



## *Final Analysis*

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*Legislative Service Commission*

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(As Passed by the General Assembly)

(Excluding appropriations, fund transfers, and similar provisions)

- Reps. Brinkman, Adams, Bacon, Batchelder, Blessing, Boyd, Bubp, Chandler, Coley, Combs, Flowers, Gibbs, Goodwin, Hottinger, Huffman, Hughes, Otterman, Patton, Uecker, Widowfield, S. Williams, Zehringer**
- Sens. D. Miller, Kearney, Faber, Stivers, Clancy, Schaffer, Cates, Amstutz, Buehrer, Fedor, Goodman, Harris, Mason, R. Miller, Mumper, Padgett, Roberts, Sawyer, Schuring, Smith, Spada, Wilson, Gardner**

**Effective date: September 10, 2007; certain provisions effective June 11, 2007; certain other provisions effective August 10, 2007**

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## **ACT SUMMARY**

### **WORKERS COMPENSATION**

- Abolishes the Workers' Compensation Oversight Commission, the Services Committee of the Workers' Compensation System, and the Internal Security Committee.
- Creates the Bureau of Workers' Compensation Board of Directors, and three working committees: the Workers' Compensation Audit Committee, the Workers' Compensation Actuarial Committee, and the Workers' Compensation Investment Committee.
- Transfers the powers and the duties of the Oversight Commission to the Board and the working committees.
- Requires the Board, in addition to the Administrator of Workers' Compensation, to safeguard and maintain the solvency of the State Insurance Fund.
- Creates the Workers' Compensation Council and specifies the Council's duties.

- Requires the Investment Committee to develop, and the Board to approve, the investment policy for the investment of the funds specified in the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.).
- Requires the Governor and the Board to meet annually to evaluate the Administrator's performance.
- Requires the Board, based upon recommendations of the Actuarial Committee, to specify the policy for the Adjudicating Committee's procedures.
- Allows the Board to create additional committees as the Board determines necessary.
- Specifies additional duties for the Board and the working committees.
- Creates the Office of the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission in the Office of the Inspector General and requires the Deputy Inspector General to conduct investigations regarding the conduct of Bureau of Workers' Compensation (BWC) and Industrial Commission officers and employees.
- Requires the Administrator, by June 30, 2008, to transition from using the Micro Insurance Reserve Analysis System to a different system or different version of that system that is transparent in nature to determine the reserves used in establishing premium rates.
- Allows the Administrator, under specified conditions, to discontinue an employer's workers' compensation coverage if the employer fails to pay the employer's premium or other obligations when due.
- Requires the Administrator to charge an employer's account for the payment of compensation and medical benefits after the employer waives or exhausts the employer's administrative appeals.
- Specifies that the payment of medical benefits, in addition to compensation under continuing law, cannot be stayed pending an appeal of an Industrial Commission or designated staff hearing officer's order or the filing of any court action.

- Modifies continuing law regarding the payment of compensation for subsequent periods of total disability during the pendency of an appeal to specify that an appeal or court filing described in the dot point immediately above does not stay the payment for subsequent periods of total disability or medical benefits during the pendency of an appeal.
- Requires the Administrator to use the same procedures the Administrator uses to obtain payments from private employers when collecting payments from certain public employers.
- Allows organizations that sponsor more than one group plan to submit a single application that supplies all the information necessary for each group that the organization sponsors.
- Requires the Administrator, if a group rated employer's premium rate changed from the previous calculation of premium rates, to send a copy of the invoice with the rate revision to the third party administrator that administers the group plan for that employer's group.
- Increases the threshold for the Medical-Only Claim Program from \$5,000 to \$15,000, and specifies, in statute, additional requirements employers participating in the Program must satisfy.
- Requires the Administrator to employ an actuary.

#### **LONG-TERM CARE PARTNERSHIP PROGRAM**

- Creates the state long-term care partnership program in conformity to certain federal tax code requirements.
- Adds consumer protection requirements for long-term care insurance including disclosures, inflation protection, nonforfeiture benefits, and restrictions on rescinding a contract or denying a claim.
- Requires agents selling, soliciting, or negotiating long-term care insurance after September 1, 2008 to complete training and continuing education requirements specific to the state long-term care partnership program.
- Grants the Superintendent of Insurance authority to adopt rules concerning the state long-term care partnership program.

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## CONTENT AND OPERATION

### WORKERS COMPENSATION

#### *Abolition of the Workers' Compensation Oversight Commission and specified committees*

The act abolishes the following three entities: (1) the Workers' Compensation Oversight Commission, which performed various duties under the Workers' Compensation Law, (2) the Services Committee of the Workers' Compensation System, which coordinated data and management services between the Bureau of Workers' Compensation (BWC) and the Industrial Commission, and (3) the Internal Security Committee, which investigated all claims or cases of criminal violations, abuse of office, or misconduct on the part of BWC or Industrial Commission employees. (R.C. 4121.12 and 4121.122, former R.C. 4121.06, and Sections 512.10, 512.30, and 512.40.)

#### *Transfer of duties*

The act creates the Bureau of Workers' Compensation Board of Directors (see "*Oversight Commission and Bureau of Workers' Compensation Board of Directors*," below) and three working committees of the Board (the Workers' Compensation Audit Committee, Workers' Compensation Actuarial Committee, and Workers Compensation Investment Committee; see "*Working Committees*," below). The act also creates the Workers' Compensation Council (see "*Workers' Compensation Council*," below) and the Office of the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission (see "*Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission*," below). The act transfers several of the former Oversight Commission's duties to the Board or the appropriate working committee, and also transfers some of the duties of the Administrator to the Board.

The table below gives an overview of the major duty transfers required by the act. The table is not exhaustive and does not specify all of the Board's duties under the act or the Administrator's duties under the act or law unchanged by the act.

<i>Duty</i>	<i>Who performed the duty under former law</i>	<i>Who performs the duty under the act</i>
Establishing the overall administrative policy of the BWC.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4121.121).	The Board (R.C. 4121.12).
Safeguarding and maintaining the solvency of the State Insurance Fund.	The Administrator (R.C. 4123.29(A)(2) and 4123.34).	The Administrator and the Board (R.C. 4123.29(A)(2) and 4123.34).
Classifying occupations and industries for the purpose of determining employer premium rates.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4121.121(B)(5) and 4123.29(A)).	The Administrator, with the advice and consent of the Board (R.C. 4121.121(B)(5) and 4123.29(A)).
Fixing premium rates based upon the classes of occupation and industry.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 119.01, 4123.29(A)(2), 4123.34, 4123.35, 4127.07, 4131.04, and 4131.14).	The Administrator, with the advice and consent of the Board (R.C. 119.01, 4123.29(A)(2), 4123.34, 4123.35, 4127.07, 4131.04, and 4131.14).
Revising basic employer premium rates and adopting rules governing rate revision.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.34(B)).	The Administrator, with the advice and consent of the Board (R.C. 4123.34(B)).
Adopting rules to establish employer premium security deposits.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.32(F)).	The Administrator, with the advice and consent of the Board (R.C. 4123.32(E)).
Establishing the Disabled Worker Relief Fund assessment rate and the amount of annual contributions from employers.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.411).	The Administrator, with the advice and consent of the Board (R.C. 4123.411).

<b><i>Duty</i></b>	<b><i>Who performed the duty under former law</i></b>	<b><i>Who performs the duty under the act</i></b>
Establishing alternative premium plans (e.g. retrospective rating plans, group rating plans, and the one-claim program).	The Administrator, subject to the approval of the Oversight Commission ( <i>R.C. 4123.29(A)(3) and (4)</i> ).	The Administrator, subject to the approval of the Board ( <i>R.C. 4123.29(A)(3) and (4)</i> ).
Electing to adopt rules to grant a discount to employers who pay their semiannual premium at least one month before it is due.	The Administrator, with the advice and consent of the Oversight Commission ( <i>R.C. 4123.29(B)(1)</i> ).	The Administrator, with the advice and consent of the Board ( <i>R.C. 4123.29(B)(1)</i> ).
Adopting rules to provide employer premium rebates and dividends.	The Administrator, with the advice and consent of the Oversight Commission ( <i>R.C. 4123.32(A)</i> ).	The Board, based upon recommendations of the Actuarial Committee ( <i>R.C. 4123.321</i> ).
Establishing a merit rate system for employer premiums.	The Administrator, with the advice and consent of the Oversight Commission ( <i>R.C. 4121.12, 4121.121, and 4123.34(C)</i> ).	The Administrator, with the advice and consent of the Board ( <i>R.C. 4121.12, 4121.121, and 4123.34(C)</i> ).
Establishing the investment policy for the funds specified in the Workers' Compensation Law ( <i>R.C. Chapters 4121., 4123., 4125., 4127., 4131., and 4167.</i> ).	The Oversight Commission ( <i>R.C. 3345.12 and 4121.12</i> ).	The Workers' Compensation Investment Committee develops the policy, which must be approved by the Board ( <i>R.C. 3345.12, 4121.12, 4121.129, 4123.44, and 4123.442</i> ).
Contracting with actuarial firms to perform audits determined necessary.	The Oversight Commission ( <i>R.C. 4121.125</i> ).	The Board, based upon recommendations of the Actuarial Committee ( <i>R.C. 4121.129 and 4121.125</i> ).
Having an independent auditor conduct a fiduciary performance audit of the BWC investment program and the investment policy.	The Oversight Commission ( <i>R.C. 4121.125(D)</i> ).	The Board ( <i>R.C. 4121.125(D)</i> ).

