

SENATE BILL 550

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71r1681
CF 71r2582

By: **Senator Garagiola**

Introduced and read first time: February 2, 2007

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Appeals – Evidence**

3 FOR the purpose of authorizing the introduction of certain health care records as
4 evidence in an appeal from a decision of the Workers' Compensation
5 Commission under certain circumstances; requiring a certain notice to be served
6 to all parties within a certain time period; providing for the right to object for
7 good cause under certain conditions and within a certain time period; providing
8 for the content of an objection; providing for a response to an objection;
9 clarifying that this Act does not otherwise limit the right to introduce new
10 evidence; defining a certain term; providing for the application of this Act; and
11 generally relating to evidence introduced in appeals from Workers'
12 Compensation Commission decisions.

13 BY repealing and reenacting, without amendments,
14 Article – Courts and Judicial Proceedings
15 Section 10–104(a)
16 Annotated Code of Maryland
17 (2006 Replacement Volume)

18 BY repealing and reenacting, without amendments,
19 Article – Labor and Employment
20 Section 9–745
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2006 Supplement)

23 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Labor and Employment
2 Section 9–745.1
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2006 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 10–104.

9 (a) (1) In this section the following terms have the meanings indicated.

10 (2) “Health care provider” means:

11 (i) A health care provider, as defined in § 3–2A–01 of this
12 article;

13 (ii) An ambulatory surgical facility;

14 (iii) An inpatient facility that is organized primarily in the
15 rehabilitation of disabled persons, through an integrated program of medical and other
16 service provided under competent professional supervision;

17 (iv) A home health agency, as defined in § 19–401 of the Health
18 – General Article;

19 (v) Any health institution, service, or program for which a
20 certificate of need is required under Title 19 of the Health – General Article; or

21 (vi) A person who is:

22 1. Substantially similar to a health care provider
23 described in items (i) through (v) of this paragraph; and

24 2. Regulated by another state to provide health care
25 services.

26 **Article – Labor and Employment**

27 9–745.

- 1 (a) The proceedings in an appeal shall:
- 2 (1) be informal and summary; and
- 3 (2) provide each party a full opportunity to be heard.
- 4 (b) In each court proceeding under this title:
- 5 (1) the decision of the Commission is presumed to be prima facie
- 6 correct; and
- 7 (2) the party challenging the decision has the burden of proof.
- 8 (c) The court shall determine whether the Commission:
- 9 (1) justly considered all of the facts about the accidental personal
- 10 injury, occupational disease, or compensable hernia;
- 11 (2) exceeded the powers granted to it under this title; or
- 12 (3) misconstrued the law and facts applicable in the case decided.
- 13 (d) On a motion of any party filed with the clerk of the court in accordance
- 14 with the practice in civil cases, the court shall submit to a jury any question of fact
- 15 involved in the case.
- 16 (e) (1) If the court determines that the Commission acted within its
- 17 powers and correctly construed the law and facts, the court shall confirm the decision
- 18 of the Commission.
- 19 (2) If the court determines that the Commission did not act within its
- 20 powers or did not correctly construe the law and facts, the court shall reverse or
- 21 modify the decision or remand the case to the Commission for further proceedings.

22 **9-745.1.**

23 (A) IN THIS SECTION, "HEALTH CARE PROVIDER" HAS THE MEANING

24 STATED IN § 10-104(A) OF THE COURTS ARTICLE.

25 (B) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,

26 WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH CARE PROVIDER OR

27 CUSTODIAN OF RECORDS, AN APPELLEE MAY INTRODUCE A WRITING OR

1 **RECORD OF A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY AS**
2 **EVIDENCE OF:**

3 (I) **THE EXISTENCE OF A HEALTH CONDITION;**

4 (II) **A HEALTH CARE PROVIDER'S OPINION;**

5 (III) **THE HEALTH CARE PROVIDED; OR**

6 (IV) **THE NECESSITY OF THE HEALTH CARE PROVIDED.**

7 (2) **IN ORDER FOR A WRITING OR RECORD TO BE ADMISSIBLE ON**
8 **APPEAL UNDER THIS SUBSECTION:**

9 (I) **THE WRITING OR RECORD SHALL HAVE BEEN**
10 **INTRODUCED IN THE PROCEEDING THAT IS THE SUBJECT OF THE APPEAL; AND**

11 (II) **AT LEAST 120 DAYS BEFORE THE DATE FOR WHICH THE**
12 **TRIAL IS SCHEDULED, OR WITHIN 10 DAYS OF A RECEIPT OF A NOTICE TO**
13 **SCHEDULE THE TRIAL ON A DATE THAT IS LESS THAN 120 DAYS FROM THE DATE**
14 **OF THE NOTICE, THE APPELLEE SHALL, AS PROVIDED UNDER MARYLAND**
15 **RULES 1-321 AND 1-322, FILE WITH THE CLERK OF THE COURT AND SERVE ON**
16 **ALL OTHER PARTIES:**

17 1. **A NOTICE OF INTENT TO INTRODUCE THE**
18 **WRITING OR RECORD WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH**
19 **CARE PROVIDER OR CUSTODIAN OF RECORDS; AND**

20 2. **A COPY OF EACH WRITING OR RECORD INCLUDED**
21 **IN THE NOTICE.**

22 (3) **THE WRITING OR RECORD MUST BE OTHERWISE ADMISSIBLE.**

23 (4) (I) **WITHIN 30 DAYS OF RECEIPT OF THE NOTICE SERVED**
24 **UNDER SUBSECTION (B)(2) OF THIS SECTION, THE APPELLANT MAY FOR GOOD**
25 **CAUSE FILE WITH THE COURT OBJECTIONS TO THE PROPOSED INTRODUCTION**
26 **OF EVIDENCE WITHOUT TESTIMONY.**

27 (II) **THE OBJECTIONS SHALL:**

1 **1. IDENTIFY THE PROPOSED EVIDENCE THAT THE**
2 **APPELLANT OBJECTS TO HAVING INTRODUCED WITHOUT SUPPORTING**
3 **TESTIMONY; AND**

4 **2. SET FORTH THE FACTUAL BASIS OR LEGAL**
5 **GROUND THAT ESTABLISH A SUFFICIENT SHOWING OF GOOD CAUSE FOR THE**
6 **COURT TO SUSTAIN THE OBJECTIONS.**

7 **(C) THE APPELLEE MAY FILE WITH THE COURT A RESPONSE TO THE**
8 **OBJECTIONS WITHIN 10 DAYS OF RECEIPT OF THE OBJECTIONS.**

9 **(D) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A**
10 **PARTY TO INTRODUCE NEW OR ADDITIONAL HEALTH CARE EVIDENCE AT TRIAL**
11 **OR PRESENT WITNESSES AT TRIAL.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
13 construed to apply only prospectively and may not be applied or interpreted to have
14 any effect on or application to any appeals of a decision of the Workers' Compensation
15 Commission filed before the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2007.