

HOUSE BILL 1436

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9lr3220
CF SB 987

By: **Delegate Krysiak**

Introduced and read first time: February 26, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation Commission – Authority – Employer Compliance**

3 FOR the purpose of clarifying the authority of the Workers' Compensation
4 Commission to conduct certain investigations and take certain other actions to
5 determine whether an employer has complied with certain requirements
6 regarding workers' compensation insurance; authorizing the Commission to
7 issue penalties and other orders under certain circumstances; establishing
8 certain penalties; requiring the Commission to notify certain employers that
9 certain licenses or permits may be suspended under certain circumstances;
10 providing for default in payment of compensation under certain circumstances;
11 creating an enforceable lien under certain circumstances; authorizing the
12 Uninsured Employers' Fund to bring civil action against an employer under
13 certain circumstances; establishing joint and several liability for certain
14 corporation officers and limited liability company members for certain
15 violations; requiring the Commission to send a certain notice to certain
16 licensing and permitting agencies; requiring certain units of the State, a county,
17 or a municipal government to suspend the license or permit of certain employers
18 under certain circumstances; requiring the Commission to file a list of certain
19 violators with certain units of State government; prohibiting certain employers
20 from entering into a contract with a public body under certain circumstances;
21 increasing a certain assessment; requiring the Governor to include in the
22 annual budget bill a certain amount for employment of a certain number of
23 investigators and certain other positions; making the provisions of this Act
24 severable; and generally relating to employer compliance and the authority of
25 the Workers' Compensation Commission.

26 BY repealing and reenacting, with amendments,
27 Article – Labor and Employment
28 Section 9–402(a), 9–407, 9–1005, and 9–1012
29 Annotated Code of Maryland
30 (2008 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY adding to
Article – Labor and Employment
Section 9–406.1, 9–407.1, and 9–407.2
Annotated Code of Maryland
(2008 Replacement Volume)

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

Article – Labor and Employment

9–402.

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

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

(2) maintaining insurance with an authorized insurer;

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

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

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

(6) having a county board of education or private noncollegiate
institution secure compensation under § 8–402(c) or § 7–114(d) of the Education
Article.

9–406.1.

**TO DETERMINE WHETHER AN EMPLOYER HAS COMPLIED WITH § 9–402 OF
THIS SUBTITLE, IN ADDITION TO ANY OTHER POWERS SET FORTH IN THIS TITLE,
THE COMMISSION MAY:**

(1) CONDUCT AN INVESTIGATION;

**(2) ENTER AND INSPECT ANY PLACE OF BUSINESS DURING
BUSINESS HOURS;**

(3) EXAMINE AND COPY BUSINESS RECORDS;

1 **(4) ADMINISTER OATHS;**

2 **(5) ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS TO**
3 **TESTIFY OR THE PRODUCTION OF PERTINENT DOCUMENTS OR RECORDS;**

4 **(6) ISSUE PENALTY ORDERS AND ANY OTHER ORDERS NECESSARY**
5 **FOR THE ADMINISTRATION OF THIS SECTION; AND**

6 **(7) SEEK INJUNCTIONS AND OTHER APPROPRIATE RELIEF.**

7 9–407.

8 (a) **(1) If THE COMMISSION DETERMINES THAT** an employer [fails] **HAS**
9 **FAILED** to secure compensation for [the] **ALL** covered employees of the employer as
10 required by § 9–402 of this subtitle, the Commission shall order the employer to:

11 **(I) maintain insurance [with the Injured Workers’ Insurance**
12 **Fund by paying to the State Treasurer, for the benefit and use of the Injured Workers’**
13 **Insurance Fund, the premiums required for the employer to become insured with the**
14 **Injured Workers’ Insurance Fund] FOR ALL COVERED EMPLOYEES WITH THE**
15 **INJURED WORKERS’ INSURANCE FUND OR AN AUTHORIZED INSURER;**

