

Chapter 676

(House Bill 1330)

AN ACT concerning

Workers' Compensation – Insurance Coverage – Employer Compliance

FOR the purpose of altering the procedures for the Workers' Compensation Commission to enforce compliance with certain workers' compensation insurance coverage requirements; altering the requirement for how certain employers secure compensation for certain covered employees; clarifying the Commission's authority to order employers to secure compensation for certain covered employees; requiring the Commission to issue certain orders directing certain employers to attend certain hearings under certain circumstances; requiring the Commission to issue orders and penalties under certain circumstances; requiring the Commission to set a certain hearing under certain circumstances; establishing certain penalties for employers that fail to secure compensation for their covered employees; providing that a failure to pay a penalty constitutes a default in payment of compensation and requiring that a judgment be entered in a certain manner; providing that a certain penalty is a lien under certain circumstances; authorizing the Uninsured Employers' Fund to bring civil actions to collect certain penalties or assessments under certain circumstances; requiring the Fund to provide certain notices to certain persons for failure to pay certain penalties; imposing joint and several liability on certain officers and members for certain violations under certain circumstances; requiring certain licensing units to suspend certain licenses or permits under certain circumstances; making certain provisions of this Act severable; making stylistic changes; making clarifying changes; and generally relating to the enforcement of compliance with workers' compensation coverage requirements.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 9–402(a), 9–404(e) and (j), 9–405(b) and (f), 9–407, and 9–1012(a) and (c)

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

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

Article – Labor and Employment

9–402.

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

[(1) maintaining insurance with the Chesapeake Employers' Insurance Company;]

[(2) (1) maintaining insurance with an authorized insurer;

[(3) (2) participating in a governmental self-insurance group that meets the requirements of § 9-404 of this subtitle;

[(4) (3) participating in a self-insurance group of private employers that meets the requirements of Title 25, Subtitle 3 of the Insurance Article;

[(5) (4) maintaining self-insurance for an individual employer in accordance with § 9-405 of this subtitle; or

[(6) (5) having a county board of education or private noncollegiate institution secure compensation under § 8-402(c) or § 7-114(d) of the Education Article.

9-404.

(e) (1) At any time, the Commission may require a governmental self-insurance group to secure payment of compensation by depositing with the Commission security:

(i) in a form accepted by a circuit court for investment of trust money; and

(ii) in the amount set by the Commission.

(2) On application and subject to paragraph (3) of this subsection, the Commission shall return security that a governmental self-insurance group has deposited under this subsection if:

(i) the members of the governmental self-insurance group cease to be subject to this title or secure compensation through an authorized insurer [or the Chesapeake Employers' Insurance Company]; and

(ii) the governmental self-insurance group has not been liable on a claim for compensation during the 5 years immediately after the day on which the event described in item (i) of this paragraph occurred.

(3) After reviewing the application and before returning security to a governmental self-insurance group, the Commission may require the governmental self-insurance group to submit to the Commission an indemnity bond in an amount equal to the value of the security.

(j) (1) The Commission shall revoke the approval of a governmental self-insurance group to self-insure under this section if the governmental self-insurance group:

(i) fails to deposit securities with or submit a bond to the Commission in accordance with subsection (e) of this section;

(ii) fails to submit satisfactory reports to the Commission in accordance with subsection (i)(1)(i) of this section; or

(iii) otherwise fails to satisfy the Commission that it is financially able to self-insure.

(2) Whenever the Commission revokes approval for a governmental self-insurance group to self-insure under this section, the members of the governmental self-insurance group immediately shall secure compensation through an authorized insurer [or the Chesapeake Employers' Insurance Company].

(3) If a member of a governmental self-insurance group fails to secure compensation as required by paragraph (2) of this subsection, the Commission shall order the member of the governmental self-insurance group to secure compensation through [the Chesapeake Employers' Insurance Company] **AN AUTHORIZED INSURER.**

9-405.

(b) (1) At any time, the Commission may require an employer who self-insures under this section to secure payment of compensation by depositing with the Commission:

(i) security:

1. in a form accepted by a circuit court for investment of trust money; and

2. in the amount set by the Commission; or

(ii) letters of credit:

1. issued by a financial institution acceptable to the Commission;

Commission; and

2. in a form acceptable to and in the amount set by the
3. that meet the requirements of § 9–408(c) of this subtitle.

