

# HOUSE BILL 968

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By: **Delegate Barkley**

Introduced and read first time: February 12, 2010

Assigned to: Economic Matters

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## 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; 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 judgment; requiring a court to alter a  
8 certain award under certain circumstances; defining a certain term; providing  
9 for the application of this Act; and generally relating to evidence introduced in  
10 appeals from Workers' Compensation Commission decisions.

11 BY repealing and reenacting, without amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 10–104(a)  
14 Annotated Code of Maryland  
15 (2006 Replacement Volume and 2009 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article – Labor and Employment  
18 Section 9–745  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2009 Supplement)

21 BY adding to  
22 Article – Labor and Employment  
23 Section 9–745.1  
24 Annotated Code of Maryland  
25 (2008 Replacement Volume and 2009 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                                   **Article – Courts and Judicial Proceedings**

2    10–104.

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

4                   (2)   “Health care provider” means:

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

7                           (ii)   An ambulatory surgical facility;

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

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

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

15                           (vi)   A person who is:

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

18                                   2.   Regulated by another state to provide health care  
19   services.

20                           (3)   “State” means a state of the United States or the District of  
21   Columbia.

22                                   **Article – Labor and Employment**

23    9–745.

24           (a)   The proceedings in an appeal shall:

25                   (1)   be informal and summary; and

26                   (2)   provide each party a full opportunity to be heard.

27           (b)   In each court proceeding under this title:

1 (1) the decision of the Commission is presumed to be prima facie  
2 correct; and

3 (2) the party challenging the decision has the burden of proof.

4 (c) The court shall determine whether the Commission:

5 (1) justly considered all of the facts about the accidental personal  
6 injury, occupational disease, or compensable hernia;

7 (2) exceeded the powers granted to it under this title; or

8 (3) misconstrued the law and facts applicable in the case decided.

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 MEANING**  
20 **STATED IN § 10-104(A) OF THE COURTS ARTICLE.**

21 (B) **THIS SECTION DOES NOT APPLY IF THE SUBJECT OF THE APPEAL IS:**

22 (1) **AN INITIAL DETERMINATION OF COMPENSABILITY OF A CLAIM**  
23 **FOR WORKERS' COMPENSATION BENEFITS;**

24 (2) **AN AWARD OR ORDER FOR SERIOUS DISABILITY**  
25 **COMPENSATION AS DEFINED IN § 9-630 OF THIS TITLE;**

26 (3) **AN AWARD OR ORDER FOR PERMANENT TOTAL DISABILITY**  
27 **COMPENSATION AS DEFINED IN § 9-635 OF THIS TITLE; OR**

28 (4) **A CLAIM FOR DEATH BENEFITS IN ACCORDANCE WITH PART**  
29 **XII OF THIS TITLE.**

1           **(C) (1) FOLLOWING RECEIPT OF A NOTICE OF PETITION FOR**  
2 **JUDICIAL REVIEW, AN APPELLEE MAY ELECT TO USE THE EVIDENTIARY**  
3 **PROVISIONS OF THIS SUBSECTION BY DOING SO IN THE RESPONSE TO PETITION**  
4 **FOR JUDICIAL REVIEW.**

5           **(2) IF AN APPELLEE ELECTS TO USE THE EVIDENTIARY**  
6 **PROVISIONS OF THIS SUBSECTION, ANY PARTY MAY INTRODUCE EVIDENCE IN**  
7 **ACCORDANCE WITH THIS SUBSECTION.**

8           **(3) SUBJECT TO PARAGRAPHS (4) AND (5) OF THIS SUBSECTION,**  
9 **WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH CARE PROVIDER OR**  
10 **CUSTODIAN OF RECORDS, AN APPELLEE MAY INTRODUCE A WRITING OR**  
11 **RECORD OF A HEALTH CARE PROVIDER AS EVIDENCE OF:**

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

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

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

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

16           **(4) IN ORDER FOR A WRITING OR RECORD TO BE ADMISSIBLE ON**  
17 **APPEAL UNDER THIS SUBSECTION:**

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

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

26                           **1. A NOTICE OF INTENT TO INTRODUCE THE**  
27 **WRITING OR RECORD WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH**  
28 **CARE PROVIDER OR CUSTODIAN OF RECORDS; AND**

29                           **2. A COPY OF EACH WRITING OR RECORD INCLUDED**  
30 **IN THE NOTICE.**

31           **(5) THE WRITING OR RECORD MUST BE OTHERWISE ADMISSIBLE.**

1           **(D) (1) A JUDGMENT FOR AN APPEAL IN WHICH THE EVIDENTIARY**  
2 **PROVISIONS OF SUBSECTION (C) OF THIS SECTION ARE USED MAY NOT EQUAL**  
3 **OR EXCEED AN AMOUNT THAT IS EQUIVALENT TO AN AWARD FOR SERIOUS**  
4 **DISABILITY COMPENSATION AS DEFINED IN § 9-630 OF THIS TITLE.**

5           **(2) IF A JURY RETURNS A VERDICT FOR A PERCENTAGE OF A**  
6 **DISABILITY THAT IS EQUIVALENT TO OR EXCEEDS AN AWARD FOR A SERIOUS**  
7 **DISABILITY, THE COURT SHALL REDUCE THE AWARD SO THAT THE PERCENTAGE**  
8 **OF DISABILITY DOES NOT RESULT IN AN AWARD THAT EXCEEDS 249 WEEKS.**

9           **(3) A REDUCTION OF A PERMANENT PARTIAL DISABILITY AWARD**  
10 **UNDER THIS SUBSECTION MAY NOT BE CONSTRUED AS LIMITING THE RIGHT OF**  
11 **THE CLAIMANT TO REQUEST AN AWARD FOR ADDITIONAL WEEKS OF**  
12 **COMPENSATION IN THE FUTURE.**

13           **(E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A**  
14 **PARTY TO INTRODUCE NEW OR ADDITIONAL HEALTH CARE EVIDENCE AT TRIAL,**  
15 **PRESENT WITNESSES AT TRIAL, TAKE A DEPOSITION FROM A HEALTH CARE**  
16 **PROVIDER, OR INTRODUCE DEPOSITION TESTIMONY TO CONTRADICT THE**  
17 **HEALTH CARE PROVIDER IF THE HEALTH CARE PROVIDER APPEARED IN COURT**  
18 **TO TESTIFY.**

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

23           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2010.