

SB216 Proposed Amendment, Maureen Quinn.pdf

Uploaded by: Maureen Quinn

Position: FWA

PROPOSED AMENDMENT TO SB216-
Workers' Compensation-Failure to Insure-Penalties
With consent of both the Uninsured Employers' Fund and the
Workers' Compensation Commission

Added language is **BOLD CAPITALIZED**
Deleted language is [bracketed]

Lines 14-15

9-407(b)(2) order the employer to pay a penalty **NOT TO EXCEED** [of] \$25,000 to the Uninsured Employers' Fund.

Lines 20-23

9-407(c)(2) If, following the hearing, the Commission finds that the employer failed to comply with an order issued under subsection (b)(1) of this section, the Commission [may] **SHALL** order the employer to pay a penalty **NOT TO EXCEED** [of] \$25,000 to the Uninsured Employers' Fund.

SB0216 Uninsured Employers Fund FAV testimony with

Uploaded by: Michael Burns

Position: FWA

WES MOORE
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 5, 2024

Uninsured Employers' Fund
Michael Burns, Director
Testimony
Before the Senate Finance Committee

SB0216 – Workers' Compensation – Failure to Insure - Penalties
Position – FAVORABLE with Amendments

Please accept the following as the written testimony of the Maryland Uninsured Employers' Fund (UEF/Fund/Agency) requesting a Favorable report on SB0216 – Workers' Compensation – Failure to Insure- Penalties, with amendments:

SB0216 would increase the penalty for an employer who fails to obtain legally mandated workers compensation insurance from up to a current maximum of \$10,000 to an increased maximum of \$25,000.

SB0216 is a Moore Administration proposal.

Also, the Uninsured Employers' Fund has agreed to an amendment to the bill with the Workers Compensation Commission (WCC) to clarify that the WCC maintains its discretion to reduce the amount of the penalty to a lesser amount up to the proposed new maximum of \$25,000. Chair Maureen Quinn of the WCC is here to testify today.

SB 0216 is designed to increase the penalty for the failure to carry workers compensation insurance to a more effective level of \$25,000 and reflects and supports the Administration and the Legislature's legitimate concerns with the current weak, low and ineffective penalty. SB 0216 is a moderate bill that also furthers the Administration's goals of protecting the health of Marylanders and furthering the Governor's commitment to social justice in this State by protecting Maryland workers.

It is anticipated that this increased penalty will lead over time to more employers ensuring they have this required insurance, thus providing more workers with compensation insurance protection and protecting them when injured. This will reduce the number of cases which end up at the Uninsured Employers' Fund, causing the Fund fewer payouts. In addition, the increase in the penalty will result in additional financial resources for the Fund which can be used to protect and care for injured Maryland workers. The suggested increase is more in line with other states which often place numerous sanctions upon employers for failure to carry workers compensation insurance. It will reflect an increased commitment by the State to ensuring workers are protected by their employers as required by Maryland law for over 100 years.

By way of background, SB0216 grew out of the Uninsured Employers' Fund (UEF) Senate budget hearing in 2023. At that hearing, several disparate state agencies - including the Public Service Commission and the People's Counsel, discussed with the Senate Budget and Taxation Committee Sub-Committee issues regarding collection of, and amounts of, penalties and fines issued by those agencies. The UEF, in turn, had an open and extremely positive discussion with the Sub-Committee regarding these same issues, including the subject which would become SB0216, the current weak penalty for the failure of Maryland employers to obtain and carry legally required Workers Compensation Insurance protection for the protection of their employees. At the conclusion of the hearing the Sub-Committee Chair, Senator Elfreth, requested that the UEF provide the Sub-Committee with further information regarding ideas for improving agency enforcement, penalties and collections.

The UEF responded to that request, in relevant part stating the following about the issue at the heart of SB 0216:

Second, as we discussed at the hearing, there are currently fines for failure to have workers compensation insurance in statute. Labor and Employment Sections 9-407(b)(2) and(c)(2)) provide for a \$10,000 maximum fine, with most cases limited to \$7,000 under the current practice of the Workers Compensation Commission.

We have researched other states' laws on failure to carry coverage and, briefly, most are considerably stronger and more effective. Considerably. A number of states make this failure to have required insurance a crime – some of them make it a felony – with significant jail time possible for the failure in appropriate cases. States also have much higher penalty amounts, often setting a minimum for the fine of at least \$25,000.

