SB 959

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 959 (Senator Middleton)
Finance Economic Matters

Injured Workers' Insurance Fund - Regulation and Status

This bill specifies that the Injured Workers' Insurance Fund (IWIF) must operate in a manner similar to an authorized domestic workers' compensation insurer and subjects IWIF to additional regulation by the Maryland Insurance Administration (MIA).

Fiscal Summary

State Effect: Special fund revenues for MIA increase annually due to the IWIF assessment under the bill. MIA can handle the additional workload with existing resources.

Injured Workers Insurance Fund Effect: IWIF advises that the bill requires it to pay approximately $80,000 annually in an assessment to the Insurance Regulation Fund; IWIF advises that this cost has a minimal fiscal impact on the agency and can be handled with existing resources.

Local Effect: Local government finances are not affected by the regulatory changes to IWIF.

Small Business Effect: None. IWIF advises that the premiums charged to employers and insurers, including small businesses, by IWIF are not affected by the bill.

Analysis

Bill Summary: The bill specifies that, with certain exceptions, IWIF is subject to the same insurance law requirements as any authorized domestic workers' compensation insurer in the State. Because IWIF operates as a third-party administrator in the State, IWIF must register with the Maryland Insurance Commissioner, and is subject to State insurance law provisions related to such entities. IWIF must serve as a competitive insurer in the marketplace for workers' compensation insurance, guarantee the availability of such insurance in the State, serve as the insurer of last resort, and engage only in the business of workers' compensation insurance.

The bill regulates IWIF as most other insurers are regulated in the State; however, the bill does not require IWIF to pay a premium tax charged to other insurers in the State, or join the National Council on Compensation Insurance (NCCI) and adhere to the policy forms filed by NCCI. The bill repeals numerous provisions in the IWIF law, which are replaced by provisions in the State Insurance Article.

The Insurance Commissioner must, at least once every five years, study IWIF's rate making practices to ensure that the agency produces actuarially sound rates. IWIF's board must adopt a schedule of premium rates in accordance with sound actuarial practices and must ensure that the rates are not excessive, inadequate, or unfairly discriminatory.

IWIF board members are entitled to reimbursement for reasonable expenses, rather than under standard State travel regulations, incurred in the performance of board duties, and must be paid biweekly, rather than semimonthly.

The bill also clarifies that the IWIF board must adopt policies, rather than regulations, to implement the law.

Current Law/Background: IWIF is currently not an authorized insurer, but many provisions that apply to other insurers in the State apply to IWIF. State law requires the Insurance Commissioner to examine IWIF on risk-based capital standards, liabilities, reserves, asset valuation, reinsurance, and impaired entities. The Insurance Commissioner may examine or review IWIF for compliance with specified provisions, including those relating to policy forms; workers' compensation insurance – except for premium rate setting provisions; unfair trade practices; and other prohibited practices. The Insurance Commissioner must report on the results of the conducted examinations or reviews to the IWIF board.

IWIF is exempt from the provisions of State law governing insurance rate making by private insurers, including regulation, examination, and enforcement by the Commissioner. IWIF is required to submit a detailed package of information to the Governor that includes the schedule of premium rates that IWIF will charge for the next calendar year. The board of IWIF, appointed by the Governor, has the authority to determine the schedule of premium rates based on the rating system that, in the opinion of the board:

- most accurately measures the level of hazard for each policyholder on the basis of the number of injuries that occur in the enterprises of the policyholder;
- encourages the prevention of injuries; and
- ensures the solvency of IWIF from year to year.

IWIF administers workers' compensation for the State and provides workers' compensation insurance to firms unable to procure insurance in the private market. IWIF was established as the State Accident Fund, part of the State Industrial Accident Commission. In 1941, it became a separate agency and took its current name in 1990. IWIF only writes policies in Maryland and is the exclusive residual workers' compensation insurer in the State. IWIF cannot decline businesses that seek coverage and must adjust rates in response to changing market conditions. In Maryland, IWIF is a major insurer with an approximate one-third market share.

Chapter 567 of 2000 and Chapter 22 of 2003 extended specific regulations to IWIF, primarily Insurance Article provisions for risk-based capital standards, assets and liabilities, reserves, reinsurance, and impaired entities.

Each workers' compensation insurer in Maryland, except IWIF, must join NCCI – the rating organization recognized in Maryland – and adhere to the policy forms filed by NCCI. By statute, IWIF is exempt from NCCI affiliation and from filing its rates with MIA. Although the bill requires IWIF to file its rates with MIA, the bill does not require IWIF to join NCCI. IWIF has developed its own loss costs data system, based solely on IWIF's loss experience. IWIF's rates are formulated based on this data, in consultation with IWIF's outside actuary, and approved by the board for IWIF.

Chapter 612 of 2008 required MIA to study the impact of subjecting IWIF to statutory provisions regarding ratemaking, rating, and rate review that are enforced by MIA for other property and casualty insurers. The study included an analysis of whether IWIF's current rate making practices produce actuarially sound rates, a determination of the cost to IWIF to file its rates with a rating organization, and a comparison of the experience rating plan used by IWIF for small employers as compared to the plan established by a rating organization for small employers.

In its January 2009 report delivered to the Senate Finance Committee and the House Economic Matters Committee, MIA concluded that:

- IWIF should be authorized to continue in its dual role as an insurer of last resort and a competitive insurer, but also subjected to the laws governing other competitive insurers writing workers' compensation policies in the State;

- IWIF should be required to pay the premium tax;
- IWIF should be required to pay the annual assessment to the Insurance Regulation Fund;
- IWIF should be required to become an NCCI member using a five-year transition period;
- IWIF's current rate making procedures produce actuarially sounds rates, but those rates should be subject to MIA review and prior approval;
- the General Assembly should remove the statutory prohibition on the Commissioner's ability to order IWIF to increase its rates;
- the General Assembly should require IWIF to use only licensed producers that it appoints and make it responsible for the actions of the producers; and
- IWIF should be provided with an assessment mechanism to allow IWIF, in the event of financial distress, to assess all other competitive insurers writing workers' compensation insurance in the State for losses resulting from its residual business.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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