Julie A. Rishel *Legislative Service Commission*
Virginia McInerney

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(As Passed by the General Assembly)

Sens. Cates, Spada, Austria, Mumper, Wachtmann, Schuler, Padgett, Clancy, Niehaus, Coughlin, Hottinger, Armbruster, Jacobson, Harris

Reps. Buehrer, Uecker, Aslanides, Blessing, Calvert, Coley, Combs, Dolan, Evans, D., Faber, Gibbs, Gilb, Hagan, Hoops, Martin, Reinhard, Schaffer, Schneider, Setzer, Taylor, Webster, White, Widowfield

Effective date: June 30, 2006

ACT SUMMARY

Determination and payment of workers' compensation benefits

- Reduces the 40-week waiting period for the filing of an application for permanent partial disability compensation (PPD) to 26 weeks.
- Changes the amount of time an employee may receive payments for wage loss suffered as a result of returning to employment other than the employee's former position of employment or for being unable to find employment consistent with the employee's physical capabilities.
- Specifies reasons an employee is not entitled to permanent total disability compensation (PTD).
- Increases the threshold for the Bureau of Workers' Compensation (BWC) medical-only claim program to $5,000 from $1,000.
- Requires the Administrator of Workers' Compensation to establish a program for group-rated employers with significant claims to mitigate the impact of those claims and requires the Administrator to establish eligibility criteria and requirements an employer must satisfy to participate in this program.
- Allows any party to void a settlement agreement if an employee dies during the 30-day period after approval of a final settlement agreement.

- Revises conditions under which a final settlement agreement may be filed without an employer's signature and establishes related notification requirements.

- Specifies that an employee receiving compensation for PTD due to a traumatic brain injury is entitled to receive that compensation regardless of the employee's subsequent employment in a sheltered workshop so long as the employee does not receive more than $2,000 in compensation from the job per calendar quarter.

- Adds that persons, while confined to a county jail in lieu of incarceration in a state or federal correctional institution, as well as those persons confined in any state or federal correctional institution as under continuing law, for conviction of a violation of a state or federal criminal law, may not receive compensation or benefits during the period of confinement.

- Revises fingering numbering for PPD.

- Increases the award for facial disfigurement from $5,000 to $10,000.

Coverage under the Workers' Compensation Law

- Modifies the continuing jurisdiction of the Industrial Commission to make a modification, change, finding, or award from six years from the date of injury in the absence of the payment of medical benefits and ten years in the absence of payment of compensation to a five-year limit in those cases.

- Removes the provision stating that the Commission may make a modification, change, finding, or award within six years after the payment of medical benefits.

Definition of injury

- Specifies that "injury" includes psychiatric conditions where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.

- Specifies that if a condition that pre-existed an injury is substantially aggravated by the injury, and that substantial aggravation is documented

by objective diagnostic findings, objective clinical findings, or objective test results, once that condition has returned to a level that would have existed without the injury, no compensation or benefits are payable because of the pre-existing condition.

Public records

- Specifies that information concerning claims filed with the BWC or the Industrial Commission, including information identifying a claimant's address and telephone number, is not a public record under the Public Records Law (sec. 149.43) and is not open to the public, except to journalists as described below.

- Permits a journalist to request claimants' addresses and phone numbers and requires the Commission or the BWC to disclose those requested addresses and telephone numbers.

Compliance with the Workers' Compensation Law

- Allows the Administrator to furnish the Tax Commissioner with a list containing the name and social security number or employer identification number of any employer and request that the Tax Commissioner report the total amount of compensation paid that the employer reported on the employer's annual tax return.

- Requires the Tax Commissioner, after receiving the Administrator's list, to disclose the total amount of compensation paid that the employer reported.

Disputes and appeals

- Specifies that a claimant may not dismiss a complaint filed with a court of common pleas concerning an appeal of an Industrial Commission decision without the employer's consent if the employer is the party that filed the initial appeal.

- Permits the Administrator to specify in the rules concerning procedures for resolution of medical disputes that those procedures must not be used to resolve disputes concerning medical services rendered that have been approved through standard treatment guidelines, pathways, or presumptive authorization guidelines.

