

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 227

(Chair, Finance Committee)(By Request - Departmental -
Uninsured Employers' Fund)

Finance

Economic Matters

**Workers' Compensation - Payment From Uninsured Employers' Fund -
Revisions**

This departmental bill modifies the process by which an employer can be found in default on a workers' compensation claim by a covered employee or the dependents of a covered employee and the subsequent process by which the employee or dependents may apply to the Uninsured Employers' Fund (UEF) for payment of the compensation award. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: UEF operations and finances related to overpayments and reimbursements may be affected beginning in FY 2026, as discussed below. Otherwise, the bill may result in administrative efficiencies for UEF and a reallocation of UEF expenditures between fiscal years, due to more timely payments made to claimants. The overall effects are not anticipated to be significant.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: The bill does not directly affect Chesapeake operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: UEF has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law: UEF is a special funded State agency that directly pays a claimant's compensation benefits and medical expenses in the event that an injured employee who should be receiving workers' compensation benefits is not properly compensated by the employer or the employer's insurer (which may happen because the employer has not purchased workers' compensation insurance or becomes insolvent). For more general information on the workers' compensation system, UEF, and recent financial issues experienced by UEF, please see the **Appendix – Workers' Compensation, the Uninsured Employers' Fund, and the Subsequent Injury Fund.**

Under current law, unless an application for review has been filed by an employer, as specified, an employer is in default on a workers' compensation claim by a covered employee or the employee's dependents if the employer fails to:

- secure payment of awarded compensation to the covered employee;
- except for authorized governmental self-insured entities, deposit security that is sufficient to cover a claim by a covered employee and totals at least \$100,000; and
- pay any awarded compensation within 30 days after the date of the award.

Under current law, if an employer is in default, the Workers' Compensation Commission (WCC) must promptly notify the employer that they are in default and that the employer's license or permit to do business in the State may be suspended. On receipt of such a notice, the employer must promptly pay the award; however, the employer may object to an award within 30 days using a specified process. If the employer does not pay the award and does not notify WCC of its objection to the award, the covered employee or the employee's dependents may apply to UEF for payment from the fund. When receiving an application, UEF may pay the award or apply for review using specified processes.

The bill modifies these processes by:

- specifying that WCC may order an offset or credit against an award for permanent partial disability benefits for any benefits paid by UEF that were also paid by the employer;
- repealing the requirement that WCC notify the employer when the employer is in default as well as the subsequent payment requirement and/or objection process and, instead, requiring that an uninsured employer be given notice of a claim before action is taken against the uninsured employer;
- requiring WCC to make UEF a party to a claim filed against an uninsured employer in a specified manner;

- specifying that the requirements governing the payment of workers' compensation claims for UEF begin on the date UEF receives this notice;
- expressly authorizing UEF to raise defenses to a claim, including defenses that may have been raised by the uninsured employer;
- authorizing UEF to implead other employers and insurers to the claim;
- allowing a covered employee or dependents of a covered employee to apply for payment from UEF if the employer is in default and the employee or dependents have demanded payment from the employer at least 15 days before the date of application;
- specifying that on receipt of an application, UEF may pay the award or, if UEF has not yet participated in a hearing on compensability, file issues requesting a hearing before WCC;
- specifying that if UEF pays an award while an appeal is pending, UEF remains entitled to full reimbursement from the uninsured employer for an award paid, regardless of the result of the appeal; and
- specifying that once UEF has paid an award on a claim, UEF must pay any additional award ordered without requiring a covered employee or the employee's dependents to complete an application for payment.

Background: UEF advises that the current statutory process by which covered employees apply for and receive payments from UEF is cumbersome and sometimes creates unnecessary delays and dysfunction for UEF as it administers its workers' compensation claims. UEF advises that the bill simplifies the award payment process by addressing many of these administrative issues.

State Fiscal Effect: Under the bill, UEF anticipates paying claims in a more timely manner compared to current law. However, in doing so, UEF anticipates that it may occasionally and incidentally overpay a claimant by paying benefits that were already paid by an employer or insurer. In such a case, the bill authorizes WCC to order an offset or credit against a future award for the claimant; thus, in many cases, UEF will be made whole.

