

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 39
Economic Matters

(Delegate Jameson)

Finance

Chesapeake Employers' Insurance Company - Issuance, Renewal, and
Cancellation of Policies - Authority

This emergency bill expressly authorizes the Chesapeake Employers' Insurance Company (Chesapeake) to issue workers' compensation insurance policies for employer's liability insurance and insurance under federal compensation laws.

The bill also grants Chesapeake the option to cancel or refuse to renew or issue a policy if the policyholder fails to reimburse Chesapeake under a policy with deductibles.

Fiscal Summary

State Effect: Negligible decrease in general fund tax revenues from Chesapeake policies due to policyholders paying lower premiums to Chesapeake by choosing a plan with deductibles. Special fund fee revenues increase if the Maryland Insurance Administration (MIA) is required to approve new forms for Chesapeake.

Chesapeake Effect: Negligible decrease in Chesapeake's revenues due to existing policyholders who switch to a deductible policy in order to pay lower premiums to Chesapeake; corresponding negligible decrease in claims costs.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 570 of 2012 converted the Injured Workers' Insurance Fund (IWIF) into a private, nonprofit, and nonstock workers' compensation insurer as of October 1, 2013. This new organization is the Chesapeake Employers' Insurance Company. Chesapeake may not be considered to be a department, unit, agency, or instrumentality of the State for any purpose. The functions, powers, duties, assets, real and personal property, accounts, liabilities, contracts, and obligations of IWIF transferred to Chesapeake. Chesapeake is required to serve as the workers' compensation insurer of last resort in the State.

Chesapeake is subject to the same provisions of law as other insurers that are authorized to sell workers' compensation insurance in the State, and it possesses the same powers, privileges, and immunities. They are authorized, examined, and regulated by the Insurance Commissioner in the same manner as other property and casualty insurers in the State.

As the insurer of last resort for workers' compensation for the State, Chesapeake must provide insurance coverage for those who cannot otherwise obtain or afford private-sector workers' compensation plans. For this reason, Chesapeake is only authorized to cancel or refuse to renew or issue policies under the following circumstances: (1) nonpayment of premiums for current or prior policies issued by IWIF or Chesapeake; (2) failure to provide payroll information to IWIF or Chesapeake; and (3) failure to cooperate in any payroll audit conducted by IWIF or Chesapeake.

Background: Employer's liability coverage and various federal compensation programs, such as the Longshore and Harbor Workers and Black Lung programs, were offered by IWIF, and these policies transferred to Chesapeake after the IWIF conversion. The statute governing IWIF explicitly recognized IWIF's authority to write these types of coverage; however, the conversion statute does contain the same authorizing language. These federal compensation programs and employer's liability coverage are offered by every workers' compensation insurer in the State. Chesapeake has continued to offer these coverages and reports that it does have authority to do so due to the language in § 24-304 of the Insurance Article, which states that Chesapeake, "has the powers, privileges, and immunities granted by and is subject to the provisions applicable to insurers authorized to write workers' compensation insurance under this article." However, Chesapeake has requested these coverages be expressly authorized in statute.

Employer's liability coverage is considered part two of every workers' compensation policy. It covers an employer against liability for workplace injuries that are not covered by basic workers' compensation. For example, if a third party were to claim mental distress from witnessing a gruesome workplace accident, these damages would be

covered by employer's liability coverage. Additionally, this insurance covers an employer's defense relating to litigation. In this way, an employer can be covered not only for damages, but also for the costs of litigation.

Workers' compensation insurers in the State are permitted to issue deductible policies, and some policyholders choose deductible policies to lower the premiums they must pay. Under this type of policy, the insurer pays all claims of an injured worker and then collects the amount paid, up to the deductible, from the policyholder. If deductibles are not paid, insurers generally cancel the policy. Because Chesapeake would be unable to cancel a policy if a policyholder refused to reimburse the company for the deductible due to its status as insurer of last resort, the Workers' Compensation Commission does not allow Chesapeake to issue deductible policies. Chesapeake reports that a very small amount of its existing policyholders (fewer than 10) are expressing interest in switching to a deductible policy. Chesapeake also reports that only a small percentage of its 20,000 policies would even be eligible for a deductible policy.

State Revenue: Chesapeake policies are subject to a 2% premium tax administered by MIA. General fund revenues from the premium tax decrease to the extent Chesapeake receives less in premiums as policyholders switch to a plan with deductibles. Any such decrease in revenues is negligible as Chesapeake expects to write fewer than 10 deductible policies annually. Additionally, MIA may be required to approve of the new forms used in the policies allowed by the bill. If so, this amounts to a negligible increase in special fund revenues of \$125 per form.

Additional Information

Prior Introductions: None.

Cross File: SB 16 (Senator Klausmeier, *et al.*) - Finance.

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

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