16 **(II) SUBMIT PROOF OF INSURANCE COVERAGE TO THE**
17 **COMMISSION; AND**

18 **(III) PAY TO THE UNINSURED EMPLOYERS’ FUND A PENALTY**
19 **NOT TO EXCEED \$10,000.**

20 **(2) THE COMMISSION SHALL NOTIFY THE EMPLOYER BY**
21 **CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT THE LICENSE OR PERMIT**
22 **OF THE EMPLOYER TO DO BUSINESS IN THE STATE MAY BE SUSPENDED IF THE**
23 **EMPLOYER FAILS TO COMPLY WITH THE ORDER.**

24 (b) **(1) If an employer fails to comply with an order to insure [with the**
25 **Injured Workers’ Insurance Fund] ALL COVERED EMPLOYEES** passed under
26 subsection (a) of this section or under § 9–404(j) or § 9–405(f) of this subtitle within 10
27 days after the Commission passes the order, **THE COMMISSION SHALL ORDER** the
28 employer [is liable to the State for a penalty equal to the premiums for 6 months of
29 insurance with the Injured Workers’ Insurance Fund] **TO PAY TO THE UNINSURED**
30 **EMPLOYERS’ FUND AN ADDITIONAL PENALTY OF \$1,000.**

31 **(2) FOR EACH ADDITIONAL 10–DAY PERIOD THAT THE EMPLOYER**
32 **FAILS TO COMPLY WITH AN ORDER TO INSURE ALL COVERED EMPLOYEES, THE**

COMMISSION SHALL ORDER THE EMPLOYER TO PAY TO THE UNINSURED EMPLOYERS' FUND AN ADDITIONAL PENALTY OF \$1,000.

(3) THE COMMISSION MAY NOT ORDER ADDITIONAL PENALTIES FOR A VIOLATION OF THIS SUBSECTION THAT EXCEED \$10,000 FOR A SINGLE VIOLATION.

(c) [The Commission may collect any unpaid amount under subsections (a) and (b) of this section in the same manner and with the same effect as provided for collections by the Injured Workers' Insurance Fund under § 10-133(c) of this article.]

(1) IF AN EMPLOYER FAILS TO PAY ANY PENALTY UNDER THIS SECTION, THE DEFAULT CONSTITUTES A DEFAULT IN PAYMENT OF COMPENSATION AND JUDGMENT SHALL BE ENTERED AS IN A CASE OF DEFAULT IN PAYMENT OF COMPENSATION.

(2) (I) ANY PENALTY THAT IS PAYABLE UNDER THIS SECTION IS A LIEN AGAINST THE ASSETS OF THE EMPLOYER WHO IS LIABLE FOR THE PENALTY.

(II) A LIEN UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBORDINATE TO:

1. CLAIMS FOR UNPAID WAGES; AND

2. PRIOR RECORDED LIENS.

(3) THE UNINSURED EMPLOYERS' FUND MAY BRING A CIVIL ACTION TO COLLECT ANY PENALTY ORDERED UNDER THIS SECTION.

(4) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE EMPLOYER THAT HAS FAILED TO COMPLY WITH AN ORDER TO INSURE ALL COVERED EMPLOYEES IS A CORPORATION THE ASSETS OF WHICH ARE NOT SUFFICIENT TO SATISFY A PENALTY ORDERED UNDER THIS SECTION, ANY OFFICER OF THE CORPORATION WHO HAS RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE CORPORATION IN THE STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE PENALTY IF THAT OFFICER KNOWINGLY FAILED TO SECURE WORKERS' COMPENSATION INSURANCE.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF THE EMPLOYER THAT HAS FAILED TO COMPLY WITH AN ORDER TO INSURE ALL COVERED EMPLOYEES IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH ARE NOT SUFFICIENT TO SATISFY A PENALTY ORDERED UNDER THIS SECTION, ANY MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS RESPONSIBILITY

1 FOR THE GENERAL MANAGEMENT OF THE LIMITED LIABILITY COMPANY IN THE
2 STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE PENALTY IF THAT MEMBER
3 KNOWINGLY FAILED TO SECURE WORKERS' COMPENSATION INSURANCE.

