



# Ohio Legislative Service Commission

## Final Analysis

Meredith L. Rockwell

### Sub. H.B. 123

129th General Assembly

(As Passed by the General Assembly)

(Excluding appropriations, fund transfers, and similar provisions)

**Reps.** Hottinger, Amstutz, Sears, Anielski, Baker, Blair, Bubp, Combs, Garland, Goyal, Hackett, Johnson, Letson, McClain, Milkovich, Newbold, O'Brien, Peterson, Slaby, Uecker, Batchelder

**Sens.** Bacon, Beagle, Schaffer, Hite, Hughes, LaRose, Obhof, Stewart, Wilson

**Effective date:** April 25, 2011; codified provisions effective July 29, 2011

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## ACT SUMMARY

- Allows the Administrator of Workers' Compensation to adopt rules establishing criteria that a public employer must satisfy for the Administrator to waive any of the continuing law requirements that certain public employers must satisfy to be granted status as a self-insuring employer.
- Allows the Administrator to charge additional security from a public employer for whom the Administrator waives any criteria to become a self-insuring employer under the act.
- Requires the Administrator or a self-insuring employer to award payment for medical bills in a claim that is ultimately denied under specified circumstances and requires those payments to be charged to the Surplus Fund Account.
- Reduces the time period for the payment of bills for medical or vocational rehabilitation services from two years to one year from the date of service or the date the payment is otherwise permitted under continuing law, except for reimbursement of conditional payments for Medicaid or Medicare and except as provided in a rule that the Administrator must adopt.
- Prohibits a medical or vocational rehabilitation services provider from billing a claimant for any bill that the Administrator or Industrial Commission is prohibited

from paying due to the provider failing to timely submit the bill, except for reimbursement of conditional payments for Medicaid or Medicare.

- Removes the requirement that the Bureau of Workers' Compensation include in the annual actuarial valuation report specified information concerning financial information and methods used in making that valuation.
- Reduces the biannual reporting requirement for the Health Care Data Program to once annually, to be submitted with the BWC Board's annual report.
- Changes the requirements an individual must satisfy to become the member of the Bureau of Workers' Compensation Board of Directors who is an actuary.
- Revises the membership of the Workers' Compensation Board of Directors Nominating Committee.
- Abolishes the BWC Division of Research and Statistics.
- Requires an existing disability benefit that is being paid by a public retirement system or an alternative retirement plan to be terminated if after the act's effective date the recipient (1) became disabled in the commission of a felony offense of bribery, while engaging in a pattern of corrupt behavior, or while committing theft in office and (2) at that time was serving in a position of honor, trust, or profit.
- Requires a public retirement system or alternative retirement plan provider, after receiving notice from the prosecutor that a member or plan participant has been charged with one of the specified felonies, to give notice to the prosecutor of whether the member or plan participant has been granted a disability benefit and to submit to the court the documents relied upon in granting the disability benefit.
- Requires the court to hold a hearing regarding the condition for which the offender was granted a disability benefit prior to sentencing the offender to determine whether the offender's disabling condition arose out of the commission of the felony the offender was convicted of or pled guilty to.
- Authorizes the public retirement system or alternative retirement plan provider to recover the disability benefit paid to the offender, if the court orders termination of the benefit.
- For purposes of the law that requires forfeiture of the right to receive future retirement benefits for conviction of one of the specified felonies while serving in a "position of honor, trust, or profit," expands that definition to include a position in

which, in the course of public employment, an employee has control over the expenditure of public funds of \$100,000 or more annually.

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## **CONTENT AND OPERATION**

### **Approval of self-insuring status for public employers**

(R.C. 4123.35(B)(2))

The act allows the Administrator of Workers' Compensation to adopt rules establishing the criteria that a public employer must satisfy in order for the Administrator to waive any of the continuing law requirements that public employers who are not the state, certain boards of county commissioners, a board of a county hospital, or a publicly owned utility must satisfy to be granted status as a self-insuring employer. A self-insuring employer pays compensation and benefits under the Workers' Compensation Law directly to a claimant. Previously, the Administrator was required to deny a public employer that status if the public employer could not satisfy all of the following requirements:

(1) For the two-year period preceding application, the public employer has maintained an unvoted debt capacity equal to at least two times the amount of the current annual workers' compensation premium established by the Administrator for the year immediately preceding the year in which the public employer makes the application.

