

AN ACT

To amend sections 2317.45, 4121.12, 4121.121, 4121.125, 4123.34, 4123.511, 4123.512, and 4123.57 of the Revised Code and to amend Sections 3 and 6 of Am. Sub. S.B. 45 of the 122nd General Assembly to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 1997, and ending June 30, 1999, and to provide authorization and conditions for the operation of Bureau of Workers' Compensation programs.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2317.45, 4121.12, 4121.121, 4121.125, 4123.34, 4123.511, 4123.512, and 4123.57 of the Revised Code be amended to read as follows:

Sec. 2317.45. (A) As used in this section:

(1) "Collateral benefits" means benefits that are paid by any source, including workers' compensation benefits, to or on behalf of the plaintiff as a result of an injury or loss to person or property, regardless of whether there is an obligation to pay back the money or other benefits, in whole or in part, upon recovery in a tort action. "Collateral benefits" does not include life insurance proceeds.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim but does not include a civil action for damages for a breach of contract or another agreement between persons.

(3) "Trier of fact" means the jury or, in a nonjury action, the court.

(B) In determining the amount of the compensatory damages that are recoverable by the plaintiff in a tort action, the trier of fact shall consider, if presented in the tort action, relevant collateral benefits that have been paid, or that the source of the benefits has acknowledged are payable, from insurance other than insurance for which the plaintiff, spouse of the plaintiff, or parent of the plaintiff if the plaintiff is a minor, has paid a premium,

insurance that is subject to a right of subrogation, workers' compensation benefits that are subject to a right of subrogation, or insurance that has any other obligation of repayment, including, but not limited to, evidence of the amount of the collateral benefit and of the costs, premiums, or charges for the collateral benefits.

(C) This section does not apply as follows:

(1) In tort actions against the state in the court of claims. Division (D) of section 2743.02 or division (B)(2) of section 3345.40 of the Revised Code applies to collateral recoveries or sources of plaintiffs in those tort actions.

(2) In tort actions against political subdivisions of this state that are commenced under or are subject to Chapter 2744. of the Revised Code. Division (B) of section 2744.05 of the Revised Code applies to collateral sources of plaintiffs in those tort actions.

(D) This section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after ~~the effective date of the amendment to this section~~ January 27, 1997, in which this section is relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to ~~the effective date of the amendment to this section~~ January 27, 1997.

Sec. 4121.12. (A) There is hereby created the workers' compensation oversight commission consisting of nine members, of which members the governor shall appoint five with the advice and consent of the senate. Of the five members the governor appoints, two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employees, at least one of whom is representative of employees who are members of an employee organization; two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employers, one of whom represents self-insuring employers and one of whom has experience as an employer in compliance with section 4123.35 of the Revised Code other than a self-insuring employer, and one of those two representatives also shall represent employers whose employees are not members of an employee organization; and one shall 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. The governor shall select the chairperson of the commission who shall serve as chairperson at the pleasure of the governor. No more than three members

appointed by the governor shall belong to or be affiliated with the same political party.

Each of these five members shall have at least three years' experience in the field of insurance, finance, workers' compensation, law, accounting, actuarial, personnel, investments, or data processing, or in the management of an organization whose size is commensurate with that of the bureau of workers' compensation. At least one of these five members shall be an attorney licensed under Chapter 4705. of the Revised Code to practice law in this state.

(B) Of the initial appointments made to the commission, the governor shall appoint one member who represents employees to a term ending one year after September 1, 1995, one member who represents employers to a term ending two years after the effective date of this section, the member who represents the public to a term ending three years after September 1, 1995, one member who represents employees to a term ending four years after September 1, 1995, and one member who represents employers to a term ending five years after September 1, 1995. Thereafter, terms of office shall be for five years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which the member was appointed.

The governor shall not appoint any person to more than two full terms of office on the commission. This restriction does not prevent the governor from appointing a person to fill a vacancy caused by the death, resignation, or removal of a commission member and also appointing that person twice to full terms on the commission, or from appointing a person previously appointed to fill less than a full term twice to full terms on the commission. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until a successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(C) In making appointments to the commission, the governor shall select the members from the list of names submitted by the workers' compensation oversight commission nominating committee pursuant to this division. Within fourteen days after the governor calls the initial meeting of the nominating committee pursuant to division (C) of section 4121.123 of the Revised Code, the nominating committee shall submit to the governor, for the initial appointments, a list containing four separate names for each of

the members on the commission. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list.

For the appointment of the member who is representative of employees who are members of an employee organization, both for initial appointments and for the filling of vacancies, the list of four names submitted by the nominating committee shall be comprised of four individuals who are members of the executive committee of the largest statewide labor federation.

Thereafter, within sixty days after a vacancy occurring as a result of the expiration of a term and within thirty days after other vacancies occurring on the commission, the nominating committee shall submit a list containing four names for each vacancy. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list. With respect to the filling of vacancies, the nominating committee shall provide the governor with a list of four individuals who are, in the judgment of the nominating committee, the most fully qualified to accede to membership on the commission. The nominating committee shall not include the name of an individual upon the list for the filling of vacancies if the appointment of that individual by the governor would result in more than three members of the commission belonging to or being affiliated with the same political party. The committee shall include on the list for the filling of vacancies only the names of attorneys admitted to practice law in this state if, to fulfill the requirement of division (A) of section 4121.12 of the Revised Code, the vacancy must be filled by an attorney.

In order for the name of an individual to be submitted to the governor under this division, the nominating committee shall approve the individual by an affirmative vote of a majority of its members.

(D) The remaining four members of the commission shall be the chairperson and ranking minority member of the standing committees of the house of representatives and of the senate to which legislation concerning this chapter and Chapters 4123., 4127., and 4131. of the Revised Code normally are referred, or a designee of the chairperson or ranking minority member, provided that the designee is a member of the standing committee. Legislative members shall serve during the session of the general assembly to which they are elected and for as long as they are members of the general assembly. Legislative members shall serve in an advisory capacity to the commission and shall have no voting rights on matters coming before the commission. Membership on the commission by legislative members shall not be deemed as holding a public office.

(E) All members of the commission shall receive their reasonable and

necessary expenses pursuant to section 126.31 of the Revised Code while engaged in the performance of their duties as members. Legislative members also shall receive fifty dollars per meeting that they attend. Members appointed by the governor also shall receive an annual salary as follows:

~~(a)~~(1) On and before August 31, 1998, not to exceed six thousand dollars payable at the rate of five hundred dollars per month. A member shall receive the monthly five hundred dollar salary only if the member has attended at least one meeting of the commission during that month. A member may receive no more than the monthly five hundred dollar salary regardless of the number of meetings held by the commission during a month or the number of meetings in excess of one within a month that the member attends.

~~(b)~~(2) After August 31, 1998, not to exceed eighteen thousand dollars payable at the rate of fifteen hundred dollars per month. A member shall receive the monthly fifteen hundred dollar salary only if the member has attended at least one meeting of the commission during that month. A member may receive no more than the monthly fifteen hundred dollar salary regardless of the number of meetings held by the commission during the month or the number of meetings in excess of one within a month that the member attends.

The administrator of workers' compensation shall provide professional and clerical assistance to the commission, as the commission considers appropriate.

(F) The commission shall:

(1) Review progress of the bureau in meeting its cost and quality objectives and in complying with this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

(2) Issue an annual report on the cost and quality objectives of the bureau to the president of the senate, the speaker of the house of representatives, and the governor;

(3) Review all independent financial audits of the bureau. The administrator shall provide access to records of the bureau to facilitate the review required under this division.

(4) Study issues as requested by the administrator or the governor;

(5) Contract with an independent actuarial firm to assist the commission in making recommendations to the administrator regarding premium rates;

(6) Establish objectives, policies, and criteria for the administration of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and

performance evaluation guidelines, and monitor the administrator's progress in implementing the objectives, policies, and criteria on a quarterly basis. The commission shall publish the objectives, policies, and criteria no less than annually and shall make copies available to interested parties. The commission shall prohibit, on a prospective basis, specific investment activity it finds to be contrary to its investment objectives, policies, and criteria.

The investment policy in existence on ~~the effective date of this amendment~~ MARCH 7, 1997, shall continue until the commission approves objectives, policies, and criteria for the administration of the investment program pursuant to this section.

(7) Advise and consent on all of the following:

(a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;

(b) The overall policy of the bureau of workers' compensation as set by the administrator;

(c) The duties and authority conferred upon the administrator pursuant to section 4121.37 of the Revised Code;

(d) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code.

(8) Perform all duties required under section 4121.125 of the Revised Code;

(9) After August 31, ~~1998~~ 2000, appoint an administrator who meets the qualifications required under section 4121.121 of the Revised Code and fix the salary of the administrator, the amount of which the commission shall base upon the experience of the administrator and the responsibilities and duties of the administrator pursuant to this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

(G) The commission may enter into an employment contract with an administrator it appoints, provided that the contract does not exceed two years in length.

