The Labor and Employment Article Review Committee notes, for consideration by the General Assembly, that while this section subrogates the Fund to the right of an uninsured employer to proceed against a third party, Subtitle 9 of this title does not authorize an uninsured employer to proceed against a third party. Consequently, the Fund may be subrogated to a right that does not exist.

The Committee also notes that the Fund was given the right to proceed against a third party under Subtitle 9 of this title by Ch. 278, Acts of 1985. Since the Fund now has its own independent right to proceed against a third party, it is unclear whether the Fund ever would need to be subrogated to the right of an uninsured employer to proceed against a third party under this section. Consequently this section may be unnecessary.

Also, there is a conflict between this section and § 9–902 of this title about how money recovered from a third party should be distributed. Section 9–902 of this title does not require the Fund to apply any money received to a demand for security or assessments against an uninsured employer or to return any money to an uninsured employer in cases where a third party has paid some compensation. In addition, § 9–902 of this title provides that any excess money recovered should be paid, after deduction of expenses, to the covered employee or dependents. This section, however, provides that the excess recovery should be "apportioned between the injured employee or his dependents and the Fund". Since the provisions of this section were originally enacted in 1967 (by Ch. 152, Acts of 1967) and the Fund was added to the provisions of § 9–902 of this title in 1985, § 9–902 of this title probably would be controlling as the later enacted provision.

Defined terms: "Compensation" § 9–101
"Covered employee" § 9–101 "Fund" § 9–1001
"Uninsured employer" § 9–1001

9–1005. ASSESSMENT AGAINST UNINSURED EMPLOYER.

(A) IN GENERAL.

WHEN THE COMMISSION MAKES A DECISION ON A CLAIM FOR COMPENSATION AGAINST AN UNINSURED EMPLOYER, THE COMMISSION SHALL IMPOSE AGAINST THE UNINSURED EMPLOYER AN ASSESSMENT OF:

(1) $150; AND

(2) 15% OF ANY AWARD MADE IN THE CLAIM, NOT EXCEEDING $1,500 IN ANY 1 CLAIM.

(B) PAYMENT INTO FUND.

THE COMMISSION SHALL DIRECT PAYMENT OF AN ASSESSMENT UNDER SUBSECTION (A) OF THIS SECTION INTO THE FUND.