<i>Duty</i>	<i>Who performed the duty under former law</i>	<i>Who performs the duty under the act</i>
Selecting an accounting firm for the annual audit of the funds specified in the Workers' Compensation Law.	The Administrator (R.C. 4123.47).	The Board, with Audit Committee recommendations (R.C. 4121.129 and 4123.47).
Electing to purchase reinsurance for the State Insurance Fund and other specified funds.	The Administrator (R.C. 4123.351, 4123.82, and 4131.13).	The Board (R.C. 4123.351, 4123.82, and 4131.13).
Appointment of the Bureau of Workers' Compensation Chief Investment Officer.	BWC, with the advice and consent of the Oversight Commission (R.C. 1707.01 and 4123.441).	The Administrator, with the advice and consent of the Board (R.C. 1707.01 and 4123.441).
Establishing the fee for applications for a temporary variance from a Public Employment Risk Reduction Program standard.	The Oversight Commission (R.C. 4167.09).	The Board (R.C. 4167.09).

**Oversight Commission and Bureau of Workers' Compensation Board of Directors**

The act abolishes the Oversight Commission. The former Oversight Commission consisted of 11 members, five of whom were appointed by the Governor and represented employers, employees, organized labor, and the public. No more than three of these five members could belong to or be affiliated with the same political party. The Oversight Commission also consisted of two investment expert members, one member who was appointed by the Treasurer of State, and one who was appointed jointly by the President of the Senate and the Speaker of the House of Representatives. All of these members served three-year terms and could serve a maximum of two full terms. The Oversight Commission also consisted of four legislative members who served in an advisory capacity to the Oversight Commission. (R.C. 4121.12(A), (D), and (E).)

Under former law, the Oversight Commission had to meet at least nine times a year. Members appointed by the Governor and the investment expert members received \$2,000 per meeting that a member attended, except that that amount was capped at \$18,000 per year regardless of whether the member attended more than nine meetings that year. All members received their necessary and reasonable expenses. (R.C. 4121.12(F).)



The act creates the Bureau of Workers' Compensation Board of Directors consisting of 11 members who the Governor appoints with the advice and consent of the Senate. The Governor cannot appoint any individual who was a member of the Oversight Commission on the act's effective date to serve as a member of the Board (Section 512.10). The Governor must appoint the following members to the Board:

- One member who, on account of the individual's previous vocation, employment, or affiliations, can be classed as a representative of employees;
- Two members who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employee organizations, and at least one of these two individuals must be a member of the executive committee of the largest statewide labor federation;
- Three members who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employers, one of whom represents self-insuring employers, one of whom is a state fund employer who employs 100 or more employees, and one of whom is a state fund employer who employs less than 100 employees;
- Two members who, on account of their vocation, employment, or affiliations, can be classed as investment and securities experts who have direct experience in the management, analysis, supervision, or investment of assets and are residents of this state;
- A certified public accountant;
- An actuary who is a member in good standing with the American Academy of Actuaries or who is an associate or fellow with the Society of Actuaries;
- A member who represents the public who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or employers (R.C. 4121.12(A)).

In making appointments of initial members to the Board, the Governor must select the members from the list of four names for each member's position as submitted by the Workers' Compensation Board of Directors Nominating Committee (renamed under the act from "Workers' Compensation Oversight

Commission Nominating Committee" under former law). The Nominating Committee must submit the initial list of names to the Governor within 30 days after the act's effective date. Within 14 days after submission of the initial list, the Governor either must appoint individuals from that initial list or request the Nominating Committee to submit another list of four names for each member the Governor has not appointed from the initial list. The Nominating Committee must submit a second list to the Governor within seven days after the Governor's request for a second list. The Governor then must appoint, within seven days after submission of the second list, one of the individuals from either list to fill any position for which the Governor has not made an appointment from the initial list. (Section 512.10.)

The act prohibits the appointment of any person who, within one year immediately preceding appointment, has been employed by the BWC or by any person, partnership, or corporation that has provided to the BWC services of a financial or investment nature, including the management, analysis, supervision, or investment of assets. The act does not limit appointment of Board members due to political party affiliation unlike prior law, which allowed only three of the five members of the Oversight Commission who were appointed by the Governor to be affiliated with the same political party. (R.C. 4121.12(A).)

Board members serve three-year terms, and the act staggers the terms of the initial appointees. Members may be reappointed, and the act includes standard provisions for the filling of vacancies. The act requires the Nominating Committee to follow the same procedure for filling vacancies as for initial appointments with respect to submission of an initial list followed by a second list if the Governor requests a second list. The act does not limit the number of terms a Board member may serve; under former law members of the Oversight Commission could not be appointed to more than two full terms. (R.C. 4121.12(B).) Before entering upon the duties of office, each appointed member of the Board must take an oath of office and file a fiduciary bond in the office of the Secretary of State as required under former law for the Oversight Commission (R.C. 4121.12(E)).

The Board must meet at least 12 times a year. Each Board member receives necessary and reasonable expenses and an annual salary not to exceed \$60,000 in total payable on the following basis:

(1) A member receives \$2,500 per each month that the member attends a board meeting, up to a maximum of \$30,000 per year regardless of the number of meetings the member attends;

(2) If a member serves on the Audit Committee, Actuarial Committee, or Investment Committee, the member receives \$2,500 per each month the member

attends one or more meetings of the committee on which the member serves, up to a maximum of \$30,000 per year regardless of the number of meetings held by a committee during a year or the number of committees on which a member serves. (R.C. 4121.12(D).)

The act specifies that the Oversight Commission is abolished on the date the Governor appoints the last member to the Board (Section 512.10). The Board, under the act, supercedes the Oversight Commission and its members and must succeed to, have, and perform all the duties, powers, and obligations pertaining to the duties, powers, and obligations of the Oversight Commission and its members. For the purpose of the institution, conduct, and completion of matters relating to its succession, the Board is deemed to be the continuation of and successor under law to the Oversight Commission and its members. Under the act, all rules, actions, determinations, commitments, resolutions, decisions, and agreements pertaining to those duties, powers, obligations, functions, and rights in force or in effect on the effective date of this provision continue in force and effect subject to any further lawful action thereon by the Board. The act specifies that wherever the Oversight Commission or its members are referred to in any provision of law, or in any agreement or document that pertains to those duties, powers, obligations, functions, and rights, the reference is to the Board. (Section 512.10.)

Under the act, all authorized obligations and supplements thereto of the Oversight Commission and its members pertaining to the duties, powers, and obligations transferred are binding on the Board, and nothing in the act impairs the obligations or rights thereunder or under any contract. The abolition of the Oversight Commission and the transfer of the Oversight Commission's duties, powers, and obligations do not affect the validity of agreements or obligations made by the Oversight Commission or its members pursuant to the Workers' Compensation Law or any other provisions of law. (Section 512.10.)

In connection with the transfer of duties, powers, obligations, functions, and rights and abolition of the Oversight Commission, the act automatically transfers all real property and interest therein, documents, books, money, papers, records, machinery, furnishings, office equipment, furniture, and all other property over which the Oversight Commission had control pertaining to the duties, powers, and obligations transferred and the rights of the Oversight Commission to enforce or receive any of the aforesaid to the Board without necessity for further action on the part of the Board. Additionally, under the act, all appropriations or reappropriations made to the Oversight Commission for the purposes of the performance of its duties, powers, and obligations, are transferred to the Board to the extent of the remaining unexpended or unencumbered balance thereof, whether allocated or unallocated, and whether obligated or unobligated. (Section 512.10.)



