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Bill Analysis
Legislative Service Commission

Sub. H.B. 180

123rd General Assembly

(As Reported by H. Finance & Appropriations)

(excluding appropriations, fund transfers, and similar provisions)

Reps. Corbin, Thomas, Vesper

BILL SUMMARY

- Retains indefinitely with the Governor the power to appoint the Administrator of Workers' Compensation and eliminates the power of the Workers' Compensation Oversight Commission to make such appointments after August 31, 2000.
- Increases from 3/4 of 1% to the constitutionally mandated 1% limit the amount of employer premiums the Administrator is required to devote to support the activities of the Division of Safety and Hygiene.
- Requires the Tax Commissioner to report to the Administrator the marital status of a person as listed on the most recent income tax returns for the purpose of determining remarriage of a spouse of a deceased workers' compensation claimant in order for the Administrator to calculate the limits on spousal death benefits.
- Authorizes the Administrator to recertify manage care organizations to operate the Workers' Compensation Health Partnership program for an indefinite number of additional two-year periods.
- Requires the Administrator to make a series of reports to the General Assembly and the Office of Budget and Management on the various aspects relating to the performance of the workers' compensation system.
- Renames the Head Injury Program the Brain Injury Program, and the Head Injury Advisory Committee the Brain Injury Advisory Committee.
- Modifies the composition of the Brain Injury Advisory Committee.

- Makes other administrative changes in the operation of the workers' compensation law.

CONTENT AND OPERATION

Power to appoint Administrator of Workers' Compensation

(secs. 121.03, 4121.12, and 4121.121)

Existing workers' compensation law gives the Governor the power, until August 31, 2000, to appoint the Administrator of Workers' Compensation to serve at the Governor's pleasure. After that date, the power of appointment shifts to the Workers' Compensation Oversight Commission. This Commission consists of nine members appointed by the Governor from among recommended representatives of labor and management and also certain designated members of the General Assembly. The Commission also performs certain oversight and policy making functions with respect to the workers' compensation system.

The bill eliminates the future power of the Commission to appoint the Administrator and extends the Governor's power of appointment indefinitely.

Employer premium contributions to the Safety and Hygiene Fund

(sec. 4121.37)

The Ohio Constitution provision that authorizes the General Assembly to adopt workers' compensation laws (Art. II, Section 35) specifically allows the setting aside of up to 1% of the premium contributions of employers for use in "the investigation and prevention of industrial accidents and diseases." Current law authorizes the Administrator to transfer up to 3/4 of 1% of employers' premium contributions into a Safety and Hygiene Fund for the support of the Division of Safety and Hygiene activities and the Occupational Safety Loan Fund.

The bill raises the amount of the premium contributions set aside to the maximum 1% authorized by the Constitution.

Identification of a change in marital status for the purpose of spousal death benefits

(secs. 4123.591, 5703.21, and 5747.18)

Existing workers' compensation law requires payment of specified benefits to certain survivors of a worker who dies as a result of an injury or occupational disease. Benefits to a surviving spouse terminate upon the death or remarriage of

that spouse. In the case of remarriage, the surviving spouse receives a lump sum payment equal to two years worth of benefits.

The bill authorizes the Administrator, quarterly, to furnish to the Tax Commissioner, in a format approved by the Tax Commissioner, the name and social security number of any person receiving spousal death benefits and receive back from the Commissioner, in a format designed by the Commissioner, information about the filing status of persons filing under the status of "married filing joint return" or "married filing separately" of the named individuals as of the person's most recent Ohio income tax return. The bill specifically authorizes the Tax Commissioner to respond to the Administrator's request for information notwithstanding the general and specific provisions existing in the tax laws requiring the Tax Commissioner and his employees to keep confidential any information acquired about taxpayers, except where disclosure is mandated in court proceedings.

Benefit payment orders of the Administrator and commencement dates for first payments

(secs. 4121.63 and 4123.511)

Under existing law, within seven days after receipt of a formal workers' compensation claim or, in the absence of a formal claim, receipt of information forwarded by any person, other than the claimant, which the Administrator believes indicates that a compensable injury or occupational disease has occurred or been contracted, the Administrator must notify the affected person and the employer. That notification is the equivalent of filing a claim and marks the date of filing for the purposes of the statute of limitations in the law. Subsequently, the Administrator must issue an order stating whether the claim is or is not compensable. This order cannot be issued any earlier than 21 days but no later than 28 days after the notice to the employer and claimant. There is an exception to the 21-day waiting period where an employer "certifies" the claim (agrees that a claim is valid) to the Administrator in which case the payment of benefits and the issuance of the Administrator's order need not wait for the 21-day period to expire.

The bill eliminates the 21-day waiting period.

Existing law requires the Administrator (or if a self-insuring employer is administering the claim of the claimant, then that employer) to make "living maintenance payments" to any claimant who the Administrator determines could probably be successfully rehabilitated. Such payments are in amounts that may range from 50% of the current statewide average weekly wage (as determined by

the Bureau of Employment Services) to the amount the claimant would receive if receiving temporary total disability compensation.

The bill makes clear that such payments must commence at the time the claimant begins participating in an approved rehabilitation program.

Premium rate adjustments to employers for injuries to handicapped employees

(sec. 4123.343)

Existing law contains an incentive for employers to hire persons with certain types of handicaps or preexisting injuries. The law designates 25 preexisting injuries or diseases as eligible for the incentive. If an employee is injured and the new injury is determined to be the result of the preexisting condition or a new injury aggravated the preexisting condition, then the costs of the new claim are charged to the Surplus Fund (i.e., spread among all employers) rather than added into the calculation of the employer's premium rates. To qualify for this beneficial premium rate calculation, however, the employer must notify the Bureau of Workers' Compensation, prior to the occurrence of the injury or occupational disease, of the fact that the employer had a handicapped person in employment. The only exception is where the employer can show "good cause" for failure to give this prior notice. The law also requires employers to file annually, an inventory of current handicapped employees.

