



# Ohio Legislative Service Commission

## Bill Analysis

Nicholas A. Keller

### Sub. H.B. 207

131st General Assembly  
(As Reported by S. Insurance)

**Reps.** Henne and McColley, Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke, Hackett, DeVitis, Retherford, Sears, Amstutz, Anielski, Antani, Antonio, Arndt, Barnes, Bishoff, Blessing, Brenner, Buchy, Butler, Conditt, Cupp, Derickson, Dever, Dovilla, Duffey, Ginter, Green, Grossman, Hall, Hayes, Hill, Huffman, Koehler, LaTourette, Manning, McClain, M. O'Brien, S. O'Brien, Patterson, Pelanda, Perales, Phillips, Rezabek, Rogers, Ruhl, Ryan, Schaffer, Scherer, Schuring, Slesnick, R. Smith, Stinziano, Sweeney, Thompson, Young, Zeltwanger, Rosenberger

**Sens.** Hottinger, Beagle, Bacon, Brown

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## BILL SUMMARY

### Workers' compensation claims involving motor vehicle accidents

- Requires workers' compensation claims to be charged to the Surplus Fund Account in lieu of to a state fund employer's experience in certain circumstances when a claim is based on a motor vehicle accident involving a third party.
- Allows a state fund employer who believes that a claim may qualify to be charged to the Surplus Fund Account under the bill to file a request with the Administrator of Workers' Compensation for a determination.
- Requires the Administrator to make the determination within 180 days after the Administrator receives the request.
- Requires any amount collected by the Administrator through the subrogation process for compensation or benefits that were charged to the Surplus Fund Account to be credited to the Surplus Fund Account and not applied to an individual employer's account.

## Workers' compensation self-insuring employers

- Eliminates the minimum number of employees required for a private sector employer or board of county commissioners to obtain self-insuring status under the Workers' Compensation Law.

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## CONTENT AND OPERATION

### Workers' compensation claims involving motor vehicle accidents

#### Charging experience for certain claims to the Surplus Fund Account

The bill requires the Administrator of Workers' Compensation, for workers' compensation claims arising on or after July 1, 2016, to charge a state fund employer's experience to the Surplus Fund Account created under continuing law within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim if all of the following apply:

- The claim is based on a motor vehicle accident involving a third party;
- The third party is issued a citation for violation of any law or ordinance regulating the motor vehicle's operation arising from the accident on which the claim is based;
- Either of the following circumstances apply to the claim:
  - Any form of insurance maintained by the third party covers the claim;
  - Uninsured or underinsured motorist coverage covers the claim.
- The employer of the employee who is the subject of the claim is not the state or a state institution of higher education, including its hospitals.<sup>1</sup>

A state fund employer is an employer who pays premiums into the State Insurance Fund to secure workers' compensation coverage. The employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's premium (see "**Background – calculation of premium rates,**" below). Thus, charging a claim to the Surplus Fund Account in lieu of the employer's experience may result in a mitigation of an increase in the employer's workers' compensation premiums as a result of the claim.

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<sup>1</sup> R.C. 4123.932; Section 3.



## Procedure for charging the experience to the Surplus Fund Account

The bill allows an employer who believes that a claim may qualify to be charged to the Surplus Fund Account under the bill to file a request with the Administrator for a determination. The bill requires the Administrator to make the determination within 180 days after the Administrator receives the employer's request.<sup>2</sup>

Upon the Administrator's determination that a claim qualifies to be charged to the Surplus Fund Account under the bill, or if the Administrator fails to make a determination on a claim within 180 days after receiving the request, the bill requires the Administrator to charge the experience of an employer for any compensation, benefits, or both paid in relation to that claim to the Surplus Fund Account and not to the individual employer's experience.<sup>3</sup>

### Deposit of subrogated funds

Continuing law prescribes procedures that the Administrator (or any other statutory subrogee) and a claimant must follow with respect to the distribution of funds that are subrogated in a third-party claim. With respect to any money collected by the Administrator under that process, current law requires the Administrator to deposit the money collected into the appropriate account within the State Insurance Fund. The bill requires any amount collected for compensation or benefits that were charged to the Surplus Fund Account pursuant to the bill and not charged to an employer's experience to be deposited in the Surplus Fund Account and not applied to an individual employer's account.<sup>4</sup>

The Workers' Compensation Law<sup>5</sup> creates a right of subrogation in favor of the Administrator or other statutory subrogees against a third party. A statutory subrogee is the entity responsible to pay workers' compensation claims. Essentially a statutory subrogee may recoup money from a third party against whom a claimant has a cause of action so that the statutory subrogee is reimbursed for money it pays out on a workers' compensation claim.