(2) For each of the two fiscal years preceding the application, the unreserved and undesignated year-end fund balance in the public employer's general fund is equal to at least 5% of the public employer's general fund revenues for the fiscal year computed in accordance with generally accepted accounting principles.

(3) For the five-year period preceding the application, the public employer, to the extent applicable, has complied fully with the continuing disclosure requirements established in rules adopted by the U.S. Securities and Exchange Commission.

(4) For the five-year period preceding the application, the public employer has not had its Local Government Fund distribution withheld on account of the public employer being indebted or otherwise obligated to the state.

(5) For the five-year period preceding the application, the public employer has not been under a fiscal watch or fiscal emergency pursuant to the Local Fiscal Emergencies Law.

(6) For the public employer's fiscal year preceding the application, the public employer has obtained an annual financial audit as required under continuing law, that has been released by the Auditor of State within seven months after the end of the public employer's fiscal year.

(7) On the date of application, the public employer holds a debt rating of Aa3 or higher according to Moody's Investors Service, Inc., or a comparable rating by similar independent rating agency.

(8) The public employer agrees to generate an annual accumulating book reserve in its financial statements reflecting an actuarially generated reserve adequate to pay projected workers' compensation claims for the applicable period of time, as determined by the Administrator.

(9) For a public employer that is a hospital, the public employer must submit audited financial statements showing the hospital's overall liquidity characteristics, and the Administrator must determine, on an individual basis, whether the public employer satisfies liquidity standards equivalent to the liquidity standards of other public employers.

(10) Any additional criteria that the Administrator adopts in rules.

The act prohibits the Administrator from waiving any of the requirements for a public employer who does not satisfy the criteria established in the rules the Administrator adopts. Additionally, the act allows the rules to require additional security from that public employer pursuant to continuing law requirements, which is similar to continuing law in which the Administrator may charge additional security if the Administrator waives certain requirements applicable to the private sector.

## **Payment of medical and related benefits**

(R.C. 4123.512(H) and 4123.52)

For workers' compensation claims arising after the act's effective date, under the act, regardless of whether a final determination that payments of benefits made to or on behalf of a claimant should not have been made, the act requires the Administrator or a self-insuring employer to award payment of medical or vocational rehabilitation services submitted for payment after the date of the final determination if all of the following apply:

- The services were approved and were rendered by the provider in good faith prior to the date of the final determination;

- The services were payable under continuing law prior to the date of the final determination;
- The request for payment is submitted within the time limit established by the act as described below.

The act requires these payments to be charged to the Surplus Fund Account of the State Insurance Fund. If the employer of the employee who is the subject of this claim is a state fund employer, the act prohibits these payments from being charged to the employer's experience (which is used to determine the employer's premium). If that employer is a self-insuring employer, the act requires the self-insuring employer to deduct the amount from the paid compensation the self-insuring employer reports to the Administrator under continuing law. Paid compensation generally consists of payments made to claimants by the self-insuring employer under the Workers' Compensation Law and is used to determine the amount of a self-insuring employer's assessments due under that law.

Additionally, the act prohibits, except as provided in a rule the Administrator is required to adopt, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, the Administrator or the Industrial Commission from making any finding or awarding for payment of medical or vocational rehabilitation services submitted for payment more than one year after the date the services were rendered or more than one year after the date the services became payable under continuing law (the date of the issuance of the staff hearing officer's order or the date of the final administrative or judicial determination), whichever is later. Thus, the act reduces the time period for the payment of bills for medical or vocational rehabilitation services from two years to one year from the date of service or the date the payment is otherwise permitted under continuing law. This requirement does not apply to requests made by the Centers for Medicare and Medicaid Services in the United States Department of Health and Human Services for reimbursement of conditional payments made pursuant to the Medicare Secondary Payer Act.

