
By: **Delegate Simmons**

Introduced and read first time: February 11, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Uninsured Employers' Fund - Liability of Corporate Officers and Limited**
3 **Liability Company Members**

4 FOR the purpose of providing that a certain officer of a corporation that does not have
5 sufficient assets to satisfy workers' compensation awards and assessments owed
6 by the corporation is jointly and severally liable for those payments; providing
7 that a certain member of a limited liability company that does not have
8 sufficient assets to satisfy workers' compensation awards and assessments owed
9 by the limited liability company is jointly and severally liable for those
10 payments; and generally relating to liability for uninsured employer
11 assessments and awards.

12 BY repealing and reenacting, without amendments,
13 Article - Labor and Employment
14 Section 9-402(a), 9-1001(a), (d), and (e), 9-1107(a) through (d), and 9-1108
15 Annotated Code of Maryland
16 (1999 Replacement Volume and 2004 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Labor and Employment
19 Section 9-1003, 9-1005, and 9-1007
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2004 Supplement)

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

24 **Article - Labor and Employment**

25 9-402.

26 (a) Subject to subsections (b) through (f) of this section, each employer shall
27 secure compensation for covered employees of the employer by:

28 (1) maintaining insurance with the Injured Workers' Insurance Fund;

- 1 (2) maintaining insurance with an authorized insurer;
- 2 (3) participating in a governmental self-insurance group that meets the
3 requirements of § 9-404 of this subtitle;
- 4 (4) participating in a self-insurance group of private employers that
5 meets the requirements of Title 25, Subtitle 3 of the Insurance Article;
- 6 (5) maintaining self-insurance for an individual employer in accordance
7 with § 9-405 of this subtitle; or
- 8 (6) having a county board of education secure compensation under §
9 8-402(c) or § 7-114(d) of the Education Article.

10 9-1001.

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

12 (d) "Fund" means the Uninsured Employers' Fund.

13 (e) "Uninsured employer" means an employer who fails to secure payment of
14 compensation to the covered employees of the employer in accordance with § 9-402 of
15 this title.

16 9-1003.

17 (a) If the Fund makes payment to a covered employee or the dependents of a
18 covered employee as directed by the Commission, the Fund is subrogated to the rights
19 of the covered employee or dependents against the uninsured employer.

20 (b) The Fund may:

21 (1) institute a civil action to recover the money paid under the award;

22 (2) refer the matter to the appropriate authority for prosecution under §
23 9-1108 of this title; or

24 (3) do both.

25 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE UNINSURED
26 EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT SUFFICIENT TO
27 SATISFY AN AWARD, ANY OFFICER OF THE CORPORATION WHO HAS RESPONSIBILITY
28 FOR THE GENERAL MANAGEMENT OF THE CORPORATION IS JOINTLY AND
29 SEVERALLY LIABLE FOR PAYMENT OF THE AWARD.

30 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE UNINSURED
31 EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH ARE NOT
32 SUFFICIENT TO SATISFY AN AWARD, ANY MEMBER OF THE COMPANY WHO HAS
33 RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE LIMITED LIABILITY
34 COMPANY IS JOINTLY AND SEVERALLY LIABLE FOR PAYMENT OF THE AWARD.

1 9-1005.

2 (a) (1) When the Commission makes a decision on a claim for compensation
3 against an uninsured employer, the Commission shall impose against the uninsured
4 employer an assessment of:

5 [(1)] (I) at least \$150 but not exceeding \$500; and

6 [(2)] (II) 15% of any award made in the claim, not exceeding \$2,500 in
7 any 1 claim.

8 (2) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
9 UNINSURED EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT
10 SUFFICIENT TO SATISFY AN ASSESSMENT, ANY OFFICER OF THE CORPORATION WHO
11 HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE CORPORATION IS
12 JOINTLY AND SEVERALLY LIABLE FOR THE ASSESSMENT.