(H) "Nothing in the Revised Code shall prohibit any member of the commission from offering comments or asking questions regarding any aspect of this chapter or Chapters 4123., 4127., and 4131. of the Revised Code, proposed amendments to those chapters, or any rules proposed or adopted pursuant to those chapters, including comments or questions

regarding the impact upon the state insurance fund or the administration of that fund caused by those chapters, proposed amendments to those chapters, or rules proposed or adopted pursuant to those chapters. This division shall be liberally construed in favor of disclosure and optimum facilitation of access to information.

(I) As used in this section, "employee organization" means any labor or bona fide organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms and other conditions of employment.

Sec. 4121.121. (A) There is hereby created the bureau of workers' compensation, which shall be administered by the administrator of workers' compensation. A person appointed to the position of administrator shall possess significant management experience in effectively managing an organization or organizations of substantial size and complexity. ~~Before September 1, 1998, the~~ the governor shall appoint the administrator as provided in section 121.03 of the Revised Code, and the administrator shall serve at the pleasure of the governor. The governor shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code. The governor shall not appoint to the position of administrator any person who has, or whose spouse has, given a contribution to the campaign committee of the governor in an amount greater than one thousand dollars during the two-year period immediately preceding the date of the appointment of the administrator. After August 31, ~~1998~~ 2000, the workers' compensation oversight commission shall appoint the administrator as provided in division (F)(9) of section 4121.12 of the Revised Code, and the administrator shall serve at the pleasure of the oversight commission. The oversight commission shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

The administrator shall hold no other public office and shall devote full time to the duties of administrator. Before entering upon the duties of the office, the administrator shall take an oath of office as required by sections 3.22 and 3.23 of the Revised Code, and shall file in the office of the secretary of state, a bond signed by the administrator and by surety approved by the governor, for the sum of fifty thousand dollars payable to the state, conditioned upon the faithful performance of the administrator's duties.

(B) The administrator is responsible for the management of the bureau

of workers' compensation and for the discharge of all administrative duties imposed upon the administrator in this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, and in the discharge thereof shall do all of the following:

(1) Establish the overall administrative policy of the bureau for the purposes of this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, and perform all acts and exercise all authorities and powers, discretionary and otherwise that are required of or vested in the bureau or any of its employees in this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, except the acts and the exercise of authority and power that is required of and vested in the oversight commission or the industrial commission pursuant to those chapters. The treasurer of state shall honor all warrants signed by the administrator, or by one or more of the administrator's employees, authorized by the administrator in writing, or bearing the facsimile signature of the administrator or such employee under sections 4123.42 and 4123.44 of the Revised Code.

(2) Employ, direct, and supervise all employees required in connection with the performance of the duties assigned to the bureau by this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, and may establish job classification plans and compensation for all employees of the bureau provided that this grant of authority shall not be construed as affecting any employee for whom the state employment relations board has established an appropriate bargaining unit under section 4117.06 of the Revised Code. All positions of employment in the bureau are in the classified civil service except those employees the administrator may appoint to serve at the administrator's pleasure in the unclassified civil service pursuant to section 124.11 of the Revised Code. The administrator shall fix the salaries of employees the administrator appoints to serve at the administrator's pleasure, including the chief operating officer, staff physicians, and other senior management personnel of the bureau and shall establish the compensation of staff attorneys of the bureau's legal section and their immediate supervisors, and take whatever steps are necessary to provide adequate compensation for other staff attorneys.

The administrator may appoint a person holding a certified position in the classified service to any state position in the unclassified service of the bureau of workers' compensation. A person so appointed shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment in the unclassified service. If the position the person previously held has been filled or placed in the unclassified service, or is otherwise unavailable, the person shall be

appointed to a position in the classified service within the bureau that the department of administrative services certifies is comparable in compensation to the position the person previously held. Reinstatement to a position in the classified service shall be to a position substantially equal to that held previously, as certified by the department of administrative services. Service in the position in the unclassified service shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment in the unclassified service. when a person is reinstated to a position in the classified service as provided in this section, the person is entitled to all rights, status, and benefits accruing to the position during the person's time of service in the position in the unclassified service.

(3) Reorganize the work of the bureau, its sections, departments, and offices to the extent necessary to achieve the most efficient performance of its functions and to that end may establish, change, or abolish positions and assign and reassign duties and responsibilities of every employee of the bureau. All persons employed by the commission in positions that, after November 3, 1989, are supervised and directed by the administrator under this section are transferred to the bureau in their respective classifications but subject to reassignment and reclassification of position and compensation as the administrator determines to be in the interest of efficient administration. The civil service status of any person employed by the commission is not affected by this section. Personnel employed by the bureau or the commission who are subject to Chapter 4117. of the Revised Code shall retain all of their rights and benefits conferred pursuant to that chapter as it presently exists or is hereafter amended and nothing in this chapter or Chapter 4123. of the Revised Code shall be construed as eliminating or interfering with Chapter 4117. of the Revised Code or the rights and benefits conferred under that chapter to public employees or to any bargaining unit.

(4) Provide offices, equipment, supplies, and other facilities for the bureau. The administrator also shall provide suitable office space in the service offices for the district hearing officers, the staff hearing officers, and commission employees as requested by the commission.

(5) Prepare and submit to the oversight commission information the administrator considers pertinent or the oversight commission requires, together with the administrator's recommendations, in the form of administrative rules, for the advice and consent of the oversight commission, for classifications of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for

rules and systems of rating, rate revisions, and merit rating. The administrator shall obtain, prepare, and submit any other information the oversight commission requires for the prompt and efficient discharge of its duties.

(6) Keep the accounts required by division (A) of section 4123.34 of the Revised Code and all other accounts and records necessary to the collection, administration, and distribution of the workers' compensation funds and shall obtain the statistical and other information required by section 4123.19 of the Revised Code.

(7) Exercise the investment powers vested in the administrator by section 4123.44 of the Revised Code in accordance with the investment objectives, policies, and criteria established by the oversight commission pursuant to section 4121.12 of the Revised Code. The administrator shall not engage in any prohibited investment activity specified by the oversight commission pursuant to division (F)(6) of section 4121.12 of the Revised Code. All business shall be transacted, all funds invested, all warrants for money drawn and payments made, and all cash and securities and other property held, in the name of the bureau, or in the name of its nominee, provided that nominees are authorized by the administrator solely for the purpose of facilitating the transfer of securities, and restricted to the administrator and designated employees.

(8) Make contracts for and supervise the construction of any project or improvement or the construction or repair of buildings under the control of the bureau.

(9) Purchase supplies, materials, equipment, and services; make contracts for, operate, and superintend the telephone, other telecommunication, and computer services for the use of the bureau; and make contracts in connection with office reproduction, forms management, printing, and other services.

(10) Separately from the budget the industrial commission submits, prepare and submit to the director of budget and management a budget for each biennium. The budget submitted shall include estimates of the costs and necessary expenditures of the bureau in the discharge of any duty imposed by law as well as the costs of furnishing office space to the district hearing officers, staff hearing officers, and commission employees under division (D) of this section.

(11) As promptly as possible in the course of efficient administration, decentralize and relocate such of the personnel and activities of the bureau as is appropriate to the end that the receipt, investigation, determination, and payment of claims may be undertaken at or near the place of injury or the

residence of the claimant and for that purpose establish regional offices, in such places as the administrator considers proper, capable of discharging as many of the functions of the bureau as is practicable so as to promote prompt and efficient administration in the processing of claims. All active and inactive lost-time claims files shall be held at the service office responsible for the claim. A claimant, at the claimant's request, shall be provided with information by telephone as to the location of the file pertaining to claim. The administrator shall ensure that all service office employees report directly to the director for their service office.

(12) Provide a written binder on new coverage where the administrator considers it to be in the best interest of the risk. The administrator, or any other person authorized by the administrator, shall grant the binder upon submission of a request for coverage by the employer. A binder is effective for a period of thirty days from date of issuance and is nonrenewable. Payroll reports and premium charges shall coincide with the effective date of the binder.

(13) Set standards for the reasonable and maximum handling time of claims payment functions, ensure, by rules, the impartial and prompt treatment of all claims and employer risk accounts, and establish a secure, accurate method of time stamping all incoming mail and documents hand delivered to bureau employees.

(14) Ensure that all employees of the bureau follow the orders and rules of the commission as such orders and rules relate to the commission's overall adjudicatory policy-making and management duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

(15) Manage and operate a data processing system with a common data base for the use of both the bureau and the commission and, in consultation with the commission, using electronic data processing equipment, shall develop a claims tracking system that is sufficient to monitor the status of a claim at any time and that lists appeals that have been filed and orders or determinations that have been issued pursuant to section 4123.511 or 4123.512 of the Revised Code, including the dates of such filings and issuances.