Anti-fraud provisions

- Expands the definition of workers' compensation fraud to include altering, forging, or creating workers' compensation certificates to falsely show correct coverage, providing false information when that information is needed to determine an employer's actual premium or assessment, and failing to secure or maintain workers' compensation coverage with the intent to defraud the BWC.

- Prohibits persons, health care providers, managed care organizations, and their owners from obtaining or attempting to obtain by deception payments under the Workers' Compensation Law to which they are not entitled, authorizes monetary penalties and debarment for violators of this prohibition, and specifies procedures for enforcing these provisions.

Self-insuring employers

- Requires the Administrator to adopt rules permitting the Administrator to assess penalties for failure to timely pay an assessment that incrementally increase the longer the assessment remains unpaid.

- Allows a self-insuring employer to opt-out of surplus fund reimbursement and makes that election irrevocable.

Fines and penalties

- Increases the penalty for overdue premium payments from the former *required* tiered penalty, based on overdue periods, ranging from 2% to a maximum of 12% of the premium due to a *permissive* penalty of not more than $30 plus a tiered penalty beginning at the prime interest rate multiplied by the premium due for 61-90 days past due, and increasing every 30 days thereafter, capped at the prime interest rate plus 8% times the premium due, except that this penalty can never exceed 15% of the premium due.

Direct deposit of payments under the Workers' Compensation Law

- Expressly permits the Administrator to utilize direct deposit of funds for all disbursements the Workers' Compensation Law authorizes the Administrator to pay, and requires the Administrator to adopt rules regarding utilizing direct deposit.

- Requires the Administrator to notify claimants about the utilization of direct deposit and to furnish debit cards and instructions for use of those cards to claimants.

- Allows the Administrator to enter into contracts with an agent to supply debit cards to claimants to allow claimants to access payments and allows the Administrator to enter into contracts with an agent and enter agreements with financial institutions to credit debit cards with the amounts specified by the Administrator.

- Allows the Administrator to require any payee to provide written authorization designating a financial institution and account number to which a payment may be credited via direct deposit.

Limitations on the investment policy of the BWC

- Prohibits the Workers' Compensation Oversight Commission from specifying in the investment program for the BWC that the Administrator or employees of the BWC are prohibited from conducting business with an investment management firm or certain related entities based on criteria that are more restrictive than restrictions in the Campaign Finance Law.

Miscellaneous

- Increases a cap on specified attorney's fees from $2,500 to $4,200.

- Allows the Administrator or self-insuring employer, as appropriate, to deduct attorney's fees and necessary expenses from a lump sum payment and pay that amount directly to and solely in the name of the attorney if specified procedures are followed relative to child support orders.

- Removes the requirement that the Administrator publish and report compiled data concerning the measures of outcomes and savings of the Qualified Health Plan System used by self-insuring employers.

- Designates the BWC Special Investigation Department a criminal justice agency, and allows the Department to apply to access the computerized databases administered by the National Crime Information Center or the Law Enforcement Automated Data System (LEADS) in Ohio and other criminal databases.

- Specifies that the act's provisions apply to claims arising on and after the act's effective date and specified pending claims.

Minimum Wage Law

- Increases the basic state minimum wage, which was $4.25 per hour under former law, to equal the basic federal minimum wage rate specified in the federal Fair Labor Standards Act, which currently is $5.15 per hour.

- Eliminates, except for tipped employees and hand harvest laborers, the various minimum wages paid to different categories of employees and requires employers to pay those employees the basic minimum wage specified in the federal Fair Labor Standards Act.

- Changes the manner in which the wage payable to tipped employees is calculated by requiring that it be calculated in the manner specified for tipped employees in the federal Fair Labor Standards Act.

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I. Determination and payment of workers' compensation benefits

Wage loss

Law retained in part by the act permits an employee who suffers a wage loss, either as a result of returning to work other than the employee's former position or as a result of being unable to find employment consistent with the employee's physical capabilities, to receive compensation on a weekly basis (sec. 4123.56(B)). Under the act, an employee receives wage loss payments if the employee suffers a wage loss as a result of returning to employment other than the employee's former position due to an injury or occupational disease (commonly referred to as "working wage loss"). The amount of compensation is set at 66 2/3% of the difference between the employee's average weekly wage and the employee's present earnings, instead of 66 2/3% of the employee's weekly wage loss as required under former law. Under continuing law, the amount of "working wage loss" received may not exceed the statewide average weekly wage. Further, while the payments may continue for a maximum of 200 weeks as permitted under former law, the act reduces these payments by the corresponding number of weeks in which the employee receives wage loss payments for participating in a prescribed rehabilitation program.

