

As Passed by the Senate

**124th General Assembly
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Sub. S. B. No. 227

**SENATORS Nein, Wachtmann, Jacobson, Goodman, White, Austria, Spada,
Armbruster, Amstutz, Blessing, Carnes, Robert Gardner, Harris, Mumper**

A B I L L

To amend sections 4123.35, 4123.66, 4123.93, and 1
4123.931 of the Revised Code to modify the 2
subrogation provisions of the Workers' Compensation 3
Law and to increase the workers' compensation 4
funeral expense benefit cap. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4123.35, 4123.66, 4123.93, and 6
4123.931 of the Revised Code be amended to read as follows: 7

Sec. 4123.35. (A) Except as provided in this section, every 8
employer mentioned in division (B)(2) of section 4123.01 of the 9
Revised Code, and every publicly owned utility shall pay 10
semiannually in the months of January and July into the state 11
insurance fund the amount of annual premium the administrator of 12
workers' compensation fixes for the employment or occupation of 13
the employer, the amount of which premium to be paid by each 14
employer to be determined by the classifications, rules, and rates 15
made and published by the administrator. The employer shall pay 16
semiannually a further sum of money into the state insurance fund 17
as may be ascertained to be due from the employer by applying the 18
rules of the administrator, and a receipt or certificate 19

certifying that payment has been made shall be mailed immediately 20
to the employer by the bureau of workers' compensation. The 21
receipt or certificate is prima-facie evidence of the payment of 22
the premium. 23

The bureau of workers' compensation shall verify with the 24
secretary of state the existence of all corporations and 25
organizations making application for workers' compensation 26
coverage and shall require every such application to include the 27
employer's federal identification number. 28

An employer as defined in division (B)(2) of section 4123.01 29
of the Revised Code who has contracted with a subcontractor is 30
liable for the unpaid premium due from any subcontractor with 31
respect to that part of the payroll of the subcontractor that is 32
for work performed pursuant to the contract with the employer. 33

Division (A) of this section providing for the payment of 34
premiums semiannually does not apply to any employer who was a 35
subscriber to the state insurance fund prior to January 1, 1914, 36
or who may first become a subscriber to the fund in any month 37
other than January or July. Instead, the semiannual premiums shall 38
be paid by those employers from time to time upon the expiration 39
of the respective periods for which payments into the fund have 40
been made by them. 41

The administrator shall adopt rules to permit employers to 42
make periodic payments of the semiannual premium due under this 43
division. The rules shall include provisions for the assessment of 44
interest charges, where appropriate, and for the assessment of 45
penalties when an employer fails to make timely premium payments. 46
An employer who timely pays the amounts due under this division is 47
entitled to all of the benefits and protections of this chapter. 48
Upon receipt of payment, the bureau immediately shall mail a 49
receipt or certificate to the employer certifying that payment has 50
been made, which receipt is prima-facie evidence of payment. 51

Workers' compensation coverage under this chapter continues 52
uninterrupted upon timely receipt of payment under this division. 53

Every public employer, except public employers that are 54
self-insuring employers under this section, shall comply with 55
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 56
regard to the contribution of moneys to the public insurance fund. 57

(B) Employers who will abide by the rules of the 58
administrator and who may be of sufficient financial ability to 59
render certain the payment of compensation to injured employees or 60
the dependents of killed employees, and the furnishing of medical, 61
surgical, nursing, and hospital attention and services and 62
medicines, and funeral expenses, equal to or greater than is 63
provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 64
to 4123.67 of the Revised Code, and who do not desire to insure 65
the payment thereof or indemnify themselves against loss sustained 66
by the direct payment thereof, upon a finding of such facts by the 67
administrator, may be granted the privilege to pay individually 68
compensation, and furnish medical, surgical, nursing, and hospital 69
services and attention and funeral expenses directly to injured 70
employees or the dependents of killed employees, thereby being 71
granted status as a self-insuring employer. The administrator may 72
charge employers who apply for the status as a self-insuring 73
employer a reasonable application fee to cover the bureau's costs 74
in connection with processing and making a determination with 75
respect to an application. 76

All employers granted such status shall demonstrate 77
sufficient financial and administrative ability to assure that all 78
obligations under this section are promptly met. The administrator 79
shall deny the privilege where the employer is unable to 80
demonstrate the employer's ability to promptly meet all the 81
obligations imposed on the employer by this section. 82

(1) The administrator shall consider, but is not limited to, 83

the following factors, where applicable, in determining the
employer's ability to meet all of the obligations imposed on the
employer by this section:

(a) The employer employs a minimum of five hundred employees
in this state;

(b) The employer has operated in this state for a minimum of
two years, provided that an employer who has purchased, acquired,
or otherwise succeeded to the operation of a business, or any part
thereof, situated in this state that has operated for at least two
years in this state, also shall qualify;

(c) Where the employer previously contributed to the state
insurance fund or is a successor employer as defined by bureau
rules, the amount of the buyout, as defined by bureau rules;

(d) The sufficiency of the employer's assets located in this
state to insure the employer's solvency in paying compensation
directly;

(e) The financial records, documents, and data, certified by
a certified public accountant, necessary to provide the employer's
full financial disclosure. The records, documents, and data
include, but are not limited to, balance sheets and profit and
loss history for the current year and previous four years.