(16) Establish and maintain a medical section within the bureau. The medical section shall do all of the following:

(a) Assist the administrator in establishing standard medical fees, approving medical procedures, and determining eligibility and reasonableness of the compensation payments for medical, hospital, and nursing services, and in establishing guidelines for payment policies which recognize usual, customary, and reasonable methods of payment for covered

services;

(b) Provide a resource to respond to questions from claims examiners for employees of the bureau;

(c) Audit fee bill payments;

(d) Implement a program to utilize, to the maximum extent possible, electronic data processing equipment for storage of information to facilitate authorizations of compensation payments for medical, hospital, drug, and nursing services;

(e) Perform other duties assigned to it by the administrator.

(17) Appoint, as the administrator determines necessary, panels to review and advise the administrator on disputes arising over a determination that a health care service or supply provided to a claimant is not covered under this chapter or Chapter 4123. of the Revised Code or is medically unnecessary. If an individual health care provider is involved in the dispute, the panel shall consist of individuals licensed pursuant to the same section of the Revised Code as such health care provider.

(18) Pursuant to section 4123.65 of the Revised Code, approve applications for the final settlement of claims for compensation or benefits under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code as the administrator determines appropriate, except in regard to the applications of self-insuring employers and their employees;

(19) Comply with section 3517.13 of the Revised Code, and except in regard to contracts entered into pursuant to the authority contained in section 4121.44 of the Revised Code, comply with the competitive bidding procedures set forth in the Revised Code for all contracts into which the administrator enters provided that those contracts fall within the type of contracts and dollar amounts specified in the Revised Code for competitive bidding and further provided that those contracts are not otherwise specifically exempt from the competitive bidding procedures contained in the Revised Code.

(20) Adopt, with the advice and consent of the oversight commission, rules for the operation of the bureau. No rule adopted by the administrator shall be construed as barring the participation of a person who is not admitted to the practice of law as a representative of a party for the purposes of any matter arising under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, provided that the representative of the party complies with rules of the administrator.

(21) Prepare and submit to the oversight commission information the administrator considers pertinent or the oversight commission requires, together with the administrator's recommendations, in the form of

administrative rules, for the advice and consent of the oversight commission, for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code.

(C) The administrator, with the advice and consent of the senate, shall appoint a chief operating officer who has significant experience in the field of workers' compensation insurance or other similar insurance industry experience if the administrator does not possess such experience. The chief operating officer shall not commence the chief operating officer's duties until after the senate consents to the chief operating officer's appointment. The chief operating officer shall serve in the unclassified civil service of the state.

Sec. 4121.125. (A) The workers' compensation oversight commission may contract with one or more outside actuarial firms and other professional persons, as the oversight commission determines necessary, to assist the oversight commission in measuring the performance of Ohio's workers' compensation system and in comparing Ohio's workers' compensation system to other state and private workers' compensation systems. The oversight commission, actuarial firm or firms, and professional persons shall make such measurements and comparisons using accepted insurance industry standards, including, but not limited to, standards promulgated by the National Council on Compensation Insurance.

(B) The oversight commission may contract with one or more outside firms to conduct management and financial audits of the workers' compensation system, including audits of the reserve fund belonging to the state insurance fund, and to establish objective quality management principles and methods by which to review the performance of the workers' compensation system.

~~(C) The oversight commission shall include any actuarial, managerial, or financial report completed under its authority pursuant to division (A) or (B) of this section in the next regularly published report of the oversight commission.~~

~~(D) The oversight commission shall publish monthly reports that include, but are not limited to, all of the following:~~

~~(1) Comparative and competitive data concerning Ohio's workers' compensation system and the workers' compensation system of other states on all of the following subjects:~~

~~(a) Average length of time to process contested and uncontested claims;~~

~~(b) Length of time to investigate claims that raise suspicion of fraudulent activity;~~

~~(c) Average indemnity cost of claims;~~

~~(d) Average medical costs of claims reported according to the types of awards and separately reported according to the types of injuries;~~

~~(e) Comparisons of Ohio classification manual rates with comparable rates in other states, and after the administrator of workers' compensation classifies occupations and industries and determines risks of different classes according to the National Council on Compensation Insurance, comparisons of rates in Ohio with rates of other states that use National Council on Compensation Insurance codes;~~

~~(f) Effectiveness of rehabilitation, both private and within the state's workers' compensation system, including the number of individuals referred, the percentage completing a rehabilitation program, and the percentage of those finding employment after successful completion of a rehabilitation program;~~

~~(2) Data concerning Ohio's workers' compensation system concerning all of the following:~~

~~(a) Performance of the investments of the bureau of workers' compensation;~~

~~(b) Effectiveness of the bureau in collecting delinquent payments that are due from employers pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code, including a croscheck with other state agencies to which employers are required under law to make payments;~~

~~(c) Effectiveness of the bureau in subrogation claims;~~

~~(d) Performance measurements of managed care organizations within the health partnership program and the qualified health plan system;~~

~~(e) Return-to-work rates, medical outcome measures, and other measures that the oversight commission or general assembly determines;~~

~~(f) Adequacy of the reserve fund to cover indemnity costs of the state insurance fund;~~

~~(g) The total number of claims filed in the time period occurring subsequent to publication of the report that immediately precedes publication of the report for which the information is being compiled according to the type of claim, employer classification, and claim result;~~

~~(h) The effectiveness of the bureau in identifying and eliminating fraud in the workers' compensation system and in recovering workers' compensation resources.~~

~~The reports published under this division shall include data from the bureau and the industrial commission regarding state fund, self-insuring, and public employers.~~

~~(E) The administrator and the industrial commission shall compile~~

mation and provide access to records of the bureau and the industrial commission to the oversight commission to the extent necessary for fulfillment of ~~all~~ both of the following requirements:

(1) Conduct of the measurements and comparisons described in division (A) of this section;

(2) Conduct of the management and financial audits and establishment of the principles and methods described in division (B) of this section;

~~(3) Publishing of the reports described in divisions (C) and (D) of this section.~~

~~(F)(D)~~ The administrator shall pay the expenses incurred by the oversight commission to effectively fulfill its duties and exercise its powers under this section as the administrator pays other operating expenses of the bureau.

Sec. 4123.34. The administrator of workers' compensation, in the exercise of the powers and discretion conferred upon ~~him~~ the administrator in section 4123.29 of the Revised Code, shall fix and maintain, with the advice and consent of the workers' compensation oversight commission, for each class of occupation or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that ~~he~~ the administrator authorizes to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees. In establishing rates, the administrator shall take into account the necessity of ensuring sufficient money is set aside in the premium payment security fund to cover any defaults in premium obligations. The administrator shall observe all of the following requirements in fixing the rates of premium for the risks of occupations or industries:

(A) ~~He~~ The administrator shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries, occupational disease, and death of employees thereof, and also keep an account of the money received from each individual employer and the amount of losses incurred against the state insurance fund on account of injuries, occupational disease, and death of the employees of the employer.

(B) Ten per cent of the money paid into the state insurance fund shall be set aside for the creation of a surplus until the surplus amounts to the sum of one hundred thousand dollars, after which time, whenever necessary in the judgment of the administrator to guarantee a solvent state insurance fund, a sum not exceeding five per cent of all the money paid into the state

insurance fund shall be credited to the surplus fund. A revision of basic rates shall be made annually on the first day of July.

Notwithstanding any provision of the law to the contrary, one hundred eighty days after the effective date on which self-insuring employers first may elect under division (D) of section 4121.66 of the Revised Code to directly pay for rehabilitation expenses, the administrator shall calculate the deficit, if any, in the portion of surplus fund that is used for reimbursement to self-insuring employers for all expenses other than handicapped reimbursement under section 4123.343 of the Revised Code. Without regard to whether a self-insuring employer makes the election under division (D) of section 4121.66 of the Revised Code, the administrator shall assess all self-insuring employers the amount ~~he~~ the administrator determines necessary to reduce the deficit over a period not to exceed five years from ~~the effective date of this amendment~~ October 20, 1993. After the initial assessment, the administrator, from time to time, may determine whether the surplus fund has such a deficit and may assess all self-insuring employers who participated in the portion of the surplus fund during the accrual of the deficit and who during that time period have not made the election under division (D) of section 4121.66 of the Revised Code the amount ~~he~~ the administrator determines necessary to reduce the deficit.

Revisions of basic rates shall be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the administrator in the administration of this chapter, as shown by the accounts kept as provided in this section, excluding the experience of employers that are no longer active if the administrator determines that the inclusion of those employers would have a significant negative impact on the remainder of the employers in a particular manual classification; and the administrator shall adopt rules, with the advice and consent of the oversight commission, governing rate revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

(C) The administrator may apply that form of rating system which ~~he~~ the administrator finds is best calculated to merit rate or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident and occupational disease experience, and may encourage and stimulate accident prevention. The administrator shall develop fixed and equitable rules controlling the rating system, which rules shall conserve to each risk the basic principles of workers' compensation insurance.

