ii) any prior final compromise and settlement agreement approved
32 by the Commission or a similar unit in another state.

33 9-806.

34 (a) The Commission shall impose an assessment of 6.5%, payable to the
35 [Subsequent] PRIOR Injury Fund, on:

1 (1) each award against an employer or its insurer for permanent
2 disability or death, including awards for disfigurement and mutilation;

3 (2) each amount payable by an employer or its insurer under a
4 settlement agreement approved by the Commission; and

5 (3) each amount payable under item (1) or (2) of this subsection by the
6 Property and Casualty Guaranty Corporation on behalf of an insolvent insurer.

7 (b) In computing the amount of an assessment, the Commission shall round
8 off any fractional dollar to the nearest whole dollar.

9 (c) Payment of an assessment under this section is in addition to any payment
10 of compensation to a covered employee who has sustained an accidental personal
11 injury, occupational disease, or compensable hernia or a dependent of the covered
12 employee, as provided in this title.

13 (d) (1) The Director of the [Subsequent] PRIOR Injury Fund promptly shall
14 remit to the State Treasurer each payment of assessment received by the
15 [Subsequent] PRIOR Injury Fund.

16 (2) The State Treasurer shall hold, manage, and disburse the money in
17 accordance with Title 10, Subtitle 2 of this article.

18 (e) The assessment imposed under this section is for payment of claims
19 submitted to the [Subsequent] PRIOR Injury Fund and is not a tax intended to
20 benefit the State.

21 9-807.

22 (a) In any case involving payment from the [Subsequent] PRIOR Injury Fund,
23 the Commission or any party in interest shall:

24 (1) give written notice to the State Treasurer or the attorney for the
25 [Subsequent] PRIOR Injury Fund that the [Subsequent] PRIOR Injury Fund is or
26 may be involved in the case; and

27 (2) implead the Fund, in writing, as a party.

28 (b) (1) The [Subsequent] PRIOR Injury Fund may be impleaded at any stage
29 of the proceedings:

30 (i) before the Commission; or

31 (ii) on appeal.

32 (2) If the [Subsequent] PRIOR Injury Fund is impleaded on appeal
33 before a circuit court or the Court of Special Appeals, the court:

1 (i) as to an impleader filed at least 60 days before the scheduled
2 trial in the circuit court or at least 60 days before the hearing in the Court of Special
3 Appeals, shall:

4 1. suspend further proceedings; and

5 2. remand the case to the Commission for further
6 proceedings to give the [Subsequent] PRIOR Injury Fund an opportunity to defend
7 against the claim; and

8 (ii) as to an impleader filed less than 60 days before the trial in the
9 circuit court or less than 60 days before the hearing in the Court of Special Appeals,
10 may for good cause shown:

11 1. suspend further proceedings; and

12 2. remand the case to the Commission for further
13 proceedings to give the [Subsequent] PRIOR Injury Fund an opportunity to defend
14 against the claim.

15 9-808.

16 When an award is made against the [Subsequent] PRIOR Injury Fund, the
17 [Subsequent] PRIOR Injury Fund may appeal the decision in accordance with
18 Subtitle 7 of this title.

19 9-902.

20 (a) If a claim is filed and compensation is awarded or paid under this title, a
21 self-insured employer, an insurer, the [Subsequent] PRIOR Injury Fund, or the
22 Uninsured Employers' Fund may bring an action for damages against the third party
23 who is liable for the injury or death of the covered employee.

24 (b) If the self-insured employer, insurer, [Subsequent] PRIOR Injury Fund, or
25 Uninsured Employers' Fund recovers damages exceeding the amount of compensation
26 paid or awarded and the amount of payments for medical services, funeral expenses,
27 or any other purpose under Subtitle 6 of this title, the self-insured employer, insurer,
28 [Subsequent] PRIOR Injury Fund, or Uninsured Employers' Fund shall:

29 (1) deduct from the excess amount its costs and expenses for the action;
30 and

31 (2) pay the balance of the excess amount to the covered employee or, in
32 case of death, the dependents of the covered employee.

33 (c) If the self-insured employer, insurer, [Subsequent] PRIOR Injury Fund, or
34 Uninsured Employers' Fund does not bring an action against the third party within 2
35 months after the Commission makes an award, the covered employee or, in case of
36 death, the dependents of the covered employee may bring an action for damages
37 against the third party.

1 (d) The period of limitations for the right of action of a covered employee or the
2 dependents of the covered employee against the third party does not begin to run
3 until 2 months after the first award of compensation made to the covered employee or
4 the dependents under this title.

5 (e) If the covered employee or the dependents of the covered employee recover
6 damages, the covered employee or dependents:

7 (1) first, may deduct the costs and expenses of the covered employee or
8 dependents for the action;

9 (2) next, shall reimburse the self-insured employer, insurer,
10 [Subsequent] PRIOR Injury Fund, or Uninsured Employers' Fund for:

11 (i) the compensation already paid or awarded; and

12 (ii) any amounts paid for medical services, funeral expenses, or any
13 other purpose under Subtitle 6 of this title; and

14 (3) finally, may keep the balance of the damages recovered.

15 (f) In an action brought by a covered employee or the dependents of the
16 covered employee under subsection (c) of this section, the covered employee or the
17 dependents of the covered employee, the self-insured employer, the insurer, the
18 [Subsequent] PRIOR Injury Fund, and the Uninsured Employers' Fund shall pay
19 court costs and attorney's fees in the proportion that the amount received by each
20 bears to the whole amount paid in settlement of any claim or satisfaction of any
21 judgment obtained in the case.

22 9-1008.

23 (a) This section does not apply to an award against the [Subsequent] PRIOR
24 Injury Fund.

25 10-201.

26 (a) In this subtitle the following words have the meanings indicated.

27 (b) "Board" means the [Subsequent] PRIOR Injury Fund Board.

28 (c) "Fund" means the [Subsequent] PRIOR Injury Fund.

29 10-204.

30 There is a [Subsequent] PRIOR Injury Fund.

31 10-207.

32 There is a [Subsequent] PRIOR Injury Fund Board.

Article - State Government

1
2 5-102.

3 (b) The surety bond under this section shall:

4 (1) run to the State;

5 (2) be in the amount that the Governor approves;

6 (3) be with a surety company that is authorized to do business in the
7 State; and

8 (4) include provisions that secure the money of:

9 (i) the Injured Workers' Insurance Fund;

10 (ii) the [Subsequent] PRIOR Injury Fund; and

11 (iii) the Unemployment Insurance Administration Fund.

12 SECTION 2. AND BE IT FURTHER ENACTED, That in every law, executive
13 order, rule, regulation, policy, or document created by any official, employee, or unit of
14 this State, the Subsequent Injury Fund is renamed the Prior Injury Fund, as provided
15 in this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That the publishers of the
17 Annotated Code of Maryland, subject to the approval of the Department of Legislative
18 Services, shall correct any statutory reference that is rendered incorrect by this Act.

19 SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be
20 construed to affect any substantive rights or obligations of this entity that exist as of
21 the effective date of this Act. Such rights and obligations may be enforced by or
22 against these entities using the entity name in which the right or obligation was
23 created. This Act does not affect the validity of any rule, regulation, policy, directive,
24 permit, proposal, form, plan, contract, appropriation, grant, property interest,
25 administrative or judicial proceeding, right to sue and be sued, mission statement,
26 bond or other evidence of indebtedness, or any other duty or responsibility associated
27 with, or any other matter pending before, this entity, all of which shall continue in
28 effect.

29 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2005.