SB 216

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 216 (Chair, Finance Committee)(By Request - Departmental - Uninsured Employers' Fund)

Finance Economic Matters

Workers' Compensation - Failure to Insure - Penalties

This departmental bill increases the maximum penalty that an employer may be required to pay to the Uninsured Employers' Fund (UEF) when the Workers' Compensation Commission (WCC) finds that the employer failed to secure compensation for all covered employees or failed to comply with an order from WCC to secure and maintain insurance for all covered employees and submit proof of that coverage to WCC. In both cases, the bill establishes a penalty of up to $25,000, an increase of $15,000 over the current maximum penalty of $10,000. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund revenues for UEF increase, potentially by a couple hundred thousand dollars or more annually, beginning in fiscal 2025, as discussed below. Expenditures are not materially affected.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: UEF has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) generally concurs with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law:

Workers' Compensation – Generally

Generally, each employer in the State must secure workers' compensation for all covered employees of the employer by maintaining insurance with an authorized insurer or, in limited circumstances, through self-insurance. An individual is presumed to be a covered employee while in the service of an employer under an express or implied contract of apprenticeship or hire. To overcome the presumption of covered employment, an employer must establish that the individual performing services is an independent contractor in accordance with the common law or is specifically exempted from covered employment under the Maryland Workers' Compensation Act.

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund (SIF), or UEF, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses.

Failure to Insure – Orders and Penalties

If an employer fails to secure compensation for all its covered employees, WCC must issue an order directing the employer to attend a hearing to show cause as to why the employer should not be (1) required to secure compensation for all covered employees; (2) found in violation of workers' compensation law; and (3) assessed a penalty for noncompliance with the law. WCC must set the hearing as soon as practicable.

If, following the hearing, WCC finds the employer failed to secure compensation for all its covered employees, WCC *must* (1) order the employer to secure and maintain insurance for all its covered employees and submit proof of insurance coverage to WCC and (2) order the employer to pay a penalty of up to $10,000 to UEF.

If an employer fails to comply with an order to insure within 30 days after the issuance of the order, WCC must set a hearing as soon as practicable. If, following the hearing, WCC finds that the employer failed to comply with an order, WCC *may* order the employer to pay a penalty of up to $10,000 to UEF.

Uninsured Employers' Fund

If an injured employee who should be receiving workers' compensation benefits is not properly compensated by an employer or the employer's insurer (which may happen because the employer has not purchased workers' compensation insurance or becomes insolvent), UEF directly pays the claimant's compensation benefits and medical expenses. The Director of UEF must use the fund to pay (1) appropriate claims awarded through the workers' compensation process; (2) for certain experts and witnesses hired by UEF; (3) other proper authorized charges; (4) outstanding obligations of authorized self-insured employers that become insolvent; and (5) hearing loss claims for retirees of the Bethlehem Steel Corporation.

In addition to the penalties being increased by the bill, UEF is funded through a 7.5% assessment on awards against employers or insurers for permanent disability or death and amounts payable by employers or insurers under settlement agreements. Specifically, 6.5% is distributed to SIF and the remaining 1% is distributed to UEF.

UEF also retains the subrogation rights of a covered employee or the employee's dependents against an uninsured employer. Through these rights, UEF may institute a civil action to recover the money it pays on behalf of an uninsured employer and/or refer the matter to the appropriate authority for prosecution.

Background: UEF advises that, in recent years, the State has experienced numerous employers who, for various reasons, fail to carry workers' compensation insurance, resulting in significant costs for UEF to ensure these injured workers are cared for after they experience a workplace injury or occupational disease. UEF advises that these employers sometimes disappear, failing to reimburse UEF for any payments made on their behalf to their injured workers, and simply reestablish a new business under a new name, often while still failing to purchase workers' compensation insurance.

UEF believes that the State's enforcement system, and the penalties being increased by the bill, have been ineffective in deterring this behavior, particularly since WCC's imposition of fines has varied substantially from year to year. Thus, the bill allows for WCC to impose more significant fines on employers who fail to maintain compensation insurance, which may serve as a stronger deterrent and will provide additional funding for UEF to maintain its operations.

