HOUSE BILL 1253

K1 HB 480/07 – ECM

By: Delegates Manno and Schuler

Introduced and read first time: February 13, 2009 Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

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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; providing for certain exceptions; 6 requiring a certain notice to be served to all parties within a certain time period; 7 establishing a certain limit on a certain verdict or judgment; requiring a court 8 to alter a certain verdict under certain circumstances; clarifying that this Act 9 does not otherwise limit the right to introduce new evidence; defining a certain 10 term; providing for the application of this Act; and generally relating to 11 evidence introduced in appeals from Workers' Compensation Commission decisions. 12

- 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 and 2008 Supplement)
- 18 BY repealing and reenacting, without amendments,
- 19 Article Labor and Employment
- 20 Section 9–745
- 21 Annotated Code of Maryland
- 22 (2008 Replacement Volume)
- 23 BY adding to
- 24 Article Labor and Employment
- 25 Section 9–745.1
- 26 Annotated Code of Maryland
- 27 (2008 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.



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$egin{array}{c} 1 \ 2 \end{array}$	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
3	Article – Courts and Judicial Proceedings
4	10–104.
5	(a) (1) In this section the following terms have the meanings indicated.
6	(2) "Health care provider" means:
7 8	(i) A health care provider, as defined in § 3–2A–01 of this article;
9	(ii) An ambulatory surgical facility;
$10 \\ 11 \\ 12$	(iii) An inpatient facility that is organized primarily in the rehabilitation of disabled persons, through an integrated program of medical and other service provided under competent professional supervision;
$\begin{array}{c} 13\\14\end{array}$	(iv) A home health agency, as defined in § 19–401 of the Health – General Article;
$\begin{array}{c} 15\\ 16\end{array}$	(v) Any health institution, service, or program for which a certificate of need is required under Title 19 of the Health – General Article; or
17	(vi) A person who is:
18 19	$1. \qquad Substantially \ similar \ to \ a \ health \ care \ provider \\ described in items (i) through (v) of this paragraph; and$
$\begin{array}{c} 20\\ 21 \end{array}$	2. Regulated by another state to provide health care services.
22 23	(3) "State" means a state of the United States or the District of Columbia.
24	Article – Labor and Employment
25	9–745.
26	(a) The proceedings in an appeal shall:
27	(1) be informal and summary; and
28	(2) provide each party a full opportunity to be heard.
29	(b) In each court proceeding under this title:

the decision of the Commission is presumed to be prima facie 1 (1) $\mathbf{2}$ correct; and 3 (2)the party challenging the decision has the burden of proof. (c) The court shall determine whether the Commission: 4 5 justly considered all of the facts about the accidental personal (1)6 injury, occupational disease, or compensable hernia; 7 (2)exceeded the powers granted to it under this title: or (3)misconstrued the law and facts applicable in the case decided. 8

9 (d) On a motion of any party filed with the clerk of the court in accordance 10 with the practice in civil cases, the court shall submit to a jury any question of fact 11 involved in the case.

12 (e) (1) If the court determines that the Commission acted within its 13 powers and correctly construed the law and facts, the court shall confirm the decision 14 of the Commission.

15 (2) If the court determines that the Commission did not act within its 16 powers or did not correctly construe the law and facts, the court shall reverse or 17 modify the decision or remand the case to the Commission for further proceedings.

18 **9–745.1.**

19(A) IN THIS SECTION, "HEALTH CARE PROVIDER" HAS THE MEANING20STATED IN § 10–104(A) OF THE COURTS ARTICLE.

21(B)THIS SECTION DOES NOT APPLY TO THE INTRODUCTION OF HEALTH22RECORDS FOR AN APPEAL IF THE SUBJECT OF THE APPEAL IS:

- 23(1) AN INITIAL DETERMINATION OF COMPENSABILITY OF A CLAIM24FOR WORKERS' COMPENSATION BENEFITS;
- 25(2) AN AWARD OR ORDER FOR SERIOUS DISABILITY26COMPENSATION AS DEFINED IN § 9–630 OF THIS TITLE;
- 27 (3) AN AWARD OR ORDER FOR PERMANENT TOTAL DISABILITY
 28 COMPENSATION AS DEFINED IN § 9–635 OF THIS TITLE; OR
- 29(4) A CLAIM FOR DEATH BENEFITS IN ACCORDANCE WITH PART30XII OF THIS TITLE.