(D) The administrator, from the money paid into the state insurance

fund, shall set aside into an account of the state insurance fund titled a premium payment security fund sufficient money to pay for any premiums due from an employer and uncollected that are in excess of the employer's premium security deposit.

The fund shall be in the custody of the treasurer of state. All investment earnings of the fund shall be deposited in the fund. Disbursements from the fund shall be made by the bureau of workers' compensation upon order of the administrator to the state insurance fund. The use of the moneys held by the premium payment security fund is restricted to reimbursement to the state insurance fund of premiums due and uncollected in excess of an employer's premium security deposit. The moneys constituting the premium payment security fund shall be maintained without regard to or reliance upon any other fund. This section does not prevent the deposit or investment of the premium payment security fund with any other fund created by this chapter, but the premium payment security fund is separate and distinct for every other purpose and a strict accounting thereof shall be maintained.

(E) The administrator may grant discounts on premium rates for employers who meet either of the following requirements:

(1) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee or similar organization or make periodic safety inspections of the workplace.

(2) Successfully complete a loss prevention program prescribed by the superintendent of the division of safety and hygiene and conducted by the division or by any other person approved by the superintendent.

(F)(1) In determining the premium rates for the construction industry the administrator shall calculate the employers' premiums based upon the actual remuneration construction industry employees receive from construction industry employers, provided that the amount of remuneration the administrator uses in calculating the premiums shall not exceed an average weekly wage equal to one hundred fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code.

(2) Division (F)(1) of this section shall not be construed as affecting the manner in which benefits to a claimant are awarded under this chapter.

(3) As used in division (F) of this section, "construction industry" includes any activity performed in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of any building, structure, highway, or bridge.

Sec. 4123.511. (A) Within seven days after receipt of any claim under this chapter, the bureau of workers' compensation shall notify the claimant

and the employer of the claimant of the receipt of the claim and of the facts alleged therein. If the bureau receives from a person other than the claimant written or telecommunicated information indicating that an injury has occurred or an occupational disease that may be compensable under this chapter has been diagnosed by a licensed physician, the bureau shall notify the employee and the employer of the information. If the information is provided by any method of telecommunication, the person providing the information shall provide written verification of the information to the bureau according to division (E) of section 4123.84 of the Revised Code. The receipt of the information in writing, or if by a method of telecommunications, the written verification, and the notice by the bureau shall be considered an application for compensation under section 4123.84 or 4123.85 of the Revised Code provided that the conditions of division (E) of section 4123.84 of the Revised Code apply to information provided by a method of telecommunication. Upon receipt of a claim, the bureau shall advise the claimant of the claim number assigned and the claimant's right to representation in the processing of a claim or to elect no representation. If the bureau determines that a claim is determined to be a compensable lost time claim, the bureau shall notify the claimant and the employer of the availability of rehabilitation services. No bureau or industrial commission employee shall directly or indirectly convey any information in derogation of this right. This section shall in no way abrogate the bureau's responsibility to aid and assist a claimant in the filing of a claim and to advise the claimant of the claimant's rights under the law.

The administrator of workers' compensation shall assign all claims and investigations to the bureau service office from which investigation and determination may be made most expeditiously.

The bureau shall investigate the facts concerning an injury or occupational disease and ascertain such facts in whatever manner is most appropriate and may obtain statements of the employee, employer, attending physician, and witnesses in whatever manner is most appropriate.

(B)(1) Except as provided in division (B)(2) of this section, in claims other than those in which the employer is a self-insuring employer, if the administrator determines under division (A) of this section that a claimant is or is not entitled to an award of compensation or benefits, the administrator shall issue an order, no later than twenty-eight days after the sending of the notice under division (A) of this section, granting or denying the payment of the compensation or benefits, or both as is appropriate to the claimant. Notwithstanding the time limitation specified in this division for the issuance of an order, if a medical examination of the claimant is required by

statute, the administrator promptly shall schedule the claimant for that examination and shall issue an order no later than twenty-eight days after receipt of the report of the examination. The administrator shall notify the claimant and the employer of the claimant and their respective representatives in writing of the nature of the order and the amounts of compensation and benefit payments involved. The employer or claimant may appeal the order pursuant to division (C) of this section within fourteen days after the date of the receipt of the order. The employer and claimant may waive, in writing, their rights to an appeal under this division.

(2) Notwithstanding the time limitation specified in division (B)(1) of this section for the issuance of an order, if the employer certifies a claim for payment of compensation or benefits, or both, to a claimant, and the administrator has completed the investigation of the claim, the payment of benefits or compensation, or both, as is appropriate, shall commence upon the later of the date of the certification or completion of the investigation and issuance of the order by the administrator, provided that the administrator shall issue the order no later than the time limitation specified in division (B)(1) of this section.

(3) If an appeal is made under division (B) of this section, the administrator shall forward the claim file to the appropriate district hearing officer within seven days of the appeal. In contested claims other than state fund claims, the administrator shall forward the claim within seven days of the administrator's receipt of the claim to the commission, which shall refer the claim to an appropriate district hearing officer for a hearing in accordance with division (C) of this section.

(C) If an employer or claimant timely appeals the order of the administrator issued under division (B) of this section or in the case of other contested claims other than state fund claims, the commission shall refer the claim to an appropriate district hearing officer according to rules the commission adopts under section 4121.36 of the Revised Code. The district hearing officer shall notify the parties and their respective representatives of the time and place of the hearing.

The district hearing officer shall hold a hearing on a disputed issue or claim within forty-five days after the filing of the appeal under this division and issue a decision within seven days after holding the hearing. The district hearing officer shall notify the parties and their respective representatives in writing of the order. Any party may appeal an order issued under this division pursuant to division (D) of this section within fourteen days after receipt of the order under this division.

(D) Upon the timely filing of an appeal of the order of the district

hearing officer issued under division (C) of this section, the commission shall refer the claim file to an appropriate staff hearing officer according to its rules adopted under section 4121.36 of the Revised Code. The staff hearing officer shall hold a hearing within forty-five days after the filing of an appeal under this division and issue a decision within seven days after holding the hearing under this division. The staff hearing officer shall notify the parties and their respective representatives in writing of the staff hearing officer's order. Any party may appeal an order issued under this division pursuant to division (E) of this section within fourteen days after receipt of the order under this division.

(E) Upon the filing of a timely appeal of the order of the staff hearing officer issued under division (D) of this section, the commission or a designated staff hearing officer, on behalf of the commission, shall determine whether the commission will hear the appeal. If the commission or the designated staff hearing officer decides to hear the appeal, the commission or the designated staff hearing officer shall notify the parties and their respective representatives in writing of the time and place of the hearing. The commission shall hold the hearing within forty-five days after the filing of the notice of appeal and, within seven days after the conclusion of the hearing, the commission shall issue its order affirming, modifying, or reversing the order issued under division (D) of this section. The commission shall notify the parties and their respective representatives in writing of the order. If the commission or the designated staff hearing officer determines not to hear the appeal, within fourteen days after the filing of the notice of appeal, the commission or the designated staff hearing officer shall issue an order to that effect and notify the parties and their respective representatives in writing of that order.

Except as otherwise provided in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code, any party may appeal an order issued under this division to the court pursuant to section 4123.512 of the Revised Code within sixty days after receipt of the order, subject to the limitations contained in that section.

(F) Every notice of an appeal from an order issued under divisions (B), (C), (D), and (E) of this section shall state the names of the claimant and employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom.

(G) All of the following apply to the proceedings under divisions (C), (D), and (E) of this section:

(1) The parties shall proceed promptly and without continuances except for good cause;

(2) The parties, in good faith, shall engage in the free exchange of information relevant to the claim prior to the conduct of a hearing according to the rules the commission adopts under section 4121.36 of the Revised Code;

(3) The administrator is a party and may appear and participate at all administrative proceedings on behalf of the state insurance fund. However, in cases in which the employer is represented, the administrator shall neither present arguments nor introduce testimony that is cumulative to that presented or introduced by the employer or the employer's representative. The administrator may file an appeal under this section on behalf of the state insurance fund; however, except in cases arising under section 4123.343 of the Revised Code, the administrator only may appeal questions of law or issues of fraud when the employer appears in person or by representative.