State Fiscal Effect: Special fund revenues for UEF may increase significantly beginning in fiscal 2025. A precise estimate cannot be reliably made at this time because the number of penalty orders made by WCC and penalties paid by uninsured employers varies significantly from year to year as shown below in **Exhibit 1**, and the bill continues to grant

WCC discretion in setting the penalties. WCC advises that it most commonly sets the penalty at $7,000 under current law.

WCC advises that this data, taken from its annual reports, does not reflect the fact that many of the penalties shown are ultimately rescinded by WCC (and, therefore, never paid) after an order is issued and the employer provides proof of coverage or other documentation that they are in compliance with the law. Moreover, many of the fines are assessed against small business limited liability companies (LLCs) wherein the owner is the only individual working for the LLC and has chosen to be excluded from workers' compensation coverage, as permitted under current law, and are, therefore, ultimately rescinded.

Exhibit 1
Penalty and Fine Orders by the Workers' Compensation Commission
Fiscal 2014-2023

Fiscal Year	Penalty Orders	Total Fines	Fine Per Order
2014	19	$136,000	$7,158
2015	109	793,500	7,280
2016	53	449,000	8,472
2017	145	1,000,000	6,897
2018	180	1,200,000	6,667
2019	600	4,400,000	7,333
2020	140	900,000	6,429
2021	-	-	-
2022	61	435,800	7,144
2023	538	3,237,106	6,017

Note: No penalties were assessed during fiscal 2021 due to the COVID-19 pandemic. Total fines for fiscal 2017 through 2020 are approximates.

Source: *Workers' Compensation Commission Annual Reports: Fiscal 2014 through 2023*; Department of Legislative Services

Nevertheless, even though a precise estimate cannot be reliably made at this time and WCC could chose not to modify its practices in issuing the penalties (since the bill allows WCC to set penalties *up to* $25,000), UEF anticipates, and DLS concurs, that the bill is likely to increase special fund revenues by at least a couple hundred thousand dollars annually, at least in the near term. *For illustrative purposes only*, if a fine is paid by only 50 employers in a single fiscal year (which is likely given the number of penalty orders issued in some fiscal years, even discounting many that may be rescinded by WCC) at an average penalty of $12,500 and WCC would have only ordered a penalty of $7,000 under current law, then special fund revenues for UEF would increase by $275,000.

In future years, the revenue impact may be less pronounced. As noted above, application of the penalties has been relatively inconsistent, and to the extent that WCC increases the penalties, the bill may effectively "incentivize" employers to purchase and maintain workers' compensation insurance when they may not have done so under current law. To the extent it does so, UEF revenues from fines and related expenditures to cover injured workers may decrease.

Small Business Effect: While DLS generally concurs that the bill has minimal or no impact on small businesses (since it is assumed that small businesses generally comply with the law), any small business that is subject to the penalty may be significantly affected depending on the penalty set by WCC; a penalty of $25,000 could have significant financial implications for the business.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Uninsured Employers' Fund; Workers' Compensation Commission; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2024
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Workers' Compensation - Failure to Insure - Penalties

BILL NUMBER: SB 216

PREPARED BY: Michael W. Burns, Esq.
Director

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation would increase the penalty for the failure of an employer to have and maintain legally required workers compensation insurance from the current optional $10,000 penalty to a mandatory $25,000 penalty. This insurance has been required for most Maryland employers for decades and this legislation is an important enforcement tool needed to ensure that covered employers are purchasing this legally required insurance to protect their workers and are adequately penalized and sanctioned for their failure to obtain that insurance if they fail to purchase it.

There would be no impact on any small business unless they are currently required to obtain this insurance but fail to do so, in which case they are in violation of current law and should be paying for the necessary required workers compensation insurance already.

In general, it would have little or no economic impact except on businesses violating Maryland law.