



S.B. 334

127th General Assembly
(As Introduced)

Sens. Faber, Seitz, Spada, Coughlin, Mumper

BILL SUMMARY

- Provides coverage under Ohio's Workers' Compensation Law for an out-of-state employee who temporarily performs work in Ohio if the law of the state where the employee is a resident does not contain a provision similar to current Ohio law that exempts out-of-state employees who temporarily perform work in Ohio from coverage under Ohio's Workers' Compensation Law.
- Requires the Administrator of Workers' Compensation to determine whether a claimant who has filed a claim for compensation or benefits under Ohio's Workers' Compensation Law also could file a claim for compensation or benefits in a state other than Ohio, and if such a determination is made, requires the Administrator to request the claimant to sign a waiver stating that the claimant waives the claimant's ability to file a claim in the other state unless the claimant's claim filed in Ohio is dismissed for reasons other than on the merits.
- Requires the Administrator to issue an order to dismiss the claimant's claim if the claimant fails or refuses to sign the waiver described immediately above within 21 days after the claim is filed.
- Prohibits an employee, or an employee's dependents from receiving compensation or benefits under Ohio's Workers' Compensation Law if the employee or the employee's dependents received a decision on the merits of a claim for compensation or benefits asserted or filed in another state regardless of whether an award was made under the other state's laws.
- Allows the Administrator or a self-insuring employer to collect the amount of the compensation or benefits paid to, or on behalf of, an

- employee pursuant to an award under Ohio's Workers' Compensation Law if the employee also is awarded workers' compensation benefits or recovers damages under the workers' compensation laws of another state.
- Specifies that the Administrator cannot charge the amounts recovered as described immediately above against a state fund employer's experience.
 - Allows the Administrator or a self-insuring employer to collect from the employee or the employee's dependents described above any costs and attorney's fees the Administrator or the self-insuring employer incurs in collecting the payment described above and any attorney's fees and costs incurred by an employer in contesting or responding to the claim filed under Ohio's Workers' Compensation Law by the employee or the employee's dependents.
 - Requires the Administrator to forward recovered costs and attorney's fees incurred by a state fund employer as described immediately above to that employer.
 - Allows employers to obtain extraterritorial coverage through an extraterritorial insurer or through the Administrator.
 - Requires employers who elect to obtain extraterritorial coverage to submit a written notice to the Administrator stating the election.
 - Requires the Administrator to select one extraterritorial insurer by following Ohio's Competitive Bidding requirements and awarding the contract to the lowest bidder.
 - Requires the Administrator to adopt rules to implement the provisions of the bill dealing with extraterritorial coverage provided through the Administrator.
 - Specifies requirements applicable to extraterritorial insurers and the Administrator when calculating employers' premiums.
 - Specifies that the Bureau of Workers' Compensation Board of Directors, individual Board members, the Administrator, and the Bureau of Workers' Compensation do not incur obligations or liabilities if another state determines that an employer's extraterritorial coverage secured

pursuant to the bill's provisions does not satisfy the requirements specified in the other state's workers' compensation law.

- Specifies wage records that employers who elect to obtain extraterritorial coverage must submit annually to the Bureau.
- Suspends premium increases or changes in the experience rating of any institution of higher education that has sustained claims arising from deaths and injuries of a catastrophic nature arising from a motor vehicle accident occurring outside of Ohio until after subrogation claims are concluded.

CONTENT AND OPERATION

When residents of other states temporarily working in Ohio are covered by Ohio's Workers' Compensation Law

The bill adds to the definition of "employee" for purposes of Ohio's Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) any person to whom all of the following apply:

- (1) The person is a resident of a state other than Ohio and is covered by that other state's workers' compensation law;
- (2) The person performs labor or provides services for that person's employer while temporarily within this state;
- (3) The laws of that other state do not include the provisions described in "*Residents of states other than Ohio,*" below. (R.C. 4123.01(A)(1)(d).)

