

LAWRENCE J. HOGAN, JR.
GOVERNOR

STATE OF MARYLAND

MARTIN E. LEWIS
CHAIR

MICHAEL W. BURNS
Director
michael.burns1@maryland.gov



CASEY BRYANT
DONCELLA S. WILSON
MEMBERS

STATE OF MARYLAND
UNINSURED EMPLOYERS' FUND

300 East Joppa Road, Suite 402
Towson, MD 21286
PHONE - (410) 321-4136
FAX - (410) 321-3975

March 14, 2020

TESTIMONY IN SUPPORT OF SB 0008 (2020) as amended
MARYLAND UNINSURED EMPLOYERS' FUND

Bill Number – SB 0008 (2020)

**Submitted by – State of Maryland Uninsured Employers' Fund, Michael W. Burns,
Director**

Position – SUPPORT (as amended by Senate)

The Maryland Uninsured Employers' Fund (UEF) appears today in support of SB 8, as amended, "**Subsequent Injury Fund and Uninsured Employers' Fund – Assessment on Awards and Settlements – Amount.**" This legislation would reduce the percentage of the assessments that the Subsequent Injury Fund (SIF) receives from the Workers Compensation Commission (WCC) on certain awards and settlements from the current 6 1/2% to 5 1/2% and increase the percentage of assessments that the UEF receives from certain awards and settlements from 1% to 2% for a period of one year (the act sunsets after one year). The agency respectfully requests that the House Economic Matters Committee approves this legislation for the reasons that follow.

UEF is a statutory agency created to protect Maryland workers who are injured on the job (from an accidental injury and occupational disease). The purpose of the agency is to provide workers' compensation benefits where an uninsured employer fails to provide benefits awarded by the WCC or in cases where a self-insured employer becomes insolvent.

UEF is a special fund, which means that is funded by fines levied by the WCC against uninsured employers and assessments imposed on most awards of permanent disability

indemnity benefits. The agency also receives reimbursement from uninsured employers for expenditures made to claimants. The agency's obligation to provide benefits and/or compensation is generally triggered when an uninsured employer defaults on an award issued by WCC. The agency is 100% self-funded.

UEF was originally designed to be a limited back-stop fund to care for injured workers whose employers failed to maintain legally required workers' compensation insurance. It was thought that there would only be a fairly small number of such cases because employers would maintain workers compensation insurance to cover their employees because it was required by law. Over the decades, however, this notion has proven to be erroneous as recent events have shown. Some employers, especially those in the construction and landscaping industries, routinely fail to carry required insurance because it enables them to underbid their competitors. Add to this honest employers who simply fail to have coverage and then have a claim from an injured worker, as well as bankrupt self-insured employers, such as Bethlehem Steel (BSC) and A&P Supermarkets (A&P), and by 2019 the result has been that UEF has now grown to cover over 900 claims at any one time, with expenditures for both lost wages and medical bills totaling millions of dollars per year.

There are a number of factors to consider in evaluating the agency's revenue requirements. Years of rising medical costs, hiring a competent Third-Party Claims Administrator (TPA) to manage claims, and filling and compensating long empty staff positions continues to require increased expenditures from the fund. In addition, as noted the law requires UEF to pay claims of self-insured employers who become insolvent. This statute places unlimited liability on the UEF to pay relevant self-insured employer claimants, but provides no funding mechanism to do so. In recent years both A&P and BSC - both self-insured - have become insolvent and UEF has become responsible for millions of dollars in workers' compensation payments for these two corporations without any source of revenue. Additionally, as a result of decisions taken in the 2019 legislative session, UEF is now responsible for potentially hundreds of additional claims amounting to millions of additional dollars for new BSC claims with no revenue source to offset those mandated payments. The potential liability the UEF faces for insolvent self-insured claims is in the millions of dollars.

An "analysis of the Uninsured Employers' Fund's unfunded estimates of revenue and expenses" produced for the agency in 2014 indicated an ongoing shrinking of the fund balance (the agency is currently cooperating with a contractor on the process of obtaining a new actuarial analysis), with the balance dropping at an ever-increasing rate year by year, until the balance turns from a positive figure to a negative one at some point after FY 2024.

Dealing with the current expenditure and revenue reality of the UEF in 2020 is the basis and reason for SB 8. The bill will increase the UEF assessment on awards and settlements from the current maximum of 2% to 3% for one year. It will, correspondingly, reduce the assessment of the SIF by 1% for a period of one year. Each 1% of the assessment is estimated, based on past history, to result in approximately \$4,000,000 annually. The UEF would, therefore, see its Fund grow by approximately \$4 million in FY 2021 and the SIF revenue would decrease by that amount during the same period.

This amended version of SB 8 is the result of the work of a group of stakeholders and interested parties. It is a result of much discussion, debate and consideration. It is a wise and prudent measure designed to ensure the ongoing stability of the UEF without increasing costs for relevant insurers. It will also not be an undue burden on the SIF. The proposed change will only be effective for one year – the results will be available for review and consideration during next year's session of the Legislature. It is a considered, conservative approach that addresses the agency's needs without increasing costs on Maryland insurers and without harming the SIF.

The agency thanks all involved who worked together to achieve this amended legislation. Especially Senator Klausmeier and Delegate Valderrama, whose leadership was instrumental in bringing the parties together and developing this amended legislation. The UEF also recognizes the participation and generous assistance of the SIF and its Director, Mr. Ed Dodd, and publicly thanks both that agency and Mr. Dodd for their ongoing assistance with this issue.

The agency respectfully requests the Committee members for a favorable vote on SB 8 as amended by the Senate and thanks the Committee for this opportunity to appear today and testify.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael W. Burns". The signature is written in black ink and is positioned above the typed name. A long, thin horizontal line extends from the end of the signature across the page.

Michael W. Burns, Esq.
Director