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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Holmes and Crossman

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SUMMARY

- Creates the Reentry Ohio Program to provide grants to employers to employ and provide housing to ex-offenders who participate in the program.
- Makes a Reentry Ohio Program participant who suffers an injury or contracts an occupational disease in the course of and arising out of participation in the program eligible for compensation and benefits under the Workers' Compensation Law.
- Makes a program participant an employee of the Department of Rehabilitation and Corrections and not the private business employing the participant solely for the purpose of providing compensation and benefits under the Workers' Compensation Law.
- Excludes a participant's services performed under the program from being considered "employment" for purposes of determining benefit eligibility and tax liability under the Unemployment Compensation Law.
- Makes an appropriation.

DETAILED ANALYSIS

Reentry Ohio Program

The bill creates the Reentry Ohio Program and directs the Director of Rehabilitation and Correction to do both of the following:

- Provide grants to Ohio employers to reimburse those employers for $\frac{1}{2}$ the cost of employing ex-offenders in positions that are suitable, affordable, and likely to aid in the ex-offender's transition and successful avoidance of future crime;

- Provide housing for ex-offenders participating in employment under the program.¹

Domestic manufacturing

In addition to other items an employer must demonstrate in applying for a Reentry Ohio Program grant, as discussed under “**Application**,” below, an employer must demonstrate that either (1) any goods to be manufactured by ex-offenders participating in the program or substantially similar goods are not being manufactured in the U.S., or (2) the goods or substantially similar goods are being manufactured in the U.S. and one of the following circumstances exists:

- Not more than $\frac{1}{2}\%$ of the world’s total production of the goods or substantially similar goods was manufactured in the U.S. during the past three years, excluding any goods manufactured in the U.S. by criminal offenders participating in federal, state, or local work programs;
- One or more manufacturers are manufacturing the goods or substantially similar goods in the U.S. with the intention of preventing an employer from participating in the program, based on the restrictions described in the above circumstance.²

Application

To apply for a Reentry Ohio Program grant, an employer must demonstrate all of the following in an application form approved by the Department of Rehabilitation and Correction (DRC):

1. That the employer will employ ex-offenders as program participants for at least two years, unless the employer terminates the employment for just cause;
2. That the employer will employ a sufficient number of ex-offenders to participate in the program so that 50% of the employer’s workforce are program participants;
3. That the employer will employ a sufficient number of ex-offenders as program participants to ensure that at least five of the employer’s employees are program participants;
4. That the employment opportunities made available by the employer under the program will be suitable and will offer transferable skills capable of preparing participants to compete for high-paying jobs after they have completed two years of employment under the program;
5. That the employment opportunities with the employer are likely to aid program participants in transition and successful avoidance of further crime;

¹ R.C. 5120.85(A).

² R.C. 5120.85(B)(6).

6. That any goods to be manufactured by ex-offenders participating in the program or substantially similar goods are not being manufactured in the U.S., or that the goods or substantially similar goods are being manufactured in the U.S. and one of the circumstances described under “**Domestic manufacturing**,” above, exists;
7. That the employer will have a program for hiring and promoting high-performing program participants on a regular basis after they have completed two years of employment through the program;
8. That the employer will make space available after hours for reentry programming provided to ex-offenders pursuant to rules adopted by DRC.

Every application must include all of the following information concerning manufacturers that are manufacturing the goods or substantially similar goods in the U.S.:

- The manufacturers’ ownership, parents, affiliates, and subsidiaries;
- The manufacturers’ source of capital;
- The manufacturers’ actual and projected net profits;
- The date manufacturing began;
- The manufacturers’ relationship to the world’s large foreign manufacturers;
- The independence of the manufacturer;
- Any other relevant information.³

Requirements for participants

Each ex-offender participating in the Reentry Ohio Program must sign a participation agreement in which the participant agrees to do both of the following:

- Participate in DRC programming after hours or on weekends;
- Contribute to support programs for new program participants after the participant has participated in the program for one year, including mentoring new participants if selected by DRC as a mentor.

These requirements are in addition to the participant’s work requirements.⁴

Workers’ Compensation Law

Under the bill, a Reentry Ohio Program participant who suffers an injury or contracts an occupational disease in the course of and arising out of program participation is entitled to compensation and benefits under the Workers’ Compensation Law. Solely for the purpose of providing compensation and benefits under the Law, the bill makes a participant a DRC

³ R.C. 5120.85(B).

