

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1330

(Chair, Economic Matters Committee)(By Request -
Departmental - Workers' Compensation Commission)

Economic Matters

Finance

Workers' Compensation - Insurance Coverage - Employer Compliance

This departmental bill modifies procedures for the Workers' Compensation Commission (WCC) to enforce an employer's compliance with the requirement that employers secure workers' compensation insurance for covered employees. The bill also alters penalties for noncompliance. In addition, the bill authorizes the use of specified procedures by the Uninsured Employers' Fund (UEF) in recovering penalties and assessments.

Fiscal Summary

State Effect: State revenues from penalties ordered to be paid by noncompliant employers are redirected from the general fund to UEF. Any increase or decrease in the amount of revenues collected cannot be reliably estimated at this time, as discussed below. Expenditures are not materially affected.

Local Effect: None.

Small Business Effect: WCC has determined that this bill has minimal or no effect on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: Under current law, WCC must order any employer that fails to otherwise secure workers' compensation insurance for its covered employees to maintain insurance with IWIF. An employer that fails to comply with such an order within 10 days is liable to the State for a penalty equal to the premiums for six months of

insurance coverage from IWIF. (Such a penalty is paid to the general fund.) Although IWIF has historically been a quasi-governmental agency and the insurer of last resort in Maryland, Chapter 570 of 2012 (SB 745) converted the fund, effective October 1, 2013, into a private, nonprofit, competitive insurer named the Chesapeake Employers' Insurance Company ("Chesapeake"). Chesapeake is, for purposes of workers' compensation law, considered an authorized insurer.

The bill modifies the above provisions such that, if an employer fails to secure compensation for its covered employees, WCC is required to order the employer to attend a hearing (which must be set as soon as practicable) to show cause as to why the employer should not be required to secure compensation for all covered employees and found to be noncompliant. Following a hearing, WCC may order a noncompliant employer to obtain workers' compensation insurance with *any* authorized insurer (including Chesapeake), provide the commission with proof of coverage, and pay to UEF a penalty of up to \$10,000. If an employer fails to comply with such an order within 30 days of issuance, WCC must set another hearing as soon as practicable. Furthermore, if, following the hearing, WCC finds that the employer failed to comply with the order, the commission may order the employer to pay to UEF an additional penalty of up to \$10,000.

An employer's failure to pay a penalty under the bill constitutes a default in payment of compensation, and a penalty that is payable under the bill is a lien against the assets of the liable employer. UEF may bring a civil action to collect any penalty ordered under the bill or any assessment ordered under specified provisions of law governing IWIF/Chesapeake, as specified by the bill. UEF may suspend the license or permit of an employer to do business in the State for failing to pay a penalty ordered under the bill.

If any provision of the bill or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the bill which can be given effect without the invalid provision or application, and for this purpose the provisions of the bill are declared severable.

Background: WCC advises that it has experienced significant administrative difficulties in using premiums as the basis for the penalty and that a more readily calculable penalty is desired. WCC further advises that the bill gives employers greater due process and adequate time to obtain insurance before any penalty is imposed. The bill is also intended to provide greater incentive for employers to obtain insurance by authorizing the imposition of an additional penalty against employers that do not obtain insurance when ordered to do so. Further, UEF has additional authority to sanction employers for failure to pay any penalty imposed.

State Revenues: State revenues from penalties ordered to be paid by noncompliant employers are redirected from the general fund to UEF.

Currently, penalty amounts are based on premium amounts, which may vary widely by employer. However, the Comptroller's Office advises that approximately \$4,000 in *total* fines, fees, and forfeitures were received from WCC in fiscal 2012. Thus, any increase in general fund revenues collected from monetary penalties is expected to be minimal.

Under the bill, penalties are not tied to premium amounts and may be imposed in any amount up to \$10,000. In addition, the bill establishes an *additional* \$10,000 penalty for the failure to comply with an order to obtain insurance. However, the amount in which penalties are likely to be imposed – and the extent to which any *additional* penalties are likely to be imposed – is unclear. Similarly, the extent to which the bill's changes are likely to assist WCC in enforcement and collections is unclear. Thus, the extent to which UEF revenues increase due to monetary penalties collected cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 28, 2013
mc/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Workers' Compensation – Insurance Coverage – Employer Compliance

BILL NUMBER: HB 1330

PREPARED BY: Workers' Compensation Commission

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.