(f) The employer's organizational plan for the administration
of the workers' compensation law;

(g) The employer's proposed plan to inform employees of the
change from a state fund insurer to a self-insuring employer, the
procedures the employer will follow as a self-insuring employer,
and the employees' rights to compensation and benefits; and

(h) The employer has either an account in a financial
institution in this state, or if the employer maintains an account
with a financial institution outside this state, ensures that

workers' compensation checks are drawn from the same account as
payroll checks or the employer clearly indicates that payment will
be honored by a financial institution in this state.

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The administrator may waive the requirements of divisions
(B)(1)(a) and (b) of this section and the requirement of division
(B)(1)(e) of this section that the financial records, documents,
and data be certified by a certified public accountant. The
administrator shall adopt rules establishing the criteria that an
employer shall meet in order for the administrator to waive the
requirement of division (B)(1)(e) of this section. Such rules may
require additional security of that employer pursuant to division
(E) of section 4123.351 of the Revised Code.

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The administrator shall not grant the status of self-insuring
employer to the state, except that the administrator may grant the
status of self-insuring employer to a state institution of higher
education, excluding its hospitals, that meets the requirements of
division (B)(2) of this section.

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(2) When considering the application of a public employer,
except for a board of county commissioners described in division
(G) of section 4123.01 of the Revised Code, a board of a county
hospital, or a publicly owned utility, the administrator shall
verify that the public employer satisfies all of the following
requirements as the requirements apply to that public employer:

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(a) For the two-year period preceding application under this
section, the public employer has maintained an unvoted debt
capacity equal to at least two times the amount of the current
annual premium established by the administrator under this chapter
for that public employer for the year immediately preceding the
year in which the public employer makes application under this
section.

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(b) For each of the two fiscal years preceding application

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under this section, the unreserved and undesignated year-end fund
balance in the public employer's general fund is equal to at least
five per cent of the public employer's general fund revenues for
the fiscal year computed in accordance with generally accepted
accounting principles.

(c) For the five-year period preceding application under this
section, the public employer, to the extent applicable, has
complied fully with the continuing disclosure requirements
established in rules adopted by the United States securities and
exchange commission under 17 C.F.R. 240.15c 2-12.

(d) For the five-year period preceding application under this
section, the public employer has not had its local government fund
distribution withheld on account of the public employer being
indebted or otherwise obligated to the state.

(e) For the five-year period preceding application under this
section, the public employer has not been under a fiscal watch or
fiscal emergency pursuant to section 118.023, 118.04, or 3316.03
of the Revised Code.

(f) For the public employer's fiscal year preceding
application under this section, the public employer has obtained
an annual financial audit as required under section 117.10 of the
Revised Code, which has been released by the auditor of state
within seven months after the end of the public employer's fiscal
year.

(g) On the date of application, the public employer holds a
debt rating of Aa3 or higher according to Moody's investors
service, inc., or a comparable rating by an independent rating
agency similar to Moody's investors service, inc.

(h) The public employer agrees to generate an annual
accumulating book reserve in its financial statements reflecting
an actuarially generated reserve adequate to pay projected claims

under this chapter for the applicable period of time, as 176
determined by the administrator. 177

(i) For a public employer that is a hospital, the public 178
employer shall submit audited financial statements showing the 179
hospital's overall liquidity characteristics, and the 180
administrator shall determine, on an individual basis, whether the 181
public employer satisfies liquidity standards equivalent to the 182
liquidity standards of other public employers. 183

(j) Any additional criteria that the administrator adopts by 184
rule pursuant to division (E) of this section. 185

The administrator shall not approve the application of a 186
public employer, except for a board of county commissioners 187
described in division (G) of section 4123.01 of the Revised Code, 188
a board of a county hospital, or publicly owned utility, who does 189
not satisfy all of the requirements listed in division (B)(2) of 190
this section. 191

(C) A board of county commissioners described in division (G) 192
of section 4123.01 of the Revised Code, as an employer, that will 193
abide by the rules of the administrator and that may be of 194
sufficient financial ability to render certain the payment of 195
compensation to injured employees or the dependents of killed 196
employees, and the furnishing of medical, surgical, nursing, and 197
hospital attention and services and medicines, and funeral 198
expenses, equal to or greater than is provided for in sections 199
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised 200
Code, and that does not desire to insure the payment thereof or 201
indemnify itself against loss sustained by the direct payment 202
thereof, upon a finding of such facts by the administrator, may be 203
granted the privilege to pay individually compensation, and 204
furnish medical, surgical, nursing, and hospital services and 205
attention and funeral expenses directly to injured employees or 206
the dependents of killed employees, thereby being granted status 207

as a self-insuring employer. The administrator may charge a board
of county commissioners described in division (G) of section
4123.01 of the Revised Code that applies for the status as a
self-insuring employer a reasonable application fee to cover the
bureau's costs in connection with processing and making a
determination with respect to an application. All employers
granted such status shall demonstrate sufficient financial and
administrative ability to assure that all obligations under this
section are promptly met. The administrator shall deny the
privilege where the employer is unable to demonstrate the
employer's ability to promptly meet all the obligations imposed on
the employer by this section. The administrator shall consider,
but is not limited to, the following factors, where applicable, in
determining the employer's ability to meet all of the obligations
imposed on the board as an employer by this section:

(1) The board as an employer employs a minimum of five
hundred employees in this state;

(2) The board has operated in this state for a minimum of two
years;

(3) Where the board previously contributed to the state
insurance fund or is a successor employer as defined by bureau
rules, the amount of the buyout, as defined by bureau rules;

(4) The sufficiency of the board's assets located in this
state to insure the board's solvency in paying compensation
directly;

(5) The financial records, documents, and data, certified by
a certified public accountant, necessary to provide the board's
full financial disclosure. The records, documents, and data
include, but are not limited to, balance sheets and profit and
loss history for the current year and previous four years.