The act allows an employee who suffers a wage loss as a result of being unable to find employment consistent with the employee's disability resulting from the employee's injury or occupational disease (commonly referred to as "nonworking wage loss") to receive compensation at 66 2/3% of the difference between the employee's average weekly wage and the employee's present earnings, instead of 66 2/3% of the employee's weekly wage loss as required under former law, not to exceed the statewide average weekly wage. The act allows an employee to receive compensation for "nonworking wage loss," for a maximum of 52 weeks, reduced from 200 weeks under former law. The first 26 weeks of compensation for "nonworking wage loss" is in addition to the maximum of 200 weeks of payments allowed for "working wage loss." Under the act, if the employee receives compensation for "nonworking wage loss" in excess of 26 weeks, the number of weeks of compensation allowable for "working wage loss" must be reduced by the corresponding number of weeks in excess of 26, and up to 52, that is allowable for "working wage loss."

The act specifies that an employee may not receive more than 226 weeks of working and nonworking wage loss in the aggregate, as opposed to 400 weeks under former law. (Sec. 4123.56(B).)

Permanent partial disability

Waiting period

Continuing law authorizes compensation for permanent partial disability (PPD) compensation based upon a calculation of the percentage of the employee's permanent disability or, for scheduled losses, based on the loss of specified parts of the body. Under former law a claimant could file an application for the determination of the percentage of PPD resulting from a work-related injury or occupational disease 40 weeks after the date of the last payment of temporary total disability (TTD) compensation or 40 weeks after the date of injury or contraction of the occupational disease in the absence of TTD compensation. The act shortens these periods to 26 weeks. (Sec. 4123.57.)

Finger numbering

Continuing law specifies a schedule of compensation for an employee who loses a finger that is based on which finger the employee lost. The act revises the numbering of each finger as listed in the table below. The act does not change the length of time for which compensation is received for each finger. (Sec. 4123.57(B).)

Identification of finger under former law	Identification of finger under the act
Thumb.	First finger, commonly known as thumb.
First finger, commonly known as index finger.	Second finger, commonly known as index finger.
Second finger.	Third finger.
Third finger.	Fourth finger.
Fourth finger, commonly known as the little finger.	Fifth finger, commonly known as the little finger.

Permanent total disability

Under continuing law, an employee who qualifies for permanent total disability compensation (PTD) receives a weekly award that continues until the employee's death. A PTD award is equal to 66 2/3% of the employee's average

weekly wage (AWW). However, the award must be no less than 50% of the statewide average weekly wage (SAWW) and no more than 66 2/3% of the SAWW. If the employee's AWW is less than 50% of the SAWW at the time of the injury, the employee receives an amount equal to the employee's AWW.

The act specifies that the SAWW used to make this calculation is the SAWW in effect on the date of injury or on the date the disability due to the occupational disease begins. (Sec. 4123.58(A).)

Under prior law, the loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, constituted total and permanent disability.[1] The act specifies that PTD must be compensated only when at least one of the following applies to the claimant:

(1) The claimant has lost, or lost the use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof; however, the loss or loss of use of one limb does not constitute the loss or loss of use of two body parts;

(2) The impairment resulting from the employee's injury or occupational disease prevents the employee from engaging in sustained remunerative employment utilizing the employment skills that the employee has or may reasonably be expected to develop. (Sec. 4123.58(C).)

The act further specifies that PTD cannot be compensated when the reason the employee is unable to engage in sustained remunerative employment is due to any of the following reasons, whether individually or in combination:

(1) Impairments of the employee that are not the result of an allowed injury or occupational disease;

(2) Solely the employee's age or aging;

(3) The employee retired or otherwise voluntarily abandoned the workforce for reasons unrelated to the allowed injury or occupational disease;

(4) The employee has not engaged in educational or rehabilitative efforts to enhance the employee's employability, unless such efforts are determined to be in vain. (Sec. 4123.58(D).)

