

**As Introduced**

**130th General Assembly  
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**H. B. No. 539**

**Representative Henne**

**Cosponsors: Representatives McGregor, Sears, Becker, Wachtmann,  
DeVitis, Butler**

**—**

**A B I L L**

To amend sections 4123.291, 4123.34, 4123.93, and 1  
4123.931 and to enact sections 4123.932 and 2  
4123.933 of the Revised Code to defer the charging 3  
of workers' compensation claims to an employer's 4  
experience when a third party may be liable for 5  
the claim and to create the Subrogation Suspense 6  
Account within the State Insurance Fund to which 7  
any such deferral will be charged. 8

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

**Section 1.** That sections 4123.291, 4123.34, 4123.93, and 9  
4123.931 be amended and sections 4123.932 and 4123.933 of the 10  
Revised Code be enacted to read as follows: 11

**Sec. 4123.291.** (A) An adjudicating committee appointed by the 12  
administrator of workers' compensation to hear any matter 13  
specified in divisions (B)(1) to ~~(7)~~(8) of this section shall hear 14  
the matter within sixty days of the date on which an employer 15  
files the request, protest, or petition. An employer desiring to 16  
file a request, protest, or petition regarding any matter 17  
specified in divisions (B)(1) to ~~(7)~~(8) of this section shall file 18

the request, protest, or petition to the adjudicating committee on 19  
or before twenty-four months after the administrator sends notice 20  
of the determination about which the employer is filing the 21  
request, protest, or petition. 22

(B) An employer who is adversely affected by a decision of an 23  
adjudicating committee appointed by the administrator may appeal 24  
the decision of the committee to the administrator or the 25  
administrator's designee. The employer shall file the appeal in 26  
writing within thirty days after the employer receives the 27  
decision of the adjudicating committee. The administrator or the 28  
designee shall hear the appeal and hold a hearing, provided that 29  
the decision of the adjudicating committee relates to one of the 30  
following: 31

(1) An employer request for a waiver of a default in the 32  
payment of premiums pursuant to section 4123.37 of the Revised 33  
Code; 34

(2) An employer request for the settlement of liability as a 35  
noncomplying employer under section 4123.75 of the Revised Code; 36

(3) An employer petition objecting to the assessment of a 37  
premium pursuant to section 4123.37 of the Revised Code and the 38  
rules adopted pursuant to that section; 39

(4) An employer request for the abatement of penalties 40  
assessed pursuant to section 4123.32 of the Revised Code and the 41  
rules adopted pursuant to that section; 42

(5) An employer protest relating to an audit finding or a 43  
determination of a manual classification, experience rating, or 44  
transfer or combination of risk experience; 45

(6) An employer request that a claim that is likely subject 46  
to third party subrogation be deferred and not included in the 47  
employer's experience pursuant to section 4123.932 of the Revised 48  
Code. 49

(7) Any decision relating to any other risk premium matter 50  
under Chapters 4121., 4123., and 4131. of the Revised Code; 51

~~(7)~~(8) An employer petition objecting to the amount of 52  
security required under division (D) of section 4125.05 of the 53  
Revised Code and the rules adopted pursuant to that section. 54

(C) The bureau of workers' compensation board of directors, 55  
based upon recommendations of the workers' compensation actuarial 56  
committee, shall establish the policy for all adjudicating 57  
committee procedures, including, but not limited to, specific 58  
criteria for manual premium rate adjustment. 59

(D) The administrator, with the advice and consent of the 60  
board, shall adopt rules to establish requirements and procedures 61  
for an adjudicating committee to follow to determine whether a 62  
claim is likely to be subrogated under section 4123.931 of the 63  
Revised Code. 64

**Sec. 4123.34.** It shall be the duty of the bureau of workers' 65  
compensation board of directors and the administrator of workers' 66  
compensation to safeguard and maintain the solvency of the state 67  
insurance fund and all other funds specified in this chapter and 68  
Chapters 4121., 4127., and 4131. of the Revised Code. The 69  
administrator, in the exercise of the powers and discretion 70  
conferred upon the administrator in section 4123.29 of the Revised 71  
Code, shall fix and maintain, with the advice and consent of the 72  
board, for each class of occupation or industry, the lowest 73  
possible rates of premium consistent with the maintenance of a 74  
solvent state insurance fund and the creation and maintenance of a 75  
reasonable surplus, after the payment of legitimate claims for 76  
injury, occupational disease, and death that the administrator 77  
authorizes to be paid from the state insurance fund for the 78  
benefit of injured, diseased, and the dependents of killed 79  
employees. In establishing rates, the administrator shall take 80

into account the necessity of ensuring sufficient money is set 81  
aside in the premium payment security fund to cover any defaults 82  
in premium obligations and in the subrogation suspense account to 83  
cover any claim amounts for which the administrator temporarily 84  
suspends charging the experience of an employer pursuant to 85  
section 4123.932 of the Revised Code. The administrator shall 86  
observe all of the following requirements in fixing the rates of 87  
premium for the risks of occupations or industries: 88