### *Fiduciary responsibilities*

The act names the Board members, instead of the voting members of the Oversight Commission, the Administrator, and the BWC Chief Investment Officer as the trustees of the State Insurance Fund (R.C. 4123.44). Under the act, all Board members, rather than only the voting members of the Oversight Commission, the BWC Director of Investments, and the Director appointed by the Workers' Compensation Council must file a disclosure statement with the appropriate ethics commission, in addition to the Administrator and the BWC Chief Investment Officer, who are required to do so under continuing law (R.C. 102.02 and 102.06). The act also transfers the fiduciary duties and responsibilities of the Oversight Commission members to the Board members. Additionally, the Board members are subject to the same conflict of interest prohibitions as the former Oversight Commission members. (R.C. 4121.126 and 4121.127, not in the act.) The Attorney General is the legal advisor for the Board. Similar to former law regarding a breach of fiduciary duty by a voting member of the Oversight Commission, if a member of the Board breaches the member's fiduciary duty to the BWC, the Attorney General may maintain a civil action against the member for harm resulting from that breach. Notwithstanding the designation of the Attorney General as legal advisor for the Board, after being informed of an allegation that the entire Board has breached its fiduciary duty, the Board may retain independent legal counsel, including legal counsel provided by the Board's fiduciary insurance carrier, to advise and represent the Board. (R.C. 109.981, 4121.128, and 4123.92.)

Under former law, if a member of the Oversight Commission was convicted of or pleaded guilty to a felony, a theft offense, a violation of the duties and restrictions specified in the Ohio Elections Law (R.C. Chapter 102.), or other offenses relating to the performance of a person's duties in a public office, the office of that member was deemed vacant. A member who received a bill of indictment for any of the aforementioned offenses was automatically suspended from the Oversight Commission pending resolution of the criminal matter. A person who had pleaded guilty to or been convicted of any of the aforementioned offenses was ineligible to be a member of the Oversight Commission. The act makes these provisions applicable to the Board. (R.C. 4121.12(H).)

### *Duties*

In addition to the duties specified under "*Transfer of duties*" above, the act transfers the following duties from the Oversight Commission to the Board:

(1) Review progress of the BWC in meeting its cost and quality objectives and in complying with the Workers' Compensation Law.

- (2) Review all independent financial audits of the BWC.
- (3) Study issues as requested by the Administrator or the Governor.
- (4) Review and publish the investment policy no less than annually and make copies available to interested parties.
- (5) Prohibit, on a prospective basis, any specific investment it finds contrary to the investment policy.
- (6) Vote to open each investment class and allow the Administrator to invest in an investment class only if the Board, by a majority vote, opens that class.
- (7) After opening a class but prior to the Administrator investing in that class, adopt rules establishing due diligence standards for BWC employees to follow when investing in that class and establish policies and procedures to review and monitor the performance and value of each investment class.
- (8) Submit a report annually on the performance and value of each investment class to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives.
- (9) Advise and consent on specified rules the Administrator adopts and on specified programs the Administrator administers (see **Rule adoption**," below) (R.C. 4121.12(F)).

The Oversight Commission formerly was required to contract with an independent actuarial firm to assist the Oversight Commission in making recommendations to the Administrator regarding premium rates (former R.C. 4121.12(G)(5)). The act also transfers this duty to the Board and additionally requires the Board to contract with: (1) outside investment counsel to assist the Investment Committee in fulfilling its duties and (2) an independent fiduciary counsel to assist the Board in the performance of its duties (R.C. 4121.12(F)(6)).

The act requires the Board to meet with the Governor on an annual basis to discuss the Administrator's performance of the duties specified in the Workers' Compensation Law (R.C. 4121.12(F)(15)). The act specifies that for purposes of Ohio's Open Meetings Law (R.C. 121.22, not in the act), the meeting between the Governor and the Board to review the Administrator's performance is considered a meeting regarding the employment of the Administrator, and as such, can be held as an executive session (R.C. 4121.12(I)). The act also requires the Board, based upon recommendations of the Actuarial Committee, to establish the policy for all adjudicating procedures, including, but not limited to, specific criteria for manual premium rate adjustment (R.C. 4123.291).

### **Annual report**

Former law required the Oversight Commission to issue an annual report on the cost and quality objectives of the BWC to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The act transfers this duty to the Board, requires the Board also to submit the annual report to the Workers' Compensation Council (see "**Workers' Compensation Council**," below), and expands the information that must be included in the report to include:

(1) A statement of the net assets available for the provision of compensation and benefits under the Workers' Compensation Law as of the last day of the fiscal year;

(2) A statement of any changes that occurred in the net assets available, including employer premiums and net investment income, for the provision of compensation and benefits and payment of administrative expenses, between the first and last day of the fiscal year immediately preceding the date of the report;

(3) The following information for each of the six consecutive fiscal years occurring previous to the report:

(a) A schedule of the net assets available for compensation and benefits;

(b) The annual cost of the payment of compensation and benefits;

(c) Annual administrative expenses incurred;

(d) Annual employer premiums allocated for the provision of compensation and benefits.

(4) A description of any significant changes that occurred during the six years for which the Board provided the information required under (3) above that affect the Board's ability to compare that information from year to year (R.C. 4121.12(F)(3)).

### **Bureau of Workers' Compensation Board of Directors Training Program**

Under the act the Board must develop and participate in a BWC Board of Directors Education Program that consists of an orientation component for newly appointed members and a continuing education component for board members who have served for at least one year. The program's curriculum must include education about each of the following topics: (1) Board member duties and responsibilities, (2) compensation and benefits paid pursuant to the Workers' Compensation Law, (3) ethics, (4) governance processes and procedures, (5) actuarial soundness, (6) investments, (7) any other subject matter the Board

believes is reasonably related to a Board member's duties. The Board must submit the program to the Workers' Compensation Council for approval and must hold all sessions, classes, and other events for the program in Ohio. (R.C. 4121.12(F)(16) to (18).)

### **Actuarial reports and investigations**

The Administrator is required by the act to employ an actuary on or before nine months after the act's effective date. (R.C. 4121.121(B)(2) and Section 512.60.)

The act requires the Board to contract to have prepared annually by or under the supervision of an actuary a report that consists of an actuarial valuation of the assets, liabilities, and funding requirements of the BWC funds.<sup>1</sup> The firm or person must prepare a report of the valuation and include all of the following information in the report:

- A summary of the compensation and benefit provisions evaluated;
- A summary of the census data and financial information used in the valuation;
- A description of the actuarial assumptions, actuarial cost method, and asset valuation method used in the valuation;
- A summary of findings that includes a statement of the actuarial accrued compensation and benefit liabilities and unfunded actuarial accrued compensation and benefit liabilities;
- A schedule showing the effect of any changes in the compensation and benefit provisions, actuarial assumptions, or cost methods since the previous annual actuarial valuation report was submitted to the Board. The firm or person must submit the report to the Board, and the Board must submit the report to the Workers' Compensation Council and the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation not later than the first day of September following the year for which the valuation was made. (R.C. 4121.125(C)(1) to (3) and (E).)

The Board also must have an actuary or a person who provides actuarial services under the supervision of an actuary, at such time as the Board determines,

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<sup>1</sup> BWC funds are those funds specified in the Workers' Compensation Law.

and at least once during the five-year period that commences on the act's effective date and once within each five-year period thereafter, conduct an actuarial investigation of the experience of employers; the mortality, service, and injury rate of employees; and the payment of temporary total disability, permanent partial disability, and permanent total disability to update the actuarial assumptions used in the annual valuation report described immediately above (R.C. 4121.125(C)(4)). The actuary or person whom the board designates to conduct the actuarial investigation must prepare a report that includes all of the following information in the report:

- A summary of relevant decrement and economic assumption experience;
- Recommended changes in actuarial assumptions to be used in subsequent annual actuarial valuations;
- A measurement of the financial effect of the recommended changes in actuarial assumptions. (R.C. 4121.125(F).) The actuary or person must submit the report to the Board, who then must submit this report to the Council and the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation not later than the first day of November following the fifth year of the period that the report covers (R.C. 4121.125(C)(5)).

Finally, the Board also must have prepared by or under the supervision of an actuary an actuarial analysis of any introduced legislation expected to have a measurable financial impact on the workers' compensation system (R.C. 4121.125(C)(6)). The actuary or person whom the board designates to conduct the actuarial analysis must prepare a report that includes all of the following information in that analysis:

- A summary of the statutory changes being evaluated;
- A description of or reference to the actuarial assumptions and actuarial cost method used in the report;
- A description of the participant group or groups included in the report;
- A statement of the financial impact of the legislation, including the resulting increase, if any, in employer premiums, in actuarial accrued liabilities, and, if an increase in actuarial accrued liabilities is predicted, the percent of premium increase that would be required to amortize the increase in those liabilities as a level percent of employer premiums over a period not to exceed 30 years.

