

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1500
Economic Matters

(Delegate Valderrama)

Finance

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

This bill requires that, unless third-party reimbursement has been waived, a self-insured employer, insurer, or the Uninsured Employers' Fund (UEF) be reimbursed before the Subsequent Injury Fund (SIF) when damages are recovered from a third party that is liable for the injury or death of a covered employee. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any action filed before October 1, 2018.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances because it generally codifies the manner in which SIF currently seeks and recovers damages from third parties.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background:

Claims Against Third Parties in Workers' Compensation Cases

An insurer, self-insured employer, SIF, or UEF are all authorized to seek damages against a third party in a workers' compensation case when the third party is liable for the injury or death of the covered employee in the case. If the amount recovered from a third party

is more than the amount paid for the covered employee for compensation, medical services, funeral expenses, or any other purpose, then the actual costs and expenses incurred for the action must be deducted from the excess amount and any remaining amount must be paid to the covered employee or the dependents of the covered employee, as appropriate.

Subsequent Injury Fund

SIF was established in 1957, and it exists to encourage the hiring of workers with preexisting disabilities by assuming the financial responsibility for a worker's preexisting disability in the event that the worker sustains an accidental workplace injury. SIF operates by reviewing and investigating workers' compensation claims when they involve preexisting health conditions. Under these circumstances, employer liability is limited to damages caused by the current injury, and SIF incurs any additional liability from the combined effects of the current and prior injuries.

The Workers' Compensation Commission is statutorily required to impose an assessment of 6.5% payable to SIF against an employer, its insurer, or the Property and Casualty Guaranty Corporation, on all compensation awards for permanent disability or death as well as each amount payable under a settlement agreement approved by the commission. This payment is in addition to any payment of compensation to a covered employee. This is the sole mechanism for funding SIF, and it pays for both workers' compensation claims and SIF administrative costs.

For fiscal 2017, SIF had a year-end fund balance of \$90.7 million. In that same year, SIF collected \$27.6 million in assessments and paid \$19.9 million in benefits. SIF advises that, on average, it receives between \$20,000 and \$30,000 annually in credits from third parties that are liable for the injury or death of a covered employee; however, in fiscal 2017, SIF received \$42,000. In addition, SIF advises that this estimate does not include final compromise and settlement agreement cases involving negotiated waiver of the third-party credit.

Additional Information

Prior Introductions: None.

Cross File: SB 979 (Senator Klausmeier) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510