(A) The administrator shall keep an accurate account of the 89  
money paid in premiums by each of the several classes of 90  
occupations or industries, and the losses on account of injuries, 91  
occupational disease, and death of employees thereof, and also 92  
keep an account of the money received from each individual 93  
employer and the amount of losses incurred against the state 94  
insurance fund on account of injuries, occupational disease, and 95  
death of the employees of the employer. 96

(B) A portion of the money paid into the state insurance fund 97  
shall be set aside for the creation of a surplus fund account 98  
within the state insurance fund. Any references in this chapter or 99  
in Chapter 4121., 4125., 4127., or 4131. of the Revised Code to 100  
the surplus fund, the surplus created in this division, the 101  
statutory surplus fund, or the statutory surplus of the state 102  
insurance fund are hereby deemed to be references to the surplus 103  
fund account. The administrator may transfer the portion of the 104  
state insurance fund to the surplus fund account as the 105  
administrator determines is necessary to satisfy the needs of the 106  
surplus fund account and to guarantee the solvency of the state 107  
insurance fund and the surplus fund account. In addition to all 108  
statutory authority under this chapter and Chapter 4121. of the 109  
Revised Code, the administrator has discretionary and contingency 110  
authority to make charges to the surplus fund account. The 111  
administrator shall account for all charges, whether statutory, 112

discretionary, or contingency, that the administrator may make to 113  
the surplus fund account. A revision of basic rates shall be made 114  
annually on the first day of July. 115

Notwithstanding any provision of the law to the contrary, one 116  
hundred eighty days after the effective date on which 117  
self-insuring employers first may elect under division (D) of 118  
section 4121.66 of the Revised Code to directly pay for 119  
rehabilitation expenses, the administrator shall calculate the 120  
deficit, if any, in the portion of the surplus fund account that 121  
is used for reimbursement to self-insuring employers for all 122  
expenses other than handicapped reimbursement under section 123  
4123.343 of the Revised Code. The administrator, from time to 124  
time, may determine whether the surplus fund account has such a 125  
deficit and may assess all self-insuring employers who 126  
participated in the portion of the surplus fund account during the 127  
accrual of the deficit and who during that time period have not 128  
made the election under division (D) of section 4121.66 of the 129  
Revised Code the amount the administrator determines necessary to 130  
reduce the deficit. 131

Revisions of basic rates shall be in accordance with the 132  
oldest four of the last five calendar years of the combined 133  
accident and occupational disease experience of the administrator 134  
in the administration of this chapter, as shown by the accounts 135  
kept as provided in this section, excluding the experience of 136  
employers that are no longer active if the administrator 137  
determines that the inclusion of those employers would have a 138  
significant negative impact on the remainder of the employers in a 139  
particular manual classification; and the administrator shall 140  
adopt rules, with the advice and consent of the board, governing 141  
rate revisions, the object of which shall be to make an equitable 142  
distribution of losses among the several classes of occupation or 143  
industry, which rules shall be general in their application. 144

(C) The administrator may apply that form of rating system 145  
that the administrator finds is best calculated to merit rate or 146  
individually rate the risk more equitably, predicated upon the 147  
basis of its individual industrial accident and occupational 148  
disease experience, and may encourage and stimulate accident 149  
prevention. The administrator shall develop fixed and equitable 150  
rules controlling the rating system, which rules shall conserve to 151  
each risk the basic principles of workers' compensation insurance. 152

(D) The administrator, from the money paid into the state 153  
insurance fund, shall set aside into an account of the state 154  
insurance fund titled a premium payment security fund sufficient 155  
money to pay for any premiums due from an employer and uncollected 156  
that are in excess of the employer's premium security deposit. 157

The fund shall be in the custody of the treasurer of state. 158  
All investment earnings of the fund shall be deposited in the 159  
fund. Disbursements from the fund shall be made by the bureau of 160  
workers' compensation upon order of the administrator to the state 161  
insurance fund. The use of the moneys held by the premium payment 162  
security fund is restricted to reimbursement to the state 163  
insurance fund of premiums due and uncollected in excess of an 164  
employer's premium security deposit. The moneys constituting the 165  
premium payment security fund shall be maintained without regard 166  
to or reliance upon any other fund. This section does not prevent 167  
the deposit or investment of the premium payment security fund 168  
with any other fund created by this chapter, but the premium 169  
payment security fund is separate and distinct for every other 170  
purpose and a strict accounting thereof shall be maintained. 171

