



**TED STRICKLAND**  
GOVERNOR  
STATE OF OHIO

## **VETO MESSAGE**

### **STATEMENT OF THE REASONS FOR VETOES OF ITEMS IN AM. SUB. HOUSE BILL 15**

June 30, 2009

Article II, SECTION 16 of the Ohio Constitution authorizes the Governor to veto any item or items in any bill making an appropriation of money. I have boxed and initialed text in Am. Sub. House Bill 15 that I have disapproved. All remaining text in the bill is approved. The reasons for my vetoes are set out below.

#### **Introduction**

The Ohio Bureau of Workers' Compensation underwrites insurance coverage for work-related injuries and illnesses for public and private sector employers conducting business in Ohio and oversees the workers' compensation programs for self-insured employers.

The Bureau of Workers' Compensation receives no General Revenue Funds for its operations – it is funded by employer premium and assessment dollars. These funds support a system that is critical in protecting injured workers and employers from loss resulting from workplace accidents.

In addition to appropriating funds and authorizing the operation of the Bureau's programs, House Bill 15 creates a deputy inspector general for the Bureau of Workers' Compensation and Industrial Commission Fund and establishes the Competitive Workers' Compensation Task Force.

## **A. Notification of Mergers**

### SECTION 4123.29 (A)(4)

Merging companies are obligated to comply with BWC rules regarding mergers and combination of policies. As such, they must file the necessary forms and notice. If a merger has been finalized or even proposed, it is reasonably certain that one or both of the merging companies has already informed the group sponsor and the third party administrator of the merger.

This provision requires the BWC to provide that information to group sponsors and the third party administrator.

This amendment is redundant to current agency practice and will absorb staff resources and mailing costs. For these reasons, a veto is in the public interest.

### Item Number 1

On page 19, delete the boxed text.

## **B. Notification to New Employers of All Group Sponsors and Discount Programs**

### SECTION 4123.29 (B)

Currently, all new employers receive a New Employer Kit, which includes a listing of all BWC programs and directs new employers to information on BWC's Web site about group sponsors. As passed by the legislature, this provision requires BWC to supply all new employers with a list of all groups participating in the group-rating discount program, and a list of all other premium discount programs.

Ohio law pertaining to group-rating requires that group-rated employers be "substantially homogeneous" to one another in order to join a group. As a result, an individual employer may only be eligible to participate in group-rating with a limited number of group sponsors.

Providing new employers an exhaustive list of all group sponsors through the New Employer Kit is expected to lead to undue confusion and frustration for the employer. Therefore, this veto is in the public interest.

Item Number 2

On page 20, delete the boxed text.

**C. Timelines for Discount Notification Announcements**

SECTION 4123.29 (D)

BWC currently has broad existing authority to adopt rules setting rates. As passed by the legislature, this item restricts the process of projecting costs and making changes based on full analysis of the entire rate structure.

This item unnecessarily impedes the Board's autonomy to set actuarially sound discounts and the underlying structure of rates in response to market demands and economic forces. For this reason, a veto is in the public interest.

Item Number 3

On page 21, delete the boxed text.

**D. Drug-Free Workplace Program/Safety Council Program Discounts**

SECTION 4123.34 (G)

The Bureau of Workers' Compensation and the Board worked with interested parties and business stakeholders to develop new discount rules for the Drug-Free Workplace Program and Safety Council Program.

This provision mandates the operation of the Drug-Free Workplace and Safety Council programs and the level of premium discounts for them, which threaten the integrity and autonomy of the BWC Board of Directors. These new provisions require BWC to offer drug-free workplace programs and workplace safety programs, and set premium discounts to all employers without regard to actuarial feasibility.

In addition, they disrupt the BWC goal of providing balanced, fair and stable rates for all Ohio employers. Additionally, the provision includes all employers, including self-insured employers who do not pay into the state insurance fund and have never been

eligible for these programs. Furthermore, the specific details of discount levels are better suited to rule-making authority because of the changing nature of the rate structure which must include all discounts in order to sustain actuarial soundness. For these reasons, a veto is in the public interest.

