

Chapter 40

(Senate Bill 174)

AN ACT concerning

Subsequent Injury Fund and Uninsured Employers' Fund – Assessments on Settlement Agreements

FOR the purpose of excluding from the assessments imposed by the Workers' Compensation Commission and payable to the Subsequent Injury Fund and the Uninsured Employers' Fund the amount of certain medical benefits under a certain settlement agreement under certain circumstances; and generally relating to settlement agreements and assessments payable to the Subsequent Injury Fund and the Uninsured Employers' Fund.

BY repealing and reenacting, with amendments,
 Article – Labor and Employment
 Section 9–806 and 9–1007
 Annotated Code of Maryland
 (2008 Replacement Volume and 2011 Supplement)

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

Article – Labor and Employment

9–806.

(a) **(1)** The Commission shall impose an assessment of 6.5%, payable to the Subsequent Injury Fund, on:

[(1)] (I) each award against an employer or its insurer for permanent disability or death, including awards for disfigurement and mutilation;

[(2)] (II) EXCEPT AS PROVIDED IN PARAGRAPH **(2)** OF THIS SUBSECTION, each amount payable by an employer or its insurer under a settlement agreement approved by the Commission; and

[(3)] (III) each amount payable under item **[(1)] (I)** or **[(2)] (II)** of this [subsection] PARAGRAPH by the Property and Casualty Guaranty Corporation on behalf of an insolvent insurer.

(2) THE AMOUNT OF MEDICAL BENEFITS SPECIFIED IN A FORMAL SET-ASIDE ALLOCATION THAT IS PART OF AN APPROVED SETTLEMENT

AGREEMENT SHALL BE EXCLUDED FROM THE ASSESSMENT IMPOSED BY THE COMMISSION UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION IF:

(I) 1. THE AMOUNT OF MEDICAL BENEFITS IS IN EXCESS OF \$50,000; AND

2. THE PAYMENT OF MEDICAL BENEFITS BY THE EMPLOYER OR ITS INSURER IS DIRECTLY TO AN AUTHORIZED INSURER THAT PROVIDES PERIODIC PAYMENTS TO THE COVERED EMPLOYEE PURSUANT TO A SINGLE PREMIUM ANNUITY; OR

(II) 1. THE AMOUNT OF MEDICAL BENEFITS IS IN ANY AMOUNT; AND

2. THE PAYMENT OF MEDICAL BENEFITS BY THE EMPLOYER OR ITS INSURER IS TO AN INDEPENDENT THIRD-PARTY ADMINISTRATOR THAT CONTROLS AND PAYS THE MEDICAL SERVICES IN ACCORDANCE WITH THE FORMAL SET-ASIDE ALLOCATION, PROVIDED THERE IS NO REVERSIONARY INTEREST TO THE COVERED EMPLOYEE OR THE COVERED EMPLOYEE'S BENEFICIARIES.

(b) In computing the amount of an assessment, the Commission shall round off any fractional dollar to the nearest whole dollar.

(c) Payment of an assessment under this section is in addition to any payment of compensation to a covered employee who has sustained an accidental personal injury, occupational disease, or compensable hernia or a dependent of the covered employee, as provided in this title.

(d) (1) The Director of the Subsequent Injury Fund promptly shall remit to the State Treasurer each payment of assessment received by the Subsequent Injury Fund.

(2) The State Treasurer shall hold, manage, and disburse the money in accordance with Title 10, Subtitle 2 of this article.

(e) The assessment imposed under this section is for payment of claims submitted to the Subsequent Injury Fund and is not a tax intended to benefit the State.

(a) (1) Except as provided in subsection (b) of this section, the Commission shall impose against an employer or, if insured, its insurer an assessment equal to 1% of:

(i) each award against the employer for permanent disability or death, including awards for disfigurement or mutilation; and

(ii) **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION**, each amount payable by the employer or its insurer under a settlement agreement approved by the Commission.

(2) THE AMOUNT OF MEDICAL BENEFITS SPECIFIED IN A FORMAL SET-ASIDE ALLOCATION THAT IS PART OF AN APPROVED SETTLEMENT AGREEMENT SHALL BE EXCLUDED FROM THE ASSESSMENT IMPOSED BY THE COMMISSION UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION IF:

(I) 1. THE AMOUNT OF MEDICAL BENEFITS IS IN EXCESS OF \$50,000; AND

2. THE PAYMENT OF MEDICAL BENEFITS BY THE EMPLOYER OR ITS INSURER IS DIRECTLY TO AN AUTHORIZED INSURER THAT PROVIDES PERIODIC PAYMENTS TO THE COVERED EMPLOYEE PURSUANT TO A SINGLE PREMIUM ANNUITY; OR

(II) 1. THE AMOUNT OF MEDICAL BENEFITS IS IN ANY AMOUNT; AND

2. THE PAYMENT OF MEDICAL BENEFITS BY THE EMPLOYER OR ITS INSURER IS TO AN INDEPENDENT THIRD-PARTY ADMINISTRATOR THAT CONTROLS AND PAYS THE MEDICAL SERVICES IN ACCORDANCE WITH THE FORMAL SET-ASIDE ALLOCATION, PROVIDED THERE IS NO REVERSIONARY INTEREST TO THE COVERED EMPLOYEE OR THE COVERED EMPLOYEE'S BENEFICIARIES.

[(2)] (3) (i) Notwithstanding any other provision of law, if the employer is a corporation the assets of which are not sufficient to satisfy an assessment, 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 assessment if the corporate officer knowingly failed to secure workers' compensation insurance.

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

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

(b) Notwithstanding the limit on the balance of the Fund under § 9-1011 of this subtitle, if the Board determines that the reserves of the Fund are inadequate to meet anticipated losses, the Board may direct the Commission to assess an additional 1% under subsection (a) of this section.

(c) Any fractional dollar of payment under this section shall be rounded off to the nearest whole dollar.

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

(e) Payments under this section are in addition to the payment of compensation to a covered employee or the dependents of a covered employee under this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, April 10, 2012.