Stated simply, if Mr. Smith, in the course of his employment, is injured when Mr. Jones collides with his vehicle, Mr. Smith may receive workers' compensation benefits and also may sue Mr. Jones. If Mr. Smith sues Mr. Jones, then Mr. Smith's employer, or

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<sup>2</sup> R.C. 4123.932(B), (C), and (D)(1).

<sup>3</sup> R.C. 4123.932(B) and (D)(2).

<sup>4</sup> R.C. 4123.931(K).

<sup>5</sup> R.C. Chapters 4121., 4123., 4127., and 4131.



the Administrator, as appropriate, may seek reimbursement from the amount Mr. Smith recovers in the third-party suit.

The Workers' Compensation Law contains procedures to follow regarding subrogation claims. Under continuing law, the Administrator's right of subrogation is automatic, regardless of whether the Administrator is joined as a party in an action by a workers' compensation claimant against a third party. The Administrator may pursue an action against a third party as well.<sup>6</sup>

### **Background – calculation of premium rates**

Ohio law requires the Administrator to fix premiums "sufficiently large" to provide a fund for the benefits authorized in the Workers' Compensation Law and "to maintain a state insurance fund from year to year." Subject to the approval of the Bureau of Workers' Compensation (BWC) Board of Directors, the Administrator classifies occupations or industries with respect to their degree of hazard, determines the risks of different classes according to the categories the National Council on Compensation Insurance establishes, and fixes the premium rates for coverage of the risks based upon the total payroll in each classification.<sup>7</sup>

Premium rates are fixed for each classification based upon total payroll. The Administrator must establish a rate for each classification. To do so, the Administrator compares the total losses experienced by employers within a classification with the total payroll of that classification to establish the rate of contribution for employers within that classification. The system includes two primary categories of premium rates – the basic rate and the experience, or merit, rate (employers qualify for one or the other). The Administrator calculates the basic rate for each of the classifications of occupations, and the Administrator does not include any individual employer's experience when calculating basic rates. If an employer is experience-rated, the employer's rate is determined by modifying the basic rate applicable to the employer by the employer's experience of losses incurred and premiums paid.<sup>8</sup> A premium is expressed as an amount for each \$100 of payroll. Rates are revised annually on July 1, and employers pay premiums in accordance with the schedule specified in the Workers' Compensation Law and in rules adopted by the Administrator.<sup>9</sup>

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<sup>6</sup> R.C. 4123.93 and 4123.931.

<sup>7</sup> R.C. 4123.29(A), not in the bill, and Ohio Administrative Code (O.A.C.) 4123-17-04.

<sup>8</sup> Fulton, Philip J., *Ohio's Workers' Compensation Law*, § 14.4 (4th Ed. 2011).

<sup>9</sup> R.C. 4123.34, not in the bill, R.C. 4123.35, and O.A.C. 4123-17-01 to 4123-17-04.



## Workers' compensation self-insuring employers

The bill eliminates the current law requirement that a private sector employer employ at least 500 employees to be eligible to pay directly for compensation and benefits under the Workers' Compensation Law. The bill also eliminates the requirement that a board of county commissioners employ at least 500 employees to be eligible to pay directly for compensation and benefits under the Workers' Compensation Law with respect to the construction of a sports facility. Currently, with respect to private employers, the Administrator must waive this requirement if the employer satisfies requirements specified in rules adopted by the Administrator. Under those rules, the employer must either have a substantial employee count outside Ohio, as determined by BWC, or obtained and agree to maintain insurance in amounts exceeding current law requirements and with a retention level determined by BWC to be appropriate.<sup>10</sup>

Under continuing law, the Administrator must consider a number of factors to determine the ability of a private sector employer or a board of county commissioners to meet the obligations of paying directly for compensation and benefits.<sup>11</sup>

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### HISTORY

| ACTION                 | DATE     |
|------------------------|----------|
| Introduced             | 05-12-15 |
| Reported, H. Insurance | 10-19-15 |
| Passed House (94-0)    | 12-01-15 |
| Reported, S. Insurance | 04-26-16 |

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<sup>10</sup> O.A.C. 4123-19-03.1.

<sup>11</sup> R.C. 4123.35(B) and (C).