(H) Except as provided in division (J) of this section, payments of compensation to a claimant or on behalf of a claimant as a result of any order issued under this chapter shall commence upon the earlier of the following:

(1) Fourteen days after the date the administrator issues an order under division (B) of this section, unless that order is appealed;

(2) Twenty-one days after the date when the employer has waived the right to appeal a decision issued under division (B) of this section;

(3) If no appeal of an order has been filed under this section or to a court under section 4123.512 of the Revised Code, the expiration of the time limitations for the filing of an appeal of an order;

(4) Twenty-one days after the date of receipt by the employer of an order of a district hearing officer, a staff hearing officer, or the industrial commission issued under division (C), (D), or (E) of this section.

(I) No medical benefits payable under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code are payable until the earlier of the following:

(1) The date of the issuance of the staff hearing officer's order under division (D) of this section;

(2) The date of the final administrative or judicial determination.

(J) Upon the final administrative or judicial determination under this section or section 4123.512 Of the Revised Code of an appeal of an order to pay compensation, if a claimant is found to have received compensation pursuant to a prior order which the claimant was not entitled is reversed upon subsequent appeal, the claimant's employer, if a self-insuring employer, or the bureau, shall withhold from any amount to which the claimant becomes entitled pursuant to any claim, past, present, or future,

under Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the amount of previously paid compensation to which the claimant was which, due to reversal upon appeal, the claimant is not entitled, pursuant to the following criteria:

(1) No withholding for the first twelve weeks of temporary total disability compensation pursuant to section 4123.56 of the Revised Code shall be made;

(2) Forty per cent of all awards of compensation paid pursuant to sections 4123.56 and 4123.57 of the Revised Code, until the amount overpaid is refunded;

(3) Twenty-five per cent of any compensation paid pursuant to section 4123.58 of the Revised Code until the amount overpaid is refunded;

(4) If, pursuant to an appeal under section 4123.512 of the Revised Code, the court of appeals or the supreme court reverses the allowance of the claim, then no amount of any compensation will be withheld.

The administrator and self-insuring employers, as appropriate, are subject to the repayment schedule of this division only with respect to an order to pay compensation that was properly paid under a previous order, but which is subsequently reversed upon an administrative or judicial appeal. The administrator and self-insuring employers are not subject to, but may utilize, the repayment schedule of this division, or any other lawful means, to collect payment of compensation made to a person who was not entitled to the compensation due to fraud as determined by the administrator or the industrial commission.

(K) If a staff hearing officer or the commission fails to issue a decision or the commission fails to refuse to hear an appeal within the time periods required by this section, payments to a claimant shall cease until the staff hearing officer or commission issues a decision or hears the appeal, unless the failure was due to the fault or neglect of the employer or the employer agrees that the payments should continue for a longer period of time.

(L) Except as provided in section 4123.522 of the Revised Code, no appeal is timely filed under this section unless the appeal is filed with the time limits set forth in this section.

(M) No person who is not an employee of the bureau or commission or who is not by law given access to the contents of a claims file shall have a file in the person's possession.

Sec. 4123.512. (A) The claimant or the employer may appeal an order of the industrial commission made under division (E) of section 4123.511 of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability or impairment, or percentage of

impairment determined pursuant to division (A) of section 4123.57 of the Revised Code, to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, or in which the contract of employment was made if the exposure occurred outside the state. If no common pleas court has jurisdiction for the purposes of an appeal by the use of the jurisdictional requirements described in this division, the appellant may use the venue provisions in the Rules of Civil Procedure to vest jurisdiction in a court. If the claim is for an occupational disease the appeal shall be to the court of common pleas of the county in which the exposure which caused the disease occurred. Like appeal may be taken from an order of a staff hearing officer made under division (D) of section 4123.511 of the Revised Code from which the commission has refused to hear an appeal. The appellant shall file the notice of appeal with a court of common pleas within sixty days after the date of the receipt of the order appealed from or the date of receipt of the order of the commission refusing to hear an appeal of a staff hearing officer's decision under division (D) of section 4123.511 of the Revised Code. The filing of the notice of the appeal with the court is the only act required to perfect the appeal.

If an action has been commenced in a court of a county other than a court of a county having jurisdiction over the action, the court, upon notice by any party or upon its own motion, shall transfer the action to a court of a county having jurisdiction.

Notwithstanding anything to the contrary in this section, if the commission determines under section 4123.522 of the Revised Code that an employee, employer, or their respective representatives have not received written notice of an order or decision which is appealable to a court under this section and which grants relief pursuant to section 4123.522 of the Revised Code, the party granted the relief has sixty days from receipt of the order under section 4123.522 of the Revised Code to file a notice of appeal under this section.

(B) The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom.

The administrator, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The administrator shall notify the employer that, if the employer fails to become an active party to the appeal, the administrator may act on behalf of the employer and the results of the appeal could have an adverse effect upon the employer's premium rates.

(C) The attorney general or one or more of the attorney general's assistants or special counsel designated by the attorney general shall represent the administrator and the commission. If the attorney general or the attorney general's designated assistants or special counsel are absent, the administrator or the commission shall select one or more of the attorneys in the employ of the administrator or the commission as the administrator's attorney or the commission's attorney in the appeal. Any attorney so employed shall continue the representation during the entire period of the appeal and in all hearings thereof except where the continued representation becomes impractical.

(D) Upon receipt of notice of appeal the clerk of courts shall provide notice to all parties who are appellees and to the commission.

The claimant, within thirty days after the filing of the notice of appeal, shall file a petition containing a statement of facts in ordinary and concise language showing a cause of action to participate or to continue to participate in the fund and setting forth the basis for the jurisdiction of the court over the action. Further pleadings shall be had in accordance with the Rules of Civil Procedure, provided that service of summons on such petition shall not be required. The clerk of the court, upon receipt thereof, shall transmit by certified mail a copy thereof to each party named in the notice of appeal other than the claimant. Any party may file with the clerk prior to the trial of the action a deposition of any physician taken in accordance with the provisions of the Revised Code, which deposition may be read in the trial of the action even though the physician is a resident of or subject to service in the county in which the trial is had. The bureau of workers' compensation shall pay the cost of the stenographic deposition filed in court and of copies of the stenographic deposition for each party from the surplus fund and charge the costs thereof against the unsuccessful party if the claimant's right to participate or continue to participate is finally sustained or established in the appeal. In the event the deposition is taken and filed, the physician whose deposition is taken is not required to respond to any subpoena issued in the trial of the action. The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of the action.

(E) The court shall certify its decision to the commission and the certificate shall be entered in the records of the court. Appeals from the judgment are governed by the law applicable to the appeal of civil actions.

(F) The cost of any legal proceedings authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial

judge, based upon the effort expended, in the event the claimant's right to participate or to continue to participate in the fund is established upon the final determination of an appeal, shall be taxed against the employer or the commission if the commission or the administrator rather than the employer contested the right of the claimant to participate in the fund. The attorney's fee shall not exceed twenty-five hundred dollars.

(G) If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate in the fund, the commission and the administrator shall thereafter proceed in the matter of the claim as if the judgment were the decision of the commission, subject to the power of modification provided by section 4123.52 of the Revised Code.

(H) An appeal from an order issued under division (E) of section 4123.511 of the Revised Code or any action filed in court in a case in which an award of compensation has been made shall not stay the payment of compensation under the award or payment of compensation for subsequent periods of total disability or impairment during the pendency of the appeal. 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 shall be charged to the surplus fund under division (B) of section 4123.34 of the Revised Code. In the event the employer is a state risk, the amount shall not be charged to the employer's experience. In the event the employer is a self-insuring employer, the self-insuring employer shall deduct the amount from the paid compensation he reports to the administrator under division (K) of section 4123.35 of the Revised Code. All actions and proceedings under this section which are the subject of an appeal to the court of common pleas or the court of appeals shall be preferred over all other civil actions except election causes, irrespective of position on the calendar.

This section applies to all decisions of the commission or the administrator on November 2, 1959, and all claims filed thereafter are governed by sections 4123.511 and 4123.512 of the Revised Code.

Any action pending in common pleas court or any other court on January 1, 1986, under this section is governed by former sections 4123.514, 4123.515, 4123.516, and 4123.519 and section 4123.522 of the Revised Code.

Sec. 4123.57. (A)(1) Except as provided in division (A)(2) of this section, not earlier than forty weeks after the date of termination of the latest period of payments under section 4123.56 of the Revised Code, or not earlier than forty weeks after the date of the injury or the date of first diagnosis of an occupational disease by a licensed physician in the absence

of payments under section 4123.56 of the Revised Code, an employee may file an application with the bureau of workers' compensation for the determination of the percentage of the employee's permanent partial impairment resulting from an injury or occupational disease.

(2) An employee may file the application specified in division (A)(1) of this section without waiting forty weeks when either of the following occurs:

(a) The receipt of payments under division (A) of section 4123.56 of the Revised Code is terminated by a hearing officer because the employee has reached maximum medical improvement.

(b) The receipt of benefits under division (A) of section 4123.56 of the Revised Code is terminated because the employee's attending physician certifies that the employee has reached maximum medical improvement.