Item Number 4

On page 24, delete the boxed text.

I signed this veto message on June 30, 2009 in Columbus, Ohio and transmitted it, today, with copies of the disapproved text, to the Clerk of the Ohio House of Representatives.

In order to signal my approval of the text not disapproved by me, I have, today, also filed the enrolled and engrossed original copies of the bill with the Secretary of State.



Ted Strickland  
Ted Strickland, Governor

I acknowledge receipt of an original copy of this veto message, along with a copy of the disapproved text in the bill on June 30, 2009.

Tom Sherman  
Name of Officer

House Clerk  
Title of Officer

June 30, 2009 6:25 p.m.  
Date and Time of Receipt

The administrator shall establish eligibility criteria and requirements that such employers must satisfy in order to participate in this program. For purposes of this program, the administrator shall establish a discount on premium rates applicable to employers who qualify for the program.

(f) In no event shall division (A)(4) of this section be construed as granting to an employer status as a self-insuring employer.

(g)(i) An employer that is merging operations with another employer shall notify the administrator of workers' compensation of the merger not more than thirty days after the merger takes effect.

(ii) If the administrator receives a notice from one or more employers of a merger of operations between those employers as described in division (A)(4)(f)(i) of this section, and if any employer involved in the merger participates in a group plan established under this section, the administrator shall provide a written notice to the organization that sponsors and the third party administrator that administers the group plan in which an employer who is involved in the merger participates informing that organization and the third party administrator about the merger.

(iii) The administrator shall comply with the notice requirements of division (A)(4)(f)(i) of this section relative to every employer that participates in a group plan that is involved in a merger about which the administrator receives a notice described in that division.

(g)(h) The administrator shall develop classifications of occupations or industries that are sufficiently distinct so as not to group employers in classifications that unfairly represent the risks of employment with the employer.

(5) Generally promote employer participation in the state insurance fund through the regular dissemination of information to all classes of employers describing the advantages and benefits of opting to make premium payments to the fund. To that end, the administrator shall regularly make employers aware of the various workers' compensation premium packages developed and offered pursuant to this section.

(6) Make available to every employer who is paying premiums to the state insurance fund a program whereby the employer or the employer's agent pays to the claimant or on behalf of the claimant the first fifteen thousand dollars of a compensable workers' compensation medical-only claim filed by that claimant that is related to the same injury or occupational disease. No formal application is required; however, an employer must elect to participate by telephoning the bureau after July 1, 1995. Once an employer has elected to participate in the program, the employer will be responsible for all bills in all medical-only claims with a date of injury the

**The above boxed and initialed text was disapproved.**

Date: June 30, 2009

Ted Strickland

**Ted Strickland, Governor**

same or later than the election date, unless the employer notifies the bureau within fourteen days of receipt of the notification of a claim being filed that it does not wish to pay the bills in that claim, or the employer notifies the bureau that the fifteen thousand dollar maximum has been paid, or the employer notifies the bureau of the last day of service on which it will be responsible for the bills in a particular medical-only claim. If an employer elects to enter the program, the administrator shall not reimburse the employer for such amounts paid and shall not charge the first fifteen thousand dollars of any medical-only claim paid by an employer to the employer's experience or otherwise use it in merit rating or determining the risks of any employer for the purpose of payment of premiums under this chapter. A certified health care provider shall extend to an employer who participates in this program the same rates for services rendered to an employee of that employer as the provider bills the administrator for the same type of medical claim processed by the bureau and shall not charge, assess, or otherwise attempt to collect from an employee any amount for covered services or supplies that is in excess of that rate. If an employer elects to enter the program and the employer fails to pay a bill for a medical-only claim included in the program, the employer shall be liable for that bill and the employee for whom the employer failed to pay the bill shall not be liable for that bill. The administrator shall adopt rules to implement and administer division (A)(6) of this section. Upon written request from the bureau, the employer shall provide documentation to the bureau of all medical-only bills that they are paying directly. Such requests from the bureau may not be made more frequently than on a semiannual basis. Failure to provide such documentation to the bureau within thirty days of receipt of the request may result in the employer's forfeiture of participation in the program for such injury. The provisions of this section shall not apply to claims in which an employer with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation or total disability.

