

**Department of Legislative Services**  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

Senate Bill 602  
Finance

(Senator Kittleman)

---

**Workers' Compensation - Temporary Total Disability - Exclusion**

---

This bill provides that an employer is not liable for temporary total disability benefits for an employee who is incarcerated and is not otherwise employed as a covered employee of the prison or participating in a work release program.

The bill applies to the payment of compensation due on or after the bill's October 1, 2007 effective date.

---

**Fiscal Summary**

**State Effect:** Minimal decrease in workers' compensation costs from reduced benefit payments.

**Local Effect:** Potential minimal.

**Small Business Effect:** Potential minimal.

---

**Analysis**

**Current Law:** An employer may not terminate or suspend temporary total disability benefits based solely on the incarceration of the worker.

**Background:** In 1996, the Maryland Court of Appeals held that, under the Workers' Compensation Act, an employer may not terminate or suspend temporary total disability benefits based solely on the incarceration of the worker, *Bowen v. Smith*, 342 Md. 449 (1996). The court found that the Act did not justify the exclusion of the employee's right

to compensation based on his or her incarceration. The Act does not provide for the suspension of disability benefits while a claimant is incarcerated, and as a result, the court held that it would not create such an exclusion. The court stated further that workers' compensation is a statutory responsibility and any change or addition to the law is a function of the legislature and not the courts.

**State Expenditures:** The impact of the bill is expected to be minimal as it would apply to relatively few cases. Any corresponding decrease in State expenditures for workers' compensation would also be expected to be minimal.

---

### **Additional Information**

**Prior Introductions:** Similar bills were introduced in the 2006 session. HB 1018 received an unfavorable report from the House Economic Matters Committee. The Senate Finance Committee did not take action on SB 801.

**Cross File:** None.

**Information Source(s):** National Council on Compensation Insurance, Uninsured Employers' Fund, Workers' Compensation Commission, Subsequent Injury Fund, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2007  
bfl/jr

---

Analysis by: Suzanne O. Potts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510