

# SENATE BILL 987

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9lr3170  
CF HB 1436

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By: **Senator Exum and Kittleman**

Introduced and read first time: February 25, 2009

Assigned to: Rules

Re-referred to: Finance, March 5, 2009

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2009

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## CHAPTER \_\_\_\_\_

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.

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,  
 2 Article – Labor and Employment  
 3 Section 9–402(a), 9–407, 9–1005, and 9–1012  
 4 Annotated Code of Maryland  
 5 (2008 Replacement Volume)

6 BY adding to  
 7 Article – Labor and Employment  
 8 Section ~~9–406.1, 9–407.1, and 9–407.2~~ and 9–407.1  
 9 Annotated Code of Maryland  
 10 (2008 Replacement Volume)

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

13 **Article – Labor and Employment**

14 9–402.

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

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

18 (2) maintaining insurance with an authorized insurer;

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

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

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

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

28 **9–406.1.**

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

32 (1) **CONDUCT AN INVESTIGATION;**

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

3           **(3) EXAMINE AND COPY BUSINESS RECORDS;**

4           **(4) ADMINISTER OATHS;**

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

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

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

10 9–407.

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

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

19                   **(II) SUBMIT PROOF OF INSURANCE COVERAGE TO THE**  
20 **COMMISSION; AND**

21                   **(III) PAY TO THE UNINSURED EMPLOYERS' FUND A PENALTY**  
22 **NOT TO EXCEED ~~\$10,000~~ \$5,000.**

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

27           (b) **(1) If an employer fails to comply with an order to insure [with the**  
28 **Injured Workers' Insurance Fund] ALL COVERED EMPLOYEES** passed under  
29 subsection (a) of this section or under § 9–404(j) or § 9–405(f) of this subtitle within 10  
30 days after the Commission passes the order, **THE COMMISSION SHALL ORDER** the  
31 employer [is liable to the State for a penalty equal to the premiums for 6 months of

1 insurance with the Injured Workers' Insurance Fund] TO PAY TO THE UNINSURED  
2 EMPLOYERS' FUND AN ADDITIONAL PENALTY OF \$1,000.

3 (2) FOR EACH ADDITIONAL 10-DAY PERIOD THAT THE EMPLOYER  
4 FAILS TO COMPLY WITH AN ORDER TO INSURE ALL COVERED EMPLOYEES, THE  
5 COMMISSION SHALL ORDER THE EMPLOYER TO PAY TO THE UNINSURED  
6 EMPLOYERS' FUND AN ADDITIONAL PENALTY OF \$1,000.

7 (3) THE COMMISSION MAY NOT ORDER ADDITIONAL PENALTIES  
8 FOR A VIOLATION OF THIS SUBSECTION THAT EXCEED ~~\$10,000~~ \$5,000 FOR A  
9 SINGLE VIOLATION.

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

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

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

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

- 22 1. CLAIMS FOR UNPAID WAGES; AND  
23 2. PRIOR RECORDED LIENS.

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

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

1 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF  
2 THE EMPLOYER THAT HAS FAILED TO COMPLY WITH AN ORDER TO INSURE ALL  
3 COVERED EMPLOYEES IS A LIMITED LIABILITY COMPANY THE ASSETS OF WHICH  
4 ARE NOT SUFFICIENT TO SATISFY A PENALTY ORDERED UNDER THIS SECTION,  
5 ANY MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS RESPONSIBILITY  
6 FOR THE GENERAL MANAGEMENT OF THE LIMITED LIABILITY COMPANY IN THE  
7 STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE PENALTY IF THAT MEMBER  
8 KNOWINGLY FAILED TO SECURE WORKERS' COMPENSATION INSURANCE.

9 **9-407.1.**

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

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

20 (2) IF LAW REQUIRES THE LICENSING UNIT TO HOLD A HEARING,  
21 THE LICENSING UNIT SHALL SEND WRITTEN NOTICE OF THE HEARING TO THE  
22 COMMISSION.

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

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

32 ~~9-407.2.~~

33 ~~(A) (1) THE COMMISSION SHALL FILE WITH THE SECRETARY OF~~  
34 ~~STATE, THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND THE~~  
35 ~~DEPARTMENT OF GENERAL SERVICES A LIST OF EMPLOYERS THAT~~

~~1 REPEATEDLY VIOLATE THE PROVISIONS OF THIS SUBTITLE BY FAILING TO  
2 MAINTAIN INSURANCE FOR ALL COVERED EMPLOYEES.~~

~~3 (2) THE COMMISSION'S FILING UNDER THIS SUBSECTION SHALL  
4 BE NOTICE TO A PUBLIC BODY AND ITS REPRESENTATIVES.~~

~~5 (3) THE LIST MAINTAINED IN ACCORDANCE WITH THIS  
6 SUBSECTION IS A PUBLIC RECORD.~~

~~7 (B) (1) AN EMPLOYER THAT APPEARS ON THE LIST SHALL BE  
8 PROHIBITED FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY  
9 DIRECTLY OR INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH THE  
10 EMPLOYER'S NAME FIRST APPEARED ON THE LIST.~~

~~11 (2) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN  
12 EMPLOYER PROHIBITED FROM ENTERING INTO A CONTRACT UNDER  
13 PARAGRAPH (1) OF THIS SUBSECTION FOR 2 YEARS FROM THE DATE ON WHICH  
14 THE EMPLOYER'S NAME FIRST APPEARED ON THE LIST.~~

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

20 9-1005.

21 (a) (1) When the Commission makes a decision on a claim for  
22 compensation against an uninsured employer, the Commission shall impose against  
23 the uninsured employer an assessment of:

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

25 (ii) 15% of any award made in the claim, not exceeding ~~[\$2,500]~~  
26 **\$10,000 \$5,000** in any 1 claim.

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

33 (ii) Notwithstanding any other provision of law, if the uninsured  
34 employer is a limited liability company the assets of which are not sufficient to satisfy  
35 an assessment, any member of the limited liability company who has responsibility for

1 the general management of the limited liability company in the State is jointly and  
2 severally liable for the assessment if a member of the limited liability company who  
3 has general management responsibility knowingly failed to secure workers'  
4 compensation insurance.

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

7 9–1012.

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

12 (i) reimburse the Fund for payment of an award under §  
13 9–1002 of this subtitle; [or]

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

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

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

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

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

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

27 (i) reimburse the Fund for payment of an award under §  
28 9–1002 of this subtitle; [or]

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

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

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

1 (i) 1. reimburses the Fund for payment of an award under §  
2 9–1002 of this subtitle;

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

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

7 **(II) PAYS ANY PENALTIES ORDERED UNDER § 9–407 OF THIS**  
8 **TITLE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall  
10 include in the annual budget for each fiscal year beginning with fiscal year 2010, an  
11 appropriation for the Workers' Compensation Commission for at least ~~four~~ two Fraud  
12 Investigators III with a grade of 13, one Programmer Analyst II with a grade of 17,  
13 one Office Secretary II with a grade of 10, and one Program Manager with a grade of  
14 19 to enforce this Act. The appropriation for each fiscal year for the fraud  
15 investigators, programmer analyst, office secretary, and program manager shall be  
16 consistent with the salary and classification plans in effect for those functions.

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.