(B) The administrator shall supply an employer, at the time the employer institutes coverage under this chapter and first selects a managed care organization under the health partnership program, with a list of all groups participating in the group rating program created pursuant to this section and a list of all premium discount programs offered by the administrator pursuant to this chapter.

(C) The administrator, with the advice and consent of the board, by rule, may do both of the following:

- (1) Grant an employer who makes the employer's semiannual premium

**The above boxed and initialed text was disapproved.**

Date: June 30, 2009

Fred Stieckland  
Fred Stieckland, Governor

payment at least one month prior to the last day on which the payment may be made without penalty, a discount as the administrator fixes from time to time;

(2) Levy a minimum annual administrative charge upon risks where semiannual premium reports develop a charge less than the administrator considers adequate to offset administrative costs of processing

(D) The administrator shall adopt a rule that sets an estimated discount for programs or alternative premium plans not later than the first day of September prior to the policy year in which the premium rate is to be in effect and shall adopt a rule that sets the actual discount for programs or alternative premium plans not later than the first day of January of the year in which the discount for programs or alternative premium plans is to be in effect, except for the premium year starting July 1, 2010, in which case the rule that sets the estimate shall not be adopted.

Sec. 4123.34. It shall be the duty of the bureau of workers' compensation board of directors and the administrator of workers' compensation to safeguard and maintain the solvency of the state insurance fund and all other funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code. The administrator, in the exercise of the powers and discretion conferred upon the administrator in section 4123.29 of the Revised Code, shall fix and maintain, with the advice and consent of the board, 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 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) 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~~ A portion of the money paid into the state insurance

**The above boxed and initialed text was disapproved.**

Date: June 30, 2009

Ted Strickland  
**Ted Strickland, Governor**

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.

(G) Commencing with the bureau of workers' compensation policy year beginning on July 1, 2010, the administrator shall offer a workplace safety program to all employers, whether or not the employers participate in a group as described in division (A)(4) of section 4123.29 of the Revised Code. The administrator shall provide any employer who participates in the workplace safety program a discount on the employer's premiums of not less than two per cent.

(H) Commencing with the bureau of workers' compensation policy year beginning on July 1, 2010, the administrator shall offer a drug free workplace program to all employers, whether or not the employers participate in a group as described in division (A)(4) of section 4123.29 of the Revised Code. The administrator shall provide any employer who participates in the drug free workplace program a discount of not less than three per cent per year on the employer's premiums for each year the employer participates in the program.

(I) The administrator of workers' compensation shall not place a limit on the length of time that an employer may participate in the bureau of workers' compensation drug free workplace and workplace safety programs.

Sec. 4123.35. (A) Except as provided in this section, every employer mentioned in division (B)(2) of section 4123.01 of the Revised Code, and every publicly owned utility shall pay semiannually in the months of January and July into the state insurance fund the amount of annual premium the administrator of workers' compensation fixes for the employment or occupation of the employer, the amount of which premium to be paid by each employer to be determined by the classifications, rules, and rates made and published by the administrator. The employer shall pay semiannually a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator, and a receipt or certificate certifying that payment has been made, along with a written notice as is required in section 4123.54 of the Revised Code, shall be mailed immediately to the employer by the bureau of

**The above boxed and initialed text was disapproved.**

Date: June 30, 2009

Ted Strickland  
Ted Strickland, Governor