

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 505

(Senator Klausmeier, *et al.*)

Finance

Economic Matters

Workers' Compensation Insurance - Premium Discount - Alcohol- and Drug-
Free Workplace Program

This bill authorizes a workers' compensation insurer to file a rating plan that provides a premium discount of up to 4% to its insured employers if they have an alcohol- and drug-free workplace policy that includes at least one of six specified programs. An insurer is not required to provide the premium discount if the insured employer is required by federal or State law to test its employees for drugs or otherwise maintain an alcohol- and drug-free workplace.

Fiscal Summary

State Effect: Minimal increase in Maryland Insurance Administration (MIA) special fund revenues in FY 2017 due to \$125 rate and form filings. Review of the filings can be handled with existing resources. To the extent the bill results in decreased workers' compensation insurance premiums, general fund revenues decrease minimally due to the 2% tax collected on all insurance premiums paid in the State, as discussed below.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake's finances are not materially affected, as discussed below.

Local Effect: Expenditures of local governments that are not self-insured decrease to the extent their insurers begin to offer discounts for the programs specified by the bill and the local governments choose to implement the programs to lower their insurance premiums, as discussed below. Expenditures may further decrease to the extent that the programs result in fewer workplace accidents and compensation claims.

Small Business Effect: Potential meaningful, as discussed below.

Analysis

Bill Summary: A workers' compensation insurer may provide a premium discount to an insured employer for:

- an alcohol and drug testing program;
- an employee education program on alcohol and drug abuse;
- a supervisor education program on alcohol and drug abuse;
- an employee assistance program that includes referrals of employees for appropriate diagnosis, treatment, and assistance;
- a program requiring an employee who has caused or contributed to an accident while at work to undergo alcohol or drug testing; and
- any other program that the insurer deems effective to encourage an alcohol- and drug-free workplace.

Current Law: Each workers' compensation insurer in the State, except Chesapeake, is required to be a member of a workers' compensation rating organization and adhere to the policy and rate forms filed by the rating organization. Currently, that rating organization is the National Council on Compensation Insurance (NCCI). Chapter 36 of 2015 requires Chesapeake to begin filing with the same rating organization as other insurers in the State, beginning January 1, 2023.

The uniform experience rating plan provided by NCCI is the exclusive means of adjusting premiums in the State based on the loss-producing characteristics of an individual insured; however, an insurer may file a rating plan with the Insurance Commissioner that adjusts premiums by up to 25% based on the characteristics of a risk that are not reflected in the uniform experience rating plan. An insurer may also file a rating plan that takes into account retrospective premium adjustments based on an insured's past experiences.

No provision of law prohibits insurers from offering discounts for implementing programs such as those specified by the bill.

Background: NCCI advises that numerous other states have laws related to premium discounts for drug-free workplace programs. For example:

- in Tennessee and Arizona, employers who adopt a drug-free workplace program qualify for a premium discount from their insurers, but only if that program meets certain requirements specified by law;
- in Mississippi, employers who adopt a drug-free workplace program are eligible for a 5% premium discount for workers' compensation insurance; however, insurers are not required to offer the discount; and

- in Georgia, insurers are required to provide a premium discount of at least 7.5% if an employer establishes a drug-free workplace program that meets specified requirements.

Chesapeake advises that it currently offers a drug-free workplace credit with emphasis on drug testing (pre-hire, random, and post-accident). Its program offers a maximum premium discount of 5% (even if the employer qualifies for all its discounts): a 3% discount if the employer does pre-hire drug screens; a 2% discount if the employer does random drug testing; and a 1% discount if the employer requires employee drug testing after an accident occurs.

Even though Chesapeake offers a discount through its drug-free workplace program, current available information suggests that many other workers' compensation insurers do not. This is primarily because the most common rating structure focuses on premium reductions based on the number of claims; thus, any effective safety program that decreases claims already results in lower premiums. Furthermore, some insurers do not exclude injured workers from benefits unless intoxication is the *sole* cause of a compensable injury. For these insurers, implementing a drug- and alcohol-free workplace program may not provide a significant benefit.

State Revenues: Workers' compensation policies are subject to a 2% premium tax administered by MIA. General fund revenues from the premium tax decrease to the extent that additional workers' compensation insurers begin to offer the premium discounts specified by the bill *and* employers begin to implement the programs to lower their premiums.

Chesapeake Fiscal Effect: From November 1, 2013, through October 31, 2014, 43.5% of Chesapeake policies qualified for a premium discount for participating in its drug screening program; participating employers realized total savings of \$3.4 million. Even so, Chesapeake does not anticipate any significant impact from the bill, as its current program is similar to the bill's program, with a maximum premium discount close to the 4% limit set by the bill (5%). In addition, because Chesapeake is not yet required to file a rating plan (it must do so beginning in 2023), Chesapeake can alter its program to accommodate the bill's changes during this transition period.

Local/Small Business Effect: Many counties and municipalities are, like the State, self-insured and, therefore, pay no premiums for a workers' compensation insurance policy. For local governments and small businesses that are not self-insured, expenditures decrease to the extent that (1) their insurers do not already offer premium discounts related to alcohol- and drug-free workplace programs but choose to do so as a result of the bill and (2) they, as employers, choose to implement the programs specified by the bill. The magnitude of any impact depends on each insurer's current discount practice and whether

each employer establishes a program to receive the bill's discount and, thus, cannot be reliably estimated.

Local government and small business expenditures may further decrease to the extent that the programs in the bill result in fewer workplace accidents and workers' compensation claims. Insurers are authorized by law to change an employer's rates based on the risk involved (up to 25%) and do take into account the number of claims that an employer has in any given year. Therefore, if the programs specified by the bill are successful in lowering the total number of accidents at a workplace, an employer's premiums may decrease beyond the 4% discount authorized by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 15, 2016
min/ljm Revised - Senate Third Reader - March 24, 2016

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