Our response to the Sub-Committee further noted that having Workers Compensation insurance is legally mandated for most businesses by law and has been for decades. It protects Maryland workers. We further noted that someone has to be responsible for ensuring relevant business entities have it – should not that be the business employing those workers? These fines and penalties would be strong and effective and would result in more workers being protected under law. Maryland is a leader in protecting our workers and these new proposed improvements will ensure that businesses get the coverage that is mandated for protecting workers or pay a heavy penalty for failing in that responsibility.

Subsequent to this communication to the Sub-Committee, the Joint Chairmen's Report (JCR) of April 2023, page 11, requested in "Committee Narrative" that the Maryland UEF provide a report (Report) regarding the following:

Recommendations on Fines for Uninsured Employers: The committees are concerned about the low penalties assessed on employers that do not carry workers' compensation as is required by State law. The committees request that the Uninsured Employers' Fund (UEF) provide a report by September 1, 2023, that describes the current fine structure for employers that are uninsured, the amount of fines imposed for fiscal 2020 through 2023, to where the revenue from the fines is provided, and recommendations for revised fine structures if necessary.

The UEF reviewed and researched the Committee's request for information and recommendations and timely filed a detailed Report in response to the Committee Narrative request. That Report is attached hereto.

The UEF stands by that Report. The agency researched the relevant law all across the country in preparing the report and including a chart listing the fines and penalties for numerous other states. The chart from that Report, listing a number of examples of various state penalties for failure to carry legally required workers compensation insurance, is attached.

Among the Report's conclusions, supported in detail, was that Workers Compensation cannot function to protect Maryland workers if employers fail to obtain the legally mandated coverage which has been the basis of the Workers Compensation system for over a century. The reform the agency recommended (and is the subject matter of SB0216), increasing the fine from \$10,000 to \$25,000, is moderate in scope (compare the proposed SB0216 \$25,000 penalty with other state penalties which are available for review on the enclosed list which was part of our legislative report) but is designed to provide real enforcement of the requirement.

As the Report illustrates, the vast majority of other states today penalize employers who fail to obtain workers compensation insurance far more heavily than Maryland currently does, including criminal penalties (in Pennsylvania, for example, a seven-year felony is a possible penalty), business shut-down provisions (approximately 19 states) and much more serious fines and penalties, including daily fines for failure to follow their law (approximately 22 states). A comparison of Maryland's current maximum fine with other states places Maryland near the bottom of the national list in fines and penalties available to the state to enforce this mandatory insurance requirement.

This is a sensible reform that protects Maryland workers. It will make a real difference for workers health and safety. It should also be welcomed by the employers who currently regularly obey the law and pay for workers compensation insurance and have to pick up the cost, through increased premiums, for those employers who cannot or will not obey the law and obtain this insurance.

SB 0216 is a workers' rights bill. It is fair and it is just and it is needed.

And it is overdue.

This legislation will also provide a financial boost to support the Fund going forward providing additional resources to help ensure the Fund's stability in years going forward.

In conclusion, this issue boils down to a simple choice - protect the health and safety of innocent injured workers or continue to protect employers who after over a hundred years of legal requirements still do not understand- or willfully ignore - the law of Maryland and their legal mandate to obtain and carry workers compensation insurance to protect their employees from harm.

The UEF requests a favorable report from this committee for this bill as amended.

Thank you.

Sincerely,

Michael W. Burns

Michael W. Burns, Esquire
Director

Monetary Penalties for Failure to secure required workers compensation insurance in various states:

- Alaska - Penalties of up to \$1,000 per employee, per day in which employers fail to provide workers' compensation coverage
- California – penalties up to \$100,000
- Connecticut - penalties of a \$300 fine per worker per day if there isn't proper Coverage
- Delaware - employer fined an amount equal to the insurance premium you should have paid, times three, for one year
- Florida - penalty is typically equal to twice the insurance premium the employer would have paid for the preceding two-year period
- Georgia - penalty of \$500 to \$5,000 per occurrence
- Hawaii - liable for fines and penalties of up to \$100 per employee per day
- Illinois - \$500 for each day of noncompliance, with a minimum fine of \$10,000
- Kansas - penalty of twice the annual workers' comp premium or \$25,000, whichever is higher.
- Kentucky - employer fined \$1,000 per employee, per day during which fails to provide mandated coverage
- Louisiana - fined up to \$250 per employee for a first violation and \$500 per employee for subsequent violations up to \$10,000.
- Maine - penalty of up to \$10,000 or 108% of the premium you would have normally paid for workers' comp insurance
- Maryland - employer may be fined up to \$10,000
- Massachusetts - minimum fines of \$100 per day, including weekends and holidays, for Day employer fails to provide coverage
- Minnesota - fine of up to \$1,000 per employee per week in which employer failed to provide workers' compensation insurance
- Missouri - penalty of three times the workers' compensation premium employer should have paid, up to a maximum of \$50,000
- Montana - double the amount of what you would have paid for insurance
- Nebraska - fine of up to \$1,000 for each violation; each day of noncompliance treated as a separate violation
- Nevada - employer charged a fine up to \$15,000
- New Hampshire - fine of \$2,500 and a fine of \$100 per employee for each day you failed to provide coverage
- New Jersey - penalties of up to \$5,000 for the first 10 days and up to \$5,000 for each additional 10-day period of failing to insure
- New York - penalty of \$2,000 for every 10 days without coverage
- North Carolina - penalty carries a \$50 per day minimum and a \$100 per day maximum

- Oklahoma - \$1,000 fine for each day employer fails to provide workers' compensation coverage to employees
- Oregon - penalty of twice the amount of the premium that should have been paid for insurance, at a \$1,000 minimum; if noncompliance continues, would incur additional penalties of \$250 per day, without limit
- Pennsylvania - criminal penalties - Misdemeanor convictions can result in the imposition of a \$2,500 fine and up to one year in imprisonment for each day the employer is in violation of the requirement to maintain workers' compensation coverage; felony convictions can result in the potential imposition of a \$15,000 fine and up to seven years imprisonment for each day the employer intentionally violated the insurance requirement
- Rhode Island - employer may be fined \$1,000 for each noncompliant day
- Utah - a penalty of at least \$1,000
- Vermont - civil penalty of \$100 per day for the first seven days employer failed to maintain coverage, and \$150 for each day after
- Virginia - penalty of \$250 for each day employer fails to maintain insurance, up to a maximum penalty of \$50,000
- Wisconsin - A penalty equal to twice the insurance premiums employer should have been paying during the uninsured period or \$750, whichever is larger

August 28, 2023

The Honorable Bill Ferguson
President
Senate of Maryland
H-107 State House
100 State Circle
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker
Maryland House of Delegates
H-101, State House
100 State Circle
Annapolis, Maryland 21401

RE: Joint Chairmen's Report April, 2023
Committee Narrative
General Administration - Recommendations on Fines
for Uninsured Employers
Report of the Maryland Uninsured Employers' Fund
Due Date: September 1, 2023

Dear President Ferguson and Speaker Jones,

The Joint Chairmen's Report (JCR) of April 2023, page 12, requested in "Committee Narrative" that the Maryland Uninsured Employers' Fund (UEF) provide a report (Report) by September 1, 2023, regarding the following:

Recommendations on Fines for Uninsured Employers: The committees are concerned about the low penalties assessed on employers that do not carry workers' compensation as is required by State law. The committees request that the Uninsured Employers' Fund (UEF) provide a report by September 1, 2023, that describes the current fine structure for employers that are uninsured, the amount of fines imposed for fiscal 2020 through 2023, to where the revenue from the fines is provided, and recommendations for revised fine structures if necessary.

The UEF, having reviewed and researched the Legislature's request for information and recommendations and having considered the facts, other states' relevant laws and available data, presents the following detailed Report which it submits in response to the Committee Narrative request:

Joint Chairmen’s Report

Fiscal 2024 – State Operating Budget

Uninsured Employers’ Fund

C96J00.01 General Administration

Report on Recommendations on Fines for Uninsured Employers

As part of the Fiscal 2024 Budget, the Maryland Legislature added “Committee Narrative” language requesting the Maryland Uninsured Employers’ Fund (UEF) to prepare a Report to the Legislature as follows:

Recommendations on Fines for Uninsured Employers: The committees are concerned about the low penalties assessed on employers that do not carry workers’ compensation as is required by State law. The committees request that the Uninsured Employers’ Fund (UEF) provide a report by September 1, 2023, that describes the current fine structure for employers that are uninsured, the amount of fines imposed for fiscal 2020 through 2023, to where the revenue from the fines is provided, and recommendations for revised fine structures if necessary.