- A statement of whether the employer premiums paid to BWC after the proposed change is enacted are expected to be sufficient to satisfy the funding objectives established by the Board (R.C. 4121.125(G)). The actuary or person must submit this report to the Board, who then must submit this report to the Legislative Service Commission, the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation, and the Council not later than 60 days after the date of introduction of the legislation (R.C. 4121.125(C)(7)).

All reports prepared by an actuary or person supervised by an actuary must be completed in accordance with the actuarial standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries (R.C. 4121.125(C)(2), (F), and (G)). The Board may, at any time, request an actuary to make any studies or actuarial valuations to determine the adequacy of the premium rates established by the Administrator, and may adjust those rates as recommended by the actuary. (R.C. 4121.125(H).)

### **Rule adoption**

Under the act, in addition to the rules specified under "**Transfer of duties**," above for which the Administrator must obtain the Board's advice and consent, the Administrator must obtain the advice and consent of the Board rather than the Oversight Commission, as under former law, when adopting rules regarding or providing for any of the following:

- (1) For the Health Partnership Program and Qualified Health Plan System (R.C. 4121.12 and 4121.441);
- (2) Regarding loans from the Long-Term Care Loan Fund and transferring money from the Safety and Hygiene Fund to the Long-Term Loan Care Fund (R.C. 4121.48);
- (3) Regarding rehabilitation programs (R.C. 4121.67);
- (4) Specifying the acts or omissions that constitute a violation of the prohibition against misrepresenting payroll and the penalties for such violations (R.C. 4123.25);
- (5) Regarding the utilization of direct deposit (R.C. 4123.311);
- (6) Governing the treatment of employers who violate the prohibition against causing an employer to fail to pay the employer's premium or assessment when due (R.C. 4123.50);

(7) Identifying medical conditions that have an historical record being allowed whenever included in a claim (R.C. 4123.511(A));

(8) Regarding furnishing medical, nurse, and hospital service and medicine to injured employees (R.C. 4123.66);

(9) Regarding the employment of persons who are blind and the inspection of their places of employment (R.C. 4123.80);

(10) Requiring a professional employer organization to provide security in the form of a bond or a line of credit assignable to BWC (R.C. 4125.05);

(11) Regarding the Public Employment Risk Reduction Program (PERRP), declining to adopt a federal Occupational Health and Safety Administration rule for PERRP, and adopting emergency standards (R.C. 4121.12(F)(13)(d) (the act), 4121.12(G)(8) (former law), 4167.02, 4167.07, 4167.08, 4167.11, and 4167.14).

#### **Additional duties of the Administrator that require oversight**

In addition to the duties specified under "Transfer of duties," above for which the Administrator must obtain the Board's advice and consent, under the act, the Administrator must obtain the advice and consent of the Board rather than the Oversight Commission, as under former law, when performing any of the following duties:

(1) Employing the Superintendent of the Division of Safety and Hygiene and directing the Superintendent and the employees of the Division in conducting investigations regarding preventing industrial accidents and promoting safe practices (R.C. 4121.12 and 4121.37);

(2) Adopting rules, taking measures, and making expenditures to aid claimants to return to work or assist in lessening or removing any resulting handicap (R.C. 4121.61);

(3) Adjusting the rate of disbursements from the Public Work-Relief Employees' Compensation Fund (R.C. 4127.07);

(4) Determining when premiums for the Marine Industry Fund and the Coal-Workers Pnuemoconiosis Fund must be paid (R.C. 4131.04 and 4131.14).

#### **Workers' Compensation Council**

The act creates the Workers' Compensation Council and states that it is created for the purpose of reviewing the soundness of the workers' compensation system and legislation involving or affecting the workers' compensation system.

The act specifies that the Council cannot be involved in the daily operations and oversight of the BWC or Industrial Commission. The Council, as created by the act, consists of the following 11 members:

(1) Three members of the Senate, appointed by the President of the Senate, not more than two of whom may be members of the same political party;

(2) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, not more than two of whom may be members of the same political party;

(3) Five members jointly appointed by the Senate President and the Speaker, not more than three of whom are members of the same political party, one of whom must represent employers who employ 100 or more employees, one of whom must represent employers who employ less than 100 employees, one of whom must represent employees, one of whom must represent injured workers, and one of whom must represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers. Of these five members, at least one must be a person with investment expertise.

(4) The chairperson of the Industrial Commission and the Administrator, who are nonvoting ex officio members of the Council (R.C. 4121.75(A) and (B)).

The President and the Speaker must make the initial appointments required under (1) and (2) above not later than 30 days after the act's effective date. The legislative members of the Council must serve during their terms as members of the General Assembly. Notwithstanding the adjournment of the General Assembly of which the member is a member, or the expiration of the member's term as a member of such General Assembly, a member must continue in office subsequent to the expiration date of the member's term on the Council until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (R.C. 4121.75(C) and (E).)

The President and the Speaker must make the initial appointments required under (3) above not later than 90 days after the act's effective date. These members serve three-year terms, and the act staggers the terms of the initial appointees. Members may be reappointed, and the act includes standard provisions for the filling of vacancies. (R.C. 4121.75(D) and (E).)

The Attorney General is the legal advisor for the Council (R.C. 4121.128).

### *Administrative duties of the Council*

The act requires that meetings of the Council be called in the manner and at the times prescribed by rules adopted by the Council (R.C. 4121.76). A majority of the voting members of the Council constitutes a quorum and the Council cannot take action unless at least five voting members approve the action. The Council must organize by selecting a chairperson, vice-chairperson, and any other officers as it determines are necessary. The act requires the Council to select the chairperson and vice-chairperson from the members of the Council who also are members of the General Assembly, and each of those members must serve as chairperson or vice-chairperson during their terms as members of the General Assembly. The Council must rotate the selection of the chairperson and vice-chairperson between the two houses. (R.C. 4121.76.)

The Council must adopt rules for the conduct of its business and the election of its officers. Each member of the Council, before entering upon the member's official duties must take and subscribe to an oath of office, to uphold the Constitution and laws of the United States and Ohio and to perform the duties of the office honestly, faithfully, and impartially. Members of the Council appointed pursuant to (3) under "*Workers' Compensation Council*" above serve without compensation but are reimbursed for their actual and necessary expenses incurred in the performance of their official duties. Legislative members do not receive compensation or expenses. (R.C. 4121.76.)

The Council must establish policies and procedures for purchasing goods and services on a competitive basis and maintaining tangible personal property. The policies and procedures must be designed to safeguard the use of funds received by the Council. An audit performed under the Auditor of State Law (R.C. Chapter 117.) must include a determination of the Council's compliance with those policies and procedures. The Council is not subject to the Office of Budget and Management Law, the Controlling Board Law, or the laws governing purchases or the hiring of personnel through the Department of Administrative Services (R.C. Chapter 123., 124., 125., 126., or 127.). (R.C. 4121.79.)

Under the act the Council may appoint a director to manage and direct the duties of the staff of the Council. The director must be a person who has had training and experience in areas related to the duties of the Council. The Council may appoint professional, technical, and clerical employees as necessary, and employ or hire on a consulting basis persons to provide actuarial, legal, investment, or other technical services required for the performance of the Council's duties. For purposes of the Public Employees' Collective Bargaining Law (R.C. Chapter 4117.), the act states that Council employees must be considered employees of the General Assembly, and thus are not considered "public employees" for the purposes of that law. The Council may fix the

compensation of the director and all other Council employees. (R.C. 4121.77.) The compensation of all Council employees and other expenses of the Council must be paid upon vouchers approved by the director and the chairperson of the Council (R.C. 4121.79). The Administrator must pay the Council's annual expenses. The act requires the Council to prepare and submit to the Administrator on or before the 30th day of June of each year an itemized estimate of the amounts necessary to pay the Council's expenses during the following year (R.C. 4121.79).