(6) The board's organizational plan for the administration of

the workers' compensation law;

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(7) The board's proposed plan to inform employees of the proposed self-insurance, the procedures the board will follow as a self-insuring employer, and the employees' rights to compensation and benefits;

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(8) The board has either an account in a financial institution in this state, or if the board maintains an account with a financial institution outside this state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the board clearly indicates that payment will be honored by a financial institution in this state;

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(9) The board shall provide the administrator a surety bond in an amount equal to one hundred twenty-five per cent of the projected losses as determined by the administrator.

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(D) The administrator shall require a surety bond from all self-insuring employers, issued pursuant to section 4123.351 of the Revised Code, that is sufficient to compel, or secure to injured employees, or to the dependents of employees killed, the payment of compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to the fund, except when an employee of the employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of the members as the result of any injury sustained in the course of and arising out of the employee's employment, the compensation to be paid by the self-insuring employer is limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the bureau out of the surplus created by section 4123.34 of the Revised Code.

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(E) In addition to the requirements of this section, the administrator shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify a finding of fact by the administrator as to granting the status of a self-insuring employer, which rules shall be general in their application, one of which rules shall provide that all self-insuring employers shall pay into the state insurance fund such amounts as are required to be credited to the surplus fund in division (B) of section 4123.34 of the Revised Code. The administrator may adopt rules establishing requirements in addition to the requirements described in division (B)(2) of this section that a public employer shall meet in order to qualify for self-insuring status.

Employers shall secure directly from the bureau central offices application forms upon which the bureau shall stamp a designating number. Prior to submission of an application, an employer shall make available to the bureau, and the bureau shall review, the information described in division (B)(1) of this section, and public employers shall make available, and the bureau shall review, the information necessary to verify whether the public employer meets the requirements listed in division (B)(2) of this section. An employer shall file the completed application forms with an application fee, which shall cover the costs of processing the application, as established by the administrator, by rule, with the bureau at least ninety days prior to the effective date of the employer's new status as a self-insuring employer. The application form is not deemed complete until all the required information is attached thereto. The bureau shall only accept applications that contain the required information.

(F) The bureau shall review completed applications within a reasonable time. If the bureau determines to grant an employer the status as a self-insuring employer, the bureau shall issue a

statement, containing its findings of fact, that is prepared by 302
the bureau and signed by the administrator. If the bureau 303
determines not to grant the status as a self-insuring employer, 304
the bureau shall notify the employer of the determination and 305
require the employer to continue to pay its full premium into the 306
state insurance fund. The administrator also shall adopt rules 307
establishing a minimum level of performance as a criterion for 308
granting and maintaining the status as a self-insuring employer 309
and fixing time limits beyond which failure of the self-insuring 310
employer to provide for the necessary medical examinations and 311
evaluations may not delay a decision on a claim. 312

(G) The administrator shall adopt rules setting forth 313
procedures for auditing the program of self-insuring employers. 314
The bureau shall conduct the audit upon a random basis or whenever 315
the bureau has grounds for believing that a self-insuring employer 316
is not in full compliance with bureau rules or this chapter. 317

The administrator shall monitor the programs conducted by 318
self-insuring employers, to ensure compliance with bureau 319
requirements and for that purpose, shall develop and issue to 320
self-insuring employers standardized forms for use by the 321
self-insuring employer in all aspects of the self-insuring 322
employers' direct compensation program and for reporting of 323
information to the bureau. 324

The bureau shall receive and transmit to the self-insuring 325
employer all complaints concerning any self-insuring employer. In 326
the case of a complaint against a self-insuring employer, the 327
administrator shall handle the complaint through the 328
self-insurance division of the bureau. The bureau shall maintain a 329
file by employer of all complaints received that relate to the 330
employer. The bureau shall evaluate each complaint and take 331
appropriate action. 332

The administrator shall adopt as a rule a prohibition against 333

any self-insuring employer from harassing, dismissing, or 334
otherwise disciplining any employee making a complaint, which rule 335
shall provide for a financial penalty to be levied by the 336
administrator payable by the offending self-insuring employer. 337

(H) For the purpose of making determinations as to whether to 338
grant status as a self-insuring employer, the administrator may 339
subscribe to and pay for a credit reporting service that offers 340
financial and other business information about individual 341
employers. The costs in connection with the bureau's subscription 342
or individual reports from the service about an applicant may be 343
included in the application fee charged employers under this 344
section. 345

(I) The administrator, notwithstanding other provisions of 346
this chapter, may permit a self-insuring employer to resume 347
payment of premiums to the state insurance fund with appropriate 348
credit modifications to the employer's basic premium rate as such 349
rate is determined pursuant to section 4123.29 of the Revised 350
Code. 351

(J) On the first day of July of each year, the administrator 352
shall calculate separately each self-insuring employer's 353
assessments for the safety and hygiene fund, administrative costs 354
pursuant to section 4123.342 of the Revised Code, and for the 355
portion of the surplus fund under division (B) of section 4123.34 356
of the Revised Code that is not used for handicapped 357
reimbursement, on the basis of the paid compensation attributable 358
to the individual self-insuring employer according to the 359
following calculation: 360