The Maryland Uninsured Employers’ Fund submits the following Report in response to this request for recommendations:

Current Fine Structure:

Currently, the fine structure for employers is contained in Labor and Employment section 9-407, and states as follows:

§9–407.

(a) If an employer fails to secure compensation for all covered employees of the employer as required by § 9–402 of this subtitle, the Commission shall:

(1) issue an order directing the employer to attend a hearing to show cause as to why the employer should not be:

(i) required to secure compensation for all covered employees of the employer;

(ii) found in violation of § 9–402 of this subtitle; and

(iii) assessed a penalty for noncompliance with § 9–402 of this subtitle; and

(2) set the hearing as soon as practicable.

(b) If, following the hearing, the Commission finds that the employer failed to secure compensation for all covered employees of the employer as required by § 9–402 of this subtitle, the Commission shall:

(1) order the employer to:

(i) secure and maintain insurance for all covered employees of the employer through an authorized insurer; and

(ii) submit proof of insurance coverage to the Commission; and

(2) order the employer to pay a penalty not to exceed \$10,000 to the Uninsured Employers' Fund.

(c) (1) If an employer fails to comply with an order to insure with an authorized insurer issued under subsection (b) of this section or under § 9–404(j) or § 9–405(f) of this subtitle, within 30 days after the Commission issues the order, the Commission shall set a hearing as soon as practicable.

(2) If, following the hearing, the Commission finds that the employer failed to comply with an order issued under subsection (b)(1) of this section, the Commission may order the employer to pay a penalty not to exceed \$10,000 to the Uninsured Employers' Fund.

(d) (1) An employer's failure to pay a penalty under this section constitutes a default in payment of compensation and judgment shall be entered as in a case of default in payment of compensation.

(2) (i) A penalty that is payable under this section is a lien against the assets of the employer that is liable for the penalty.

(ii) A lien under subparagraph (i) of this paragraph is subordinate to claims for unpaid wages and prior recorded liens.

(3) The Uninsured Employers' Fund may bring a civil action to collect any penalty ordered under this section or any assessment ordered under Subtitle 10 of this article.

(4) (i) Notwithstanding any other provision of law, if the uninsured employer is a corporation the assets of which are not sufficient to satisfy any penalty ordered under this

section, any officer of the corporation who has responsibility for the general management of the corporation in the State is jointly and severally liable for the penalty if the corporate officer knowingly failed to secure compensation for the covered employees of the employer.

(ii) Notwithstanding any other provision of law, if the uninsured employer is a limited liability company the assets of which are not sufficient to satisfy any penalty ordered under this section, any member of the limited liability company who has responsibility for the general management of the limited liability company in the State is jointly and severally liable for the penalty if a member of the limited liability company who has general management responsibility knowingly failed to secure compensation for the covered employees of the employer.

(Emphasis Added).

Pursuant to this statute the relevant current fine structure can, therefore, be simply summarized as follows – fines of up to \$10,000 are authorized and may be issued by the Workers Compensation Commission (WCC) to employers “for failure to secure compensation for all covered employees of the employer. “Labor and Employment sections 9-407(a), (b) and (c).

Amount of Fines Imposed Fiscal 2020 – 2023:

After researching this request, the UEF can report that according to the Workers Compensation Commission (WCC) the following amounts of relevant fines/penalties were imposed by the WCC against employers for failure “to secure compensation for all covered employees of the employer as required“ during the requested Fiscal Years 2020-2023:

“The Commission has determined that the net totals of fines imposed on employers found to be non-insured after a Show Cause Hearing are as follows:

Fiscal Year 2020: \$623,250.00

Fiscal Year 2021: No Hearings due to Pandemic

Fiscal Year 2022: \$1,779,250.00

Fiscal Year 2023: \$2,866,106.25”

The UEF notes that an unknown number of these fines/penalties issued by the WCC were apparently later reduced or rescinded by the WCC as a result of further information received by the WCC and by WCC revisions to original Orders.

The agency also notes that due to the Covid pandemic shutdown and resulting safety measures the WCC did not conduct hearings for failure to insure for a significant period of time

in 2020 and 2021 with the result that these numbers are somewhat skewed for the last two fiscal years for that reason.

Where the revenue from the fines is provided:

All penalties obtained from the enforcement of L & E 9-407 are paid to the Maryland Uninsured Employers' Fund. L & E 9-407(b)(2), (c)(2).

