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Uninsured Employers' Fund
Testimony
SB0789/HB0915 – Workers' Compensation – Uninsured Employers' Fund – Timely
Payment of Awards
Position - Unfavorable

Please accept the following as the written testimony of the Maryland Uninsured Employers' Fund (UEF/Fund/Agency) requesting an Unfavorable report on SB0789/HB0915 – Workers' Compensation – Uninsured Employers' Fund – Timely Payment of Awards:

The stated purpose of SB0789/HB0915 is to require that “the Uninsured Employers' Fund begin paying compensation for a workers' compensation claim within a certain time period.”

The Uninsured Employer's Fund (UEF/agency/fund) exists to protect workers whose employers fail to obtain Worker's Compensation Insurance. The UEF reviews and investigates claims by injured workers who are not properly compensated for their injuries by their employers and pays claims when appropriate. We work to ensure that benefits and medical expenses are properly paid to injured workers, and that uninsured employers are held accountable with penalties and sanctions for their failure to comply with Maryland law to insure and protect their employees. Our mission is, therefore, to protect the innocent employee and to ensure that noncompliant employers are held accountable for their actions as mandated by law.

Currently, the mechanism for triggering payment from the Uninsured Employers' Fund (UEF) is governed by statute. That statute lays out the process and the timeline, in detail, of how the Fund is to pay benefits. This bill does not modify that statute, or potentially other relevant provisions of law, so it would not change the timelines by which the Fund pays benefits, despite its stated intention. Changing such timelines would require other legislative changes and would seriously disrupt how the UEF functions and operates and require substantial changes to agency policies and procedures.

This bill also subjects the fund to new monetary penalties for failure to pay benefits within “15 days of the later of the date a) an award is issued or b) an award becomes due.”

The Fund currently does pay benefits within 15 days after “becoming due” under the relevant statute and current law. Therefore, it is the agency’s position that the punitive penalties in the bill, as drafted, would not be applicable to the UEF. Obviously, that dispute would lead to confusion and future litigation should this bill be enacted.

The UEF additionally emphasizes that it is not an insurance company, it is a state agency which is a payer of last resort. Employers and insurance companies are in a different legal posture with different legal obligations than the Fund. This agency’s obligation to pay is triggered by the default of an uninsured employer, unlike the obligations to pay of an insurer or an employer. The bill fails to recognize these basic legal and factual differences.

In summary:

1) There is no indication that there is currently a problem of untimely payments from the Fund that would merit a punitive legislative change against a state agency;

2) The bill does not change the timeline for payments from the Fund, despite announcing its intention to do so, which will result in confusion and portends the prospect of future litigation on the matter to resolve resulting conflicts;

3) The bill does not specify that the non-insured employer that is ordered to pay benefits be fined first - and that any fines paid by the Fund be recoverable from the non-insured employer, leaving the Fund without recourse in recouping penalties from any source.

4) The bill penalizes the Fund without any source of recovery for the penalty payments listed made available, thus depleting the Fund and reducing the resources available to achieve the Fund’s purpose – to protect and compensate uninsured injured Maryland workers; and,

5) Although it is impossible to predict how many cases would be subject to this bill, it is clear that the bill would monetarily penalize the Fund and reduce the Fund’s resources reducing the Fund’s financial balance, stability and ability to protect and care for injured Maryland workers.

The Uninsured Employers’ Fund is not an insurance agency. It is not an employer. It is a statutory Maryland State Government entity established by law to be the payer of last resort in workers compensation cases where employers break the law, fail to have insurance and refuse to pay compensation to their injured workers. It is not a private entity. As a State entity we have a legal and fiduciary duty to ensure payments are legal and to pursue proper legal processes to protect the Fund’s resources. We do so.

This agency requests an unfavorable report on this proposed legislation.

Thank you.

Sincerely,

Michael W. Burns

Michael W. Burns, Esquire
Director