Additionally, the act permits the Council to require the members of the Industrial Commission, Board, Audit Committee, Actuarial Committee, and Investment Committee, the Administrator, and employees of the Commission and BWC, and any agency or official of this state or its political subdivisions to provide the Council with any information necessary to carry out its duties (R.C. 4121.77). The Council may administer oaths and hold public hearings at times and places within Ohio as necessary to accomplish the purposes of the law governing the Council. Also, the Council may establish regular reporting requirements for any report that the chairperson of the Commission, chairperson of the Board, members of the working committees, and the Administrator are required to submit to the Council. Additionally, the Council may request that the Auditor of State perform or contract for the performance of a financial or special audit of BWC or a special or fiduciary audit of the workers' compensation system. (R.C. 4121.77.)

### **Duties of the Council**

The act requires the Council to do all of the following:

(1) Study all changes to the Workers' Compensation Law proposed to the General Assembly and report to the General Assembly on their probable costs, actuarial implications, and desirability as a matter of public policy;

(2) Review for solvency, as the Council determines necessary, all financial, actuarial, and fiduciary audits performed on the BWC funds and BWC's actuarial policies;

(3) Have prepared by an independent actuary, at least once every ten years, an actuarial review of the annual actuarial valuations and quinquennial actuarial investigations prepared by the Board as described under "**Actuarial reports and investigations**," above, including a review of the actuarial assumptions and methods and the data underlying the valuations and investigations;

(4) Submit to the Governor and the General Assembly a report summarizing the review required under (3) immediately above;

(5) Submit an annual report summarizing the activities and findings of the Council during the year preceding the annual report to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, and the members of the standing committees of the House of Representatives and of the Senate to which matters concerning Workers' Compensation Law normally are referred. (R.C. 4121.78.)

The Council, under the act, must contract with an independent actuary to have that actuary perform an actuarial valuation of the assets, liabilities, and funding requirements of the BWC funds. The actuary with whom the Council contracts must prepare a report of the valuation in accordance with the standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries and must submit that report to the Council. The actuary must include all of the following information in the report: (1) a summary of the compensation and benefit provisions evaluated, (2) a summary of the census data and financial information used in the valuation, (3) a description of the actuarial assumptions, actuarial cost method, and asset valuation method used in the valuation, and (4) a summary of the findings that includes a statement of the actuarial accrued compensation and benefit liabilities and unfounded actuarial accrued compensation and benefit liabilities. The Council must submit to the Governor and the General Assembly a report summarizing the valuation required under the act not later than two years after the effective date of the law creating the Council. (Section 512.45.)

### **Working Committees**

The act creates the Workers' Compensation Audit Committee, Actuarial Committee, and Investment Committee (R.C. 4121.129). The Board appoints the members of each committee and, with the exception of specified Board members who must serve on a particular committee, the Board, by majority vote, may remove any committee member. The Board, by majority vote, must determine how often each committee will meet and report to the Board. If a committee meets on the same day as the Board holds a meeting, the act prohibits a member from being compensated for more than one meeting held on that day. The Board must appoint the members of each committee not later than 90 days after the act's effective date (Section 512.20). The Board may create any committees in addition to these three committees that the Board determines are necessary to assist the Board in performing its duties (R.C. 4121.12(G)).

### **Audit Committee**

The Audit Committee consists of at least three members, one of whom must be the certified accountant member of the Board. The Board, by majority vote, must appoint two additional Board members to serve on the Audit

Committee and may appoint additional members who are not Board members, as the Board determines necessary. The Audit Committee must do all of the following:

(1) Recommend to the Board an accounting firm to perform the annual audits required under continuing law;

(2) Recommend an auditing firm for the Board to use when the Board elects to conduct additional audits permitted under continuing law;

(3) Review the results of each annual audit and management review and, if any problems exist, assess the appropriate course of action to correct those problems and develop an action plan to correct those problems;

(4) Monitor the implementation of any action plans created pursuant to (3) immediately above;

(5) Review all internal audit reports on a regular basis. (R.C. 4121.129(A).)

### **Actuarial Committee**

The Actuarial Committee consists of at least three members, one of whom must be the actuary member of the Board. The Board, by majority vote, must appoint two additional Board members to serve on the Actuarial Committee and may appoint additional members who are not Board members, as the Board determines necessary. In addition to the recommendations the Actuarial Committee must make to the Board as described under "**Transfer of duties**," above, the Actuarial Committee must review calculations on rate schedules and performance prepared by the actuarial consultants with whom the Board enters into a contract. (R.C. 4121.129(B).)

### **Investment Committee**

The Investment Committee consists of at least four members, two of whom must be the investment and securities expert members of the Board. The Board, by majority vote, must appoint two additional Board members to serve on the Investment Committee and may appoint additional members who are not Board members. Each additional member the Board appoints must have at least one of the following qualifications: (1) experience managing another state's pension funds or workers' compensation funds, or (2) expertise that the Board determines is needed to make investment decisions.

The Investment Committee must develop the investment policy for the administration of the investment program for the BWC funds and submit the

policy to the Board for approval. The Investment Committee must follow the same requirements concerning prohibited investments, opening investment classes, and limits on contracting that the Oversight Commission had to follow under former law when developing the policy. Additionally, the Investment Committee must prohibit investing in specific investments where the Committee finds such investment contrary to the Board's investment policy. (R.C. 4121.12(F)(9) and 4123.442.) The Investment Committee also must monitor implementation by the Administrator and BWC Chief Investment Officer of the investment policy approved by the Board and review the performance of the BWC Chief Investment Officer and any investment consultants retained by the Administrator to assure that the investments of the assets of the BWC are made in accordance with the investment policy approved by the Board and that the best possible return on investment is achieved. Additionally, the Investment Committee must recommend outside investment counsel with whom the Board may contract to assist the Investment Committee in fulfilling its duties. (R.C. 4121.129(C).)

### **Obligations and liabilities of the Board**

Continuing law, as retained in part by the act, specifies that, except for a gross abuse of discretion, neither the Board (instead of the Oversight Commission, as under former law), nor the individual members thereof, nor the Administrator incur any obligation or liability respecting the assessments for contributions for the Self-Insuring Employers' Guaranty Fund, the collection of premiums for the Coal-Workers Pneumoconiosis Fund or Marine Industry Fund, the administration and investment of those funds, or the payment of liabilities therefrom (R.C. 4123.351, 4131.06, and 4131.16).

### **Preparation of internal operating budget by the Administrator**

The act requires the Administrator, in addition to the biennial budget the Administrator prepares and submits to the Director of the Office of Budget and Management under continuing law, to prepare and submit to the Board, for the Board's approval, an annual budget for internal operating purposes (R.C. 4121.121(B)(10)).

### **Comprehensive reviews on rates and reserves**

The act requires the Administrator to have two comprehensive reviews performed: one of the base rate of premiums paid by all employers and of all the rating programs used by the Administrator, and one of the adequacy of the Surplus Fund and the general reserving methods used for the BWC funds. The Administrator must commission a reputable outside firm that the BWC has not retained to conduct similar reports over the five years preceding the act's effective

date to conduct these reviews. The act specifies that, for the first review, the Administrator must (1) compare the rates and programs used in Ohio to the rates and programs used in other states, (2) study the effect of the rates in reducing the number and severity of workers' compensation claims in Ohio, and (3) study the effect that saving money has had on safety in workplaces in Ohio. The Administrator must provide a summary of these reviews and present recommendations based on the reviews to the General Assembly and Board within two years after the effective date of that provision. (Section 512.50.)

**Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission; abolition of Internal Security Committee**

The act creates, in the Office of the Inspector General, the Office of Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission. The Inspector General must appoint the Deputy Inspector General. The Deputy Inspector General serves at the pleasure of the Inspector General. A person employed as the Deputy Inspector General must have the same qualifications as those specified in continuing law for the Inspector General. The Inspector General must provide professional and clerical assistance to the Deputy Inspector General. (R.C. 121.52.)

The act abolishes the Internal Security Committee, which investigated all claims or cases of criminal violations, abuse of office, or misconduct on the part of BWC or Industrial Commission employees, and instead requires the Deputy Inspector General to investigate wrongful acts or omissions that have been committed by or are being committed by officers or employees of the BWC and the Industrial Commission. The Deputy Inspector General must perform the same duties regarding matters concerning the BWC and the Industrial Commission as those specified in continuing law for the Inspector General. Additionally, the act specifies that complaints may be filed with the Deputy Inspector General in the same manner as prescribed for complaints filed with the Inspector General. (R.C. 121.52, 4121.122(D), and 121.42, 121.43, and 121.45, not in the act.)

All investigations conducted and reports issued by the Deputy Inspector General are public records unless made confidential or unless the Deputy Inspector General indicates the matter is confidential in accordance with procedures the Inspector General follows under continuing law (R.C. 121.44, not in the act, and 121.52).

