

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 929
Finance

(Senator Kittleman)

Workers' Compensation Insurance - Subrogation Rights of Insurers

This bill provides that if an insurer makes payment for a claim under the Workers' Compensation Act, the insurer is subrogated to the cause of action of the claimant receiving the payment against the Maryland Automobile Insurance Fund (MAIF) under its unsatisfied claims provisions or uninsured motorist coverage under a motor vehicle liability insurance policy.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations. The State is self insured for workers' compensation.

Local Effect: Local government expenditures for workers' compensation insurance could decrease minimally. Any such decrease could be partially offset by an increase in expenditures to purchase motor vehicle liability insurance.

Small Business Effect: Minimal.

Analysis

Background: Subrogation is the substitution of one person in the place of another regarding a lawful claim, demand, or right. The person substituted succeeds to the debt or claim of the replaced person, along with the associated rights, remedies, or securities.

Current Law: When a person other than an employer is liable for the injury or death of an employee covered under the Workers' Compensation Act, the covered employee may file a claim under the Workers' Compensation Act or bring an action for damages against

the person liable for the injuries (or against each tort feisor if multiple persons are responsible).

If a claim is filed under the Workers' Compensation Act and compensation is awarded, the workers' compensation insurer may bring an action for damages against the third party who is liable for the injury or death of the covered employee. The Court of Appeals has said that the theory behind the statute is subrogation, that the insurer stands in the shoes of the injured worker. *Erie Ins. Co. v. Curtis*, 330 Md. 160, 164 (1993) (internal citations omitted). If the workers' compensation insurer does not bring an action within two months, the injured worker may bring an action against the third-party tort feisor.

If the covered employee recovers damages, the covered employee must distribute money from any award in the following order: (1) the employee's costs and expenses of the bringing the action; (2) reimbursement of the insurer for compensation paid or awarded and medical expenses paid; and (3) keep the remaining balance. If both the insurer and the covered employee jointly bring the action, the court costs and attorney's fees are split proportionally to the whole amount of the judgment in the case.

If a covered employee receives a damage award in a civil action, the damages are in place of any award under the Workers' Compensation Act and the workers' compensation case is closed settled. If the damages received is less than the amount of a workers' compensation award, the covered employee may reopen the claim for compensation to recover the difference.

Under *Erie Ins. Co. v. Curtis*, 330 Md. 160 (1993), a workers' compensation insurer does not have a claim to payments made to an injured worker under uninsured motorist coverage because the workers' compensation insurer's subrogation right does not apply to the contractual relationship between the injured worker and the provider of uninsured motorist insurance coverage. This is the case whether the coverage is provided through the worker's insurer or the employer's insurer. *Id.*, at 169.

Benefits payable under uninsured motorist coverage must be reduced to the extent that the recipient has recovered benefits under State or federal workers' compensation laws for which the workers' compensation benefit provider has not been reimbursed.

Local Expenditures: Local government expenditures for workers' compensation insurance could decrease to the extent their workers' compensation insurers lowered premiums because of the bill. Any such decrease cannot be accurately estimated but is assumed to be negligible. Any decrease may be partially offset by an increase in motor vehicle liability insurance. The National Council on Compensation Insurance advises that 1.9% of workers' compensation claims stem from motor vehicle accidents. The

Injured Workers Insurance Fund estimates that 5% of subrogation claims involve uninsured motorist coverage.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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