4 **9-407.1.**

5 (A) IF THE EMPLOYER FAILS TO COMPLY WITH THE COMMISSION'S
6 ORDER TO INSURE ALL COVERED EMPLOYEES WITHIN 30 DAYS OF THE DATE
7 THAT THE NOTICE ISSUED UNDER § 9-407(A)(2) IS RECEIVED BY THE
8 EMPLOYER, THE COMMISSION SHALL SEND A COPY OF THAT NOTICE TO EACH
9 STATE, COUNTY, OR MUNICIPAL UNIT THAT HAS ISSUED A LICENSE OR PERMIT
10 TO THE EMPLOYER FOR AN ACTIVITY FOR WHICH WORKERS' COMPENSATION
11 COVERAGE IS REQUIRED BY LAW.

12 (B) (1) WITHIN 15 DAYS AFTER RECEIPT OF THE NOTICE, THE
13 LICENSING UNIT SHALL PROVIDE THE EMPLOYER WITH THE NOTICE AND
14 OPPORTUNITY FOR A HEARING AS OTHERWISE MAY BE REQUIRED BY LAW.

15 (2) IF LAW REQUIRES THE LICENSING UNIT TO HOLD A HEARING,
16 THE LICENSING UNIT SHALL SEND WRITTEN NOTICE OF THE HEARING TO THE
17 COMMISSION.

18 (C) (1) THE LICENSING UNIT SHALL SUSPEND THE LICENSE OR
19 PERMIT OF THE EMPLOYER IF THE LICENSING UNIT FINDS THAT THE EMPLOYER
20 HAS FAILED TO COMPLY WITH THE COMMISSION'S ORDER TO MAINTAIN
21 INSURANCE FOR ALL COVERED EMPLOYEES WITH THE INJURED WORKERS'
22 INSURANCE FUND OR AN AUTHORIZED INSURER AND TO SUBMIT PROOF OF
23 INSURANCE COVERAGE TO THE COMMISSION.

24 (2) A SUSPENSION OF A LICENSE OR PERMIT UNDER PARAGRAPH
25 (1) OF THIS SUBSECTION SHALL CONTINUE UNTIL THE EMPLOYER COMPLIES
26 WITH THE COMMISSION'S ORDER TO INSURE ALL COVERED EMPLOYEES.

27 **9-407.2.**

28 (A) (1) THE COMMISSION SHALL FILE WITH THE SECRETARY OF
29 STATE, THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND THE
30 DEPARTMENT OF GENERAL SERVICES A LIST OF EMPLOYERS THAT
31 REPEATEDLY VIOLATE THE PROVISIONS OF THIS SUBTITLE BY FAILING TO
32 MAINTAIN INSURANCE FOR ALL COVERED EMPLOYEES.

33 (2) THE COMMISSION'S FILING UNDER THIS SUBSECTION SHALL
34 BE NOTICE TO A PUBLIC BODY AND ITS REPRESENTATIVES.

1 (3) THE LIST MAINTAINED IN ACCORDANCE WITH THIS
2 SUBSECTION IS A PUBLIC RECORD.

3 (B) (1) AN EMPLOYER THAT APPEARS ON THE LIST SHALL BE
4 PROHIBITED FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY
5 DIRECTLY OR INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH THE
6 EMPLOYER'S NAME FIRST APPEARED ON THE LIST.

7 (2) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN
8 EMPLOYER PROHIBITED FROM ENTERING INTO A CONTRACT UNDER
9 PARAGRAPH (1) OF THIS SUBSECTION FOR 2 YEARS FROM THE DATE ON WHICH
10 THE EMPLOYER'S NAME FIRST APPEARED ON THE LIST.