(1) The total assessment against all self-insuring employers 361
as a class for each fund and for the administrative costs for the 362
year that the assessment is being made, as determined by the 363
administrator, divided by the total amount of paid compensation 364
for the previous calendar year attributable to all amenable 365

self-insuring employers;

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(2) Multiply the quotient in division (J)(1) of this section
by the total amount of paid compensation for the previous calendar
year that is attributable to the individual self-insuring employer
for whom the assessment is being determined. Each self-insuring
employer shall pay the assessment that results from this
calculation, unless the assessment resulting from this calculation
falls below a minimum assessment, which minimum assessment the
administrator shall determine on the first day of July of each
year with the advice and consent of the workers' compensation
oversight commission, in which event, the self-insuring employer
shall pay the minimum assessment.

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In determining the total amount due for the total assessment
against all self-insuring employers as a class for each fund and
the administrative assessment, the administrator shall reduce
proportionately the total for each fund and assessment by the
amount of money in the self-insurance assessment fund as of the
date of the computation of the assessment.

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The administrator shall calculate the assessment for the
portion of the surplus fund under division (B) of section 4123.34
of the Revised Code that is used for handicapped reimbursement in
the same manner as set forth in divisions (J)(1) and (2) of this
section except that the administrator shall calculate the total
assessment for this portion of the surplus fund only on the basis
of those self-insuring employers that retain participation in the
handicapped reimbursement program and the individual self-insuring
employer's proportion of paid compensation shall be calculated
only for those self-insuring employers who retain participation in
the handicapped reimbursement program. The administrator, as the
administrator determines appropriate, may determine the total
assessment for the handicapped portion of the surplus fund in
accordance with sound actuarial principles.

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The administrator shall calculate the assessment for the 398
portion of the surplus fund under division (B) of section 4123.34 399
of the Revised Code that under division (D) of section 4121.66 of 400
the Revised Code is used for rehabilitation costs in the same 401
manner as set forth in divisions (J)(1) and (2) of this section, 402
except that the administrator shall calculate the total assessment 403
for this portion of the surplus fund only on the basis of those 404
self-insuring employers who have not made the election to make 405
payments directly under division (D) of section 4121.66 of the 406
Revised Code and an individual self-insuring employer's proportion 407
of paid compensation only for those self-insuring employers who 408
have not made that election. 409

An employer who no longer is a self-insuring employer in this 410
state or who no longer is operating in this state, shall continue 411
to pay assessments for administrative costs and for the portion of 412
the surplus fund under division (B) of section 4123.34 of the 413
Revised Code that is not used for handicapped reimbursement, based 414
upon paid compensation attributable to claims that occurred while 415
the employer was a self-insuring employer within this state. 416

(K) There is hereby created in the state treasury the 417
self-insurance assessment fund. All investment earnings of the 418
fund shall be deposited in the fund. The administrator shall use 419
the money in the self-insurance assessment fund only for 420
administrative costs as specified in section 4123.341 of the 421
Revised Code. 422

(L) Every self-insuring employer shall certify, in affidavit 423
form subject to the penalty for perjury, to the bureau the amount 424
of the self-insuring employer's paid compensation for the previous 425
calendar year. In reporting paid compensation paid for the 426
previous year, a self-insuring employer shall exclude from the 427
total amount of paid compensation any reimbursement the 428
self-insuring employer receives in the previous calendar year from 429

the surplus fund pursuant to section 4123.512 of the Revised Code
for any paid compensation. The self-insuring employer also shall
exclude from the paid compensation reported any amount recovered
under section ~~4123.93~~ 4123.931 of the Revised Code and any amount
that is determined not to have been payable to or on behalf of a
claimant in any final administrative or judicial proceeding. The
self-insuring employer shall exclude such amounts from the paid
compensation reported in the reporting period subsequent to the
date the determination is made. The administrator shall adopt
rules, in accordance with Chapter 119. of the Revised Code,
establishing the date by which self-insuring employers must submit
such information and the amount of the assessments provided for in
division (J) of this section for employers who have been granted
self-insuring status within the last calendar year.

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The administrator shall include any assessment that remains
unpaid for previous assessment periods in the calculation and
collection of any assessments due under this division or division
(J) of this section.

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(M) As used in this section, "paid compensation" means all
amounts paid by a self-insuring employer for living maintenance
benefits, all amounts for compensation paid pursuant to sections
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and
4123.64 of the Revised Code, all amounts paid as wages in lieu of
such compensation, all amounts paid in lieu of such compensation
under a nonoccupational accident and sickness program fully funded
by the self-insuring employer, and all amounts paid by a
self-insuring employer for a violation of a specific safety
standard pursuant to Section 35 of Article II, Ohio Constitution
and section 4121.47 of the Revised Code.

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(N) Should any section of this chapter or Chapter 4121. of
the Revised Code providing for self-insuring employers'
assessments based upon compensation paid be declared

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unconstitutional by a final decision of any court, then that
section of the Revised Code declared unconstitutional shall revert
back to the section in existence prior to November 3, 1989,
providing for assessments based upon payroll.