Residents of states other than Ohio

If an employee is a resident of a state other than Ohio and is insured under the workers' compensation law or similar laws of a state other than Ohio, then the employee and the employee's dependents are not entitled to receive compensation or benefits under Ohio's Workers' Compensation Law, on account of injury, disease, or death arising out of or in the course of employment while temporarily within Ohio, and the rights of the employee and the employee's dependents under the laws of the other state are the exclusive remedy against the employer on account of the injury, disease, or death. The bill changes this provision to apply only when both of the following apply:

- (1) The laws of the other state limit the ability of an employee who is a resident of this state and is covered by Ohio's Workers' Compensation Law, or the

employee's dependents, to receive compensation or benefits under the other state's workers' compensation law on account of injury, disease, or death incurred by the employee that arises out of or in the course of the employee's employment while temporarily within that state in the same manner as explained in the paragraph immediately above for an employee who is a resident of a state other than Ohio, or the employee's dependents;

(2) The laws of the other state limit the liability of the employer of the employee who is a resident of Ohio and who is described in the paragraph immediately above for that injury, disease, or death, in the same manner described two paragraphs above for the employer of an employee who is a resident of the other state. (R.C. 4123.54(H).)

Employees who perform all or some of their work outside of Ohio

Currently, with respect to an employee of an employer who is subject to and has complied with Ohio's Workers' Compensation Law, when there is a possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of Ohio or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement must be in writing and be filed with the Bureau within ten days after it is executed and it remains in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of Ohio and the employer has complied with Ohio's Workers' Compensation Law, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and the employee's dependents under the laws of Ohio are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment without regard to the place where the injury was sustained or the disease contracted. (R.C. 4123.54(H).)

The bill specifies that if an employer and an employee enter into an agreement as described immediately above, the fact that the employer and the employee entered into that agreement cannot be construed to change the status of an employee whose continued employment is subject to the will of the employer or the employee, unless the agreement contains a provision that expressly changes that status. (R.C. 4123.54(H)(1).)

Waiver required

The bill creates a requirement that if an employee is injured or contracts an occupational disease or dies as a result of an injury or occupational disease, and a claim for compensation or benefits for that injury, occupational disease, or death is filed by or on behalf of the employee under Ohio's Workers' Compensation Law, the Administrator of Workers' Compensation must determine whether the claimant also could file a claim for compensation or benefits in a state other than Ohio pursuant to that state's workers' compensation laws for that injury, occupational disease, or death. If the Administrator determines that such a claim could be filed, the bill requires the Administrator to request the claimant to sign a waiver stating that because the claimant elected to file a claim for that injury, occupational disease, or death in Ohio, the claimant waives the claimant's ability to file a claim for that injury, occupational disease, or death in the other state unless the claimant's claim filed in Ohio is dismissed for reasons other than on the merits. The bill states that if the claimant fails or refuses to sign the waiver within 21 days after the claim is filed, the Administrator must issue an order to dismiss the claimant's claim and the claimant is ineligible to file a claim for compensation or benefits in Ohio for that injury, disability, or death. The bill prohibits the Administrator from issuing an order granting or denying the payment of compensation or benefits or both before either the 21¹ period specified in the bill expires or the Administrator receives the signed waiver. The bill makes such an order not appealable. (R.C. 4123.513.)

Claim not allowed if previously decided on the merits in another state

If an employee or the dependents of an employee are eligible to assert or file a claim for compensation or benefits under the workers' compensation laws of any state other than Ohio, and the employee or the employee's dependents assert or file such a claim in another state or states and receive a decision on the merits of that claim for compensation or benefits, under the bill the employee or the employee's dependents cannot receive compensation or benefits under Ohio's Workers' Compensation Law for the same injury, occupational disease, or death for which the employee or the employee's dependents received a decision on the merits of a claim for compensation or benefits asserted or filed in the other state or states, regardless of whether the employee or the employee's dependents are awarded compensation or benefits pursuant to that state's or those states' laws. (R.C. 4123.542.)

¹ The bill requires a technical amendment to correct this number.

Reimbursement requirements when claimant receives benefits or compensation in both Ohio and another state

Currently under Ohio's Workers' Compensation Law, if any employee or the employee's dependents are awarded workers' compensation benefits or recover damages from an employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, must be credited on the amount of any award of compensation or benefits made to the employee or the employee's dependents by the Bureau of Workers' Compensation. (R.C. 4123.54(H).)