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[1] *In 2002, the Ohio Supreme Court held that the loss of an arm entails the "separate entities of the hand and arm, thus entitling" the claimant to PTD (*State ex rel. Thomas, v. Indus. Comm. of Ohio *(2002), 97 Ohio St.3d 37, 38).*

Traumatic brain injury

The act specifies that if an employee is awarded compensation for PTD because the employee sustained a traumatic brain injury, the employee is entitled to that compensation regardless of the employee's employment in a sheltered workshop subsequent to the award, on the condition that the employee does not receive income, compensation, or remuneration from that employment in excess of $2,000 in any calendar quarter. The act defines "sheltered workshop" as "a state agency or nonprofit organization established to carry out a program of rehabilitation for handicapped individuals or to provide these individuals with remunerative employment or other occupational rehabilitating activity." (Sec. 4123.58(F).)

Facial or head disfigurement

In case an injury or occupational disease results in serious facial or head disfigurement that either impairs or may in the future impair the opportunities to secure or retain employment, continuing law requires the Administrator of Workers' Compensation to make an award of compensation as the Administrator deems proper and equitable, in view of the nature of the disfigurement. The act increases the cap for this award to $10,000 from $5,000 under former law. (Sec. 4123.57(B).)

$5,000 medical-only claim program

Continuing law largely retained by the act requires the Administrator to allow all state fund employers to participate in the $1,000 medical-only claim program. An employer who participates in the program, or the employer's agent, pays the first $1,000 of a compensable workers' compensation claim and cannot be reimbursed for the amounts paid. At the same time, the Administrator cannot charge the first $1,000 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 an employer for the purpose of payment of premiums.

The act increases the threshold amount of the medical-only claim program from $1,000 to $5,000. Additionally, the act specifies that 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 is liable for that bill, and the employee for whom the employer failed to pay that bill is not liable for that bill. (Sec. 4123.29(A)(6).)

Program for group-rated employers with significant claims

Under continuing law, the Administrator, subject to the approval of the Workers' Compensation Oversight Commission, must offer to insure the obligations of employers under the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) under a group-rating plan that pools the risk of the employers within the group provided that the employers meet conditions specified in continuing law. The act statutorily requires the Administrator, in providing employer group-rating plans, to establish a program designed to mitigate the impact of a significant claim that would come into the experience of a private, state fund group-rated employer for the first time and be a contributing factor in that employer being excluded from a group-rated plan. The Administrator previously administered a program of this nature under rules. The act statutorily requires the Administrator to establish eligibility criteria and requirements that such employers must satisfy in order to participate in this program. For purposes of this program, the act requires the Administrator to establish a discount on premium rates applicable to employers who qualify for the program. (Sec. 4123.29(A)(4).)

Final settlements

Continuing law permits a state fund employer or its employee to file an application with the Administrator for approval of a final settlement of a claim. The application must include the settlement agreement, reasons for the settlement, and the signatures of the claimant and employer. However, under continuing law, an agreement does not have to be signed by the employer if the employer is no longer doing business in Ohio. The act also permits a claimant to file an application without an employer's signature in both of the following situations:

(1) The claim no longer is in the employer's industrial accident or occupational disease experience as provided in current law and the claimant is no longer employed with that employer;

(2) The employer has failed to comply with current law requirements concerning payment of employer premiums.

Under the act, if such an application is filed, and the employer still is doing business in Ohio, the Administrator is required to send written notice of the application to the employer immediately upon receipt of the application. The agreement does not have to contain the employer's signature if the employer fails to respond to the notice within 30 days after the notice is sent. (Sec. 4123.65(A).)

The act further specifies that if an employee dies during the 30-day period after the approval of a final settlement agreement, the settlement can be voided by any party for good cause shown. (Sec. 4123.65(C).)

County prisoners

Continuing law specifies that compensation or benefits are not payable to a claimant during the period of confinement of the claimant in any state or federal correctional institution, and the act adds or in any county jail in lieu of incarceration in a state or federal correctional institution, whether in this or any other state for conviction of violation of any state or federal criminal law. (Sec. 4123.54(I).)