(O) The administrator may grant a self-insuring employer the
privilege to self-insure a construction project entered into by
the self-insuring employer that is scheduled for completion within
six years after the date the project begins, and the total cost of
which is estimated to exceed one hundred million dollars. The
administrator may waive such cost and time criteria and grant a
self-insuring employer the privilege to self-insure a construction
project regardless of the time needed to complete the construction
project and provided that the cost of the construction project is
estimated to exceed fifty million dollars. A self-insuring
employer who desires to self-insure a construction project shall
submit to the administrator an application listing the dates the
construction project is scheduled to begin and end, the estimated
cost of the construction project, the contractors and
subcontractors whose employees are to be self-insured by the
self-insuring employer, the provisions of a safety program that is
specifically designed for the construction project, and a
statement as to whether a collective bargaining agreement
governing the rights, duties, and obligations of each of the
parties to the agreement with respect to the construction project
exists between the self-insuring employer and a labor
organization.

A self-insuring employer may apply to self-insure the
employees of either of the following:

(1) All contractors and subcontractors who perform labor or
work or provide materials for the construction project;

(2) All contractors and, at the administrator's discretion, a
substantial number of all the subcontractors who perform labor or

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work or provide materials for the construction project. 494

Upon approval of the application, the administrator shall 495
mail a certificate granting the privilege to self-insure the 496
construction project to the self-insuring employer. The 497
certificate shall contain the name of the self-insuring employer 498
and the name, address, and telephone number of the self-insuring 499
employer's representatives who are responsible for administering 500
workers' compensation claims for the construction project. The 501
self-insuring employer shall post the certificate in a conspicuous 502
place at the site of the construction project. 503

The administrator shall maintain a record of the contractors 504
and subcontractors whose employees are covered under the 505
certificate issued to the self-insured employer. A self-insuring 506
employer immediately shall notify the administrator when any 507
contractor or subcontractor is added or eliminated from inclusion 508
under the certificate. 509

Upon approval of the application, the self-insuring employer 510
is responsible for the administration and payment of all claims 511
under this chapter and Chapter 4121. of the Revised Code for the 512
employees of the contractor and subcontractors covered under the 513
certificate who receive injuries or are killed in the course of 514
and arising out of employment on the construction project, or who 515
contract an occupational disease in the course of employment on 516
the construction project. For purposes of this chapter and Chapter 517
4121. of the Revised Code, a claim that is administered and paid 518
in accordance with this division is considered a claim against the 519
self-insuring employer listed in the certificate. A contractor or 520
subcontractor included under the certificate shall report to the 521
self-insuring employer listed in the certificate, all claims that 522
arise under this chapter and Chapter 4121. of the Revised Code in 523
connection with the construction project for which the certificate 524
is issued. 525

A self-insuring employer who complies with this division is 526
entitled to the protections provided under this chapter and 527
Chapter 4121. of the Revised Code with respect to the employees of 528
the contractors and subcontractors covered under a certificate 529
issued under this division for death or injuries that arise out 530
of, or death, injuries, or occupational diseases that arise in the 531
course of, those employees' employment on that construction 532
project, as if the employees were employees of the self-insuring 533
employer, provided that the self-insuring employer also complies 534
with this section. No employee of the contractors and 535
subcontractors covered under a certificate issued under this 536
division shall be considered the employee of the self-insuring 537
employer listed in that certificate for any purposes other than 538
this chapter and Chapter 4121. of the Revised Code. Nothing in 539
this division gives a self-insuring employer authority to control 540
the means, manner, or method of employment of the employees of the 541
contractors and subcontractors covered under a certificate issued 542
under this division. 543

The contractors and subcontractors included under a 544
certificate issued under this division are entitled to the 545
protections provided under this chapter and Chapter 4121. of the 546
Revised Code with respect to the contractor's or subcontractor's 547
employees who are employed on the construction project which is 548
the subject of the certificate, for death or injuries that arise 549
out of, or death, injuries, or occupational diseases that arise in 550
the course of, those employees' employment on that construction 551
project. 552

The contractors and subcontractors included under a 553
certificate issued under this division shall identify in their 554
payroll records the employees who are considered the employees of 555
the self-insuring employer listed in that certificate for purposes 556
of this chapter and Chapter 4121. of the Revised Code, and the 557

amount that those employees earned for employment on the
construction project that is the subject of that certificate.
Notwithstanding any provision to the contrary under this chapter
and Chapter 4121. of the Revised Code, the administrator shall
exclude the payroll that is reported for employees who are
considered the employees of the self-insuring employer listed in
that certificate, and that the employees earned for employment on
the construction project that is the subject of that certificate,
when determining those contractors' or subcontractors' premiums or
assessments required under this chapter and Chapter 4121. of the
Revised Code. A self-insuring employer issued a certificate under
this division shall include in the amount of paid compensation it
reports pursuant to division (L) of this section, the amount of
paid compensation the self-insuring employer paid pursuant to this
division for the previous calendar year.

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Nothing in this division shall be construed as altering the
rights of employees under this chapter and Chapter 4121. of the
Revised Code as those rights existed prior to September 17, 1996.
Nothing in this division shall be construed as altering the rights
devolved under sections 2305.31 and 4123.82 of the Revised Code as
those rights existed prior to September 17, 1996.

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As used in this division, "privilege to self-insure a
construction project" means privilege to pay individually
compensation, and to furnish medical, surgical, nursing, and
hospital services and attention and funeral expenses directly to
injured employees or the dependents of killed employees.

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(P) A self-insuring employer whose application is granted
under division (O) of this section shall designate a safety
professional to be responsible for the administration and
enforcement of the safety program that is specifically designed
for the construction project that is the subject of the
application.

