

HOUSE BILL 1253

K1
HB 480/07 – ECM

9lr1332

By: **Delegates Manno and Schuler**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters

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 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
12 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 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.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 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 (i) A health care provider, as defined in § 3–2A–01 of this
8 article;

9 (ii) An ambulatory surgical facility;

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

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

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

17 (vi) A person who is:

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

20 2. Regulated by another state to provide health care
21 services.

22 (3) “State” means a state of the United States or the District of
23 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:

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 TO THE INTRODUCTION OF HEALTH**
22 **RECORDS FOR AN APPEAL IF THE SUBJECT OF THE APPEAL IS:**

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

25 (2) **AN AWARD OR ORDER FOR SERIOUS DISABILITY**
26 **COMPENSATION 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 PART**
30 **XII OF THIS TITLE.**

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;**

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**
15 **TRIAL IS SCHEDULED, OR WITHIN 10 DAYS OF A RECEIPT OF A NOTICE TO**
16 **SCHEDULE THE TRIAL ON A DATE THAT IS LESS THAN 120 DAYS FROM THE DATE**
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:**

20 **1. A NOTICE OF INTENT TO INTRODUCE THE**
21 **WRITING OR RECORD WITHOUT THE SUPPORTING TESTIMONY OF THE HEALTH**
22 **CARE PROVIDER OR CUSTODIAN OF RECORDS; AND**

23 **2. A COPY OF EACH WRITING OR RECORD INCLUDED**
24 **IN THE NOTICE.**

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

26 **(D) (1) A JUDGMENT OR VERDICT FOR AN APPEAL CONDUCTED**
27 **UNDER THIS SECTION SHALL NOT EQUAL OR EXCEED AN AMOUNT THAT IS**
28 **EQUIVALENT 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**
31 **DISABILITY THAT IS EQUIVALENT TO AN AWARD FOR A SERIOUS DISABILITY, THE**

1 COURT SHALL REDUCE THE AWARD SO THAT THE PERCENTAGE OF DISABILITY
2 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.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2009.