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Bill Analysis
Legislative Service Commission

S.B. 334*

127th General Assembly
(As Reported by S. Insurance, Commerce, and Labor)

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 include in the form an employee files with the Administrator or a self-insuring employer to initiate a claim under Ohio's Workers' Compensation Law language stating that the employee elects to file a claim in Ohio and waives the right to file a claim for the same injury, occupational disease, or death in another state.
- Requires the Administrator or a self-insuring employer to request an employee or the employee's dependent to sign an election affirming the employee's acceptance of electing to receive compensation and benefits under Ohio's Workers' Compensation Law for a claim and affirmatively waiving and releasing the employee's right to file for and receive compensation and benefits under the laws of another state for that claim.
- Requires the Administrator or self-insuring employer to suspend a claim if the Administrator or self-insuring employer does not receive a signed election as described above within 28 days after the Administrator or self-insuring employer submits the request to receive the election.

* This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Prohibits an employee or an employee's dependents who receive a decision on the merits of a claim for compensation or benefits under Ohio's Workers' Compensation Law from filing a claim for the same injury, occupational disease, or death in another state.
- Prohibits an employee or the employee's dependents who receive a decision on the merits of a claim for compensation and benefits under another state's workers' compensation laws from filing a claim under Ohio's Workers' Compensation Law for the same injury, occupational disease, or death.
- Allows the Administrator or an employer to collect the amount of the compensation or benefits paid to, or on behalf of, an employee or employee's dependents pursuant to an award under Ohio's Workers' Compensation Law if the employee also pursues workers' compensation benefits or recovers damages under the workers' compensation laws of another state for the same injury, occupational disease, or death.
- Specifies that the Administrator cannot charge the amounts recovered as described immediately above against a state fund employer's experience.
- Allows the Administrator or an employer to collect from the employee or the employee's dependents described above any costs and attorney's fees the Administrator or the employer incurs in collecting the payment described above and any attorney's fees, penalties, interest, awards, and costs incurred by an employer in contesting or responding to any claim by the employee or the employee's dependents after the original claim under Ohio's or another state's workers' compensation law.
- 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 other-states' coverage through an other-states' insurer or through the Administrator.
- Requires employers who elect to obtain other-states' coverage to submit a written notice to the Administrator stating the election.
- Permits the Administrator to offer other-states' coverage and, if the Administrator elects to do so, requires the Administrator to select one

other-states' insurer by following Ohio's Competitive Bidding requirements and awarding the contract to the lowest and best bidder.

- Requires the Administrator to adopt rules to implement the provisions of the bill dealing with other-states' coverage provided through the Administrator.
- Specifies requirements applicable to other-states' 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 other-states' 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 other-states' 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.
- Specifies that only an individual whose primary occupation is as a journalist may request and receive the address and telephone number of claimants and dependents of claimants.
- Exempts any legislation enacted by the General Assembly prior to June 30, 2008 from review by the Workers' Compensation Council.

TABLE OF CONTENTS

Workers' compensation coverage for residents of states other than Ohio.....	4
When residents of other states temporarily working in Ohio are covered by Ohio's Workers' Compensation Law	5
Employees who perform all or some of their work outside of Ohio.....	5
Waiver of right to file in another state.....	6
Election of remedy.....	7

Reimbursement requirements when claimant receives benefits or compensation in both Ohio and another state	7
Other-states' coverage.....	8
Other-states' coverage allowed.....	8
Employer election of other-states' coverage.....	9
Premium calculation requirements for other-states' insurers	9
Other-states' coverage through the Administrator.....	9
Premium calculation for other-states' coverage through the Administrator.....	10
Records requirements for employers who elect other-states' coverage	10
Bar against incurring obligations or liabilities	11
Calculation of State Insurance Fund premiums for employers who elect to obtain other-states' coverage	11
Access to specified workers' compensation information	12
Temporary suspension of premium increase and experience change	12
Application of bill and exemption from Workers' Compensation Council review.....	13

CONTENT AND OPERATION

Workers' compensation coverage for residents of states other than Ohio

Under current law, 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, the employee and the employee's dependents are not entitled to receive compensation or benefits under Ohio's Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.), 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).)