13 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
14 UNINSURED EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH
15 ARE NOT SUFFICIENT TO SATISFY AN ASSESSMENT, ANY MEMBER OF THE LIMITED
16 LIABILITY COMPANY WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT
17 OF THE LIMITED LIABILITY COMPANY IN THE STATE IS JOINTLY AND SEVERALLY
18 LIABLE FOR THE ASSESSMENT.

19 (b) The Commission shall direct payment of an assessment under subsection
20 (a) of this section into the Fund.

21 9-1007.

22 (a) (1) Except as provided in subsection (b) of this section, the Commission
23 shall impose against an employer or, if insured, its insurer an assessment equal to 1%
24 of:

25 [(1)] (I) each award against the employer for permanent disability or
26 death, including awards for disfigurement or mutilation; and

27 [(2)] (II) each amount payable by the employer or its insurer under a
28 settlement agreement approved by the Commission.

29 (2) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
30 EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT SUFFICIENT TO
31 SATISFY AN ASSESSMENT, ANY OFFICER OF THE CORPORATION WHO HAS
32 RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE CORPORATION IS
33 JOINTLY AND SEVERALLY LIABLE FOR THE ASSESSMENT.

34 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
35 EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH ARE NOT
36 SUFFICIENT TO SATISFY AN ASSESSMENT, ANY MEMBER OF THE LIMITED LIABILITY
37 COMPANY WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE

1 LIMITED LIABILITY COMPANY IS JOINTLY AND SEVERALLY LIABLE FOR THE
2 ASSESSMENT.

3 (b) Notwithstanding the limit on the balance of the Fund under § 9-1011 of
4 this subtitle, if the Board determines that the reserves of the Fund are inadequate to
5 meet anticipated losses, the Board may direct the Commission to assess an additional
6 1% under subsection (a) of this section.

7 (c) Any fractional dollar of payment under this section shall be rounded off to
8 the nearest whole dollar.

9 (d) The Commission shall direct payment of an assessment under subsection
10 (a) or (b) of this section into the Fund.

11 (e) Payments under this section are in addition to the payment of
12 compensation to a covered employee or the dependents of a covered employee under
13 this title.

14 9-1107.

15 (a) An employer who self insures under § 9-405 of this title or participates in
16 a governmental self-insurance group under § 9-404 of this subtitle and fails to apply
17 to the Commission for approval of the self-insurance plan of the employer or
18 governmental self-insurance group in accordance with § 9-403 of this subtitle is
19 guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or
20 imprisonment not exceeding 1 year or both.

21 (b) An employer who is subject to this title and fails to secure payment of
22 compensation in accordance with § 9-402 of this title or fails to pay an award of
23 compensation is guilty of a misdemeanor and on conviction is subject to a fine not
24 exceeding \$5,000 or imprisonment not exceeding 1 year or both.

25 (c) If the employer is a corporation, the officer of the corporation who has
26 responsibility for the general management of the corporation in the State is subject to
27 the fine and imprisonment specified in subsection (a) or (b) of this section.

28 (d) (1) A fine imposed on an employer under this section shall be:

29 (i) paid to the State Treasury and credited to the Commission; and

30 (ii) used to pay, wholly or partly, an award made against the
31 employer by the Commission.

32 (2) A disbursement under this subsection shall be made in the same
33 manner as a disbursement of other money of the Commission.

34 (3) Any part of the fine that is not required to pay an award shall be
35 transferred to the General Fund of the State.

1 9-1108.

2 (a) An employer who fails to secure payment of compensation in accordance
3 with § 9-402 of this title that will be in force on the date a cancellation of a contract
4 of workers' compensation insurance becomes effective is guilty of a misdemeanor and
5 on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding
6 1 year or both.

7 (b) If the employer is a corporation, the officer of the corporation who has
8 responsibility for the general management of the corporation in the State is subject to
9 the fine and imprisonment specified in subsection (a) of this section.

10 (c) A fine imposed against and collected from an employer under this section
11 shall be paid into the Uninsured Employers' Fund.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2005.