The act prohibits a medical or vocational rehabilitation services provider from billing a claimant for any bill that the Administrator or Industrial Commission is prohibited from paying due to the provider failing to timely submit the bill.

### **Payment of compensation and benefits resulting from vocational rehabilitation**

(R.C. 4121.68)

The act eliminates the requirement that the Bureau of Workers' Compensation (BWC) be considered the employer of a claimant who sustains an injury or occupational

disease or dies in the course of and arising out of the claimant's participation in a vocational rehabilitation program. Under continuing law, compensation and benefits paid to such a claimant are charged to the Surplus Fund Account and not charged through the State Insurance Fund to the employer against which the claim was allowed. The act limits the prior law ability to have these compensation and benefits be charged to the Surplus Fund Account to only those employers who pay assessments into the Account for that payment, which is consistent with current practice with respect to state agencies.

## **Annual actuarial valuation report**

(R.C. 4121.125)

Continuing law requires the BWC Board of Directors (Board) to contract to have prepared annually by or under the supervision of an actuary a report that meets specified requirements and that consists of an actuarial valuation of the assets, liabilities, and funding requirements of the State Insurance Fund and all other funds specified in the Workers' Compensation Law. The act removes the following from the information required to be included in the report:

- A summary of the census data and financial information used in the valuation;
- A description of the 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.

The report must continue to contain all of the following information:

- A summary of the compensation and benefit provisions evaluated;
- A description of the actuarial assumptions and actuarial cost method used in the valuation;
- 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.

## **Health Partnership Program**

(R.C. 4121.44 and 4121.99 (repealed))

The act reduces the biannual reporting requirement for the Health Care Data Program to once annually and requires the report to be submitted to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Workers' Compensation Council along with the Board's annual report. Previously, this report was submitted to the President of the Senate, Speaker of the House of Representatives, and the Governor each January 1 and July 1. Under continuing law the report contains compiled data on the measures of outcomes and savings of the Health Partnership Program. The act also makes technical changes with respect to the Health Partnership Program.

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

(R.C. 4121.12)

The act requires the member of the Board who must be an actuary to be (1) an associate or fellow with the Casualty Actuarial Society, rather than an associate or fellow with the Society of Actuaries as under prior law, or (2) a member in good standing with the American Academy of Actuaries, as under continuing law.

## **Workers' Compensation Board of Directors Nominating Committee**

(R.C. 4121.123)

The act changes the membership of the Workers' Compensation Board of Directors Nominating Committee in two ways. First, the act removes the president of the Ohio Municipal League from the Committee. Second, the act requires the chief executive officer or the equivalent of the chief executive officer of the National Federation of Independent Businesses and the Ohio Farm Bureau each to serve on the Committee, rather than requiring the two groups to jointly select a representative under prior law.

Under continuing law, the Committee reviews and evaluates possible appointees for the Board and makes recommendations to the Governor for the appointment of members to the Board. The Committee must meet at the request of the Governor or as the Committee determines appropriate in order to make recommendations to the Governor for the appointment of members of the Board.

## **Division of Research and Statistics**

(R.C. 4121.124 (repealed), 4121.32, and 4121.41)

The act abolishes the BWC Division of Research and Statistics, which was previously not staffed by BWC. The Workers' Compensation Law required the Division to be headed by a superintendent, who was in the unclassified civil service. In abolishing the Division, the act transfers the following duties from the Division to BWC:

- Performance of cost-effectiveness analyses of regarding the procedure for the assignment and transfer of claims that are available to the General Assembly, the Governor, and to the public during normal working hours;
- Compilation of statistics on the subjects of complaints regarding BWC.

Additionally, the act eliminates the following duties of the Division:

- The duty to prepare and publish statistical summaries pertaining to the operation of BWC and the Industrial Commission;
- The duty to prepare and transmit to the appropriate committees of the General Assembly, upon request, cost estimates for any legislation under consideration that has an impact upon the workers' compensation system or the operation of the agencies involved in the administration of the system.

