

HOUSE BILL 527

K1, P1
HB 1163/05 – ECM

71r0375

By: **Delegates Barve and Simmons**

Introduced and read first time: February 7, 2007

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); and
12 10–201, 10–204, and 10–207 to be under the amended subtitle “Subtitle 2.
13 Prior Injury Fund”

14 Annotated Code of Maryland

15 (1999 Replacement Volume and 2006 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article – State Government

18 Section 5–102(b)

19 Annotated Code of Maryland

20 (2004 Replacement Volume and 2006 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Labor and Employment

9–310.1.

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

9–610.

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

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

(c) (1) The Commission may:

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

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

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

9–630.

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

8 9-637.

9 (c) (4) Subject to any right of the [Subsequent] **PRIOR** Injury Fund to be
10 impleaded or any right of the [Subsequent] **PRIOR** Injury Fund to defend in a case
11 involving payment from the [Subsequent] **PRIOR** Injury Fund created under Title 10,
12 Subtitle 2 of this article, as allowable under Subtitle 8 of this title, the [Subsequent]
13 **PRIOR** Injury Fund shall reimburse the employer in whose employment the employee
14 was injured or the employer's insurer the amount of additional weekly compensation
15 paid by the employer or insurer under paragraph (3) of this subsection.

16 9-722.

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

- 22 (1) the employer;
- 23 (2) the insurer of the employer;
- 24 (3) the [Subsequent] **PRIOR** Injury Fund; or
- 25 (4) the Uninsured Employers' Fund.

26 (d) (2) Unless the Commission orders otherwise, a final compromise and
27 settlement agreement between a covered employee or the dependents of a covered
28 employee and the employer or its insurer precludes the right of the covered employee
29 or the dependents of the covered employee to proceed against the [Subsequent]
30 **PRIOR** Injury Fund on the claim.

1 9-729.

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

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

6 (2) determine in the award:

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

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

12 9-730.

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

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

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

16 9-731.

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

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

21 1. the employer or its insurer; or

22 2. if payments are made from the [Subsequent] **PRIOR**
23 Injury Fund, the [Subsequent] **PRIOR** Injury Fund.

24 9-737.

25 An employer, covered employee, dependent of a covered employee, or any other
26 interested person aggrieved by a decision of the Commission, including the

1 [Subsequent] **PRIOR** Injury Fund and the Uninsured Employers' Fund, may appeal
2 from the decision of the Commission provided the appeal is filed within 30 days after
3 the date of the mailing of the Commission's order by:

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

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

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

11 9-743.

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

15 9-802.

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

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

22 (2) the covered employee suffers a subsequent compensable accidental
23 personal injury, occupational disease, or compensable hernia resulting in permanent
24 partial or permanent total disability that is substantially greater due to the combined
25 effects of the previous impairment and the subsequent compensable event than it
26 would have been from the subsequent compensable event alone;

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

30 (4) the previous impairment, as determined by the Commission at the
31 time of the subsequent compensable event, and the subsequent accidental personal

1 injury, occupational disease, or compensable hernia are each compensable for at least
2 125 weeks.

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

5 9–803.

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

9 9–804.

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

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

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

14 (3) the date when the [Subsequent] **PRIOR** Injury Fund shall begin
15 payments; and

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

17 (b) (1) When the Commission makes an award against the [Subsequent]
18 **PRIOR** Injury Fund, if the prior permanent disability contributes to the covered
19 employee's current permanent disability, the Commission shall deduct from the award
20 the amount of all prior permanent disability payments received by the covered
21 employee under:

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

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

26 9–806.

27 (a) The Commission shall impose an assessment of 6.5%, payable to the
28 [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
10 payment of compensation to a covered employee who has sustained an accidental
11 personal injury, occupational disease, or compensable hernia or a dependent of the
12 covered employee, as provided in this title.

13 (d) (1) The Director of the [Subsequent] **PRIOR** Injury Fund promptly
14 shall 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
17 in 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 benefit
20 the State.

21 9–807.

22 (a) In any case involving payment from the [Subsequent] **PRIOR** Injury
23 Fund, 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
29 stage of the proceedings:

1 (i) before the Commission; or

2 (ii) on appeal.

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

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

8 1. suspend further proceedings; and

9 2. remand the case to the Commission for further
10 proceedings to give the [Subsequent] **PRIOR** Injury Fund an opportunity to defend
11 against the claim; and

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

15 1. suspend further proceedings; and

16 2. remand the case to the Commission for further
17 proceedings to give the [Subsequent] **PRIOR** Injury Fund an opportunity to defend
18 against the claim.

19 9–808.

20 When an award is made against the [Subsequent] **PRIOR** Injury Fund, the
21 [Subsequent] **PRIOR** Injury Fund may appeal the decision in accordance with Subtitle
22 7 of this title.

23 9–902.

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

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

7 (1) deduct from the excess amount its costs and expenses for the
8 action; and

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

11 (c) If the self-insured employer, insurer, [Subsequent] **PRIOR** Injury Fund,
12 or Uninsured Employers' Fund does not bring an action against the third party within
13 2 months after the Commission makes an award, the covered employee or, in case of
14 death, the dependents of the covered employee may bring an action for damages
15 against the third party.

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

20 (e) If the covered employee or the dependents of the covered employee
21 recover damages, the covered employee or dependents:

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

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

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

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

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

30 (f) In an action brought by a covered employee or the dependents of the
31 covered employee under subsection (c) of this section, the covered employee or the

1 dependents of the covered employee, the self-insured employer, the insurer, the
2 [Subsequent] **PRIOR** Injury Fund, and the Uninsured Employers' Fund shall pay
3 court costs and attorney's fees in the proportion that the amount received by each
4 bears to the whole amount paid in settlement of any claim or satisfaction of any
5 judgment obtained in the case.

6 9-1008.

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

9 Subtitle 2. [Subsequent] **PRIOR** Injury Fund.

10 10-201.

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

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

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

14 10-204.

15 There is a [Subsequent] **PRIOR** Injury Fund.

16 10-207.

17 There is a [Subsequent] **PRIOR** Injury Fund Board.

18 **Article - State Government**

19 5-102.

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

21 (1) run to the State;

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

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

- 1 (4) include provisions that secure the money of:
- 2 (i) the Injured Workers' Insurance Fund;
- 3 (ii) the [Subsequent] **PRIOR** Injury Fund; and
- 4 (iii) the Unemployment Insurance Administration Fund.

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

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

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

22 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2007.