(E) There is hereby created in the state insurance fund the 172  
subrogation suspense account, to be used to defer costs related to 173  
subrogation claims so that the experience of an employer is not 174  
affected by a claim that is likely eligible for third-party 175  
subrogation. The use of the moneys held in the subrogation 176

suspense account is restricted to reimbursement to the state 177  
insurance fund of amounts paid on a claim that is not charged to 178  
an employer's experience pursuant to division (B) of section 179  
4123.932 of the Revised Code. 180

(F) The administrator may grant discounts on premium rates 181  
for employers who meet either of the following requirements: 182

(1) Have not incurred a compensable injury for one year or 183  
more and who maintain an employee safety committee or similar 184  
organization or make periodic safety inspections of the workplace. 185

(2) Successfully complete a loss prevention program 186  
prescribed by the superintendent of the division of safety and 187  
hygiene and conducted by the division or by any other person 188  
approved by the superintendent. 189

~~(F)~~(G)(1) In determining the premium rates for the 190  
construction industry the administrator shall calculate the 191  
employers' premiums based upon the actual remuneration 192  
construction industry employees receive from construction industry 193  
employers, provided that the amount of remuneration the 194  
administrator uses in calculating the premiums shall not exceed an 195  
average weekly wage equal to one hundred fifty per cent of the 196  
statewide average weekly wage as defined in division (C) of 197  
section 4123.62 of the Revised Code. 198

(2) Division ~~(F)~~(G)(1) of this section shall not be construed 199  
as affecting the manner in which benefits to a claimant are 200  
awarded under this chapter. 201

(3) As used in division ~~(F)~~(G) of this section, "construction 202  
industry" includes any activity performed in connection with the 203  
erection, alteration, repair, replacement, renovation, 204  
installation, or demolition of any building, structure, highway, 205  
or bridge. 206

~~(G)~~(H) The administrator of workers' compensation shall not 207

place a limit on the length of time that an employer may 208  
participate in the bureau of workers' compensation drug free 209  
workplace and workplace safety programs. 210

**Sec. 4123.93.** As used in sections 4123.93 and ~~4123.931~~ to 211  
4123.933 of the Revised Code: 212

(A) "Claimant" means a person who is eligible to receive 213  
compensation, medical benefits, or death benefits under this 214  
chapter or Chapter 4121., 4127., or 4131. of the Revised Code. 215

(B) "Statutory subrogee" means the administrator of workers' 216  
compensation, a self-insuring employer, or an employer that 217  
contracts for the direct payment of medical services pursuant to 218  
division (P) of section 4121.44 of the Revised Code. 219

(C) "Third party" means an individual, private insurer, 220  
public or private entity, or public or private program that is or 221  
may be liable to make payments to a person without regard to any 222  
statutory duty contained in this chapter or Chapter 4121., 4127., 223  
or 4131. of the Revised Code. 224

(D) "Subrogation interest" includes past, present, and 225  
estimated future payments of compensation, medical benefits, 226  
rehabilitation costs, or death benefits, and any other costs or 227  
expenses paid to or on behalf of the claimant by the statutory 228  
subrogee pursuant to this chapter or Chapter 4121., 4127., or 229  
4131. of the Revised Code. 230

(E) "Net amount recovered" means the amount of any award, 231  
settlement, compromise, or recovery by a claimant against a third 232  
party, minus the attorney's fees, costs, or other expenses 233  
incurred by the claimant in securing the award, settlement, 234  
compromise, or recovery. "Net amount recovered" does not include 235  
any punitive damages that may be awarded by a judge or jury. 236

(F) "Uncompensated damages" means the claimant's demonstrated 237



or proven damages minus the statutory subrogee's subrogation 238  
interest. 239

**Sec. 4123.931.** (A) The payment of compensation or benefits 240  
pursuant to this chapter or Chapter 4121., 4127., or 4131., of the 241  
Revised Code creates a right of recovery in favor of a statutory 242  
subrogee against a third party, and the statutory subrogee is 243  
subrogated to the rights of a claimant against that third party. 244  
The net amount recovered is subject to a statutory subrogee's 245  
right of recovery. 246