(2) On application and subject to paragraph (3) of this subsection, the Commission shall return security that an employer has deposited under this subsection if the employer:

- (i) ceases to be subject to this title or secures compensation through an authorized insurer [or the Chesapeake Employers' Insurance Company]; and

- (ii) has not been liable on a claim for compensation during the 5 years immediately after the day on which the event described in item (i) of this paragraph occurred.

(3) After reviewing the application and before returning security to an employer the Commission may require the employer to submit to the Commission an indemnity bond in an amount equal to the value of the security.

(f) (1) The Commission shall revoke the approval of an employer to self-insure under this section if the employer:

- (i) fails to deposit securities or letters of credit with or submit a bond to the Commission in accordance with subsection (b) of this section;

- (ii) fails to submit satisfactory reports to the Commission in accordance with subsection (e)(1)(i) of this section; or

- (iii) otherwise fails to satisfy the Commission that it is financially able to secure compensation.

(2) (i) On notice to the Commission pursuant to § 9–408(c)(2) of this subtitle that a letter of credit will not be renewed, the Commission shall demand that, within 30 days, the employer provide:

1. other satisfactory proof of the employer's financial ability to pay; or

2. another letter of credit in the same amount from another qualifying financial institution.

(ii) If the employer fails to furnish other satisfactory proof of the financial ability to pay or another acceptable letter of credit within 30 days after receipt of a demand under subparagraph (i) of this paragraph, the Commission shall demand payment from the financial institution of, and the financial institution shall pay, the amount represented by the letter of credit.

(iii) The Commission shall hold as security under this section the amount demanded and received under subparagraph (ii) of this paragraph until the employer can provide:

1. satisfactory proof of the employer's financial ability to pay; or
2. another acceptable letter of credit.

(iv) On provision of satisfactory proof of financial ability to pay or an acceptable letter of credit, the Commission shall return the amount of the letter of credit to the employer or the financial institution, whichever has the equitable right to that amount at the time that the proof or letter of credit is provided.

(3) Whenever the Commission revokes approval for an employer to self-insure under this section, the employer immediately shall secure compensation through an authorized insurer [or the Chesapeake Employers' Insurance Company].

(4) If an employer fails to secure compensation as required by paragraph (3) of this subsection, the Commission shall order the employer to secure compensation through [the Chesapeake Employers' Insurance Company] **AN AUTHORIZED INSURER.**

9-407.

(a) If an employer fails to secure compensation for [the] **ALL** covered employees of the employer as required by § 9-402 of this subtitle, the Commission shall:

(1) ISSUE AN ORDER DIRECTING THE EMPLOYER TO ATTEND A HEARING TO SHOW CAUSE AS TO WHY THE EMPLOYER SHOULD NOT BE:

(I) REQUIRED TO SECURE COMPENSATION FOR ALL COVERED EMPLOYEES OF THE EMPLOYER;

(II) FOUND IN VIOLATION OF § 9-402 OF THIS SUBTITLE;
AND

(III) ASSESSED A PENALTY FOR NONCOMPLIANCE WITH § 9-402 OF THIS SUBTITLE; AND

(2) SET THE HEARING AS SOON AS PRACTICABLE.

(B) IF, FOLLOWING THE HEARING, THE COMMISSION FINDS THAT THE EMPLOYER FAILED TO SECURE COMPENSATION FOR ALL COVERED EMPLOYEES OF THE EMPLOYER AS REQUIRED BY WITH § 9-402 OF THIS SUBTITLE, THE COMMISSION SHALL:

(1) order the employer to:

(I) SECURE AND maintain insurance [with the Chesapeake Employers' Insurance Company by paying to the State Treasurer, for the benefit and use of the Chesapeake Employers' Insurance Company, the premiums required for the employer to become insured with the Chesapeake Employers' Insurance Company] FOR ALL COVERED EMPLOYEES OF THE EMPLOYER THROUGH AN AUTHORIZED INSURER; AND

(II) SUBMIT PROOF OF INSURANCE COVERAGE TO THE COMMISSION; AND

(2) ORDER THE EMPLOYER TO PAY A PENALTY NOT TO EXCEED \$10,000 TO THE UNINSURED EMPLOYERS' FUND.

