

SENATE BILL 979

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8lr2817
CF HB 1500

By: **Senator Klausmeier**

Introduced and read first time: February 5, 2018

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2018

CHAPTER _____

1 AN ACT concerning

2 **Workers' Compensation – Third-Party Actions – Subsequent Injury Fund**

3 FOR the purpose of ~~repealing the authorization for the Subsequent Injury Fund to bring~~
4 ~~an action for damages against a third party under certain circumstances; repealing~~
5 ~~the requirement that a covered employee or dependents of a covered employee~~
6 ~~reimburse the Fund under certain circumstances; repealing the requirement that~~
7 ~~the Fund pay certain court costs and attorney's fees under certain circumstances;~~
8 ~~making certain conforming changes; requiring that, if a self-insured employer,~~
9 ~~insurer, or the Uninsured Employers' Fund has not waived third-party~~
10 ~~reimbursement, the Subsequent Injury Fund be reimbursed after the self-insured~~
11 ~~employer, insurer, or Uninsured Employers' Fund in a certain third-party action;~~
12 providing for the application of this Act; and generally relating to third-party actions
13 involving the Subsequent Injury Fund.

14 BY repealing and reenacting, with amendments,
15 Article – Labor and Employment
16 Section 9–902
17 Annotated Code of Maryland
18 (2016 Replacement Volume and 2017 Supplement)

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

21 **Article – Labor and Employment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 9-902.

2 (a) If a claim is filed and compensation is awarded or paid under this title, a
3 self-insured employer, an insurer, ~~the Subsequent Injury Fund,~~ or the Uninsured
4 Employers' Fund may bring an action for damages against the third party who is liable for
5 the injury or death of the covered employee.

6 (b) If the self-insured employer, insurer, ~~Subsequent Injury Fund,~~ or
7 Uninsured Employers' Fund recovers damages exceeding the amount of compensation paid
8 or awarded and the amount of payments for medical services, funeral expenses, or any
9 other purpose under Subtitle 6 of this title, the self-insured employer, insurer, ~~Subsequent~~
10 ~~Injury Fund,~~ or Uninsured Employers' Fund shall:

11 (1) deduct from the excess amount its costs and expenses for the action;
12 and

13 (2) pay the balance of the excess amount to the covered employee or, in case
14 of death, the dependents of the covered employee.

15 (c) If the self-insured employer, insurer, ~~Subsequent Injury Fund,~~ or
16 Uninsured Employers' Fund does not bring an action against the third party within 2
17 months after the Commission makes an award, the covered employee or, in case of death,
18 the dependents of the covered employee may bring an action for damages against the third
19 party.

20 (d) The period of limitations for the right of action of a covered employee or the
21 dependents of the covered employee against the third party does not begin to run until 2
22 months after the first award of compensation made to the covered employee or the
23 dependents under this title.

24 (e) If the covered employee or the dependents of the covered employee recover
25 damages, the covered employee or dependents:

26 (1) first, may deduct the costs and expenses of the covered employee or
27 dependents for the action;

28 (2) next, SUBJECT TO SUBSECTION (G) OF THIS SECTION, shall
29 reimburse the self-insured employer, insurer, ~~Subsequent Injury Fund,~~ or Uninsured
30 Employers' Fund for:

31 (i) the compensation already paid or awarded; and

32 (ii) any amounts paid for medical services, funeral expenses, or any
33 other purpose under Subtitle 6 of this title; and

34 (3) finally, may keep the balance of the damages recovered.

1 (f) In an action brought by a covered employee or the dependents of the covered
2 employee under subsection (c) of this section, the covered employee or the dependents of
3 the covered employee, the self-insured employer, the insurer, ~~the~~ Subsequent Injury
4 Fund, and the Uninsured Employers' Fund shall pay court costs and attorney's fees in the
5 proportion that the amount received by each bears to the whole amount paid in settlement
6 of any claim or satisfaction of any judgment obtained in the case.

7 **(G) IN DETERMINING REIMBURSEMENT UNDER SUBSECTION (E)(2) OF THIS**
8 **SECTION, IF THE SELF-INSURED EMPLOYER, INSURER, OR UNINSURED**
9 **EMPLOYERS' FUND HAS NOT WAIVED THIRD-PARTY REIMBURSEMENT:**

10 **(1) FIRST, THE SELF-INSURED EMPLOYER, INSURER, OR UNINSURED**
11 **EMPLOYERS' FUND SHALL BE REIMBURSED; AND**

12 **(2) NEXT, THE SUBSEQUENT INJURY FUND SHALL BE REIMBURSED.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
14 apply only prospectively and may not be applied or interpreted to have any effect on or
15 application to any action filed before the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.