

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 297
Finance

(Senator Exum)

Workers' Compensation - Sole Proprietors - Coverage

This bill requires sole proprietors to “opt-out” of workers’ compensation coverage.

The bill establishes that a sole proprietor is considered a covered employee. If a sole proprietor elects not to be a covered employee, he or she must submit to the Workers’ Compensation Commission and to the principal contractor, or other employer, a signed and notarized written notice that names the individual who has opted out of coverage. A principal contractor is not liable to pay compensation to a sole proprietor only if that individual has elected not to be a covered employee.

Fiscal Summary

State Effect: Increase in special fund expenditures for the Uninsured Employers’ Fund (UEF). No effect on general fund expenditures or revenues.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Sole proprietors are not required to carry workers’ compensation insurance, but they are able to elect coverage by “opting-in” through written notice to their insurers and the Workers’ Compensation Commission naming the individual or individuals who have elected coverage.

Principal contractors are not liable to pay compensation to sole proprietors if the sole proprietors do not submit the appropriate form to identify covered employee status and do not elect to be covered. Sole proprietors are assumed not to be covered employees if they work primarily in the trade for which they were hired by the contractor, provide notification of their noncovered status on the appropriate form, and have filed the requisite Internal Revenue Service forms.

Background: According to the Injured Workers' Insurance Fund (IWIF), a principal contractor may be found liable for injuries to a sole proprietor if the commission determines that the sole proprietor is a covered employee. This can occur even if the sole proprietor did not choose to be a covered employee. The employer or insurer may be required to pay compensation if the commission rules that the person who did not elect to be covered is in fact covered.

According to IWIF, the bill ensures that a principal contractor is not liable for injuries to a sole proprietor if the sole proprietor has not elected coverage. Thus, the sole proprietor would be treated in the same fashion as corporate officers who are entitled to file a binding election not to be covered.

UEF pays awards ordered by the Workers' Compensation Commission in cases where noninsured employers default on payments. UEF derives its revenue from assessments on awards and settlements against employers or insurers. UEF imposes a 1% assessment and can increase the assessment by up to 1% if UEF determines the fund balance is inadequate to meet anticipated losses. The assessment can also be suspended if the balance exceeds \$5 million. UEF also collects penalties from sanctions on uninsured employers and recovers benefits and medical expenses paid by UEF on uninsured claims.

State Fiscal Effect: The number of uninsured claims UEF receives annually and costs associated with litigation increase as a result of the bill. According to UEF, if a hiring company or individual is uninsured and does not pay an award in favor of an injured sole proprietor, then UEF is responsible for the claim. UEF advises that any losses can be covered by existing statutory sources of revenue. Legislative Services concurs.

Any increase in work at the commission to process filings, which are assumed to be minimal, can be handled with existing resources.

Small Business Effect: Principal contractors may experience increased insurance premiums due to an increase in the number of covered employees. However, principal contractors and other employers and private insurers are no longer held liable for sole proprietors who elect not to be covered by workers' compensation.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 9, 2009
ncs/rhh

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