The Uninsured Employers' Fund (UEF) is 100% self-funded and receives no general funding. All revenue obtained by the statutory mechanism for funding the agency, including all penalties recovered under L & E 9-407, goes into an operating account for use. These funds are used to support the agency in its work in supporting injured workers and their families, claims management, enforcement; recovery of monies owed to the agency and other related operating expenses.

Recommendations for revised fine structures:

Workers' Compensation - General History and Background

Worker's Compensation is a system of no-fault insurance that provides wage replacement and medical benefits to employees for accidental injuries or diseases related to the employee's work.

Before 1911, a worker who was injured in the course of his or her employment could sue his or her employer in a civil or "tort" action, which was the same remedy available to a person injured under other circumstances. The tort remedy, however, had certain problems. It required the worker to prove that the injury occurred because the employer was negligent and the employer had various defenses depending on the jurisdiction which could include: (1) The worker was also negligent; (2) The worker knew of the dangers involved and "assumed the risk;" or (3) The injury occurred because of the negligence of a "fellow employee." Additionally, because of the expense of securing legal counsel as well as the length of time to seek and obtain recovery under this tort system, it was very difficult for workers to recover against their employers. If they did win, however, there were, generally, no dollar limits on what a jury could award to the injured worker.

In response to this situation a system of workers compensation was developed and adopted by the states over time. Workers' compensation is one of America's oldest social insurance programs: It was adopted in most states during the second decade of the 20th century. The workers' compensation system is based on a trade-off between employers and employees.

Employees are entitled to receive prompt, effective medical treatment for on-the-job injuries or illnesses no matter who is at fault and appropriate compensation for lost wages and, in return, are prevented from suing employers over those injuries. This is the system set up generally throughout the various states, including Maryland.

Workers Compensation - Maryland History and Background

As a result of this system, most Maryland employers are required by law to have workers' compensation insurance, even if they have only one employee. And, if employees get hurt or sick in the course of their employment, the employer is required to pay by way of their insurance for their injured workers' medical and other compensation benefits. Workers' compensation insurance provides various basic benefits, including medical care, temporary disability benefits, permanent disability benefits, vocational rehabilitation benefits, and death benefits.

In return, the law limits the amount that a worker can recover. As noted, workers are only entitled to certain specified benefits, including: (1) Certain wage loss benefits; (2) The cost of medical treatment; and (3) Certain disability payments. Under the old system, workers were able to recover for pain and suffering, loss of enjoyment of life and other damages that a jury might award. Recovery under worker's compensation today is, however, limited to the statutorily permitted areas of coverage, no matter how serious the injury.

This system works exceedingly well – the tradeoff between the rights of employers and employees results in serious protections for the injured worker at a reasonable cost to the employer for workers compensation insurance.

When, however, the employer fails to live up to its part of the trade off – when that employer, for whatever reason, fails to carry the required insurance - the system breaks down, leaving the injured worker in a serious and dangerous position. For the system to work all relevant employers must secure and maintain the required workers compensation insurance. Were it not for uninsured employers' funds such as Maryland's UEF, injured workers with uninsured employers would face terribly difficult – potentially catastrophic - situations in which lost wages and medical treatment payments would be difficult, if not impossible, to recover, from employers without insurance and then only by means of long, costly legal action.

It is imperative, if workers compensation is to work, that employers have the required insurance. No excuses, no reasons, no sad stories can or should alter this basic fact and requirement. This is not a new system – it has been the law of Maryland and around the nation for decades and decades. There is simply no excuse for a Maryland employer in 2023 to not carry the required insurance today.

Maryland – Current Status of Maryland Workers Compensation Insurance Requirement Enforcement

Unfortunately, Maryland has suffered, and continues to suffer, from a number of employers who, for various reasons, fail to carry this required insurance and when injuries occur to their workers these employers are bailed out by the Maryland Uninsured Employers' Fund (UEF). Often, employers disappear and refuse to pay for their workers injuries, or they form new entities to continue their business without insurance, or they fail to reimburse the Fund for payments made on their behalf by the Fund to their injured workers. These problems are endemic throughout the country and are not unique to Maryland.

And these problems, issues and results can often be traced back to the failure of current Maryland law to effectively penalize the failure of employers to carry the required workers compensation insurance and to enforce the requirement that all relevant employers in Maryland carry this insurance.

