

# HOUSE BILL 1330

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By: **Chair, Economic Matters Committee (By Request – Departmental – Workers’ Compensation Commission)**

Introduced and read first time: February 8, 2013

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Workers’ Compensation – Insurance Coverage – Employer Compliance**

3 FOR the purpose of altering the procedures for the Workers’ Compensation  
4 Commission to enforce compliance with certain workers’ compensation  
5 insurance coverage requirements; altering the requirement for how certain  
6 employers secure compensation for certain covered employees; clarifying the  
7 Commission’s authority to order employers to secure compensation for certain  
8 covered employees; requiring the Commission to issue certain orders directing  
9 certain employers to attend certain hearings under certain circumstances;  
10 requiring the Commission to issue orders and penalties under certain  
11 circumstances; requiring the Commission to set a certain hearing under certain  
12 circumstances; establishing certain penalties for employers that fail to secure  
13 compensation for their covered employees; providing that a failure to pay a  
14 penalty constitutes a default in payment of compensation and requiring that a  
15 judgment be entered in a certain manner; providing that a certain penalty is a  
16 lien under certain circumstances; authorizing the Uninsured Employers’ Fund  
17 to bring civil actions to collect certain penalties or assessments under certain  
18 circumstances; requiring the Fund to provide certain notices to certain persons  
19 for failure to pay certain penalties; imposing joint and several liability on  
20 certain officers and members for certain violations under certain circumstances;  
21 requiring certain licensing units to suspend certain licenses or permits under  
22 certain circumstances; making certain provisions of this Act severable; making  
23 stylistic changes; making clarifying changes; and generally relating to the  
24 enforcement of compliance with workers’ compensation coverage requirements.

25 BY repealing and reenacting, with amendments,  
26 Article – Labor and Employment  
27 Section 9–402(a), 9–404(e) and (j), 9–405(b) and (f), 9–407, and 9–1012(a) and (c)  
28 Annotated Code of Maryland  
29 (2008 Replacement Volume and 2012 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Labor and Employment**

4 9–402.

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

7 [(1) maintaining insurance with the Chesapeake Employers' Insurance  
8 Company;]

9 [(2)] (1) maintaining insurance with an authorized insurer;

10 [(3)] (2) participating in a governmental self–insurance group that  
11 meets the requirements of § 9–404 of this subtitle;

12 [(4)] (3) participating in a self–insurance group of private employers  
13 that meets the requirements of Title 25, Subtitle 3 of the Insurance Article;

14 [(5)] (4) maintaining self–insurance for an individual employer in  
15 accordance with § 9–405 of this subtitle; or

16 [(6)] (5) having a county board of education or private noncollegiate  
17 institution secure compensation under § 8–402(c) or § 7–114(d) of the Education  
18 Article.

19 9–404.

20 (e) (1) At any time, the Commission may require a governmental  
21 self–insurance group to secure payment of compensation by depositing with the  
22 Commission security:

23 (i) in a form accepted by a circuit court for investment of trust  
24 money; and

25 (ii) in the amount set by the Commission.

26 (2) On application and subject to paragraph (3) of this subsection, the  
27 Commission shall return security that a governmental self–insurance group has  
28 deposited under this subsection if:

1 (i) the members of the governmental self-insurance group  
2 cease to be subject to this title or secure compensation through an authorized insurer  
3 [or the Chesapeake Employers' Insurance Company]; and

4 (ii) the governmental self-insurance group has not been liable  
5 on a claim for compensation during the 5 years immediately after the day on which the  
6 event described in item (i) of this paragraph occurred.

7 (3) After reviewing the application and before returning security to a  
8 governmental self-insurance group, the Commission may require the governmental  
9 self-insurance group to submit to the Commission an indemnity bond in an amount  
10 equal to the value of the security.

11 (j) (1) The Commission shall revoke the approval of a governmental  
12 self-insurance group to self-insure under this section if the governmental  
13 self-insurance group:

14 (i) fails to deposit securities with or submit a bond to the  
15 Commission in accordance with subsection (e) of this section;

16 (ii) fails to submit satisfactory reports to the Commission in  
17 accordance with subsection (i)(1)(i) of this section; or

18 (iii) otherwise fails to satisfy the Commission that it is  
19 financially able to self-insure.

20 (2) Whenever the Commission revokes approval for a governmental  
21 self-insurance group to self-insure under this section, the members of the  
22 governmental self-insurance group immediately shall secure compensation through  
23 an authorized insurer [or the Chesapeake Employers' Insurance Company].