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A self-insuring employer whose application is granted under 590
division (O) of this section shall employ an ombudsperson for the 591
construction project that is the subject of the application. The 592
ombudsperson shall have experience in workers' compensation or the 593
construction industry, or both. The ombudsperson shall perform all 594
of the following duties: 595

(1) Communicate with and provide information to employees who 596
are injured in the course of, or whose injury arises out of 597
employment on the construction project, or who contract an 598
occupational disease in the course of employment on the 599
construction project; 600

(2) Investigate the status of a claim upon the request of an 601
employee to do so; 602

(3) Provide information to claimants, third party 603
administrators, employers, and other persons to assist those 604
persons in protecting their rights under this chapter and Chapter 605
4121. of the Revised Code. 606

A self-insuring employer whose application is granted under 607
division (O) of this section shall post the name of the safety 608
professional and the ombudsperson and instructions for contacting 609
the safety professional and the ombudsperson in a conspicuous 610
place at the site of the construction project. 611

(Q) The administrator may consider all of the following when 612
deciding whether to grant a self-insuring employer the privilege 613
to self-insure a construction project as provided under division 614
(O) of this section: 615

(1) Whether the self-insuring employer has an organizational 616
plan for the administration of the workers' compensation law; 617

(2) Whether the safety program that is specifically designed 618
for the construction project provides for the safety of employees 619
employed on the construction project, is applicable to all 620

contractors and subcontractors who perform labor or work or
provide materials for the construction project, and has a
component, a safety training program that complies with standards
adopted pursuant to the "Occupational Safety and Health Act of
1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing
management and employee involvement;

(3) Whether granting the privilege to self-insure the
construction project will reduce the costs of the construction
project;

(4) Whether the self-insuring employer has employed an
ombudsperson as required under division (P) of this section;

(5) Whether the self-insuring employer has sufficient surety
to secure the payment of claims for which the self-insuring
employer would be responsible pursuant to the granting of the
privilege to self-insure a construction project under division (O)
of this section.

(R) As used in this section:

(1) "Unvoted debt capacity" means the amount of money that a
public employer may borrow without voter approval of a tax levy;

(2) "State institution of higher education" means the state
universities listed in section 3345.011 of the Revised Code,
community colleges created pursuant to Chapter 3354. of the
Revised Code, university branches created pursuant to Chapter
3355. of the Revised Code, technical colleges created pursuant to
Chapter 3357. of the Revised Code, and state community colleges
created pursuant to Chapter 3358. of the Revised Code.

Sec. 4123.66. (A) In addition to the compensation provided
for in this chapter, the administrator of workers' compensation
shall disburse and pay from the state insurance fund the amounts
for medical, nurse, and hospital services and medicine as ~~he~~ the

administrator deems proper and, in case death ensues from the 651
injury or occupational disease, ~~he~~ the administrator shall 652
disburse and pay from the fund reasonable funeral expenses in an 653
amount not to exceed ~~thirty-two~~ fifty-five hundred dollars. The 654
bureau of workers' compensation shall reimburse anyone, whether 655
dependent, volunteer, or otherwise, who pays the funeral expenses 656
of any employee whose death ensues from any injury or occupational 657
disease as provided in this section. The administrator may adopt 658
rules, with the advice and consent of the workers' compensation 659
oversight commission, with respect to furnishing medical, nurse, 660
and hospital service and medicine to injured or disabled employees 661
entitled thereto, and for the payment therefor. In case an injury 662
or industrial accident that injures an employee also causes damage 663
to the employee's eyeglasses, artificial teeth or other denture, 664
or hearing aid, or in the event an injury or occupational disease 665
makes it necessary or advisable to replace, repair, or adjust the 666
same, the bureau shall disburse and pay a reasonable amount to 667
repair or replace the same. 668

(B)(1) If an employer or a welfare plan has provided to or on 669
behalf of an employee any benefits or compensation for an injury 670
or occupational disease and that injury or occupational disease is 671
determined compensable under this chapter, the employer or a 672
welfare plan may request that the administrator reimburse the 673
employer or welfare plan for the amount the employer or welfare 674
plan paid to or on behalf of the employee in compensation or 675
benefits. The administrator shall reimburse the employer or 676
welfare plan for the compensation and benefits paid if, at the 677
time the employer or welfare plan provides the benefits or 678
compensation to or on behalf of employee, the injury or 679
occupational disease had not been determined to be compensable 680
under this chapter and if the employee was not receiving 681
compensation or benefits under this chapter for that injury or 682
occupational disease. The administrator shall reimburse the 683

employer or welfare plan in the amount that the administrator
would have paid to or on behalf of the employee under this chapter
if the injury or occupational disease originally would have been
determined compensable under this chapter. If the employer is a
merit-rated employer, the administrator shall adjust the amount of
premium next due from the employer according to the amount the
administrator pays the employer. The administrator shall adopt
rules, in accordance with Chapter 119. of the Revised Code, to
implement this division.

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(2) As used in this division, "welfare plan" has the same
meaning as in division (1) of 29 U.S.C.A. 1002.

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Sec. 4123.93. As used in sections 4123.93 and 4123.931 of the
Revised Code:

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(A) "Claimant" means a person who is eligible to receive
compensation ~~or, medical benefits, or death benefits~~ under this
chapter or Chapter 4121., 4127., or 4131. of the Revised Code,
~~including any dependent or person whose eligibility is the result~~
~~of an injury to or occupational disease of another person.~~

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(B) "Statutory subrogee" means the administrator of ~~the~~
~~bureau of~~ workers' compensation, a self-insuring employer, or an
employer that contracts for the direct payment of medical services
pursuant to division (L) of section 4121.44 of the Revised Code.