**Cooperation by persons being investigated**

The members of the Industrial Commission, Board, Audit Committee, Actuarial Committee, and Investment Committee, and the Administrator, and employees of the Industrial Commission and the BWC must cooperate with and

provide assistance to the Deputy Inspector General in the performance of any investigation conducted by the Deputy Inspector General. In particular, those persons must make their premises, equipment, personnel, books, records, and papers readily available to the Deputy Inspector General. In the course of an investigation, the Deputy Inspector General may (1) question any person employed by the Industrial Commission or the Administrator and any person transacting business with the Industrial Commission, the Board, the Audit Committee, the Actuarial Committee, the Investment Committee, the Administrator, or the BWC, (2) inspect and copy any books, records, or papers in the possession of those persons or entities the Deputy Inspector General questions, taking care to preserve the confidentiality of information contained in responses to questions or the books, records, or papers that are made confidential by law. In performing any investigation, the Deputy Inspector General must avoid interfering with the ongoing operations of the entities being investigated, except insofar as is reasonably necessary to successfully complete the investigation. (R.C. 121.52.)

### **Inspector General and Deputy Inspector General reports**

At the conclusion of an investigation conducted by the Deputy Inspector General, the Deputy Inspector General must deliver to the Board, the Administrator, the Industrial Commission, and the Governor any case for which remedial action is necessary. The Deputy Inspector General must maintain a public record of the activities of the Office of the Deputy Inspector General to the extent permitted under the act, ensuring that the rights of the parties involved in each case are protected. The Inspector General must include in the annual report required under continuing law a summary of the Deputy Inspector General's activities during the previous year (R.C. 121.52).

The act prohibits any person from disclosing any information that is designated as confidential in accordance with the act or any confidential information that is acquired in the course of an investigation conducted under the act to any person who is not legally entitled to disclosure of that information (R.C. 121.52).

### **Transition from use of the existing MIRA program**

The act requires the Administrator to completely transition from use of the Micro Insurance Reserve Analysis System to a different system or different version of that system to determine the reserves for use in establishing premium rates assessed for the purposes of the Workers' Compensation Law on or before June 30, 2008. The act states that a contract between the Administrator and a vendor for the system in existence on the act's effective date must expire in accordance with the terms of the contract, and the Administrator may renew or

extend that contract only for a period of time that does not extend past June 30, 2008.

The act requires the Administrator to transition to a reserve analysis system that is characterized as transparent in nature and for that purpose of transparency, satisfies both of the following criteria:

(1) The manner in which the system uses data can be understood in general terms by employers who are subject to the Workers' Compensation Law and other persons interested in use of the system;

(2) The type of data the system uses in making reserve analysis can be explained to employers who are subject to the Workers' Compensation Law and other persons interested in use of the system.

The act further requires the Administrator to communicate information describing the manner in which the new reserve analysis system uses data and the type of data the system uses in making reserve analysis to employers who are subject to the Workers' Compensation Law and to any other persons who request such information. (Section 512.70.)

#### **Complete employer applications for coverage**

The act requires the Administrator, with the advice and consent of the Board, to adopt a rule that requires each employer, on the occasion of instituting workers' compensation coverage, to submit an application for coverage that completely provides all of the information required for the Administrator to establish coverage for that employer. The act further specifies that an employer's failure to provide all of the information completely may be grounds for the Administrator to deny coverage for that employer (R.C. 4123.32(F)).

#### **Public employers who fail to pay security deposit and premium**

Under continuing law, when an employer institutes workers' compensation coverage, the employer must pay a premium security deposit that is based upon the amount of the employer's premium. Continuing law specifies procedures the Administrator must follow if the Administrator determines that a private-sector employer is subject to the Workers' Compensation Law and has not paid the employer's premium security deposit and premium. The act requires the Administrator, with regard to a public employer other than the state, a state university or college,<sup>2</sup> or a state hospital,<sup>3</sup> to follow the same procedures specified

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<sup>2</sup> Under the act, a "state university or college" means the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State

for a private-sector employer who the Administrator determines is subject to the Workers' Compensation Law and has not paid the employer's premium security deposit and premium (R.C. 4123.37).

**Failure to pay premiums or other assessments when due**

Under continuing law, the Administrator must adopt a rule specifying that an employer is covered under the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) if the employer pays the employer's premium security deposit and the employer's premium when due. An employer also is required to pay administrative assessments under the Workers' Compensation Law and may be required to pay other obligations under the law. If an employer fails to pay the employer's premium when due, the employer may be subject to a penalty, including a late fee penalty. (R.C. 4123.32.)

The act requires the Administrator, with the advice and consent of the Board, to adopt rules that permit the Administrator, in addition to any other remedies permitted under the Workers' Compensation Law, to discontinue the coverage of an employer other than the state, a state university or college, or a state hospital if the employer fails to pay the employer's premium on or before its due date. The act also requires the Administrator, with the advice and consent of the Board, to adopt a rule that specifies that if after a final adjudication it is determined that an employer has failed to pay an obligation, billing, account, or assessment that is greater than \$1,000 on or before its due date, the Administrator may discontinue the employer's coverage in addition to any other remedies permitted in the Workers' Compensation Law. The act prohibits the Administrator from discontinuing an employer's coverage prior to a final adjudication regarding the employer's failure to pay such obligation, billing, account, or assessment on or before its due date. (R.C. 4123.32(G) and (H).)

**Charges to an employer's experience rating pending a final determination**

Continuing law specifies when compensation and medical benefits are payable (R.C. 4123.511(H) and (I)). Law retained in part by the act specifies that an appeal from an order issued by the Industrial Commission or a staff hearing officer the Industrial Commission designates or any action filed in court in a case

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University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, the Northeastern Ohio Universities College of Medicine, the Ohio Agricultural Research and Development Center, and the Ohio State University Cooperative Extension Service (R.C. 4123.321 and R.C. 3345.12, not in the act).

<sup>3</sup> The act defines "state hospital" as the Ohio State University Hospital and its ancillary facilities and the Medical University of Ohio at Toledo Hospital (R.C. 4123.321).

in which an award of compensation has been made does not stay the payment of compensation under the award or payment of compensation for subsequent periods of total disability during the pendency of the appeal. Continuing law also states that if, in a final administrative or judicial action, it is determined that payments of compensation or benefits, or both, made to or on behalf of a claimant should not have been made, the amount thereof is charged to the Surplus Fund and if the employer is a state fund employer, the amount is not charged to the employer's experience. (R.C. 4123.512(H).)<sup>4</sup>

The act requires the Administrator to charge an employer's experience immediately after an employer has exhausted the employer's administrative appeals or waived the employer's right to an administrative appeal under continuing law, subject to any adjustment made to the employer's experience because it was ultimately determined that the claimant was not entitled to compensation or medical benefits. The act adds that, in a case in which medical benefits have been awarded, an appeal from an order issued by Industrial Commission or a designated staff hearing officer or any action filed in court does not stay the payment of medical benefits while the appeal is pending. The act also specifies that such an appeal or filing of a court action does not stay the payment for subsequent periods of total disability or medical benefits during the pendency of an appeal. (R.C. 131.02, 4123.511, and 4123.512.)

### **Labor-Management Advisory Council**

Under the act, the Labor-Management Advisory Council must advise the Board, rather than the Oversight Commission, as under former law, and the Administrator on the quality and effectiveness of rehabilitation services and make recommendations pertaining to BWC's rehabilitation program, including the operation of that program. (R.C. 4121.70.)

### **Participation by hospitals in Long-Term Care Loan Fund Program**

Continuing law requires the Administrator to operate the Long-Term Care Loan Fund Program. The Administrator must use the program to make loans without interest to employers that are nursing homes for the purpose of allowing those employers to purchase, improve, install, or erect sit-to-stand floor lifts, ceiling lifts, other lifts, and fast electric beds, and to pay for the education and

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<sup>4</sup> The Ohio Supreme Court held in *Arth Brass and Aluminum Castings Inc. v. Conrad* (2004), 104 Ohio St.3d 547, that the Administrator has the discretion to make compensation and medical benefit payments prior to a final determination, but the Administrator could not charge an employer's experience for medical benefit payments made to a claimant prior to a final adjudication (*Arth Brass* at ¶ 28 and ¶ 37).

training of personnel to implement a facility policy of no manual lifting of residents by employees. The Administrator, with the advice and consent of the Board (the Oversight Commission under former law), may adopt rules for loan eligibility, maximum loan amounts, loan periods, default penalties, and any other terms the Administrator considers necessary for a loan. The act allows hospitals to participate in the program (R.C. 4121.48).