24 (3) If a member of a governmental self-insurance group fails to secure  
25 compensation as required by paragraph (2) of this subsection, the Commission shall  
26 order the member of the governmental self-insurance group to secure compensation  
27 through [the Chesapeake Employers' Insurance Company] **AN AUTHORIZED**  
28 **INSURER.**

29 9-405.

30 (b) (1) At any time, the Commission may require an employer who  
31 self-insures under this section to secure payment of compensation by depositing with  
32 the Commission:

33 (i) security:

34 1. in a form accepted by a circuit court for investment of  
35 trust money; and

- 1                                   2.     in the amount set by the Commission; or
- 2                                   (ii)   letters of credit:
- 3                                   1.     issued by a financial institution acceptable to the  
4 Commission;
- 5                                   2.     in a form acceptable to and in the amount set by the  
6 Commission; and
- 7                                   3.     that meet the requirements of § 9–408(c) of this  
8 subtitle.

9                   (2)   On application and subject to paragraph (3) of this subsection, the  
10 Commission shall return security that an employer has deposited under this  
11 subsection if the employer:

12                                   (i)    ceases to be subject to this title or secures compensation  
13 through an authorized insurer [or the Chesapeake Employers' Insurance Company];  
14 and

15                                   (ii)   has not been liable on a claim for compensation during the 5  
16 years immediately after the day on which the event described in item (i) of this  
17 paragraph occurred.

18                   (3)   After reviewing the application and before returning security to an  
19 employer the Commission may require the employer to submit to the Commission an  
20 indemnity bond in an amount equal to the value of the security.

21                   (f)   (1)   The Commission shall revoke the approval of an employer to  
22 self-insure under this section if the employer:

23                                   (i)    fails to deposit securities or letters of credit with or submit a  
24 bond to the Commission in accordance with subsection (b) of this section;

25                                   (ii)   fails to submit satisfactory reports to the Commission in  
26 accordance with subsection (e)(1)(i) of this section; or

27                                   (iii) otherwise fails to satisfy the Commission that it is  
28 financially able to secure compensation.

29                   (2)   (i)   On notice to the Commission pursuant to § 9–408(c)(2) of  
30 this subtitle that a letter of credit will not be renewed, the Commission shall demand  
31 that, within 30 days, the employer provide:



1 (II) FOUND IN VIOLATION OF § 9-402 OF THIS SUBTITLE;  
2 AND

3 (III) ASSESSED A PENALTY FOR NONCOMPLIANCE WITH §  
4 9-402 OF THIS SUBTITLE; AND

5 (2) SET THE HEARING AS SOON AS PRACTICABLE.

6 (B) IF, FOLLOWING THE HEARING, THE COMMISSION FINDS THAT THE  
7 EMPLOYER FAILED TO SECURE COMPENSATION FOR ALL COVERED EMPLOYEES  
8 OF THE EMPLOYER AS REQUIRED BY WITH § 9-402 OF THIS SUBTITLE, THE  
9 COMMISSION SHALL:

10 (1) order the employer to:

11 (I) SECURE AND maintain insurance [with the Chesapeake  
12 Employers' Insurance Company by paying to the State Treasurer, for the benefit and  
13 use of the Chesapeake Employers' Insurance Company, the premiums required for the  
14 employer to become insured with the Chesapeake Employers' Insurance Company]  
15 FOR ALL COVERED EMPLOYEES OF THE EMPLOYER THROUGH AN AUTHORIZED  
16 INSURER; AND

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

19 (2) ORDER THE EMPLOYER TO PAY A PENALTY NOT TO EXCEED  
20 \$10,000 TO THE UNINSURED EMPLOYERS' FUND.

21 [(b)] (C) (1) If an employer fails to comply with an order to insure with  
22 [the Chesapeake Employers' Insurance Company passed] AN AUTHORIZED INSURER  
23 ISSUED under subsection [(a)] (B) of this section or under § 9-404(j) or § 9-405(f) of  
24 this subtitle, within [10] 30 days after the Commission [passes] ISSUES the order,  
25 [the employer is liable to the State for a penalty equal to the premiums for 6 months of  
26 insurance with the Chesapeake Employers' Insurance Company] THE COMMISSION  
27 SHALL SET A HEARING AS SOON AS PRACTICABLE.

28 (2) IF, FOLLOWING THE HEARING, THE COMMISSION FINDS THAT  
29 THE EMPLOYER FAILED TO COMPLY WITH AN ORDER ISSUED UNDER  
30 SUBSECTION (B)(1) OF THIS SECTION, THE COMMISSION MAY ORDER THE  
31 EMPLOYER TO PAY A PENALTY NOT TO EXCEED \$10,000 TO THE UNINSURED  
32 EMPLOYERS' FUND.