Continuing jurisdiction of the Industrial Commission and Administrator

The Industrial Commission and the Administrator have continuing jurisdiction over each workers' compensation case, and the Commission may modify or change its former findings and orders. However, no modification, change, finding, or award with respect to a claim may be made regarding disability, compensation, dependency, or benefits after six years from the date of the injury in the absence of the payment of medical benefits, in which case the modification, change, finding, or award must be made within six years after the payment of the medical benefits. In the absence of payment of compensation or wages in lieu of compensation, the modification, change, finding, or award must be made within ten years from the date of the last payment of compensation or the date of the death of the claimant. The act reduces the time within which the Commission may make a modification, change, finding, or award in the cases described above to five years, except that the act entirely removes the language specifying that a modification, change, finding, or award shall be made within six years after the payment of medical benefits. (Sec. 4123.52.)

II. Definition of injury

Psychiatric conditions arising from forced sexual conduct

An "injury," for purposes of determining coverage under the Workers' Compensation Law, includes any injury, whether caused by external accidental means or accidental in character and result, that was received in the course of and arising out of the injured employee's employment. Under continuing law, "injury" includes psychiatric conditions that have arisen from an injury or occupational disease. The act specifies that this provision applies when the injury or occupational disease has been sustained by the claimant. The act also adds that "injury" includes psychiatric conditions where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by

threat of physical harm to engage or participate. For purposes of this provision, the act defines "sexual conduct" to mean vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of gender; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. (Sec. 4123.01(C)(1) and (I).)

Substantial aggravation of a pre-existing condition

The act specifies that a condition that pre-existed an injury is not considered an "injury" for purposes of workers' compensation coverage unless that pre-existing condition is substantially aggravated by the injury. Under the act, that substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. The act states that while subjective complaints may be evidence of that substantial aggravation, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation. If a condition that pre-existed an injury is substantially aggravated by the injury, and that substantial aggravation is documented by objective diagnostic findings, objective clinical findings, or objective test results, the act specifies that once that condition has returned to a level that would have existed without the injury, no compensation or benefits are payable because of the pre-existing condition. (Secs. 4123.01(C)(4) and 4123.54(G).)

III. Public records

Confidentiality of claimant files; journalist exception concerning addresses and phone numbers

The act specifies that claimant files, in addition to being confidential under continuing law, are not public records under the Public Records Law (sec. 149.43) and that any information directly or indirectly identifying the address or telephone number of a claimant, regardless of whether the claimant's claim is active or closed, is not a public record. Further, the act specifies that, except as described in the next paragraph, information kept by the Industrial Commission or the Bureau of Workers' Compensation (BWC) concerning claimant files is for the exclusive use and information of the Commission and the BWC in the discharge of their official duties, and are not open to the public and cannot be used in any court in any action or proceeding pending therein, unless the Commission or BWC is a party to the action or proceeding. The information, however, may be tabulated and published by the Commission or BWC in statistical form for the use and information of other state agencies and the public. (Sec. 4123.88(B) and (C).)

Under the act, upon receiving a written request made and signed by a journalist,[2] the Commission or BWC must disclose to the journalist the address or addresses and telephone number or numbers of claimants, regardless of whether a claim is active or closed, and the dependents of those claimants. A journalist is permitted to request this information for multiple workers or dependents in one written request. A journalist must include all of the following in the written request:

(1) The journalist's name, title, and signature;

(2) The name and title of the journalist's employer;

(3) A statement that the disclosure of the information sought is in the public interest.

The act prohibits the Commission and BWC from inquiring as to the specific public interest served by the disclosure of information requested by a journalist. (Sec. 4123.88(D).) Additionally, under the act, a record of the proceedings of the Commission continue to be a matter of public record, except that all of the provisions discussed in the paragraphs above also apply to that record (sec. 4121.10).

IV. Compliance with the Workers' Compensation Law

Tax Commissioner

The act permits the Administrator to furnish to the Tax Commissioner, on a quarterly basis, a list in a format approved by the Tax Commissioner containing the name and social security number or employer identification number of any employer, and to request that the Tax Commissioner, on a quarterly basis, report the total amount of compensation paid that the employer reported for the employer's annual tax return, for each employer contained on the Administrator's list. Upon receipt of this list and request, the act requires the Tax Commissioner to provide to the Administrator, in a format designed by the Tax Commissioner, information identifying any employer listed by the Administrator who reported compensation paid to employees on the employer's most recent annual tax return and the total amount of compensation paid reported for the period for which that return is made. (Sec. 4123.271.) The act specifically adds these disclosures to the

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[2] *"Journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public (sec. 4123.88(E) and sec. 149.43, not in the act).*

list of exceptions from confidentiality requirements of the Tax Law (secs. 5703.21 and 5747.18).