⁴ R.C. 5120.85(D).

employee and not an employee of the private business employing the participant under the program. DRC may include a participant in its own workers' compensation policy or establish a separate policy with the Bureau of Workers' Compensation (BWC) on the terms and conditions for insurance to be established by BWC consistent with insurance principles, as is equitable in the view of degree and hazard.⁵

The bill makes a claim for compensation and benefits under the Workers' Compensation Law the exclusive remedy for a participant or the participant's dependents for injury suffered or occupational disease contracted in the course of and arising out of program participation and exempts from liability, except for intentional torts, DRC and the employer employing the participant.⁶

Unemployment Compensation Law

A participant's services performed under the program are not considered "employment" for purposes of determining eligibility to receive benefits under Ohio's Unemployment Compensation Law.⁷ Under continuing law, a claimant's right to receive unemployment benefits generally is based on whether the claimant worked the required number of weeks during a specified time period in employment covered by the Law, the claimant's wages during that time, and the reason the claimant is unemployed.⁸ Under the bill, participation in the program would not be included as employment for purposes of determining future eligibility for unemployment benefits. It also means that the employer employing a participant under the program would be exempt from paying Ohio's unemployment tax with respect to that participant's services.⁹

Unemployment benefits are funded through a federal-state partnership. If an employer pays contributions into an "approved" state system, the employer receives a significant credit on the employer's federal unemployment tax under the Federal Unemployment Tax Act¹⁰ (FUTA). Approval requires state adherence to various federal law requirements and U.S. Department of Labor regulations.¹¹

FUTA specifies the provisions that a state must include in the state's unemployment compensation law to be an approved system.¹² FUTA also provides a general framework for state programs, including a list of services that are excluded from the definition of

⁵ R.C. 4123.392.

⁶ R.C. 4123.392, by reference to R.C. 2745.01 and 4123.74, not in the bill.

⁷ R.C. Chapter 4141.

⁸ R.C. 4141.01(R), and R.C. 4141.29, not in the bill.

⁹ R.C. 4141.01(B)(3).

¹⁰ 26 U.S.C. 3301 *et seq.*

¹¹ 26 United States Code (U.S.C.) 3301, 3302, and 3304 and 42 U.S.C. 503.

¹² 26 U.S.C. 3304 and 42 U.S.C. 503.

“employment” and thus are excluded from FUTA coverage.¹³ FUTA requires that state unemployment laws cover services performed for state and local government entities, federally recognized Indian tribes, and certain nonprofit organizations.¹⁴ If state law fails to cover these services, the state may no longer have an approved system and an employer subject to the FUTA tax could be liable for the entire federal tax.

While state law can be amended to exclude other types of employment from coverage without affecting the state’s approval, that amendment may not completely exempt an employer from all unemployment tax obligations. Ohio’s Unemployment Compensation Law contains various exceptions to the Law’s definition of “employment.”¹⁵ Services included in the exceptions are not subject to Ohio’s unemployment tax. If a state excludes services that are covered under FUTA from coverage under state law, those services would still be covered under FUTA. As a result, the employer would avoid paying state unemployment tax for those excluded services but would be required to pay the full FUTA tax on those services. Because eligibility for unemployment benefits is based on state law requirements, the individual providing the services may not be eligible to receive unemployment benefits if the individual’s services are not considered employment under state law.

Thus, if a participant’s services under the program are considered “employment” under FUTA, the employer would be required to pay the full federal unemployment tax with respect to a participant.¹⁶ It is also possible that a participant’s services may be considered “employment” for purposes of Ohio’s Unemployment Compensation Law if, generally, the participant’s services are determined to be “employment” under FUTA.¹⁷

Rules

DRC is required to adopt rules for all of the following:

- Processing grant applications and for making periodic payments to reimburse successful applicants for 50% of the costs of employing ex-offenders participating in a program;
- Identifying affordable housing within walking distance of participating employment opportunities that may be purchased or leased and made available to ex-offenders participating in a program;

¹³ 26 U.S.C. 3306(c).

¹⁴ 26 U.S.C. 3304 and 3309.

¹⁵ R.C. 4141.01(B)(3).

¹⁶ 26 U.S.C. 3306; 26 Code of Federal Regulations (C.F.R.) 31.3301-1; *see Conformity Requirements for State UC Laws: Coverage*, U.S. Department of Labor, Employment and Training Administration, https://oui.doleta.gov/unemploy/pdf/uilaws_coverage.pdf.

¹⁷ *See* 26 U.S.C. 3306; R.C. 4141.01; *Giles v. Ovens*, Franklin 10th Dist. No. 78AP-349, 1978 Ohio App. LEXIS 10216, 1978 WL 217277, *7 (December 26, 1978) (“Quite clearly it is the intent . . . that any relationship which constitutes covered employment under the Federal Unemployment Tax Act also constitutes covered employment under the Ohio laws.”).

- Providing reentry programming to ex-offenders participating in a program.¹⁸

Reentry Ohio Program Fund

The bill creates the Reentry Ohio Program Fund in the State Treasury. The fund consists of any money donated to the fund or appropriated to the fund by the General Assembly. Any interest on the fund is credited to the fund. The DRC Director must use the money in the fund to provide program grants to reimburse employers and provide housing for ex-offenders participating in the employment program. The bill transfers $\frac{1}{2}$ of the appropriation for halfway houses in FY 2020 and 2021 to the fund and appropriates those amounts in FY 2020 and 2021.¹⁹

HISTORY

Action	Date
Introduced	06-10-20

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¹⁸ R.C. 5120.85(C).

¹⁹ R.C. 5120.85(A) and Sections 3 and 4.