
By: **Delegates Simmons and Feldman**
 Introduced and read first time: February 9, 2006
 Assigned to: Economic Matters

Committee Report: Favorable with amendments
 House action: Adopted
 Read second time: March 21, 2006

CHAPTER_____

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 if a certain
 7 officer knowingly failed to secure workers' compensation insurance; providing
 8 that a certain member of a limited liability company that does not have
 9 sufficient assets to satisfy workers' compensation awards and assessments owed
 10 by the limited liability company is jointly and severally liable for those
 11 payments if a member of the limited liability company who has general
 12 management responsibility knowingly failed to secure workers' compensation
 13 insurance; and generally relating to liability for uninsured employer
 14 assessments and awards.

15 BY repealing and reenacting, without amendments,
 16 Article - Labor and Employment
 17 Section 9-402(a), 9-1001(a), (d), and (e), 9-1107(a) through (d), and 9-1108
 18 Annotated Code of Maryland
 19 (1999 Replacement Volume and 2005 Supplement)

20 BY repealing and reenacting, with amendments,
 21 Article - Labor and Employment
 22 Section 9-1003, 9-1005, and 9-1007
 23 Annotated Code of Maryland
 24 (1999 Replacement Volume and 2005 Supplement)

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

3 **Article - Labor and Employment**

4 9-402.

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

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

8 (2) maintaining insurance with an authorized insurer;

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

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

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

15 (6) having a county board of education secure compensation under §
16 8-402(c) or § 7-114(d) of the Education Article.

17 9-1001.

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

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

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

23 9-1003.

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

27 (b) The Fund may:

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

29 (2) refer the matter to the appropriate authority for prosecution under §
30 9-1108 of this title; or

31 (3) do both.

1 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE UNINSURED
2 EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT SUFFICIENT TO
3 SATISFY AN AWARD, ANY OFFICER OF THE CORPORATION WHO HAS RESPONSIBILITY
4 FOR THE GENERAL MANAGEMENT OF THE CORPORATION IN THE STATE IS JOINTLY
5 AND SEVERALLY LIABLE FOR PAYMENT OF THE AWARD IF THE CORPORATE OFFICER
6 KNOWINGLY FAILED TO SECURE WORKERS' COMPENSATION INSURANCE.

7 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE UNINSURED
8 EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH ARE NOT
9 SUFFICIENT TO SATISFY AN AWARD, ANY MEMBER OF THE COMPANY WHO HAS
10 RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE LIMITED LIABILITY
11 COMPANY IN THE STATE IS JOINTLY AND SEVERALLY LIABLE FOR PAYMENT OF THE
12 AWARD IF A MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS GENERAL
13 MANAGEMENT RESPONSIBILITY KNOWINGLY FAILED TO SECURE WORKERS'
14 COMPENSATION INSURANCE.

15 9-1005.

16 (a) (1) When the Commission makes a decision on a claim for compensation
17 against an uninsured employer, the Commission shall impose against the uninsured
18 employer an assessment of:

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

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

22 (2) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
23 UNINSURED EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT
24 SUFFICIENT TO SATISFY AN ASSESSMENT, ANY OFFICER OF THE CORPORATION WHO
25 HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE CORPORATION IN
26 THE STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE ASSESSMENT IF THE
27 CORPORATE OFFICER KNOWINGLY FAILED TO SECURE WORKERS' COMPENSATION
28 INSURANCE.

29 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
30 UNINSURED EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH
31 ARE NOT SUFFICIENT TO SATISFY AN ASSESSMENT, ANY MEMBER OF THE LIMITED
32 LIABILITY COMPANY WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT
33 OF THE LIMITED LIABILITY COMPANY IN THE STATE IS JOINTLY AND SEVERALLY
34 LIABLE FOR THE ASSESSMENT IF A MEMBER OF THE LIMITED LIABILITY COMPANY
35 WHO HAS GENERAL MANAGEMENT RESPONSIBILITY KNOWINGLY FAILED TO
36 SECURE WORKERS' COMPENSATION INSURANCE.

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

1 9-1007.

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

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

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

9 (2) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
10 EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT SUFFICIENT TO
11 SATISFY AN ASSESSMENT, ANY OFFICER OF THE CORPORATION WHO HAS
12 RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE CORPORATION IN THE
13 STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE ASSESSMENT IF THE
14 CORPORATE OFFICER KNOWINGLY FAILED TO SECURE WORKERS' COMPENSATION
15 INSURANCE.

16 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE
17 EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH ARE NOT
18 SUFFICIENT TO SATISFY AN ASSESSMENT, ANY MEMBER OF THE LIMITED LIABILITY
19 COMPANY WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE
20 LIMITED LIABILITY COMPANY IN THE STATE IS JOINTLY AND SEVERALLY LIABLE
21 FOR THE ASSESSMENT IF A MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS
22 GENERAL MANAGEMENT RESPONSIBILITY KNOWINGLY FAILED TO SECURE
23 WORKERS' COMPENSATION INSURANCE.

24 (b) Notwithstanding the limit on the balance of the Fund under § 9-1011 of
25 this subtitle, if the Board determines that the reserves of the Fund are inadequate to
26 meet anticipated losses, the Board may direct the Commission to assess an additional
27 1% under subsection (a) of this section.

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

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

32 (e) Payments under this section are in addition to the payment of
33 compensation to a covered employee or the dependents of a covered employee under
34 this title.

35 9-1107.

36 (a) An employer who self insures under § 9-405 of this title or participates in
37 a governmental self-insurance group under § 9-404 of this subtitle and fails to apply
38 to the Commission for approval of the self-insurance plan of the employer or
39 governmental self-insurance group in accordance with § 9-403 of this subtitle is

1 guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or
2 imprisonment not exceeding 1 year or both.

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

7 (c) 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) or (b) of this section.

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

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

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

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

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

18 9-1108.

19 (a) An employer who fails to secure payment of compensation in accordance
20 with § 9-402 of this title that will be in force on the date a cancellation of a contract
21 of workers' compensation insurance becomes effective is guilty of a misdemeanor and
22 on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding
23 1 year or both.

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

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2006.