(3) Whenever an application is filed under division (A)(1) or (2) of this section, the bureau shall send a copy of the application to the employee's employer or the employer's representative and, except when the option provided in division (A)(7) of this section is chosen, shall schedule the employee for a medical examination by the bureau medical section. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives. The report of the medical examination shall contain a statement of the examiner's finding on the employee's percentage of permanent partial impairment resulting from allowed conditions in the claim under the most recent edition of the American medical association's guides to the evaluation of permanent impairment. After receiving the report of the medical examination, the administrator of workers' compensation shall make a tentative order finding that the employee's percentage of permanent partial impairment is the same percentage shown by the report of the medical examination, unless the administrator determines that the report clearly is erroneous. If the administrator determines that the report clearly is erroneous, the administrator shall disregard the report, schedule the employee for another examination by the bureau medical section, and issue a tentative order that finds that the employee's percentage of permanent partial impairment is the same percentage shown by the second medical examination report.

(4) The administrator shall notify the employee, the employer, and their representatives, in writing, of the tentative order and of the parties' right to request a hearing. Within fourteen days after receipt of the tentative order, the employee, the employer, or their representatives, may file with the bureau an objection to the tentative order. The opposing party must be served by the filing party with a copy of the objection to the tentative order

not later than the day of filing. Proper mailing of the objection to the tentative order to the opposing party constitutes service. If an objection to the tentative order is not filed by a party by the deadline established by division (A)(4) of this section, the order becomes final.

(5) If the employee, the employer, or their representatives timely notify the administrator of an objection to the tentative order, either party, within fourteen days after the date of filing or of receipt of an objection, whichever is later, may request another examination by the bureau medical section. The party requesting that examination shall pay the cost of that examination. Upon that request, the bureau shall schedule the employee for another medical examination by the bureau medical section. All provisions of division (A)(3) of this section applicable to the first medical examination apply to a subsequent medical examination requested pursuant to division (A)(5) of this section. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives.

Upon the filing of an objection to the tentative order or upon the completion of the medical examination requested pursuant to division (A)(5) of this section, whichever is later, the matter shall be referred to a district hearing officer who shall set the application for hearing with written notices to all interested persons. At the hearing, the district hearing officer first shall make a finding as to whether any of the following has occurred:

(a) The bureau medical section based its report, at least in part, on conditions not allowed in the claim;

(b) The bureau medical section failed to consider all of the allowed conditions in the claim;

(c) The bureau medical section's examiner was prejudiced against the employer or the employee;

(d) The bureau medical section failed to properly apply the most recent edition of the American medical association's guides to the evaluation of permanent impairment in determining the employee's percentage of permanent impairment;

(e) The tentative order provides for the payment of compensation under a circumstance in which that compensation is barred by this section or any other provision of law.

If the district hearing officer finds one of the situations described in division (A)(5)(a), (b), (c) or (d) of this section, the district hearing officer shall issue an order rejecting the report of the medical examination and requiring the bureau medical section to perform a new medical examination. All provisions of this division applicable to the first medical examination

d the determination of the percentage of permanent partial impairment apply to any subsequent medical examination that is ordered under this division. If the district hearing officer finds the situation described in division (A)(5)(e) of this section, the district hearing officer shall issue an order denying the application. If the district hearing officer finds none of the situations described in division (A)(5)(a), (b), (c), (d), or (e) of this section, the district hearing officer shall issue an order finding that the employee's percentage of permanent partial impairment is the same percentage shown by either the first or any subsequent bureau medical examination report.

(6) An employee may file an application for a subsequent determination of the percentage of the employee's permanent impairment. No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted unless supported by substantial evidence of new and changed circumstances developing since the time of the last determination. If an application is filed under division (A)(6) of this section, the bureau shall treat the application as though it was an original application for the determination of the percentage of permanent partial impairment, except that the bureau may require either a medical examination or a medical review of the employee. In no instance shall the former award be modified unless it is found from medical or clinical findings that the condition of the employee resulting from the injury or occupational disease has so progressed as to have increased the percentage of permanent partial impairment. All provisions of this division applicable to an original application apply to an application for subsequent determination. The decision of a district hearing officer on an employee's application filed under division (A)(1), (2), and (6) of this section is final.

(7) Notwithstanding divisions (A)(3) through (6) of this section, the determination of an employee's percentage of permanent partial impairment shall be made in accordance with division (A)(7) of this section, upon the written agreement by an employee and employer to utilize the alternative method of determination provided in division (A)(7) of this section. Within seven days after receipt of the written agreement, the administrator shall assign a physician from the impairment evaluation panel within the bureau medical section to conduct a medical examination of the employee and send written notice to the employee and employer of that assignment. The employee and employer each shall select a physician from the impairment evaluation panel who shall serve as consultants to the assigned physician if the employee or employer objects to the assigned physician's determination.

Within twenty-one days after assignment, the assigned physician shall conduct a medical examination of the employee and provide to the

administrator a report of the medical examination stating the employee's percentage of permanent partial impairment resulting from the allowed conditions in the claim under the most recent edition of the American medical association's guides to the evaluation of permanent impairment. Immediately upon receipt of the report, the administrator shall send a copy of the report to the employee and employer.

Within twenty-one days after receipt of the report, an employee or employer may send written notice to the administrator objecting to the report. If a written notice of objection is not timely received, the assigned physician's determination of the percentage of permanent partial impairment of an employee is final, notwithstanding section 4123.511 of the Revised Code. If a written notice of objection is timely received, the administrator shall provide a copy of the assigned physician's report to the consulting physicians selected by the employee and employer, within seven days after receipt of the objection.

Within twenty-one days after receipt of the report, both consulting physicians shall confer with the assigned physician and jointly, on the basis of the opinion of a majority of the physicians, issue a final report stating the employee's percentage of permanent partial impairment resulting from the allowed conditions in the claim under the most recent edition of the American medical association's guides to the evaluation of permanent impairment. Within fourteen days after receipt of the final report, the administrator shall send a copy of the final report to the employee and employer. Notwithstanding section 4123.511 of the Revised Code, the percentage of permanent partial impairment of an employee stated in the final report issued pursuant to division (A)(7) of this section is final.

(8) Compensation payable under division (A) of this section accrues and is payable to the employee from the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or, for occupational diseases, the date of disease. The employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage for the number of weeks that equals the percentage of two hundred weeks. If the percentage of the permanent impairment of the employee equals or exceeds ninety per cent, compensation for permanent partial impairment shall be paid for two hundred weeks. No award shall be made under division (A) of this section based upon a percentage of impairment that, when taken with all other percentages of permanent

impairment, exceeds one hundred per cent. Notwithstanding division (H) of section 4123.511 of the Revised Code, the bureau or a self-insuring employer shall pay a permanent partial impairment award within twenty-one days after the date on which an order fixing the employee's percentage of permanent partial impairment becomes final.

As used in this division, "date of disease" means the date an occupational disease is first diagnosed by a licensed physician, or for an occupational disease described in divisions (A) through (AA) of section 4123.68 of the Revised Code or other occupational disease that results from exposure to fibrosis-producing or toxic dusts, fumes, mists, vapors, gases, or liquids, or other toxic materials, or a combination of those, the date that the employee first misses work as a result of the occupational disease.

(9) When an award under division (A) of this section has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee, and if there are no children surviving, then to other dependents as the administrator determines.

(B) In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall continue during the periods provided in the following schedule:

For the loss of a thumb, sixty weeks.

For the loss of a first finger, commonly called index finger, thirty-five weeks.

For the loss of a second finger, thirty weeks.

For the loss of a third finger, twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one-third of the finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two-thirds of the finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either useless, the same number of weeks apply to the members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers by amputation or ankylosis and the nature of the claimant's employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or impairment resulting from the loss of fingers, or loss of use of fingers, exceeds the normal handicap or impairment resulting from the loss of fingers, or loss of use of fingers, the administrator may take that fact into consideration and increase the award of compensation accordingly, but the award made shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

For the loss of one of the toes other than the great toe, ten weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two-thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one-half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the administrator shall make an award of compensation as the administrator deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of five thousand dollars. For the purpose of making the award, it is not material whether the employee is gainfully employed in any occupation or trade at the time of the administrator's determination.

When an award under this division has been made prior to the death of an employee all unpaid installments accrued or to accrue under the provisions of the award shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to the employee's death, the administrator shall make an award in accordance with this division for the loss which shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

(C) Compensation for partial impairment under divisions (A) and (B) of this section is in addition to the compensation paid the employee pursuant to section 4123.56 of the Revised Code. A claimant may receive compensation under divisions (A) and (B) of this section. No employee may receive compensation under division (A) of this section or receive a medical examination provided for by this section during the time in which that employee is receiving compensation under section 4123.58 of the Revised Code in any claim or is receiving compensation under section 4123.56 of the Revised Code on the same claim in which the employee is seeking compensation under this section. The employee shall list on the application specified in divisions (A)(1) and (2) of this section the claim numbers of all other claims for which the employee is a claimant.