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1 (C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, 2 WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH CARE PROVIDER OR 3 CUSTODIAN OF RECORDS, AN APPELLEE MAY INTRODUCE A WRITING OR 4 RECORD OF A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY AS 5 EVIDENCE OF:

6 **(I)** THE EXISTENCE OF A HEALTH CONDITION; $\mathbf{7}$ **(II)** A HEALTH CARE PROVIDER'S OPINION: 8 (III) THE HEALTH CARE PROVIDED; OR 9 (IV) THE NECESSITY OF THE HEALTH CARE PROVIDED. 10 **(2)** IN ORDER FOR A WRITING OR RECORD TO BE ADMISSIBLE ON 11 **APPEAL UNDER THIS SUBSECTION:** 12 **(I)** THE WRITING OR RECORD SHALL HAVE BEEN 13 INTRODUCED IN THE PROCEEDING THAT IS THE SUBJECT OF THE APPEAL; AND 14 **(II)** AT LEAST 120 DAYS BEFORE THE DATE FOR WHICH THE 15TRIAL IS SCHEDULED, OR WITHIN 10 DAYS OF A RECEIPT OF A NOTICE TO SCHEDULE THE TRIAL ON A DATE THAT IS LESS THAN 120 DAYS FROM THE DATE 16 17 OF THE NOTICE, THE APPELLEE SHALL, AS PROVIDED UNDER MARYLAND 18 RULES 1-321 AND 1-322, FILE WITH THE CLERK OF THE COURT AND SERVE ON 19 **ALL OTHER PARTIES:** 201. A NOTICE OF INTENT TO INTRODUCE THE 21WRITING OR RECORD WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH 22CARE PROVIDER OR CUSTODIAN OF RECORDS; AND 232. A COPY OF EACH WRITING OR RECORD INCLUDED 24IN THE NOTICE. 25(3) THE WRITING OR RECORD MUST BE OTHERWISE ADMISSIBLE. 26**(D)** (1) A JUDGMENT OR VERDICT FOR AN APPEAL CONDUCTED $\mathbf{27}$ UNDER THIS SECTION SHALL NOT EQUAL OR EXCEED AN AMOUNT THAT IS 28EQUIVALENT TO AN AWARD FOR SERIOUS DISABILITY COMPENSATION AS 29 **DEFINED IN § 9–630 OF THIS TITLE.** 30 (2) IF A JURY RETURNS A VERDICT FOR A PERCENTAGE OF A 31DISABILITY THAT IS EQUIVALENT TO AN WARD FOR A SERIOUS DISABILITY, THE

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COURT SHALL REDUCE THE AWARD SO THAT THE PERCENTAGE OF DISABILITY
 DOES NOT RESULT IN AN AWARD THAT EXCEEDS 249 WEEKS.

3 (3) A REDUCTION OF A PERMANENT PARTIAL DISABILITY
4 VERDICT, AWARD, OR ORDER UNDER THIS SUBSECTION SHALL NOT BE
5 CONSTRUED AS LIMITING THE RIGHT OF THE CLAIMANT TO REQUEST AND
6 AWARD FOR ADDITIONAL WEEKS OF COMPENSATION IN THE FUTURE.

7 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A 8 PARTY TO INTRODUCE NEW OR ADDITIONAL HEALTH CARE EVIDENCE AT TRIAL, 9 PRESENT WITNESSES AT TRIAL, TAKE A DEPOSITION FROM A HEALTH CARE 10 PROVIDER, OR INTRODUCE DEPOSITION TESTIMONY TO CONTRADICT THE 11 HEALTH CARE PROVIDER IF THE HEALTH CARE PROVIDER HAD APPEARED IN 12 COURT TO TESTIFY.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be 14 construed to apply only prospectively and may not be applied or interpreted to have 15 any effect on or application to any appeals of a decision of the Workers' Compensation 16 Commission filed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effectOctober 1, 2009.