V. Disputes and appeals

Appeals to courts of common pleas

With some exceptions, pleadings filed with a court of common pleas for appeals of specified Commission orders are filed in accordance with the Ohio Rules of Civil Procedure. The act adds an exception that a claimant may not dismiss the complaint without the employer's consent if the employer is the party that filed the notice of appeal to the court (sec. 4123.512(D)).

Procedures for the resolution of medical disputes

Under continuing law, the Administrator, with the advice and consent of the Oversight Commission, must adopt specified rules under the Administrative Procedure Act for the Health Care Partnership Program. The act permits the Administrator, in adopting a rule establishing procedures for the resolution of medical disputes, as required under continuing law, to specify that the resolution procedures must not be used to resolve disputes concerning medical services rendered that have been approved through standard treatment guidelines, pathways, or presumptive authorization guidelines. (Sec. 4121.441(A)(1).)

VI. Anti-fraud provisions

Workers' compensation fraud

The act expands the list of the types of activities specified in continuing law that may be considered workers' compensation fraud to include the following:

(1) Making or presenting or causing to be made or presented a false statement concerning manual codes, classification of employees, payroll, paid compensation, or number of personnel when that information is needed to determine an employer's actual workers' compensation premium or assessment;

(2) Altering, forging, or creating a workers' compensation certificate to falsely show current or correct coverage;

(3) Failing to secure or maintain required workers' compensation coverage with the intent to defraud the BWC (sec. 2913.48(A)).

A violation of (1), (2), or (3), above is a first degree misdemeanor unless specified circumstances apply. If the value of the premiums and assessments unpaid is more than $500 and less than $5,000, a violation of (1), (2), or (3), above

is a fifth degree felony. If the value is more than $5,000 and less than $100,000, a violation is a fourth degree felony, and a violation is a third degree felony if the value is $100,000 or more. (Sec. 2913.48(B).)

The act also expands the definition of "services" for purposes of this workers' compensation fraud provision. Under continuing law, "services" includes service provided by health care providers to claimants for workers' compensation benefits. Under the act, "services" also includes any and all services provided by the BWC as a part of workers' compensation insurance coverage. (Sec. 2913.48(E)(3).)

Health care providers and managed care organizations

Monetary penalties

The act prohibits persons, health care providers (HCP), managed care organizations (MCO), and owners[3] of a HCP or MCO from obtaining or attempting to obtain payments by deception[4] under the Workers' Compensation Law to which the person, HCP, MCO, or owner is not entitled under specified rules. In addition to any other penalties provided by law, a person, HCP, MCO, or owner that does so is liable for all of the following penalties:

(1) Payment of interest on the amount of the excess payments at the maximum interest rate allowable for real estate mortgages calculated from the date the payment was made to the person, owner, HCP, or MCO, to the date upon which repayment is made to the BWC or self-insuring employer;

(2) Payment of an amount equal to three times the amount of excess payments;

(3) Payment of a sum of not less than $5,000 and not more than $10,000 for each act of deception;

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[3] The act defines an "owner" as any person having at least a 5% ownership interest in a HCP or MCO (sec. 4121.444(F)(2)).

[4] The act defines "deception" as acting with actual knowledge in order to deceive another or cause another or be deceived by (1) a false or misleading representation, (2) withholding of information, (3) preventing another from acquiring information, or (4) any other conduct, act, or omission that creates, confirms, or perpetuates a false impression as to a fact, the law, the value of something, or a person's state of mind. (Sec. 4121.444(F)(1).)

(4) All reasonable and necessary expenses that a court determines have been incurred by the BWC or self-insuring employer in recovering these payments obtained by deception.

The act authorizes the Attorney General to bring an action on behalf of the state, and authorizes self-insuring employers to bring actions on their own behalf, within six years after the conduct in violation of these provisions terminates. Further, the Attorney General, with the Administrator's approval, may settle or compromise any action to enforce these provisions.