In all cases arising under division (B) of this section, if it is determined by any one of the following: (1) the amputee clinic at University hospital, Ohio state university; (2) the rehabilitation services commission; (3) an amputee clinic or prescribing physician approved by the administrator or the

administrator's designee, that an injured or impaired employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether the appliance or its repair will be serviceable in the vocational rehabilitation of the injured employee, and regardless of whether the employee has returned to or can ever again return to any gainful employment, the bureau shall pay the cost of the artificial appliance or its repair out of the surplus created by division (B) of section 4123.34 of the Revised Code.

In those cases where a rehabilitation services commission recommendation that an injured or impaired employee is in need of an artificial appliance would conflict with their state plan, adopted pursuant to the "Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the administrator or the administrator's designee or the bureau may obtain a recommendation from an amputee clinic or prescribing physician that they determine appropriate.

(D) If an employee makes application for a finding and is found to have contracted silicosis as defined in division (X), or coal miners' pneumoconiosis as defined in division (Y), or asbestosis as defined in division (AA) of section 4123.68 of the Revised Code, and it is found that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust, asbestos, or coal dust and if the employee, after the finding, has changed or shall change the employee's occupation to an occupation in which the exposure to silica dust, asbestos, or coal dust is substantially decreased, the employee shall receive an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of one hundred weeks immediately following the expiration of the period of thirty weeks, the employee shall receive sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such employee is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the employee is employed in an occupation in which the exposure to silica dust, asbestos, or coal dust is not substantially less than the exposure in the occupation in which the employee was formerly employed or for any period during which the employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis, asbestosis, or coal miners' pneumoconiosis. An award for change of occupation for a coal miner who has contracted coal miners'

pneumoconiosis may be granted under this division even though the coal miner continues employment with the same employer, so long as the coal miner's employment subsequent to the change is such that the coal miner's exposure to coal dust is substantially decreased and a change of occupation is certified by the claimant as permanent. Medical and other benefits shall be paid to the employee in accordance with section 4123.66 of the Revised Code.

(E) If a firefighter or police officer makes application for a finding and the administrator finds that the firefighter or police officer has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of the firefighter's or police officer's occupation is medically advisable in order to decrease substantially further exposure to smoke, toxic gases, chemical fumes, and other toxic vapors, and if the firefighter, or police officer, after the finding, has changed or changes occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the administrator shall allow to the firefighter or police officer an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of the period of thirty weeks the administrator shall allow the firefighter or police officer sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such firefighter or police officer is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the firefighter or police officer is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which the firefighter or police officer was formerly employed or for any period during which the firefighter or police officer may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The administrator may accord to the firefighter or police officer medical and other benefits in accordance with section 4123.66 of the Revised Code.

(F) An order issued under division (B), (D), or (E) of this section is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

SECTION 2. That existing sections 2317.45, 4121.12, 4121.121, 4121.125, 4123.34, 4123.511, 4123.512, and 4123.57 of the Revised Code are hereby repealed.

SECTION 3. The Administrator of Workers' Compensation shall submit a series of reports to the Workers' Compensation Oversight Commission, the Office of Budget and Management, the Legislative Budget Office of the Legislative Service Commission, and the General Assembly semiannually during the 1997-1999 biennium, beginning on or before October 1, 1997, containing information relative to all of the following:

(A) The premium cost per worker, which reports the average annual cost a state fund employer pays to provide workers' compensation coverage for its employees. The premium cost per worker is calculated by adding together an employer's total amounts of premiums and assessments paid during a calendar year and dividing that sum by the employer's average number of workers.

(B) The claims cost per worker, which reports the average annual benefit cost paid for each worker who is employed by a state fund employer during the preceding twelve months. The claims cost per worker is calculated by dividing an employer's total claim expenses paid during the preceding twelve months by the employer's average number of workers.

(C) The administrative cost per claim, which reports the average annual administrative expense a state fund employer pays to process a claim. The administrative cost per claim is calculated by dividing an employer's total amount of administrative expenses incurred during the preceding twelve months by the total number of claims the employer processed.

(D) The direct loss ratio, which measures the relationship between an employer's revenues and workers' compensation benefits paid to an injured worker during the preceding twelve months;

(E) The rate of return generated by investments of the Bureau of Workers' Compensation;

(F) The customer service index, which accounts for various statistical measures reflecting the Bureau's customer service levels;

(G) The Health Partnership Program performance index, which measures the effectiveness of managed care organizations working for the Bureau and reflects the quality of care, customer satisfaction, and cost of care provided by the managed care organizations;

(H) The rate of injury in the state per 1,000 workers;

(I) The average and median number of days the Bureau takes to adjudicate an injured worker's medical bill fee;

(J) The return-to-work rate of state fund employers' injured workers who do not receive workers' compensation benefits for at least ninety days following their injury, which reports the number of injured workers who returned to work as a percentage of total injuries;

(K) The average number of days it takes for an employer or injured worker to report an injury to the Bureau, which is calculated by taking the average number of days between the date of injury and the date the claim was filed with the Bureau;

(L) The percentage of indemnity claims adjudicated by the Bureau within fourteen days of the injury.

SECTION 4. All items in this section are hereby appropriated out of any moneys in the state treasury to the credit of the designated fund. For all appropriations made in this act, those in the first column are for fiscal year 1998, and those in the second column are for fiscal year 1999.

BWC BUREAU OF WORKERS' COMPENSATION

<u>FND ALI</u>	<u>ALI TITLE</u>		<u>FY 1998</u>	<u>FY 1999</u>
Workers' Compensation Fund Group				
023 855-401	William Green Lease	\$	14,665,000	\$ 15,465,000
	Payments to OBA			
4Y6 855-611	J.L. Camera Center Rent	\$	1,592,800	\$ 1,681,997
4Y6 855-612	J.L. Camera Center Operating	\$	7,381,302	\$ 7,345,026
023 855-407	Claims, Risk & Medical Management	\$	129,400,786	\$ 123,784,337
023 855-408	Fraud Prevention	\$	9,000,705	\$ 8,111,383
023 855-409	Administrative Services	\$	111,629,196	\$ 114,654,976
023 855-410	Attorney General Payments	\$	3,017,914	\$ 3,227,422
825 855-605	DWRF	\$	635,629	\$ 651,961
822 855-606	Coal Workers' Fund	\$	73,684	\$ 75,545
823 855-608	Marine Industry	\$	42,536	\$ 43,599
826 855-609	Safety & Hygiene	\$	17,981,552	\$ 17,991,764
TOTAL WCF Workers' Compensation Fund Group		\$	295,421,104	\$ 293,033,010
TOTAL ALL BUDGET FUND GROUPS		\$	295,421,104	\$ 293,033,010

Safety and Hygiene

Notwithstanding section 4121.37 of the Revised Code, the Administrator of the Bureau of Workers' Compensation shall transfer moneys from the State Insurance Fund so that appropriation line item 855-609, Safety and Hygiene, is provided \$17,981,552 in fiscal year 1998 and \$17,991,764 in fiscal year 1999.

Workers' Compensation Fraud Unit

The Workers' Compensation Section Fund (Fund 195) shall receive

payments from the Bureau of Workers' Compensation at the beginning of each quarter of each fiscal year to fund expenses of the Workers' Compensation Fraud Unit of the Attorney General's Office. Of the foregoing appropriation item 855-410, Attorney General Payments, \$659,151 in fiscal year 1998 and \$676,002 in fiscal year 1999 shall be used to provide such payments.

William Green Lease Payments

The foregoing appropriation item 855-401, William Green Lease Payments to OBA, shall be used for lease payments to the Ohio Building Authority, and these appropriations shall be used to meet all payments at the times they are required to be made during the period from July 1, 1997, to June 30, 1999, by the Bureau of Workers' Compensation to the Ohio Building Authority pursuant to leases and agreements made under Chapter 152. of the Revised Code and Section 6 of Am. Sub. H.B. 743 of the 118th General Assembly. Of the amounts received in Fund 023, appropriation line item 855-401, up to \$30,130,000 shall be restricted for lease rental payments to the Ohio Building Authority. If it is determined that additional appropriations are necessary for such purpose, such amounts are hereby appropriated.

Notwithstanding any other provision of law to the contrary, all tenants of the William Green Building not funded by the Workers' Compensation Fund (Fund 023) shall pay their fair share of the costs of lease payments to the Workers' Compensation Fund (Fund 023) by intrastate transfer voucher.