Maryland's penalty and enforcement mechanism has been, unfortunately, ineffective in serving as an effective deterrent to the situation. Maryland's current fine¹ structure, a penalty up to \$10,000 for failure to carry insurance, has simply not succeeded in changing behavior or in adequately penalizing malefactors. The WCC seldom imposes the maximum fine of \$10,000 for the failure of an employer to carry the required insurance, with fines sometimes being as low as \$150 in some cases. Fines are also waived by the WCC in many cases for various reasons, including, quite properly, when the insurance is not actually legally required under the facts in a given case.

Enforcement of Workers Compensation Insurance Requirements in Other States

A review of the laws in other states by the UEF reveals a much more aggressive penalty and enforcement scheme exists in most other states – a much more aggressive program. In many states, the fines are assessed per day, sometimes separately for each uncovered employee, and can end costing up to tens of thousands of dollars for the failure of an employer to carry the relevant insurance. Penalties can even eventually reach into hundreds of thousands of dollars if the employers refuse to pay repeatedly.

Ignoring the fines and penalties have other repercussions as well across the country. Numerous states add criminal penalties, both misdemeanors and felonies which include jail time, for failure to carry workers compensation insurance and/or for failure to pay fines/penalties. Many states also give their government the authority to close down employers with “stop work” orders when such employers fail to pay the assessed fines and penalties for failure to have the required insurance. Many states also hold all relevant employer entity officers individually

¹ The term in the relevant statute, Labor & Employment §9-407, is actually “penalty”. For purposes of this report the term “fine/penalty” will be utilized as well.

responsible for the payment of the fines and penalties as well, and recovery can be sought from any one or more of the relevant individuals.²

Recommendations for Revised Fine Structures – Proposed Legislation to change Maryland’s statutory penalties/fines for failure of employers to carry legally required workers compensation insurance – Discussion

The options for Maryland to increase enforcement are, therefore, extensive and varied. There are literally dozens of different state penalty structures from which to pick and choose. The Legislature has specifically requested information as to “recommendations for revised fine structures” and this Report will, therefore, make only recommendations to that specific topic along with a request that the Report’s recommended changes and improvements in the penalty system be enacted by the Legislature.

We again emphasize that the current fine/penalty system has not proven effective in enforcing the Maryland legal requirement of mandatory workers compensation insurance for relevant employers, nor has it evidenced any effect in deterring employers from obtaining that insurance in many cases.

Many of those employers identified for failure to obtain workers compensation insurance are exempted from the \$10,000 fine/penalty by the WCC at the required statutory hearings.³ There are many reasons for this, some of which are absolutely in keeping with the law’s requirements and are completely appropriate. The \$10,000 fine/penalty, however, is very seldom assessed by the WCC against relevant employers who have not obtained the required insurance in Maryland. The vast majority of fines issued are at or below \$7,000, and are issued after an employer fails to appear at a scheduled compliance hearing and/or a “show cause” (why they are not in violation of the law) hearing. This discretion is exercised by the WCC as per the current language of Labor and Employment sections 9-407(b)(2) and (c)(2).

The practice of the WCC over the years was also to permit employers without the required insurance to give a number of various causes and reasons to explain why they failed to have the required insurance and then to reduce or rescind the original imposed fine. These various practices and actions, although well-intentioned, have not been conducive to either the strict enforcement of the legal requirement for workers compensation insurance coverage nor have they resulted in significant, serious, uniform penalties for those violating Maryland law.

² See the Table attached hereto for comparison of Maryland fine/penalty for failure to carry required workers compensation insurance with various other states. The UEF emphasizes that most states have various other enforcement tools available in law besides fines/penalties, often including employer “shut down” provisions, escalating fines and criminal penalties.

³ Hearings, per Labor and Employment §9-407, are often referred to as “show cause” compliance hearings. It should be noted that the UEF has no advance notice of, nor does it participate in, these hearings.

From this agency's case experience, there is little evidence that the current fine/penalty structure as described deters or effectively penalizes employers who fail to have the required insurance. In fact, the UEF has seen numerous employers in cases over the years who have had their workers injured on the job and had no insurance who failed to purchase the required insurance, or allowed coverage to lapse, for monetary and business reasons. In other words, they made a business decision not to spend the money on the insurance hoping it would never be required and they could save the costs of the insurance. They simply choose to ignore the requirements of the law because the current penalties cost them less to pay, if they are caught, than purchasing the mandated insurance. This agency has also seen multiple cases involving the same employer come up over the years where the employer continues to evade the requirement for insurance.

