



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 348

125th General Assembly
(As Introduced)

**Reps. Willamowski, Setzer, Hartnett, Seitz, Mason, Harwood, Skindell,
Hughes, Olman, T. Patton**

BILL SUMMARY

- Expands the requirement that every clerk of a court of common pleas send to the Department of Insurance annual reports containing specified information relating to each civil action upon a medical, dental, optometric, or chiropractic claim filed or pending in the court to require that the clerk send the specified information to the Department of Insurance and to the Supreme Court and that the specified information be provided for each tort action filed or pending in the court.
- For the purpose of paying the costs of making those reports, expands the requirement that the court of common pleas collect \$5 as an additional filing fee in each civil action upon a medical, dental, optometric, or chiropractic claim that is filed in the court to require that the additional fee be collected in each tort action that is filed in the court.
- Creates a 13-member Commission on Responsible Legal Reform to perform specified duties, including the determination of the number of cases in Ohio that involve certain large amounts of awards of noneconomic damages and punitive or exemplary damages and the analyses of their impact on taxpayers, victims and their families, businesses, and the court system; the evaluation of the effect of assigning a percentage of punitive or exemplary damages awards to a charity; the determination of information regarding health care insurance subrogation clauses; the determination of whether it is in the best interest of Ohioans to enact a statute of repose in product liability actions; the consideration of the concept of "useful safe life," and the evaluation of the effect of changes in the prejudgment interest law on tort settlements.

CONTENT AND OPERATION

Existing law

Existing law requires that, before January 15 of each year, every clerk of a court of common pleas in Ohio send to the Department of Insurance an annual report containing all of the following information relating to each *civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim* (see **COMMENT 1**) that was filed or is pending in that court of common pleas (R.C. 2303.23(A)):

- (1) The style and number of the case;
- (2) The date of the filing of the case;
- (3) Whether or not there has been a trial and the dates of the trial if there was a trial;
- (4) The current status of the case;
- (5) Whether or not the parties have agreed on a settlement of the case;
- (6) Whether or not a judgment has been rendered, the nature of the judgment, including the amounts of the compensatory damages that represent economic loss and noneconomic loss, and the date of entry of the judgment;
- (7) If a judgment has been rendered, whether or not a notice of appeal of the judgment has been filed or whether the time for filing an appeal has expired.

If a report that relates to a specific *civil action* includes the information specified above in clauses (6) and (7) with respect to that action or if the parties have agreed on a settlement, the succeeding annual report that the clerk of the court sends to the Department of Insurance no longer may include the information described above with respect to that action (R.C. 2303.23(B)).

For the purpose of paying the costs of implementing the reporting requirements, the court of common pleas must collect the sum of \$5 as additional filing fees in each *civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim* that is filed in the court (R.C. 2303.23(C)).

Operation of the bill

The bill requires that, before January 15 of each year, every clerk of a court of common pleas in Ohio send to the Department of Insurance *and the Supreme Court* an annual report containing all of the information listed in clauses (1) to (7)

in "Existing law," above, relating to each *tort action* (changed from "civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim") that was filed or is pending in that court of common pleas. The bill defines "tort action" as a civil action for damages for injury, death, or loss to person or property, including a product liability claim, but not including a civil action for damages for a breach of contract or another agreement between persons. (R.C. 2303.23(A) and (D) and by reference to R.C. 2307.011(K).)

If a report that relates to a specific *tort action* includes the information specified above in clauses (6) and (7) in "Existing law" with respect to that action or if the parties have agreed on a settlement, the succeeding annual report that the clerk of the court sends to the Department of Insurance and the Supreme Court no longer must include the information described in "Existing law," above, with respect to that action (R.C. 2303.23(B)).

For the purpose of paying the costs of implementing the reporting requirements, the court of common pleas must collect the sum of \$5 as additional filing fees in each *tort action* that is filed in the court (R.C. 2303.23(C)).

Commission on Responsible Legal Reform

The bill creates the Commission on Responsible Legal Reform, consisting of 13 members. The President of the Senate appoints four of the members, and the Speaker of the House appoints four of the members. The Minority Leader of the Senate appoints two members, and the Minority Leader of the House of Representatives appoints two members. The Superintendent of Insurance or the Superintendent's designee is the 13th member of the Commission. Of the four members appointed by the President of the Senate, one must represent the Ohio Chamber of Commerce, one must represent the Ohio Manufacturer's Association, one must represent the National Federation of Independent Businesses-Ohio, and one must represent the Senate Majority Caucus. Of the four members appointed by the Speaker of the House of Representatives, one must represent the Ohio Academy of Trial Lawyers, one must represent the Ohio State Bar Association, one must represent the American Association of Retired Persons-Ohio, and one must represent the House Majority Caucus. Of the two members appointed by the Minority Leader of the Senate, one must represent the Ohio Common Pleas Judges Association and one must represent the Senate Minority Caucus. Of the two members appointed by the Minority Leader of the House of Representatives, one must represent the Ohio AFL-CIO and one must represent the House Minority Caucus. (Section 3(A).)