However, for some cases (for example when a claimant has no future benefit payments to apply the offset or credit to) the bill provides UEF no recourse to recoup the overpayment. Otherwise, the bill may result in administrative efficiencies for UEF and a reallocation of UEF expenditures between fiscal years, due to more timely payments made to claimants. Any impact on UEF's operations and finances cannot be predicted without actual experience under the bill but is not likely to be significant.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - February 23, 2025
rh/smr Third Reader - March 26, 2025
Revised - Amendment(s) - March 26, 2025

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Appendix – Workers’ Compensation, the Uninsured Employers’ Fund, and the Subsequent Injury Fund

Workers’ Compensation – Generally

Generally, each employer in the State must secure workers’ compensation for all covered employees of the employer by maintaining insurance with an authorized insurer or, in limited circumstances, through self-insurance. An individual is presumed to be a covered employee while in the service of an employer under an express or implied contract of apprenticeship or hire. To overcome the presumption of covered employment, an employer must establish that the individual performing services is an independent contractor in accordance with the common law or is specifically exempted from covered employment under the Maryland Workers’ Compensation Act.

If an employee covered under workers’ compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund (SIF), or the Uninsured Employers’ Fund (UEF), as appropriate. Workers’ compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses.

Uninsured Employers’ Fund and Subsequent Injury Fund – Generally

UEF and SIF are separate and distinct State agencies that each support the State’s workers’ compensation system in a different way. UEF directly pays a claimant’s compensation benefits and medical expenses in the event that an injured employee who should be receiving workers’ compensation benefits is not properly compensated by the employer or the employer’s insurer (which may happen because the employer has not purchased workers’ compensation insurance or becomes insolvent). SIF assumes the financial responsibility for a worker’s preexisting disability should the worker sustain an accidental workplace injury, thereby encouraging the hiring of such workers.

UEF and SIF are both special funded, and their revenues are primarily derived from two assessments (one for each agency) on awards against employers or insurers for permanent disability or death and amounts payable by employers or insurers under settlement agreements. The SIF assessment also applies to payments made by the Property and Casualty Guaranty Corporation on behalf of insolvent insurers; however, this source of revenue is relatively minimal.

Recent Legislative Action to Address Uninsured Employers' Fund Financial Difficulties

UEF has faced significant financial difficulties in recent years. During the 2020 legislative session, the Department of Legislative Services projected that UEF would become insolvent without financial intervention. Consequently, Chapter 495 of 2020 temporarily adjusted the distribution of the assessments between UEF and SIF, providing UEF with an additional \$4.0 million in fiscal 2021, before reverting to the previous distribution in subsequent years. **Exhibit 1** shows the distribution of the assessments under Chapter 495.

Exhibit 1 **Distribution of Assessments to UEF and SIF under Chapter 495 of 2020** **Fiscal 2020-2022 and Subsequent Years**

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022+</u>
SIF Assessment	6.5%	5.5%	6.5%
Base UEF Assessment	1.0%	2.0%	1.0%
Additional UEF Assessment	1.0%	1.0%	1.0%

SIF: Subsequent Injury Fund

UEF: Uninsured Employers' Fund

Notes: The distribution in fiscal 2022 has continued in future fiscal years under current law. UEF may implement its additional assessment when its reserves are inadequate to meet anticipated losses, as specified.

Source: Department of Legislative Services

Even with the additional funding provided by Chapter 495, UEF has continued to experience financial issues. To assist in addressing these issues, the General Assembly passed Senate Bill 216 of 2024 (enacted as Chapter 78) and used the Joint Chairmen's Report (JCR) to require the Workers' Compensation Commission (WCC) and UEF to form a workgroup to study and report on UEF's financial difficulties and possible solutions to ensure UEF's long-term financial health.

Chapter 78 increased the maximum penalty that WCC is authorized to impose on an employer who fails to secure and maintain workers' compensation insurance for its covered employees from \$10,000 to \$25,000. These penalties directly accrue to UEF; however, the aforementioned assessment has remained its primary funding source. In response to the JCR, UEF and WCC each prepared a separate report discussing UEF's financial difficulties and possible reforms, both legislative and administrative.

STATE OF MARYLAND



STATE OF MARYLAND UNINSURED EMPLOYERS' FUND

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Workers' Compensation - Payment From Uninsured Employers' Fund – Revisions

BILL NUMBER: SB 227

PREPARED BY: Michael W. Burns, Esq.; Director

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

This legislation will repair the currently cumbersome and, in some cases, dysfunctional, payment system for injured workers who are awarded benefits by the Workers Compensation Commission (WCC) for injuries suffered on the job, whose employers are not insured and whose employers refuse to pay those workers' awards from the WCC for medical and/or wage compensation to the injured workers or, in some cases, their families.

This legislation will directly benefit injured workers by simplifying the award payment process and should enable injured workers to be paid their awarded benefits faster and easier. The current statute is a dysfunctional, badly drafted collection which does not reflect reality, creates unnecessary time and complications for the parties involved, and results in delays in the payment of awards to injured workers and/or their families of their awarded workers compensation benefits. This legislation is a simple, but important, improvement which will benefit all involved, especially injured workers and their families.

This legislation should result in no, or extremely minimal, impact to small businesses.