1           [(c) The Commission may collect any unpaid amount under subsections (a)  
2 and (b) of this section in the same manner and with the same effect as provided for  
3 collections by the Chesapeake Employers' Insurance Company under § 10-133(c) of  
4 this article.]

5           **(D) (1) AN EMPLOYER'S FAILURE TO PAY A PENALTY UNDER THIS**  
6 **SECTION CONSTITUTES A DEFAULT IN PAYMENT OF COMPENSATION AND**  
7 **JUDGMENT SHALL BE ENTERED AS IN A CASE OF DEFAULT IN PAYMENT OF**  
8 **COMPENSATION.**

9           **(2) (I) A PENALTY THAT IS PAYABLE UNDER THIS SECTION IS A**  
10 **LIEN AGAINST THE ASSETS OF THE EMPLOYER THAT IS LIABLE FOR THE**  
11 **PENALTY.**

12                           **(II) A LIEN UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**  
13 **IS SUBORDINATE TO CLAIMS FOR UNPAID WAGES AND PRIOR RECORDED LIENS.**

14           **(3) THE UNINSURED EMPLOYERS' FUND MAY BRING A CIVIL**  
15 **ACTION TO COLLECT ANY PENALTY ORDERED UNDER § 9-407 OF THIS SUBTITLE**  
16 **OR ANY ASSESSMENT ORDERED UNDER SUBTITLE 10 OF THIS ARTICLE.**

17           **(4) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF**  
18 **THE UNINSURED EMPLOYER IS A CORPORATION THE ASSETS OF WHICH ARE NOT**  
19 **SUFFICIENT TO SATISFY ANY PENALTY ORDERED UNDER THIS SECTION, ANY**  
20 **OFFICER OF THE CORPORATION WHO HAS RESPONSIBILITY FOR THE GENERAL**  
21 **MANAGEMENT OF THE CORPORATION IN THE STATE IS JOINTLY AND**  
22 **SEVERALLY LIABLE FOR THE PENALTY IF THE CORPORATE OFFICER**  
23 **KNOWINGLY FAILED TO SECURE COMPENSATION FOR THE COVERED**  
24 **EMPLOYEES OF THE EMPLOYER.**

25                           **(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF**  
26 **THE UNINSURED EMPLOYER IS A LIMITED LIABILITY COMPANY THE ASSETS OF**  
27 **WHICH ARE NOT SUFFICIENT TO SATISFY ANY PENALTY ORDERED UNDER THIS**  
28 **SECTION, ANY MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS**  
29 **RESPONSIBILITY FOR THE GENERAL MANAGEMENT OF THE LIMITED LIABILITY**  
30 **COMPANY IN THE STATE IS JOINTLY AND SEVERALLY LIABLE FOR THE PENALTY**  
31 **IF A MEMBER OF THE LIMITED LIABILITY COMPANY WHO HAS GENERAL**  
32 **MANAGEMENT RESPONSIBILITY KNOWINGLY FAILED TO SECURE**  
33 **COMPENSATION FOR THE COVERED EMPLOYEES OF THE EMPLOYER.**

34 9-1012.

35           (a) (1) Notwithstanding any other provision of this subtitle, the Director  
36 shall notify an employer by certified mail, return receipt requested, that the license or

1 permit of the employer to do business in the State may be suspended if the employer  
2 fails to:

3 (i) reimburse the Fund for payment of an award under §  
4 9–1002 of this subtitle; [or]

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

6 **(III) PAY A PENALTY ORDERED UNDER § 9–407 OF THIS**  
7 **ARTICLE.**

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

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

13 (i) reimburse the Fund for payment of an award under §  
14 9–1002 of this subtitle; [or]

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

16 **(III) PAY A PENALTY ORDERED UNDER § 9–407 OF THIS**  
17 **ARTICLE.**

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

20 (i) reimburses the Fund for payment of an award under §  
21 9–1002 of this subtitle;

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

23 (iii) **PAYS A PENALTY DUE TO THE FUND; OR**

24 **(IV)** agrees to reimburse the Fund for payment of an award or to  
25 pay the assessment **AND THE PENALTY** due to the Fund in a manner approved by the  
26 Board.

27 **SECTION 2. AND BE IT FURTHER ENACTED,** That if any provision of this  
28 Act or the application thereof to any person or circumstance is held invalid for any  
29 reason in a court of competent jurisdiction, the invalidity does not affect other  
30 provisions or any other application of this Act which can be given effect without the  
31 invalid provision or application, and for this purpose the provisions of this Act are  
32 declared severable.



1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2    October 1, 2013.