### **Administrative changes for group plans**

Under continuing law, the Administrator, subject to the approval of the Board (the Oversight Commission under former law), must offer to insure the obligations of employers under the Workers' Compensation Law under a group-rating plan that pools the risk of the employers within the group provided that the employers meet conditions specified in continuing law. Organizations sponsor these employer groups. Under the act, if an organization sponsors more than one employer group to participate in group plans, that organization may submit a single application that supplies all of the information necessary for each group of employers that the organization wishes to sponsor. (R.C. 4123.29(A)(4).)

Additionally, at the time the Administrator revises premium rates, if the premium rate of an employer who participates in a group plan changes from the rate established for the previous year, the act requires the Administrator, in addition to sending the invoice with the rate revision to that employer, to send a copy of that invoice to the third-party administrator that administers the group plan for that employer's group. (R.C. 4123.29(A)(4).)

### **Medical-Only Claim Program**

Continuing law largely retained by the act, requires the Administrator to make available to every state fund employer a program, commonly referred to as the "Medical-Only Claim Program," whereby the employer or the employer's agent pays to a claimant or on behalf of a claimant the first \$5,000 of a compensable workers' compensation medical-only claim filed by that claimant that is related to the same injury or occupational disease. If an employer elects to enter the program, the Administrator does not reimburse the employer for such amounts paid and does not charge the first \$5,000 of any medical-only claim paid by an employer to the employer's experience or otherwise use it in merit rating or determining the risks of any employer for the purpose of payment of premiums. If an employer elects to enter the program and the employer fails to pay a bill for a medical-only claim included in the program, the employer is liable for that bill and the employee for whom the employer failed to pay the bill is not liable for that bill. Under rules adopted by the Administrator, a participating employer must pay all bills as billed or agree upon an appropriate reimbursement level with the health

care provider who provided services to the employer's employee under the program (R.C. 4123.29(A)(6) and O.A.C. 4123-17-59).

The act raises the program threshold from \$5,000 to \$15,000. The act further specifies that no formal application is required; however, an employer must elect to participate by telephoning BWC after July 1, 1995. Under the act, once an employer has elected to participate in the program, the employer will be responsible for all bills in all medical-only claims with a date of injury the same or later than the election date, unless the employer notifies BWC within 14 days of receipt of the notification of a claim being filed that it does not wish to pay the bills in that claim, or the employer notifies BWC that the \$15,000 maximum has been paid, or the employer notifies BWC of the last day of service on which it will be responsible for the bills in a particular medical-only claim. (R.C. 4123.29(A)(6).)

The act additionally states that upon written request from the BWC, the employer must provide documentation to the BWC of all medical-only bills that they are paying directly. Such requests from the BWC may not be made more frequently than on a semi-annual basis under the act. Failure to provide such documentation to the BWC within 30 days of receipt of the request may result in the employer's forfeiture of participation in the program for such injury. However, under the act, these provisions do not apply to claims in which an employer with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation or total disability. (R.C. 4123.29(A)(6).)

### **Miscellaneous Workers' Compensation Law changes**

#### **Insurance experience of Administrator and Chief Operating Officer**

The act specifies that the person appointed to the position of Administrator must possess a minimum of five years of experience in the field of workers' compensation insurance or in another insurance industry, except when the Chief Operating Officer appointed by the Administrator satisfies that same experience requirement. Under former law, the Chief Operating Officer had to have "significant" experience in the field of workers' compensation insurance or in another similar insurance industry. (R.C. 4121.121(A) and (C).)

#### **Internal auditor**

Under former law, the BWC, with the advice and consent of the Oversight Commission, employed an internal auditor. The internal auditor had to report directly to the Oversight Commission on investment matters and the Oversight Commission had to request and review internal audits conducted by the internal auditor. Under the act, the Administrator makes the appointment and the Board

consents to the internal auditor's employment and the internal auditor must report findings directly to the Board, Audit Committee, and Administrator, except that the internal auditor must not report findings directly to the Administrator when those findings involve malfeasance, misfeasance, or nonfeasance on the part of the Administrator. Additionally, the Audit Committee may request and review internal audits conducted by the internal auditor. (R.C. 4121.125(J).)

## **LONG-TERM CARE PARTNERSHIP PROGRAM**

### **State long-term care insurance partnership program**

#### **Definitions**

The act specifies that for the purposes of Ohio law governing long-term care insurance contracts, "long-term care insurance" includes "qualified long-term care insurance contracts." (R.C. 3923.41(A).) The act defines a "qualified long-term care insurance contract" using the definition from the "Internal Revenue Code of 1986" (26 U.S.C. 7702B) but adds clarifying language to three of the sub points in the federal law definition. Under the act, a qualified long-term care insurance contract is an individual or group insurance contract of which all of the following are true:

(1) The only insurance protection provided under the contract is coverage of qualified long-term care services and includes payments made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(2) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the "Social Security Act," (Medicare), or would be so reimbursable but for the application of a deductible or coinsurance amount. The act adds that the contract may pay or reimburse expenses that are reimbursable under Medicare as a secondary payer. A contract may allow payments to be made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(3) The contract is guaranteed renewable, within the meaning of applicable federal tax code law.

(4) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in the next division.

(5) All refunds of premiums, and all policy holder dividends or similar amounts, under the contract must be applied to a reduction in future premiums or



to increase future benefits. The act adds the exception, that a refund in the event of death of the insured or in the event of a complete surrender or cancellation of the contract must not exceed the aggregate premiums paid under the contract.

(6) The contract meets the consumer protection provisions set forth in federal tax code law. (R.C. 3923.41(F).)

In addition, the act adds that a "qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" also means the portion of a life insurance contract that provides long-term care insurance coverage by a rider or as part of the contract and that satisfies the requirements of federal tax code law. (R.C. 3923.41(F)(2).)

The act also defines "state long-term care partnership program" or "partnership program" using applicable federal law which describes a state long-term care partnership program that is eligible to receive the Medicaid benefits previously described (R.C. 3923.41(G)).

The act defines "insurance agent" as a person who is licensed to sell, solicit, or negotiate insurance under Chapter 3905. of the Revised Code (R.C. 3923.41(H)).

Under the act, "insurer" means "any person authorized under Title XXXIX of the Revised Code to engage in the business of insurance in this state or any health insuring corporation authorized under Chapter 1751. of the Revised Code to do business in this state that issues long-term care insurance policies or certificates" (R.C. 3923.41(I)).

### **Group long-term care insurance**

The act revises the former broad definition of "group long-term care insurance" to take the purposes and types of the groups into account. Under the act, group long-term care insurance is a long-term care policy delivered or issued for delivery to any of the following groups:

(1) One or more employers or labor organizations, or a trust or the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, established for one of two groups: (a) employees or former employees or a combination thereof, (b) members of the labor organization, or former members of the labor organization, or a combination thereof.

(2) Any professional, trade, or occupational association for its members or former or retired members, or a combination thereof, if the association is both composed of individuals who are or were actively engaged in the same profession,



trade, or occupation and maintained in good faith for purposes other than obtaining insurance.

(3) An association or trust of the trustees of a fund established, created, or maintained for the benefit of members of one or more associations.

(4) Another group about whom the Superintendent of Insurance finds the issuance of the group policy is not contrary to the best interest of the public, the issuance of the group policy would result in economies of acquisition or administration, and the benefits of the group policy are reasonable in relation to the premiums charged. (R.C. 3923.41(D).)

Prior to advertising, marketing, or offering a policy within this state, the act requires the association or the insurer of the association described under (3) above to file evidence with the Superintendent that the association has at the outset a minimum of 100 persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one year. The association must also have a constitution and bylaws that provide that the association must hold regular meetings not less than annually to further the purposes of the members; except for credit unions, the association collects dues or solicits contributions from members; and the association's members have voting privileges and representation on the governing board and committees of the association. If the Superintendent does not make a specific finding that the association does not satisfy the organizational requirements, 30 days after the association files the required evidence with the Superintendent, the association is deemed to have satisfied the requirements. (R.C. 3923.43.)

### **Notices, disclosures, and reports**

Under continuing law, an outline of coverage and a notice that consumer information is available from the Department of Insurance must be delivered to a prospective applicant for long-term care insurance at the time of original solicitation. Continuing law also specifies that the outline of coverage must include specific information to which the act adds a statement that discloses whether the policy is intended to be a federally tax-qualified long-term care insurance contract. (R.C. 3923.44(I).)