After decades of the workers compensation statutory scheme's existence there is simply no excuse for relevant covered employers to not purchase this insurance today and there is no valid excuse for them to not carry the coverage (similar to the state's automobile insurance mandate) when they are covered by the statute. It is our conclusion, based on the evidence and research submitted herein, that in light of the ineffectiveness of the current penalty structure it is only by way of the establishment of a sufficient, and mandatory, monetary fine/penalty that the situation can be addressed, the insurance mandate be effectively enforced and injured Maryland workers be compensated and protected as intended by the statutory requirement for workers compensation insurance.

In particular, it is the unscrupulous employers who know of the requirement but deliberately fail to carry the insurance to increase their profits who can and must be the target of this necessary reform. Clearly, those who fail to carry the insurance for monetary gain cannot be allowed to continue to profit from their actions. A significant fine/penalty would definitely work to accomplish that goal and force employers to buy the required insurance rather than pay a larger penalty for failing to purchase that insurance for their workers. Additionally, the increased fine would continue to go to the UEF and thereby provide added revenue for the UEF to compensate and assist injured workers and their families as well as insuring adequate funding for the Fund going forward.

**Recommendations for Revised Fine Structures – Proposed Legislation to change Maryland's statutory penalties/fines for failure of employers to carry legally required workers compensation insurance-
Specific Legislative Recommendations**

The UEF, after having examined the law of the other states as a guide for what would be an appropriate penalty for the failure to carry workers compensation insurance and considered the options therefore recommends that Maryland adopt the figure of \$25,000 as an appropriate

penalty amount. This is a figure which, as discussed, is utilized in other states – it is a fair and effective deterrent amount and would be an appropriate starting point for reform in this area.

This deterrent can only deter, however, if it is enforced. The UEF can do our part in enforcement but first the fine/penalty must be imposed by the WCC. Many of the states with fines/penalties impose them strictly; that is, should the evidence be that the insurance was required and not obtained the penalty is as laid out in statute without waiver or reduction authorized or permitted.

In order to make the increased fine/penalty truly effective the UEF strongly further recommends that no waiver or reduction of the fine/penalty, in cases where it is legally appropriate, should be in the amended statute as well.

The change to statute itself would be relatively simple: in 9-407(b)(2) the relevant language would read:

“. . . shall order the employer to pay a penalty of **\$25,000, no part of which may be suspended**, to the Uninsured Employers’ Fund.” (Emphasis added).

In 9-407(c)(2) the relevant language would read the same.

Those simple changes would carry enormous weight in adding to effective enforcement as well as serve as a real deterrent to those seeking to make money by failing to protect their employees. Responsible employers who have carried, and continue to carry, the costs for workers compensation insurance as per the legal requirements would not suffer from this change and all employers would be on notice that the Maryland requirement for workers compensation insurance is being enforced vigorously and that all relevant employers are expected to obey the law and ensure they carry the required insurance and protect their employees. With a fine more costly than the required insurance, such as the proposed \$25,000, employers who currently make a decision to avoid the cost of the insurance and risk a lesser fine would face a different situation where the penalty costs them more than the insurance – which should result in more employers paying for the coverage and, thereby, resulting in more workers being protected.

Conclusion

In conclusion, the UEF offers these recommendations to the Legislature to increase and ensure the safety of Maryland workers. These are simple and reasonable changes, moderate in comparison to many other state’s enforcement schemes but definitely stricter and more effective and more biting than the current penalty and enforcement practices. The agency respectfully urges the Legislature to consider and to please enact these needed reforms.

Maryland's current penalty for failure to carry workers compensation been ineffective and requires revision to be effective. In comparison to most states the Maryland penalty and discretionary enforcement is simply toothless and needs improvement.

The agency sincerely appreciates the Legislature's interest in this important area of workers compensation law and the opportunity to present detailed information, conclusions and recommendations in response to the Legislature's interest in strengthening this important policy and mandate and thereby protecting Maryland workers. The UEF thanks the legislature for this opportunity to bring this matter to their attention, to discuss options and offer recommendations and stands ready to implement and enforce any changes in this area with vigor and results.

Respectfully submitted,

Michael W. Burns

Michael W. Burns, Esquire

Director

Encl.