Camera Center

The Camera Center Fund (Fund 4Y6) created in division (F) of section 4121.62 of the Revised Code shall receive revenues raised by the fees Camera Center charges for its services and rent paid by tenants of the Center's facilities. The foregoing appropriation item 855-611, J.L. Camera Center Rent, shall be used to pay rent, including building operating expenses, of the J. Leonard Camera Rehabilitation Center in Columbus. The foregoing appropriation item 855-612, J.L. Camera Center Operating, shall be used for all other expenses for the Center.

The Bureau of Workers' Compensation shall not consider appropriations made to the Camera Center Fund (Fund 4Y6) when establishing administrative cost rates.

Balances

Notwithstanding any provision of law to the contrary, the Director of Budget and Management shall make any transfers of cash balances between funds made necessary by the creation of new funds, or the consolidation of funds as authorized by the General Assembly. Within the first five days after

the effective date of this section, the administering agency head shall certify to the Director an estimate of the amount of the cash balance to be transferred to the receiving fund. The Director may transfer the estimated amount when needed to make payments. Within thirty days after the effective date of this section, the administering agency head shall certify the final amount to the Director. The Director shall transfer the difference between any estimated amount previously transferred and such certified final amount.

To implement such funding changes as described above pertaining to prior year encumbrance balances and commensurate appropriation authority, in fiscal year 1998 the Director of Budget and Management may cancel encumbrances outstanding on June 30, 1997, and reestablish such prior year encumbrances or parts of encumbrances as needed in fiscal year 1998 in the appropriate fund or appropriation line item as authorized in this act for the same purpose and to the same vendor. As determined by the Director, the appropriation authority necessary to reestablish such prior year encumbrances in fiscal year 1998 in a different fund or appropriation line item within an agency or between agencies is hereby authorized. The Director shall reduce each prior year's appropriation authority by the amount of the encumbrances canceled in their respective funds and appropriation line items.

Vocational Rehabilitation

The Bureau of Workers' Compensation and the Rehabilitation Services Commission shall enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. The Bureau shall provide \$519,608 in fiscal year 1998 and \$534,157 in fiscal year 1999 from the State Insurance Fund to fund vocational rehabilitation services and staff in accordance with the interagency agreement.

Fund Balance

Any unencumbered cash balance in excess of \$45,000,000 in the Workers' Compensation Fund (Fund 023) on the thirtieth day of June of each fiscal year shall be used to reduce the administrative cost rate charged to employers to cover appropriations for Bureau of Workers' Compensation and Industrial Commission operations.

SECTION 5.

Accounting

Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form

and manner in which appropriation accounts shall be maintained.

The appropriations made in this act are subject to all provisions of H. B. 215 of the 122nd General Assembly that are generally applicable to such appropriations.

SECTION 6.

Reissuance of Voided Warrants

In order to provide funds for the reissuance of voided warrants pursuant to section 117.47 of the Revised Code, there is hereby appropriated, out of moneys in the state treasury from the fund credited as provided in section 117.47 of the Revised Code, that amount sufficient to pay such warrants when approved by the Office of Budget and Management.

SECTION 7.

Judgments Against State

Any appropriations contained in this act, except those to be applied to or used for payment of guarantees by or on behalf of the state or for debt service on bonds, notes, or certificates of participation, may be used pursuant to section 2743.15, 2743.19, or 2743.191 of the Revised Code for the purpose of satisfying judgments, settlements, or administrative awards ordered or approved by the Court of Claims in connection with civil actions against the state.

SECTION 8.

Reappropriation of Unexpended Balances

Notwithstanding section 131.33 of the Revised Code, unexpended balances of appropriations and reappropriations against which encumbrances have been lawfully incurred by a state agency are, at the close of fiscal year 1997, to the extent of such encumbrances, hereby reappropriated from the funds from which they were originally appropriated and reappropriated and, except for encumbrances for items of special order manufacture not available on term contract or open market, made available for the purpose of discharging such encumbrances for a period of five months from the end of the fiscal year. Unexpended balances of appropriations and reappropriations against which encumbrances for items of special order manufacture not available on term contract or in the open market have been lawfully incurred are, at the close of the fiscal year, to the extent of such encumbrances, hereby reappropriated and made available for

the purpose of discharging such encumbrances for a period of five months from the end of the fiscal year or, if the Director of Budget and Management approves, for a period of not more than twelve months from the end of the fiscal year.

Any items for which unexpended balances are reappropriated beyond a five-month period from the end of the fiscal year shall be reported to the Controlling Board by the Director of Budget and Management. The report on each such item shall include the item, the cost of the item, the vendor involved, and the delivery date. Such reports to the board shall be updated on a quarterly basis while the encumbrance remains open.

After any such period, reappropriations made for the purpose of discharging encumbrances for operating expenses, defined as those encumbrances incurred for personal services, maintenance, and equipment, are canceled. Reappropriations for encumbrances other than operating expenses or items of special manufacture not available on term contract or in the open market may be extended by obtaining the approval of the Director of Budget and Management.

SECTION 9. If any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the codified and uncodified sections contained in this act are composed, and their applications, are independent and severable.

SECTION 10. Except as otherwise specifically provided in this act, the codified and uncodified sections of law contained in this act, and the items of law of which the codified and uncodified sections of law contained in this act are composed, are not subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, the codified and uncodified sections of law contained in this act, and the items of law of which the codified and uncodified sections of law contained in this act are composed, except as otherwise specifically provided in this act, go into immediate effect when this act becomes law.

SECTION 11. Sections 2317.45, 4121.12, 4121.121, 4121.125, 4123.511, and 4123.512 of the Revised Code, as amended or enacted by this act, and the items of law of which such sections, as amended or enacted by this act, are composed, are subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1c and section 1.471 of the Revised Code, such sections as amended or enacted by this act, and the items of law of which such sections as amended or enacted by this act are composed, take effect on the ninety-first day after this act is filed with the Secretary of State. If, however, a referendum petition is filed against any such section as amended or enacted by this act, or against any item of law of which any such section as amended or enacted by this act is composed, the section as amended or enacted, or item of law, unless rejected at the referendum, takes effect at the earliest time permitted by law.

SECTION 12. That Sections 3 and 6 of Am. Sub. S.B. 45 of the 122nd General Assembly be amended to read as follows:

"Sec. 3. (A) Except as provided in ~~division~~ DIVISIONS (B) AND (C) of this section, the provisions of ~~this act~~ Am. Sub. S. B. 45 of the 122nd General Assembly apply to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code arising on and after ~~the effective date of this act July 22, 1997.~~

(B) The following apply to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code pending on ~~the effective date of this act July 22, 1997:~~

(1) The provision in division (B)(1) of section 4123.56 of the Revised Code, as amended by ~~this act~~ Am. Sub. S.B. 45 of the 122nd General Assembly, allowing an employer to voluntarily commence payment of compensation for temporary disability;

(2) The provision in division (C)(2) of section 4123.56 of the Revised Code, as amended by ~~this act~~ Am. Sub. S.B. 45 of the 122nd General Assembly, allowing an employee to file an application for and receive wage loss compensation pursuant to that division without affecting the employee's application for permanent total impairment compensation;

(3) The provisions of section 4123.65 of the Revised Code, as amended by Am. Sub. S.B. 45 of the 122nd General Assembly.

(4) The provision in division (A) of section 4123.57, as amended by ~~this act~~ AM. SUB. S. B. 45 OF THE 122nd GENERAL ASSEMBLY, allowing an employee to file an application for the determination of the percentage of

the employee's permanent partial impairment after the employee has reached maximum medical improvement.

(C) The provisions in division (A) of section 4123.57 as amended by Am. Sub. S. B. 45 of the 122nd General Assembly, other than division (A)(2), providing new procedures for the determination of permanent partial impairment apply to all claims pending on and after July 1, 1998.

Sec. 6. The Administrator of Workers' Compensation shall study the incidence of occurrence of occupational diseases in the health care professions, listed in section 4123.68 of the Revised Code and the incidence of occurrence of occupational diseases not specified in statute as the Administrator determines necessary, to determine the frequency of occurrence of those diseases, whether any diseases should be added to or deleted from the schedule, and the adequacy of Chapters 4121., 4123., 4127., and 4131. of the Revised Code in addressing all occupational diseases ~~that arise in those professions~~. The study shall specifically include latent occupational diseases. The Administrator shall report the results of the study to the Speaker of the House of Representatives and the President of the Senate no later than July 1, 1998."

SECTION 13. That existing Sections 3 and 6 of Am. Sub. S.B. 45 of the 122nd General Assembly are hereby repealed.

SECTION 14. Section 4123.57 of the Revised Code is amended by this act and also by Am. Sub. S.B. 45 of the 122nd General Assembly, effective July 22, 1997. The amendments of Am. Sub. S.B. 45 are included in this act to confirm the intention to retain them, but are not intended to be effective until July 22, 1997.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____