[(b)] (C) (1) If an employer fails to comply with an order to insure with [the Chesapeake Employers' Insurance Company passed] AN AUTHORIZED INSURER ISSUED under subsection [(a)] (B) of this section or under § 9-404(j) or § 9-405(f) of this subtitle, within [10] 30 days after the Commission [passes] ISSUES the order, [the employer is liable to the State for a penalty equal to the premiums for 6 months of insurance with the Chesapeake Employers' Insurance Company] THE COMMISSION SHALL SET A HEARING AS SOON AS PRACTICABLE.

(2) IF, FOLLOWING THE HEARING, THE COMMISSION FINDS THAT THE EMPLOYER FAILED TO COMPLY WITH AN ORDER ISSUED UNDER SUBSECTION (B)(1) OF THIS SECTION, THE COMMISSION MAY ORDER THE EMPLOYER TO PAY A PENALTY NOT TO EXCEED \$10,000 TO THE UNINSURED EMPLOYERS' FUND.

[(c) The Commission may collect any unpaid amount under subsections (a) and (b) of this section in the same manner and with the same effect as provided for collections by the Chesapeake Employers' Insurance Company under § 10-133(c) of this article.]

(D) (1) AN EMPLOYER'S FAILURE TO PAY A PENALTY UNDER THIS SECTION CONSTITUTES A DEFAULT IN PAYMENT OF COMPENSATION AND JUDGMENT SHALL BE ENTERED AS IN A CASE OF DEFAULT IN PAYMENT OF COMPENSATION.

(2) (I) A PENALTY THAT IS PAYABLE UNDER THIS SECTION IS A LIEN AGAINST THE ASSETS OF THE EMPLOYER THAT IS LIABLE FOR THE PENALTY.

(II) A LIEN UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBORDINATE TO CLAIMS FOR UNPAID WAGES AND PRIOR RECORDED LIENS.

(3) THE UNINSURED EMPLOYERS' FUND MAY BRING A CIVIL ACTION TO COLLECT ANY PENALTY ORDERED UNDER § 9-407 OF THIS SUBTITLE OR ANY ASSESSMENT ORDERED UNDER SUBTITLE 10 OF THIS ARTICLE.

(4) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE UNINSURED EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT SUFFICIENT TO SATISFY ANY PENALTY ORDERED UNDER THIS SECTION, ANY OFFICER OF THE CORPORATION WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE CORPORATION IN THE STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE PENALTY IF THE CORPORATE OFFICER KNOWINGLY FAILED TO SECURE COMPENSATION FOR THE COVERED EMPLOYEES OF THE EMPLOYER.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE UNINSURED EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH ARE NOT SUFFICIENT TO SATISFY ANY PENALTY ORDERED UNDER THIS SECTION, ANY MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE LIMITED LIABILITY COMPANY IN THE STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE PENALTY IF A MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS GENERAL MANAGEMENT RESPONSIBILITY KNOWINGLY FAILED TO SECURE COMPENSATION FOR THE COVERED EMPLOYEES OF THE EMPLOYER.

9-1012.

(a) (1) Notwithstanding any other provision of this subtitle, the Director shall notify an employer by certified mail, return receipt requested, that the license or permit of the employer to do business in the State may be suspended if the employer fails to:

(i) reimburse the Fund for payment of an award under § 9–1002 of this subtitle; [or]

(ii) pay an assessment under this subtitle; **OR**

(III) PAY A PENALTY ORDERED UNDER § 9–407 OF THIS ARTICLE.

(2) The Director shall send a copy of the notice to each State, county, or municipal unit that has issued a license or permit to the employer for an activity for which workers' compensation coverage is required by law.

(c) (1) The licensing unit shall suspend the license or permit of the employer if the licensing unit finds that the employer has failed to:

(i) reimburse the Fund for payment of an award under § 9–1002 of this subtitle; [or]

(ii) pay an assessment under this subtitle; **OR**

(III) PAY A PENALTY ORDERED UNDER § 9–407 OF THIS ARTICLE.

(2) A suspension of a license or permit under paragraph (1) of this subsection shall continue until the employer:

(i) reimburses the Fund for payment of an award under § 9–1002 of this subtitle;

(ii) pays the assessment due to the Fund; [or]

(iii) **PAYS A PENALTY DUE TO THE FUND; OR**

(IV) agrees to reimburse the Fund for payment of an award or to pay the assessment AND THE PENALTY due to the Fund in a manner approved by the Board.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 16, 2013.