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 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**," above. (R.C. 4123.01(A)(1)(d).)

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 of right to file in another state

Under the bill, the Administrator of Workers' Compensation, on the form an employee or an individual acting on behalf of the employee files with the Administrator or a self-insuring employer¹ to initiate a claim under Ohio's Workers' Compensation Law, must include a statement that is substantially similar to the following statement in bold font and set apart from all other text in the form:

By signing this form, I elect to receive workers' compensation benefits for this claim from only the state of Ohio. I understand and I hereby waive and release my right to receive compensation and benefits under the workers' compensation laws of another state for the injury or occupational disease, or the death resulting from an injury or occupational disease, for which I am filing this claim. I have not received compensation and benefits under the workers' compensation laws of another state for this claim, and I will not file a claim in another state for the injury or occupational disease or death resulting from an injury or occupational disease for which I am filing this claim. (R.C. 4123.51.)

Additionally, under the bill, an employee, or the dependent of an employee, who elects to receive compensation and benefits under Ohio's Workers' Compensation Law for a claim may not receive compensation and benefits under the workers' compensation laws of any state other than Ohio for that same claim. For each claim submitted by or on behalf of an employee, the Administrator or, if the employee is employed by a self-insuring employer, the self-insuring employer must request the employee or the employee's dependent to sign an election that

¹ A self-insuring employer is an employer who is granted the privilege of paying compensation and benefits directly to the employer's employees (R.C. 4123.01(G)). A state fund employer pays premiums into the State Insurance Fund, and the Administrator administers the claims for compensation and benefits filed by employees of state fund employers.

affirms the employee's or employee's dependent's acceptance of electing to receive compensation and benefits under Ohio's Workers' Compensation Law for that claim that also affirmatively waives and releases the employee's or the employee's dependent's right to file for and receive compensation and benefits under the laws of any state other than Ohio for that claim. The employee or the employee's dependent must sign the election form within 28 days after the Administrator or self-insuring employer submits the request or the Administrator or self-insuring employer must suspend that claim until the Administrator or self-insuring employer receives the signed election form. (R.C. 4123.54(H)(5).)

Election of remedy

The bill prohibits an employee or the employee's dependents who receive a decision on the merits of a claim for compensation or benefits under Ohio's Workers' Compensation Law from filing a claim for the same injury, occupational disease, or death in another state under the workers' compensation laws of that state. Additionally, the bill prohibits an employee or the employee's dependents who receive a decision on the merits of a claim for compensation or benefits under the workers' compensation laws of another state from filing a claim for compensation and benefits under Ohio's Workers' Compensation Law for the same injury, occupational disease, or death. The bill defines "a decision on the merits" as a decision determined or adjudicated for compensability of a claim and not on jurisdictional grounds. (R.C. 4123.542.)

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 specifies that if any employee or the employee's dependents pursue workers' compensation benefits or recover damages from the employer under the laws of another state, and the employee or the employee's dependents also pursue or receive an award of 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 pursued workers' compensation benefits or recovered damages under the laws of another state, the Administrator or any employer, by any lawful means, may collect the amount of compensation or benefits paid to or on behalf of the

employee or the employee's dependents by the Administrator or a self-insuring employer pursuant to Ohio's Workers' Compensation Law for that award. The bill also allows the Administrator or any employer to collect from the employee or the employee's dependents any costs and attorney's fees the Administrator or the employer incurs in collecting the payment discussed immediately above and any attorney's fees, penalties, interest, awards, and costs incurred by an employer in contesting or responding to any claim after the original claim under the provision described in "*Election of remedy*," described above 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(H)(2).)

Other-states' coverage

Other-states' 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 other-states' coverage through an other-states' insurer or through the Administrator, if the Administrator elects to offer such coverage (R.C. 4123.292(A) and 4123.82(C)). The bill defines "other-states' 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 "other-states' 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 other-states' coverage

The bill requires an employer who elects to obtain other-states' coverage to submit a written notice to the Administrator stating that election and, if the employer elects to obtain that coverage through an other-states' insurer, the name of the other-states' insurer through whom the employer has obtained that coverage. If an employer fails to pay the employer's premium for other-states' coverage, the bill requires the Administrator to consider the employer to be noncompliant for the purposes of having other-states' 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).)