11 (C) A DEBARMENT UNDER THIS SECTION SHALL BE IN EFFECT AGAINST
12 ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS ONE OR MORE
13 OF THE SAME PRINCIPALS OR OFFICERS AS THE EMPLOYER AGAINST WHOM THE
14 DEBARMENT WAS IMPOSED AND THAT WAS ENGAGED IN THE SAME OR
15 EQUIVALENT TRADE OR ACTIVITY.

16 9-1005.

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

20 (i) at least [\$150] **\$500** but not exceeding [\$500] **\$1,000**; and

21 (ii) 15% of any award made in the claim, not exceeding [\$2,500]
22 **\$10,000** in any 1 claim.

23 (2) (i) Notwithstanding any other provision of law, if the uninsured
24 employer is a corporation the assets of which are not sufficient to satisfy an
25 assessment, any officer of the corporation who has responsibility for the general
26 management of the corporation in the State is jointly and severally liable for the
27 assessment if the corporate officer knowingly failed to secure workers' compensation
28 insurance.

29 (ii) Notwithstanding any other provision of law, if the uninsured
30 employer is a limited liability company the assets of which are not sufficient to satisfy
31 an assessment, any member of the limited liability company who has responsibility for
32 the general management of the limited liability company in the State is jointly and
33 severally liable for the assessment if a member of the limited liability company who
34 has general management responsibility knowingly failed to secure workers'
35 compensation insurance.

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

9–1012.

(a) (1) Notwithstanding any other provision of this subtitle, the Director shall notify an employer by certified mail, return receipt requested, that the license or permit of the employer to do business in the State may be suspended if the employer fails to:

(i) reimburse the Fund for payment of an award under § 9–1002 of this subtitle; [or]

(ii) pay an assessment under this subtitle; **OR**

(III) PAY ANY PENALTIES ORDERED UNDER § 9–407 OF THIS TITLE.

(2) The Director shall send a copy of the notice to each State, county, or municipal unit that has issued a license or permit to the employer for an activity for which workers' compensation coverage is required by law.

(b) (1) Within 15 days after receipt of the notice, the licensing unit shall provide the employer with the notice and opportunity for a hearing as otherwise may be required by law.

(2) If law requires the licensing unit to hold a hearing, the licensing unit shall send written notice of the hearing date to the Director.

(c) (1) The licensing unit shall suspend the license or permit of the employer if the licensing unit finds that the employer has failed to:

(i) reimburse the Fund for payment of an award under § 9–1002 of this subtitle; [or]

(ii) pay an assessment under this subtitle; **OR**

(III) PAY ANY PENALTIES ORDERED UNDER § 9–407 OF THIS TITLE.

(2) A suspension of a license or permit under paragraph (1) of this subsection shall continue until the employer:

(i) **1.** reimburses the Fund for payment of an award under § 9–1002 of this subtitle;

[(ii)] 2. pays the assessment due to the Fund; or

1 [(iii)] **3.** agrees to reimburse the Fund for payment of an
2 award or to pay the assessment due to the Fund in a manner approved by the Board;
3 **AND**

4 **(II) PAYS ANY PENALTIES ORDERED UNDER § 9-407 OF THIS**
5 **TITLE.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall
7 include in the annual budget for each fiscal year beginning with fiscal year 2010, an
8 appropriation for the Workers' Compensation Commission for at least four Fraud
9 Investigators III with a grade of 13, one Programmer Analyst II with a grade of 17,
10 one Office Secretary II with a grade of 10, and one Program Manager with a grade of
11 19 to enforce this Act. The appropriation for each fiscal year for the fraud
12 investigators, programmer analyst, office secretary, and program manager shall be
13 consistent with the salary and classification plans in effect for those functions.

14 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
15 Act or the application thereof to any person or circumstance is held invalid for any
16 reason in a court of competent jurisdiction, the invalidity does not affect other
17 provisions or any other application of this Act which can be given effect without the
18 invalid provision or application, and for this purpose the provisions of this Act are
19 declared severable.

20 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2009.