Duties of Commission

The bill requires the Commission to do all of the following (Section 3(B)):

(1)(a) Determine the number of cases annually in Ohio that involve awards for compensatory damages for noneconomic loss that are greater than \$250,000 and the number of cases annually in Ohio that involve awards for compensatory damages for noneconomic loss that are greater than \$1 million;

(b) Analyze the impact of awards for compensatory damages for noneconomic loss that are greater than \$250,000 and awards for compensatory damages for noneconomic loss that are greater than \$1 million on taxpayers, injury and wrongful death victims and their families, the competitiveness of businesses, and the court system.

(2)(a) Determine the number of cases annually in Ohio that involve awards for punitive or exemplary damages that are greater than \$100,000 and the number of cases annually in Ohio that involve awards for punitive or exemplary damages that are greater than \$1 million;

(b) Analyze the impact of awards for punitive or exemplary damages that are greater than \$100,000 and awards for punitive or exemplary damages that are greater than \$1 million on taxpayers, victims and their families, businesses, and the court system;

(c) Evaluate the effect of assigning a percentage of an award for punitive or exemplary damages to a charity, including the legal implications of making that charity a party to the action.

(3)(a) Determine the number of health care insurance entities that currently include subrogation clauses in order to evaluate the potential savings that may result from abolishing the collateral source rule (see **COMMENT 2**);

(b) Consider the impact on the court system of litigating the issue regarding subrogation clauses in front of a jury.

(4)(a) Determine the number of actions filed in the last ten years in Ohio in which the person filing the action discovered the injury that is the basis of the action after the statute of limitations had run and, for each of those actions, compare the time when that person is alleging the injury occurred with the time when that person filed the action;

(b) Determine whether or not it is in the best interest of the people of Ohio to enact a statute of repose in product liability actions;



(c) Consider the concept of "useful safe life."

(5) Evaluate the effect changes in the prejudgment interest law would have on settlements in tort actions.

Report

The bill requires the Commission to submit a report of its findings to the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, the Minority Leader of the Senate, and the Governor by December 31, 2004 (Section 3(C)).

COMMENT

1. Existing R.C. 2303.23(D) defines "medical claim," "dental claim," "optometric claim," and "chiropractic claim" as in R.C. 2305.113(E), not in the bill, which defines those terms as follows:

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following:

(a) Derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person;

(b) Claims that arise out of the medical diagnosis, care, or treatment of any person and to which either of the following applies:

(i) The claim results from acts or omissions in providing medical care.

(ii) The claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment.

(c) Claims that arise out of the medical diagnosis, care, or treatment of any person and that are brought under section 3721.17 of the Revised Code.

...

(6) "Dental claim" means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. "Dental claim" includes derivative claims for relief that arise from a dental operation or the dental diagnosis, care, or treatment of a person.

...

(9) "Chiropractic claim" means any claim that is asserted in any civil action against a chiropractor, or against any employee or agent of a chiropractor, and that arises out of the chiropractic diagnosis, care, or treatment of any person. "Chiropractic claim" includes derivative claims for relief that arise from the chiropractic diagnosis, care, or treatment of a person.

...

(11) "Optometric claim" means any claim that is asserted in any civil action against an optometrist, or against any employee or agent of an optometrist, and that arises out of the optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative claims for relief that arise from the optometric diagnosis, care, or treatment of a person.

2. In *Pryor v. Weber* (1970), 23 Ohio St.2d 104, in paragraphs 2 and 3 of the Syllabus, the Supreme Court held as follows:

2. The collateral source rule is an exception to the general rule of compensatory damages in a tort action, and evidence of compensation from collateral sources

is not admissible to diminish the damages for which a tort-feasor must pay for his negligent act.

3. Under the collateral source rule, benefits in the form of diminished wages, received by a plaintiff from his employer during the period he is not able to work because of a tort-feasor's negligent act are collateral benefits and are not admissible on the issue of damages. However, if the tort-feasor claims that benefits received are not collateral but are direct benefits, the burden of establishing that such benefits are direct benefits, and therefore admissible on the issue of damages, is on the tort-feasor.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-09-03	p. 1260

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