(B) If a claimant, statutory subrogee, and third party settle 247  
or attempt to settle a claimant's claim against a third party, the 248  
claimant shall receive an amount equal to the uncompensated 249  
damages divided by the sum of the subrogation interest plus the 250  
uncompensated damages, multiplied by the net amount recovered, and 251  
the statutory subrogee shall receive an amount equal to the 252  
subrogation interest divided by the sum of the subrogation 253  
interest plus the uncompensated damages, multiplied by the net 254  
amount recovered, except that the net amount recovered may instead 255  
be divided and paid on a more fair and reasonable basis that is 256  
agreed to by the claimant and statutory subrogee. If while 257  
attempting to settle, the claimant and statutory subrogee cannot 258  
agree to the allocation of the net amount recovered, the claimant 259  
and statutory subrogee may file a request with the administrator 260  
of workers' compensation for a conference to be conducted by a 261  
designee appointed by the administrator, or the claimant and 262  
statutory subrogee may agree to utilize any other binding or 263  
non-binding alternative dispute resolution process. 264

The claimant and statutory subrogee shall pay equal shares of 265  
the fees and expenses of utilizing an alternative dispute 266  
resolution process, unless they agree to pay those fees and 267  
expenses in another manner. The administrator shall not assess any 268

fees to a claimant or statutory subrogee for a conference	269
conducted by the administrator's designee.	270
(C) If a claimant and statutory subrogee request that a	271
conference be conducted by the administrator's designee pursuant	272
to division (B) of this section, both of the following apply:	273
(1) The administrator's designee shall schedule a conference	274
on or before sixty days after the date that the claimant and	275
statutory subrogee filed a request for the conference.	276
(2) The determination made by the administrator's designee is	277
not subject to Chapter 119. of the Revised Code.	278
(D) When a claimant's action against a third party proceeds	279
to trial and damages are awarded, both of the following apply:	280
(1) The claimant shall receive an amount equal to the	281
uncompensated damages divided by the sum of the subrogation	282
interest plus the uncompensated damages, multiplied by the net	283
amount recovered, and the statutory subrogee shall receive an	284
amount equal to the subrogation interest divided by the sum of the	285
subrogation interest plus the uncompensated damages, multiplied by	286
the net amount recovered.	287
(2) The court in a nonjury action shall make findings of	288
fact, and the jury in a jury action shall return a general verdict	289
accompanied by answers to interrogatories that specify the	290
following:	291
(a) The total amount of the compensatory damages;	292
(b) The portion of the compensatory damages specified	293
pursuant to division (D)(2)(a) of this section that represents	294
economic loss;	295
(c) The portion of the compensatory damages specified	296
pursuant to division (D)(2)(a) of this section that represents	297
noneconomic loss.	298

(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 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.

(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.

(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 331  
thirty-first day of January every year for a notice provided by 332  
the thirty-first day of December. The claimant's reimbursement 333  
payment shall be in an amount that equals the total amount listed 334  
on the notice the claimant receives from the statutory subrogee. 335

(F) If a claimant does not establish a trust account as 336  
described in division (E)(1) of this section, the claimant shall 337  
pay to the statutory subrogee, on or before thirty days after 338  
receipt of funds from the third party, the full amount of the 339  
subrogation interest that represents estimated future payments of 340  
compensation, medical benefits, rehabilitation costs, or death 341  
benefits. 342

(G) A claimant shall notify a statutory subrogee and the 343  
attorney general of the identity of all third parties against whom 344  
the claimant has or may have a right of recovery, except that when 345  
the statutory subrogee is a self-insuring employer, the claimant 346  
need not notify the attorney general. No settlement, compromise, 347  
judgment, award, or other recovery in any action or claim by a 348  
claimant shall be final unless the claimant provides the statutory 349  
subrogee and, when required, the attorney general, with prior 350  
notice and a reasonable opportunity to assert its subrogation 351  
rights. If a statutory subrogee and, when required, the attorney 352  
general are not given that notice, or if a settlement or 353  
compromise excludes any amount paid by the statutory subrogee, the 354  
third party and the claimant shall be jointly and severally liable 355  
to pay the statutory subrogee the full amount of the subrogation 356  
interest. 357

(H) The right of subrogation under this chapter is automatic, 358  
regardless of whether a statutory subrogee is joined as a party in 359  
an action by a claimant against a third party. A statutory 360  
subrogee may assert its subrogation rights through correspondence 361  
with the claimant and the third party or their legal 362

representatives. A statutory subrogee may institute and pursue 363  
legal proceedings against a third party either by itself or in 364  
conjunction with a claimant. If a statutory subrogee institutes 365  
legal proceedings against a third party, the statutory subrogee 366  
shall provide notice of that fact to the claimant. If the 367  
statutory subrogee joins the claimant as a necessary party, or if 368  
the claimant elects to participate in the proceedings as a party, 369  
the claimant may present the claimant's case first if the matter 370  
proceeds to trial. If a claimant disputes the validity or amount 371  
of an asserted subrogation interest, the claimant shall join the 372  
statutory subrogee as a necessary party to the action against the 373  
third party. 374