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(C) ~~"Subrogated amounts" include, but are not limited to, the~~
~~following:~~

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~~(1) Amounts recoverable from any third party, notwithstanding~~
~~any limitations by the third party concerning its responsibility~~
~~to make payments in cases involving workers' compensation under~~
~~Chapter 4121., 4123., 4127., or 4131. of the Revised Code;~~

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~~(2) Amounts recoverable from a claimant's insurer in~~

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~~connection with underinsured or uninsured motorist coverage,~~ 714
~~notwithstanding any limitation contained in Chapter 3937. of the~~ 715
~~Revised Code.~~ 716

~~(3) Amounts that a claimant would be entitled to recover from~~ 717
~~a political subdivision, notwithstanding any limitations contained~~ 718
~~in Chapter 2744. of the Revised Code.~~ 719

~~(D) "Third party" means an individual, private insurer,~~ 720
~~public or private entity, or public or private program that is or~~ 721
~~may be liable to make payments to a person without regard to any~~ 722
~~statutory duty contained in this chapter or Chapter 4121., 4127.,~~ 723
~~or 4131. of the Revised Code.~~ 724

(D) "Subrogation interest" includes past, present, and 725
estimated future payments of compensation, medical benefits, 726
rehabilitation costs, or death benefits, and any other costs or 727
expenses paid to or on behalf of the claimant by the statutory 728
subrogee pursuant to this chapter or Chapter 4121., 4127., or 729
4131. of the Revised Code. 730

(E) "Net amount recovered" means the amount of any award, 731
settlement, compromise, or recovery by a claimant against a third 732
party, minus the attorney's fees, costs, or other expenses 733
incurred by the claimant in securing the award, settlement, 734
compromise, or recovery. 735

(F) "Uncompensated damages" means the claimant's demonstrated 736
or proven damages minus the statutory subrogee's subrogation 737
interest. 738

Sec. 4123.931. (A) The payment of compensation or benefits 739
pursuant to this chapter or Chapter 4121., 4127., or 4131., of the 740
Revised Code creates a right of subrogation recovery in favor of a 741
statutory subrogee against a third party. ~~A statutory subrogee's~~ 742
~~subrogation interest includes past payments of compensation and~~ 743

~~medical benefits and estimated future values of compensation and 744
medical benefits arising out of an injury to or disability or 745
disease of a claimant, and the statutory subrogee is subrogated to 746
the rights of a claimant against that third party. The net amount 747
recovered is subject to a statutory subrogee's right of recovery. 748~~

(B) If a claimant, statutory subrogee, and third party settle 749
or attempt to settle a claimant's claim against a third party, the 750
claimant shall receive an amount equal to the uncompensated 751
damages divided by the sum of the subrogation interest plus the 752
uncompensated damages, multiplied by the net amount recovered, and 753
the statutory subrogee shall receive an amount equal to the 754
subrogation interest divided by the sum of the subrogation 755
interest plus the uncompensated damages, multiplied by the net 756
amount recovered, except that the net amount recovered may instead 757
be divided and paid on a more fair and reasonable basis that is 758
agreed to by the claimant and statutory subrogee. If while 759
attempting to settle, the claimant and statutory subrogee cannot 760
agree to the allocation of the net amount recovered, the claimant 761
and statutory subrogee may file a request with the administrator 762
of workers' compensation for a conference to be conducted by a 763
designee appointed by the administrator, or the claimant and 764
statutory subrogee may agree to utilize any other binding or 765
non-binding alternative dispute resolution process. 766

The claimant and statutory subrogee shall pay equal shares of 767
the fees and expenses of utilizing an alternative dispute 768
resolution process, unless they agree to pay those fees and 769
expenses in another manner. The administrator shall not assess any 770
fees to a claimant or statutory subrogee for a conference 771
conducted by the administrator's designee. 772

(C) If a claimant and statutory subrogee request that a 773
conference be conducted by the administrator's designee pursuant 774
to division (B) of this section, both of the following apply: 775

(1) The administrator's designee shall schedule a conference on or before sixty days after the date that the claimant and statutory subrogee filed a request for the conference. 776
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(2) The determination made by the administrator's designee is not subject to Chapter 119. of the Revised Code. 779
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(D) When a claimant's action against a third party proceeds to trial and damages are awarded, both of the following apply: 781
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(1) The claimant shall receive an amount equal to the uncompensated damages divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered, and the statutory subrogee shall receive an amount equal to the subrogation interest divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered. 783
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(2) The court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories that specify the following: 790
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(a) The total amount of the compensatory damages; 794

(b) The portion of the compensatory damages specified pursuant to division (D)(2)(a) of this section that represents economic loss; 795
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(c) The portion of the compensatory damages specified pursuant to division (D)(2)(a) of this section that represents noneconomic loss. 798
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(E)(1) After a claimant and statutory subrogee know the net amount recovered, and after the means for dividing it has been determined under division (B) or (D) of this section, a claimant may establish an interest-bearing trust account for the full amount of the subrogation interest that represents estimated 801
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future payments of compensation, medical benefits, rehabilitation costs, or death benefits, reduced to present value, from which the claimant shall make reimbursement payments to the statutory subrogee for the future payments of compensation, medical benefits, rehabilitation costs, or death benefits. If the workers' compensation claim associated with the subrogation interest is settled, or if the claimant dies, or if any other circumstance occurs that would preclude any future payments of compensation, medical benefits, rehabilitation costs, and death benefits by the statutory subrogee, any amount remaining in the trust account after final reimbursement is paid to the statutory subrogee for all payments made by the statutory subrogee before the ending of future payments shall be paid to the claimant or the claimant's estate.