The bill eliminates the provision described above and instead allows the Administrator or a self-insuring employer to collect the amount of compensation or benefits paid to, or on behalf of, an employee or the employee's dependents by the Administrator or self-insuring employer pursuant to an award for compensation or benefits under Ohio's Workers' Compensation Law if the employee or the employee's dependents also are awarded workers' compensation benefits or recover damages from an employer under the laws of another state. The bill also allows the Administrator or a self-insuring employer to collect from an employee or the employee's dependents any costs and attorney's fees the Administrator or the self-insuring employer incurs in collecting the payment discussed immediately above and any attorney's fees and costs incurred by an employer in contesting or responding to the claim filed under Ohio's Workers' Compensation Law by that employee or the employee's dependents. The bill prohibits the Administrator from charging the amount of compensation or benefits the Administrator collects to the employer's experience if the employee's employer pays premiums into the state insurance fund. The bill requires the Administrator to forward the amount of the costs and attorney's fees the Administrator collects that were incurred by a state fund employer to that employer. If the employee's employer is a self-insuring employer, the bill requires the self-insuring employer to deduct the amount of compensation or benefits the self-insuring employer collects from the paid compensation the self-insuring employer reports to the Administrator. (R.C. 4123.54.)

Extraterritorial coverage

Extraterritorial coverage allowed

Generally, all contracts or agreements purporting to indemnify or insure an employer against loss or liability for the payment of compensation to workers or their dependents for death, injury, or occupational disease occasioned in the course of the workers' employment are currently void under Ohio's Workers' Compensation Law. The Ohio Workers' Compensation Law allows any corporation organized or admitted under the laws of Ohio to transact liability

insurance, by amendment of its articles of incorporation or by original articles of incorporation, to provide therein for the authority and purpose to make insurance in states, territories, districts, and counties, other than the state of Ohio, and in the state of Ohio in respect of contracts otherwise allowed under the law indemnifying employers against loss or liability for payment of compensation to workers and employees and their dependents for death, injury, or occupational disease occasioned in the course of the employment and to insure and indemnify employers against loss, expense, and liability by risk of bodily injury or death by accident, disability, sickness, or disease suffered by workers and employees for which the employer may be liable or has assumed liability. (R.C. 4123.82(A).)

The bill specifically allows an employer to elect to obtain extraterritorial coverage through an extraterritorial insurer or through the Administrator (R.C. 4123.292(A) and 4123.82(C)). The bill defines "extraterritorial coverage" as insurance coverage purchased by an employer for workers' compensation claims that arise in a state or states other than Ohio and that are filed by the employees of the employer or those employee's dependents, as applicable, in that other state or those other states (R.C. 4123.01(K)). Additionally, the bill defines "extraterritorial insurer" as an insurance company that is authorized to provide workers' compensation insurance coverage in any of the states that permit employers to obtain insurance for workers' compensation claims through insurance companies. (R.C. 4123.01(J).)

Employer election of extraterritorial coverage

The bill requires an employer who elects to obtain extraterritorial coverage to submit a written notice to the Administrator stating that election and, if the employer elects to obtain that coverage through an extraterritorial insurer, the name of the extraterritorial insurer through whom the employer has obtained that coverage. If an employer fails to pay the employer's premium for extraterritorial coverage, the bill requires the Administrator to consider the employer to be noncompliant for the purposes of having extraterritorial coverage but cannot consider the employer to be a noncomplying employer for purposes of Ohio's Workers' Compensation Law unless the employer otherwise fails to comply with Ohio's Workers' Compensation Law. (R.C. 4123.292(A).)

Extraterritorial coverage through the Administrator

The bill requires the Administrator to secure extraterritorial coverage to allow an employer who elects to obtain that coverage through the Administrator for workers' compensation claims arising in a state or states other than Ohio. The bill requires the Administrator to follow Ohio's Competitive Bidding requirements (R.C. Chapter 125.) to select one extraterritorial insurer. Additionally, the Administrator, with the advice and consent of the Bureau of Workers'

Compensation Board of Directors, must award the contract to provide extraterritorial coverage for employers located in Ohio to the extraterritorial insurer that is the lowest bidder. (R.C. 4123.292(B).)