Premium calculation requirements for other-states' insurers

The bill requires an other-states' insurer that provides other-states' coverage to an employer to do all of the following when calculating the employer's premium for the other-states' 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 other-states' insurer uses to calculate premiums for workers' compensation insurance. (R.C. 4123.292(E).)

Other-states' coverage through the Administrator

The bill permits the Administrator to secure other-states' coverage to allow an employer who wishes to obtain other-states' coverage and who elects to obtain that coverage through the Administrator for workers' compensation claims arising

in a state or states other than Ohio. If the Administrator elects to secure other-states' coverage, the bill requires the Administrator to follow Ohio's Competitive Bidding Requirements (R.C. Chapter 125.) to select one other-states' insurer and the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, must award the contract to provide other-states' coverage for employers located in Ohio to the other-states' insurer that is the lowest and best bidder. (R.C. 4123.292(B).)

Premium calculation for other-states' coverage through the Administrator

The bill requires the Administrator, if the Administrator elects to secure other-states' coverage, to calculate an employer's premium for other-states' 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 other-states' 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 other-states' coverage, the Administrator must do all of the following:

(1) Base the employer's other-states' 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 other-states' 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).)

Under the bill, if the Administrator elects to secure other-states' coverage, the Administrator, with the advice and consent of the Board, must adopt rules to implement the provisions allowing the Administrator to secure other-states' coverage and to calculate employer's premiums for the other-states' coverage provided through the Administrator. (R.C. 4123.292(D).)

Records requirements for employers who elect other-states' 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 other-states' coverage through the Administrator, if the Administrator elects to offer such coverage, or an other-states' 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 to the Bureau:

(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.

The bill specifies that the allocation of wages identified by the employer pursuant to (1) and (2) immediately above cannot be presumed to be an indication of the law under which an employee is eligible to receive compensation and benefits. (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 other-states' 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 to obtain other-states' coverage

If an employer elects to obtain other-states' coverage, 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 other-states' coverage does not apply. (R.C. 4123.29(A)(2)(b).)

Access to specified workers' compensation information

Under continuing law, information contained in a claimant's file is confidential and is not a public record. However, current law requires the Industrial Commission or the Bureau of Workers' Compensation, upon receiving a written request made and signed by a journalist, to disclose to the journalist the address or addresses and telephone number or numbers of claimants, regardless of whether their claims are active or closed, and the dependents of those claimants. Current law permits a journalist to request this information for multiple workers or dependents in one written request. A journalist must include all of the following in the written request:

- The journalist's name, title, and signature;
- The name and title of the journalist's employer;
- A statement that the disclosure of the information sought is in the public interest.

Continuing law prohibits the Commission or the Bureau from inquiring as to the specific public interest served by the disclosure of information requested by a journalist. "Journalist," under continuing law, means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public. (R.C. 4123.88(D) and 149.43, not in the bill.)

The bill specifies that only an individual whose primary occupation is as a journalist may request and receive the information described above. (R.C. 4123.88.)

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.)

Application of bill and exemption from Workers' Compensation Council review

The bill specifies that it applies to all claims pursuant to Ohio's Workers' Compensation Law arising on or after the bill's effective date. The bill also specifies that, notwithstanding the requirement that the Workers' Compensation Council must study all changes to Ohio's Workers' Compensation Law proposed to the General Assembly and to report to the General Assembly on the changes, probable costs, actuarial implications, and desirability as a matter of public policy, any legislation proposing to make changes to Ohio's Workers' Compensation Law that is enacted by the General Assembly on or before June 30, 2008 is not subject to that study and report. (Sections 3 and 5.)

HISTORY

ACTION	DATE
Introduced	05-08-08
Reported, S. Insurance, Commerce, and Labor	---

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