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(2) A claimant may use interest that accrues on the trust account to pay the expenses of establishing and maintaining the trust account, and all remaining interest shall be credited to the trust account.

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(3) If a claimant establishes a trust account, the statutory subrogee shall provide payment notices to the claimant on or before the thirtieth day of June and the thirty-first day of December every year listing the total amount that the statutory subrogee has paid for compensation, medical benefits, rehabilitation costs, or death benefits during the half of the year preceding the notice. The claimant shall make reimbursement payments to the statutory subrogee from the trust account on or before the thirty-first day of July every year for a notice provided by the thirtieth day of June, and on or before the thirty-first day of January every year for a notice provided by the thirty-first day of December. The claimant's reimbursement payment shall be in an amount that equals the total amount listed on the notice the claimant receives from the statutory subrogee.

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(F) If a claimant does not establish a trust account as described in division (E)(1) of this section, the claimant shall pay to the statutory subrogee, on or before thirty days after receipt of funds from the third party, the full amount of the subrogation interest that represents estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits. 838
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(G) A claimant shall notify a statutory subrogee and the attorney general of the identity of all third parties against whom the claimant has or may have a right of recovery, except that when the statutory subrogee is a self-insuring employer, the claimant need not notify the attorney general. No settlement, compromise, judgment, award, or other recovery in any action or claim by a claimant shall be final unless the claimant provides the statutory subrogee and, when required, the attorney general, with prior notice and a reasonable opportunity to assert its subrogation rights. If a statutory subrogee ~~is~~ and, when required, the attorney general are not given that notice, or if a settlement or compromise excludes any amount paid by the statutory subrogee, the third party and the claimant shall be jointly and severally liable to pay the statutory subrogee the full amount of the subrogation interest. 845
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~~(E)~~(H) The right of subrogation under this chapter is automatic, regardless of whether a statutory subrogee is joined as a party in an action by a claimant against a third party. A statutory subrogee may assert its subrogation rights through correspondence with the claimant and the third party or their legal representatives. A statutory subrogee may institute and pursue legal proceedings against a third party either by itself or in conjunction with a claimant. If a statutory subrogee institutes legal proceedings against a third party, the statutory subrogee shall provide notice of that fact to the claimant. If the 860
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statutory subrogee joins the claimant as a necessary party, or if 870
the claimant elects to participate in the proceedings as a party, 871
the claimant may present the claimant's case first if the matter 872
proceeds to trial. If a claimant disputes the validity or amount 873
of an asserted subrogation interest, the claimant shall join the 874
statutory subrogee as a necessary party to the action against the 875
third party. 876

~~(D) The entire amount of any settlement or compromise of an~~ 877
~~action or claim is subject to the subrogation right of a statutory~~ 878
~~subrogee, regardless of the manner in which the settlement or~~ 879
~~compromise is characterized. Any settlement or compromise that~~ 880
~~excludes the amount of compensation or medical benefits shall not~~ 881
~~preclude a statutory subrogee from enforcing its rights under this~~ 882
~~section. The entire amount of any award or judgment is presumed to~~ 883
~~represent compensation and medical benefits and future estimated~~ 884
~~values of compensation and medical benefits that are subject to a~~ 885
~~statutory subrogee's subrogation rights unless the claimant~~ 886
~~obtains a special verdict or jury interrogatories indicating that~~ 887
~~the award or judgment represents different types of damages.~~ 888

~~(E) Subrogation does not apply to the portion of any~~ 890
~~judgment, award, settlement, or compromise of a claim to the~~ 891
~~extent of a claimant's attorney's fees, costs, or other expenses~~ 892
~~incurred by a claimant in securing the judgment, award,~~ 893
~~settlement, or compromise, or the extent of medical, surgical, and~~ 894
~~hospital expenses paid by a claimant from the claimant's own~~ 895
~~resources for which reimbursement is not sought. No additional~~ 896
~~attorney's fees, costs, or other expenses in securing any recovery~~ 897
~~may be assessed against any subrogated claims of a statutory~~ 898
~~subrogee~~ (I) The statutory subrogation right of recovery applies 899
to, but is not limited to, all of the following: 900

(1) Amounts recoverable from a claimant's insurer in 901

connection with underinsured or uninsured motorist coverage, 902
notwithstanding any limitation contained in Chapter 3937. of the 903
Revised Code; 904

(2) Amounts that a claimant would be entitled to recover from 905
a political subdivision, notwithstanding any limitations contained 906
in Chapter 2744. of the Revised Code; 907

(3) Amounts recoverable from an intentional tort action. 908

(J) If a claimant's claim against a third party is for 909
wrongful death or the claim involves any minor beneficiaries, 910
amounts allocated under this section are subject to the approval 911
of probate court. 912

Section 2. That existing sections 4123.35, 4123.66, 4123.93, 913
and 4123.931 of the Revised Code are hereby repealed. 914