Premium calculation for extraterritorial coverage through the Administrator

The bill requires the Administrator to calculate an employer's premium for extraterritorial coverage provided through the Administrator separately from calculating any other premiums or assessments charged under Ohio's Workers' Compensation Law. The Administrator must calculate the employer's extraterritorial coverage premium in the same manner the Administrator calculates an employer's premium for the State Insurance Fund, except that, when calculating the employer's premium for extraterritorial coverage, the Administrator must do all of the following:

(1) Base the employer's extraterritorial coverage premium on the terms specified in the contract the Administrator enters into with an insurance company;

(2) When determining the expenditure of wages, payroll, or both upon which to base the employer's extraterritorial coverage premium, use only the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in a state or states other than Ohio;

(3) Not take into account the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in Ohio or any compensation or benefits paid for claims covered by the State Insurance Fund. (R.C. 4123.292(C).)

The bill also requires the Administrator, with the advice and consent of the Board, to adopt rules to implement the provisions requiring the Administrator to secure extraterritorial coverage and to calculate employer's premiums for the extraterritorial coverage provided through the Administrator. (R.C. 4123.292(D).)

Premium calculation requirements for extraterritorial insurers

The bill requires an extraterritorial insurer that provides extraterritorial coverage to an employer to do all of the following when calculating the employer's premium for the extraterritorial coverage:

(1) When determining the amount of wages, payroll, or both upon which to base the employer's premium, use only the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in a state or states other than Ohio;

(2) Not take into account the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in Ohio or any compensation or benefits paid for claims otherwise covered by Ohio's Workers' Compensation Law;

(3) Take into account any other factors the extraterritorial insurer uses to calculate premiums for workers' compensation insurance. (R.C. 4123.292(E).)

Records requirements for employers who elect extraterritorial coverage

Currently, every employer must keep records of, and furnish to the Bureau of Workers' Compensation in January of each year, the following information:

(1) The number of employees employed during the preceding year from January 1 through December 31.

(2) The number of the employees described in (1) above employed at each kind of employment and the aggregate amount of wages paid to such employees. (R.C. 4123.26(A) and (B).)

If an employer elects to obtain extraterritorial coverage through the Administrator or an extraterritorial insurer for claims arising in a state or states other than Ohio, the bill requires the employer to furnish all of the following additional information:

(1) The amount of wages the employer paid to the employer's employees for performing labor or providing services for the employer in Ohio.

(2) The amount of wages the employer paid to the employer's employees for performing labor or providing services for the employer in a state or states other than Ohio. (R.C. 4123.26(C).)

Bar against incurring obligations or liabilities

The bill specifies that the Board and the individual members thereof, the Administrator, and the Bureau of Workers' Compensation cannot incur any obligation or liability if another state determines that the extraterritorial coverage provided by the bill does not satisfy the requirements specified in that state's workers' compensation law for obtaining workers' compensation coverage in that state. (R.C. 4123.292(F).)

Calculation of State Insurance Fund premiums for employers who elect extraterritorial coverage

If an employer elects to obtain extraterritorial coverage through the Administrator or an extraterritorial insurer, the bill requires the Administrator to calculate the employer's premium for the State Insurance Fund in the same manner as otherwise required under Ohio's Workers' Compensation Law, except that when the Administrator determines the expenditure of wages, payroll, or both upon which to base the employer's premium, the Administrator must use only the expenditure of wages, payroll, or both attributable to the labor performed and services provided by that employer's employees when those employees performed labor and provided services in Ohio only and to which the extraterritorial coverage does not apply. (R.C. 4123.29(A)(2)(b).)

Temporary suspension of premium increase and experience change

In the case of any institution of higher education that has sustained claims arising from deaths and injuries of a catastrophic nature arising from a motor vehicle accident occurring outside of Ohio, the bill requires the Administrator to suspend the imposition of any premium increase or any change in the experience of such an institution of higher education until after the conclusion of any subrogation claims that are brought by the Administrator in relation to those deaths and injuries. (Section 4 of the bill.)

HISTORY

ACTION	DATE
Introduced	05-08-08

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