The bill removes the requirements placed upon an employer to give prior notice and furnish the annual inventory of handicapped employees.

Certification of external vendors of managed care under the Workers' Compensation Health Partnership program

(sec. 4121.44)

Existing workers' compensation law gives to employers a choice of either of two mechanisms to provide required medical benefits to an injured worker. One way is through a Qualified Health Plan. This plan allows any employer to utilize the services of any plan that meets the criteria for a qualified plan. The other means is through the Health Partnership program. This program also utilizes the services of managed care organizations (the law calls them "external vendors") who, under the direct supervision of the Administrator, provide cost containment and medical management services for medical benefits to injured workers. In this latter case, when the law created the program, it required the Administrator, initially, to certify one or more external vendors to provide managed care services for a period of two years. The Administrator may recertify such vendor for one

additional year period. Beyond that, the law makes no provision for additional recertifications.

The bill allows recertification for an unlimited number of additional two-year periods.

Filing with Administrator the notice of appeal to court of an Industrial Commission decision

(sec. 4123.512)

Existing law allows either a workers' compensation claimant or the employer to appeal to a court of common pleas the decision of the Industrial Commission (the highest administrative tribunal) granting or denying compensation or benefits. The claimant, employer, and the Administrator automatically are parties to an appeal.

The bill requires the party filing the appeal to serve a copy of the notice of appeal on the Administrator at the Columbus central office of the Bureau of Workers' Compensation.

Documentation in support of workers' compensation liens against noncomplying employers

(sec. 4123.76)

Existing law requires the Administrator to file liens against employers who are not in compliance with the workers' compensation law. Liens are filed in the offices of county recorders for all counties in which property of the employer is located. The Recorder records the liens as real estate mortgages and chattel mortgages against the property. In support of the lien, the Administrator must file a copy of the workers' compensation claim that revealed to the Administrator the fact that the employer was a noncomplying employer.

The bill stipulates that in lieu of a formal claim document, if the Administrator has no such formal document, the Administrator may file such other record the Administrator has documenting the existence of a claim.

Newspaper notices of complying employers

(sec. 4123.83)

The bill deletes a requirement that the Bureau of Workers' Compensation, semiannually, send a list of all employers who are in compliance with the workers'

compensation law, classified by counties, to the newspapers published in each county seat with a request for gratuitous publication of the list as a matter of news and protection to workers.

Performance reports of the Administrator

(Section 3)

Existing law (Section 3 of Am. Sub. H.B. 363 of the 122nd General Assembly) requires the Administrator to submit a series of reports during the 1997-1999 biennium, to the Workers' Compensation Oversight Commission, the Office of Budget and Management, the Legislative Budget Office, and the General Assembly. The bill continues this requirement for the coming 1999-2001 biennium. These reports must cover various aspects of the workers' compensation system as follows:

(1) The premium cost per worker (calculated by adding together an employer's total amounts of premiums and assessments paid during a calendar year and dividing that sum by the employer's average number of workers), which is the average annual cost a state fund employer pays to provide workers' compensation coverage for its employees.

(2) The claims cost per worker (calculated by dividing an employer's total claim expenses paid during the preceding 12 months by the employer's average number of workers), which is the average annual benefit cost paid for each worker who is employed by a state fund employer during the preceding 12 months.

(3) The administrative cost per claim (calculated by dividing an employer's total amount of administrative expenses incurred during the preceding 12 months by the total number of claims the employer processed), which is the average annual administrative expense a state fund employer pays to process a claim.

(4) The direct loss ratio, which measures the relationship between an employer's revenues and workers' compensation benefits paid to an injured worker during the preceding 12 months;

(5) The rate of return generated by investments of the Bureau;

(6) The customer service index, which accounts for various statistical measures reflecting the Bureau's customer service levels;

(7) The Health Partnership Program performance index, which measures the effectiveness of managed care organizations working for the Bureau and

reflects the quality of care, customer satisfaction, and cost of care provided by the managed care organizations.

(8) The rate of injury in the state per 1,000 workers;

(9) The average number of days the Bureau takes to adjudicate an injured worker's medical bill fee;

(10) The return-to-work rate of state fund employers' injured workers who do not receive workers' compensation benefits for at least 90 days following their injury, which reports the number of injured workers who returned to work as a percentage of total injuries;

(11) The average number of days it takes for an employer or injured worker to report an injury to the Bureau, which is calculated by taking the average number of days between the date of injury and the date the claim was filed with the Bureau;

(12) The percentage of indemnity claims adjudicated by the Bureau within 14 days of the injury.

Revisions regarding the Head Injury Program and Advisory Committee

(secs. 3304.23 and 3304.231)

The bill renames the Head Injury Program, the Brain Injury Program under the Rehabilitation Services Commission and designates the Administrator of Workers' Compensation as a member of the Brain Injury Advisory Committee in place of the Industrial Commission Chairperson. The bill also specifies that the members of the Advisory Committee who represents the National Head Injury Foundation/Ohio, Inc., is replaced by a member who represents the Brain Injury Association of Ohio.*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-16-99	p. 199
Reported, H. Finance & Appropriations	03-03-99	p. 257

* *The National Head Injury Foundation/Ohio, Inc., appears to be the predecessor of the Brain Injury Association of Ohio.*

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