If the policy is intended to qualify under the state long-term care partnership program, the act requires the agent or insurer to deliver along with the outline of coverage required above a long-term care partnership policy disclosure form. The Superintendent must prescribe the content and format of the disclosure form (R.C. 3923.44(N)(2) and (R)).

If a long-term care insurance policy or a policy intended to qualify under the state long-term care partnership program is issued to a group previously defined that includes one or more employers or labor organizations and their employees and members, the act makes an exception to providing the outline of coverage, notice, or disclosure form required to allow the required information to be contained in other materials relating to enrollment if those other materials are made available to the Superintendent upon request. (R.C. 3923.44(M).)

In addition to the outline and notice, continuing law requires insurers that issue life insurance policies that provide long-term care benefits within the policy or by rider to provide a policy summary to each applicant when the policy is delivered. The policy summary must specify certain information to which the act adds a statement of whether long-term care inflation protection (see **Inflation protection**" below) is available under the policy. (R.C. 3923.44(K) and (N)(2)(c).) If a policy intended to qualify under the state long-term care partnership program offers long-term care insurance within a life insurance policy or as a rider to a life insurance policy, the long-term care partnership policy disclosure form must be provided with the policy summary (R.C. 3923.44(N)(2)(c)).

Under former law, insurers were required to provide a semiannual report providing specified information to a policyholder when long-term care benefits were being paid under a life insurance policy or rider except during the six months preceding the expiration of benefits being paid. During those six months, the insurer had to provide that report every 60 days. The act removes these requirements and requires insurers to provide similar monthly reports to a policyholder when a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status. The monthly reports must include a description of all benefits for long-term care insurance that were paid by the policy during that month, an explanation of any changes in the policy including death benefits or cash values due to the payment of long-term care benefits, and a statement of the amount of benefits for long-term care insurance that is still available under the policy. (R.C. 3923.44(L).)

### **Inflation protection**

The act requires insurers that issue long-term care insurance policies intended to qualify as state long-term care insurance partnership program policies to provide inflation protection for policies purchased by individuals who are under the age of 76. If the individual is under the age of 61 when the individual purchases the policy, the policy must provide inflation protection that is either fixed at a minimum of 3% compounded annually or a rate, compounded annually, that is equal to the Consumer Price Index. If the individual is between the ages of 61 and 76 when the individual purchases the policy, the policy must provide inflation protection at a simple interest rate that is either fixed at a minimum of 3%

or equal to the Consumer Price Index. Policies issued to individuals who are at least 76 years of age may include inflation protection but are not required to do so. (R.C. 3923.44(O).)

For purposes of inflation protection, the act defines "Consumer Price Index" as "the consumer price index for all urban consumers, U.S. city average, all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor" but specifies that the Superintendent may approve a different index to be used in place of the Consumer Price Index in determining inflation protection rates. (R.C. 3923.44(P) and (Q).)

**Rescinding a contract or denying a claim based upon misrepresentation**

Except in the event of the death of the insured,<sup>5</sup> the act notwithstanding the continuing law requirement that sickness and accident insurance policies include a standard provision that places a two-year time limit on certain defenses for voiding a policy or denying a claim (R.C. 3923.04, not in the act). The act prohibits an insurer from rescinding a long-term care insurance policy or certificate or denying an otherwise valid claim based upon a misrepresentation by the applicant without adhering to one of the following:

(1) For a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the insurer can demonstrate that the insured misrepresented facts that were material to the insurer's offer of coverage to the insured.

(2) For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the insurer can demonstrate that the insured misrepresented facts that were both material to the insurer's offer of coverage to the insured and that pertain to the condition for which the insured sought benefits.

(3) After a policy or certificate has been in force for at least two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the insurer can demonstrate that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health in the insured's application for the policy. (R.C. 3923.441(A).)

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<sup>5</sup> In the event of the death of the insured, the remaining death benefits under a life insurance policy that accelerates benefits for long-term care are governed by R.C. 3923.04. (R.C. 3923.441(C).)

In addition, the act prohibits an insurer from recovering from the insured benefits that were paid under a long-term care insurance policy or certificate prior to the rescission of the policy or certificate pursuant to this section (R.C. 3923.441(B)).

### **Nonforfeiture benefit**

The act prohibits an insurer from delivering or issuing for delivery a long-term care insurance policy or certificate in this state without offering the policyholder or certificate holder the option of purchasing a nonforfeiture benefit that may be in the form of a rider that is attached to the policy. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer is required to provide a contingent benefit upon lapse that must be available for a period of time specified in the policy or certificate following a substantial increase in premium rates. (R.C. 3923.442(A).)

If the insurer delivers or issues for delivery a group long-term care insurance policy, the insurer must make the offer of purchasing a nonforfeiture benefit to the group policyholder rather than to the policyholder or certificate holder. If the insurer delivers or issues for delivery a group long-term care insurance policy to a group that is not included by the Superintendent into the definition of "group long-term care insurance," other than to a continuing care retirement community or other similar entity, the insurer must make the offer of purchasing a nonforfeiture benefit to each proposed certificate holder. (R.C. 3923.442(B).)

The act authorizes the Superintendent to adopt rules specifying the type of nonforfeiture benefits insurers may offer as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse (R.C. 3923.442(C)).

### **Agent education**

The act prohibits an agent from selling, soliciting, or negotiating any long-term care insurance on or after September 1, 2008, without completing an initial eight-hour partnership program training course prescribed by the act. Any such agent also must to complete at least four hours of continuing education in every 24-month period beginning on the first day of January of the year immediately following the year of the issuance of the agent's license. (R.C. 3923.443.)

Under the act, the initial training course and the continuing education must consist of combined topics related to long-term care insurance, long-term care services, and state long-term care insurance partnership programs, including all of the following:

- (1) State and federal regulations and requirements and the relationship between state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;
- (2) Available long-term care services and providers;
- (3) Changes or improvements in long-term care services or providers;
- (4) Alternatives to the purchase of private long-term care insurance;
- (5) The effect of inflation on benefits and the importance of inflation protection;
- (6) Consumer suitability standards and guidelines;
- (7) Any other topics required by the Superintendent. (R.C. 3923.443(B).)

The initial training and continuing education cannot include training that is specific to a particular insurer or company product or that includes any sales or marketing information, materials, or training other than those required by state or federal law (R.C. 3923.443(C)). The Superintendent may approve the required initial training course and continuing education as continuing education courses under current law's continuing education course requirements for all insurance agents (R.C. 3923.443(B) and 3905.481 to 3905.486, latter sections not in the act). Under the act, an agent also may complete the training and continuing education by completing partnership program training requirements in any other state, provided that the course is approved by the Superintendent prior to the agent taking the course (R.C. 3923.443(D)). Also, each insurer must maintain records of the initial training and continuing education completed by agents of that insurer as well as the training completed by the insurer's agents concerning the distribution of the insurer's partnership program policies and make those records available to the Superintendent upon request (R.C. 3923.443(E)).

The Superintendent must certify to the Director of Job and Family Services that the Superintendent has verified that all agents selling, soliciting, or negotiating long-term care insurance in Ohio have completed the training and continuing education including training concerning the partnership program policies and their relationship to public and private coverage of long-term care in this state, including Medicaid. The Superintendent also must make the records

provided to the Superintendent by the insurers available to the Director. (R.C. 3923.443(F).)

**Field issuing policies**

The act prohibits an agent or third-party administrator from field issuing a long-term care insurance policy or certificate if the compensation to the agent or third-party administrator is not based on the number of policies or certificates issued (R.C. 3923.444(A)). Under the act, "field issue" means to issue a policy or certificate pursuant to the underwriting authority granted to an agent or third-party administrator by an insurer using the insurer's underwriting guidelines (R.C. 3923.444(B)).

**Rule-making**

The act specifies that the Superintendent may adopt rules related to the state long-term care partnership program, including, but not limited to, requirements related to offers to exchange partnership program policies for previously issued policies and for consumer disclosures related to the state long-term care partnership program. (R.C. 3923.44(A).) It also specifies that the Superintendent's broad authority under current law to adopt rules to carry out the purposes of the Long-term Care Insurance Law includes the authority to adopt rules relating to the state long-term care partnership program (R.C. 3923.47).

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**HISTORY**

ACTION	DATE
Introduced	03-06-07
Reported, H. Insurance	04-25-07
Passed House (88-8)	04-25-07
Reported, S. Insurance, Commerce & Labor	05-22-07
Passed Senate (33-0)	05-22-07
House concurred in Senate amendments (99-0)	05-23-07

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