## **Termination of a disability benefit granted by a public retirement system**

(R.C. 145.27, 145.563 (not in the act), 145.573, 742.41, 742.464, 742.64, 2901.43 (not in the act), 2929.193, 3305.12, 3305.20, 3305.22, 3307.20, 3307.373, 3307.47 (not in the act), 3309.22, 3309.673, 3309.70 (not in the act), 5505.04, 5505.263, and 5505.34)

The act establishes a process for terminating disability benefits that are paid by a public retirement system to a person who became disabled while serving in a position of honor, trust, or profit, if the person became disabled in the commission of a felony offense of bribery, while engaging in a pattern of corrupt behavior, or while committing theft in office.

When a member of a public retirement system or a participant in an alternative retirement plan is charged with a felony offense of bribery, engaging in a pattern of corrupt behavior, or theft in office, and the offense was committed while the person was serving in a position of honor, trust, or profit, the prosecutor must provide written notice to the applicable retirement system or plan. The act then requires the retirement system or plan provider to determine whether the member has been granted a disability

benefit. If so, the system or plan provider must send written notice to the prosecutor assigned to the case that a disability benefit has been granted to the offender and the benefit may be subject to termination.

Prior to sentencing the offender, the court must hold a hearing regarding the condition for which the offender was granted a disability benefit. The hearing is limited to a consideration of whether the offender's disabling condition arose out of the commission of the offense the offender was convicted of or pled guilty to. Not later than ten days before the scheduled date of the hearing, the court must give written notice of the hearing to the offender, the prosecutor, and the appropriate public retirement system, alternative retirement plan provider, or, if more than one is providing a disability benefit, the applicable combination of these.

The system or plan provider must submit to the court the offender's medical reports and recommendations, and the offender's disability application. Although the offender's medical reports and recommendations generally are privileged, the act requires them to be released to a court that is conducting a hearing regarding the possible termination of the offender's disability benefits.

If the court determines, based on those documents, that the disabling condition arose out of the commission of the felony the offender was convicted of or pled guilty to, the court must order the system or plan provider to terminate the offender's disability benefit. And, any disability benefit paid to the offender prior to the termination of those benefits may be recovered in accordance with continuing law regarding recovery of erroneously paid benefits.

### **Forfeiture of public retirement benefits for certain convictions**

(R.C. 145.56, 145.561, 145.82, 145.95, 742.46, 742.47, 2329.66, 2929.192, 3305.07, 3305.08, 3307.41, 3307.42, 3309.66, 3309.661, 3309.82, 3309.95, and 5505.22)

The act expands what is considered a "position of honor, trust, or profit" for the purpose of the law governing the forfeiture of public retirement benefits. Although public retirement benefits generally are protected from execution, garnishment, bankruptcy, and other legal processes, a member of a public retirement system or alternative retirement plan forfeits those benefits if the person is convicted of or pleads guilty to a felony offense of bribery, engaging in a pattern of corrupt behavior, or theft in office for an offense that was committed while the person was a member or participant. The act expands the list of positions of "honor, trust, or profit" to include a position in which, in the course of employment, an employee has control over the expenditure of public funds of \$100,000 or more annually.

The act adds the new category to those offices already subject to the forfeiture provisions. Under continuing law, all of the following are considered positions of honor, trust, or profit:

- (1) An elective office of the state or any of its political subdivisions;
- (2) A position on any state board or commission that is appointed by the Governor or the Attorney General;
- (3) A position as a public official or employee who is required to file a financial disclosure statement under the Ethics Law;
- (4) A position as a prosecutor; or
- (5) A position as a peace officer or State Highway Patrol Superintendent or trooper.

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## HISTORY

ACTION	DATE
Introduced	02-24-11
Reported, H. Insurance	03-16-11
Re-referred to H. Finance & Appropriations	03-17-11
Reported, H. Finance & Appropriations	03-22-11
Passed House (96-0)	03-23-11
Reported, S. Insurance, Commerce, & Labor	04-06-11
Passed Senate (28-4)	04-06-11
House concurred in Senate amendments (94-3)	04-13-11

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