(I) The statutory subrogation right of recovery applies to, 375  
but is not limited to, all of the following: 376

(1) Amounts recoverable from a claimant's insurer in 377  
connection with underinsured or uninsured motorist coverage, 378  
notwithstanding any limitation contained in Chapter 3937. of the 379  
Revised Code; 380

(2) Amounts that a claimant would be entitled to recover from 381  
a political subdivision, notwithstanding any limitations contained 382  
in Chapter 2744. of the Revised Code; 383

(3) Amounts recoverable from an intentional tort action. 384

(J) If a claimant's claim against a third party is for 385  
wrongful death or the claim involves any minor beneficiaries, 386  
amounts allocated under this section are subject to the approval 387  
of probate court. 388

(K)(1) The administrator shall deposit any money collected 389  
under this section into the public fund or the private fund of the 390  
state insurance fund, as appropriate. ~~If~~ Except as provided in 391  
division (K)(2) of this section, any amount deposited under 392  
division (K)(1) of this section shall be credited to the 393

experience of the employer against whom the experience of the 394  
corresponding claim was charged. 395

(2) If, at the time an amount is deposited under division 396  
(K)(1) of this section, the corresponding claim is not being 397  
charged to the experience of an employer, pursuant to section 398  
4123.932 of the Revised Code, any amount deposited shall be 399  
credited to the individual account of the employer to whose 400  
experience the claim would have been charged. 401

(3) If a self-insuring employer collects money under this 402  
section of the Revised Code, the self-insuring employer shall 403  
deduct the amount collected, in the year collected, from the 404  
amount of paid compensation the self-insured employer is required 405  
to report under section 4123.35 of the Revised Code. 406

Sec. 4123.932. (A) An employer who pays premiums into the 407  
state insurance fund and who believes that a claim filed under 408  
this chapter or Chapter 4121., 4127., or 4131. of the Revised Code 409  
may be subject to third-party subrogation under section 4123.931 410  
of the Revised Code may file a request with an adjudicating 411  
committee in accordance with section 4123.291 of the Revised Code 412  
to defer the experience resulting from that claim. 413

(B) Upon a final determination made pursuant to section 414  
4123.291 of the Revised Code, or upon the administrator's own 415  
determination, that the administrator is likely to be subrogated 416  
to the rights of a claimant under section 4123.931 of the Revised 417  
Code, the administrator shall not charge the experience of that 418  
employer for any compensation, benefits, or both paid in relation 419  
to that claim until the earlier of the following: 420

(1) Three years after the date the injury occurred or 421  
occupational disease was diagnosed or, if an employee dies in the 422  
course of and arising out of the employee's employment, the date 423  
of the employee's death; 424

(2) The conclusion or settlement of any actions that involve 425  
the administrator as a statutory subrogee in relation to the 426  
claim. 427

**Sec. 4123.933.** (A) If a final determination is made pursuant 428  
to section 4123.291 of the Revised Code that the administrator of 429  
workers' compensation is likely to be subrogated to the rights of 430  
a claimant under section 4123.931 of the Revised Code, the 431  
administrator shall create an individual account within the 432  
subrogation suspense account created in section 4123.34 of the 433  
Revised Code for the employer whose experience the claimant's 434  
claim would otherwise affect. 435

(B) The administrator shall charge any compensation or 436  
benefits paid from the state insurance fund for a claim that is 437  
deferred pursuant to section 4123.932 of the Revised Code to the 438  
employer's individual account within the subrogation suspense 439  
account. 440

(C) Upon the conclusion of the deferral period described in 441  
division (B) of section 4123.932 of the Revised Code, the 442  
administrator shall charge an employer's experience for the amount 443  
of compensation or benefits paid in a claim and charged to the 444  
employer's individual account within the subrogation suspense 445  
account for that claim, except that the administrator shall not 446  
charge the employer's experience for any amount credited to the 447  
employer's individual subrogation suspense account pursuant to 448  
division (K)(2) of section 4123.931 of the Revised Code. The 449  
administrator shall credit the subrogation suspense account in the 450  
amount the administrator charges to the employer's experience. Any 451  
additional compensation or benefits incurred in that claim after 452  
the deferral period shall be charged to the employer's experience. 453

**Section 2.** That existing sections 4123.291, 4123.34, 4123.93, 454  
and 4123.931 of the Revised Code are hereby repealed. 455