All moneys collected by the BWC under this provision are deposited into the State Insurance Fund; any moneys collected by a self-insuring employer are paid to the self-insuring employer. (Sec. 4121.444(A), (B), and (D).)

Debarment

In addition to the above monetary penalties, the act provides further that the Administrator may terminate any agreement between the BWC and a person, HCP, or MCO or its owner, and cease reimbursement to the person, HCP, MCO, or owner for services rendered, if (1) the person, HCP, MCO, owner, or an authorized agent, officer, associate, manager, or employee of the person, HCP, or MCO is convicted of or pleads guilty to workers' compensation fraud or to engaging in a pattern of corrupt activity or any other criminal offense related to the delivery of billing for health care benefits, (2) there exists an entry of judgment against such person and proof of the specific intent of that person to defraud in a civil action brought under the act's fraud provisions, or (3) there exists an entry of judgment against such person in a civil action for engaging in a pattern of corrupt activity. However, the Administrator may not terminate the agreement of or reimbursement to a person, HCP, or MCO if the person, HCP, MCO, or its owner demonstrates that it did not directly or indirectly sanction the action of the authorized agent, associate, manager, or employee that resulted in the conviction, plea of guilty, or entry of judgment for workers' compensation fraud, for engaging in a pattern of corrupt activity, or any other criminal offense related to the delivery of billing for health care benefits.

A person, HCP, or MCO, and its owner, officers, authorized agents, associates, managers, or employees that had its agreement with and reimbursement from the BWC terminated by the Administrator is prohibited from:

(1) Directly providing services to any other Bureau provider or having an ownership interest in a provider of services that furnishes services to any other Bureau provider;

(2) Arranging for, rendering, or ordering services for claimants while debarred.

Additionally, the act specifies that nothing in the provisions described above prohibits an owner, officer, authorized agent, associate, manager, or employee of a person, HCP, or MCO from entering into an agreement with the BWC if the owner, officer, authorized agent, associate, manager, or employee demonstrates absence of knowledge of the action of the person, HCP, or MCO with which that individual or organization was formerly associated that resulted in a conviction, plea of guilty, or entry of judgment for workers' compensation fraud, for engaging in a pattern of corrupt activity, or for any other criminal offense related to the delivery of billing for health care benefits. (Sec. 4121.444(C).)

Remedies for payments to claimants for medical assistance

The act specifies that the availability of specified remedies described above, and of remedies available under continuing law for recovering benefits paid on behalf of claimants for medical assistance does not limit the BWC's or a self-insuring employer's authority to recover excess payments to a person, HCP, MCO, or owner under state or federal law (sec. 4121.444(E)).

VII. Self-insuring employers

Penalties for late assessment payments

Under continuing law, self-insuring employers are required to certify to the BWC the amount of the self-insuring employer's paid compensation for the previous year. Additionally, self-insuring employers must pay assessments calculated by the Administrator that is based on the paid compensation reported by the self-insuring employer. (Sec. 4123.35(J) and (L).)

The act requires the Administrator to adopt rules that permit the Administrator to add a late fee penalty of not more than $500 to the assessment if an employer fails to pay the assessment when due, plus an additional penalty amount as follows:

(1) For an assessment from 61 to 90 days past due, the prime interest rate, multiplied by the assessment due;

(2) For an assessment from 91 to 120 days past due, the prime interest rate plus 2%, multiplied by the assessment due;

(3) For an assessment from 121 to 150 days past due, the prime interest rate plus 4%, multiplied by the assessment due;

(4) For an assessment from 151 to 180 days past due, the prime interest rate plus 6%, multiplied by the assessment due;

(5) For an assessment from 181 to 210 days past due, the prime interest rate plus 8%, multiplied by the assessment due;

(6) For each additional 30-day period or portion thereof that an assessment remains past due after it has remained past due for more than 210 days, the prime interest rate plus 8%, multiplied by the assessment due.

For the purposes of calculating these penalties, the act specifies that "prime interest rate" means the average bank prime rate, and specifies that the Administrator must determine the prime interest rate in the same manner as a county auditor determines the average bank prime rate under the Agricultural Districts Law (sec. 929.02, not in the act). An employer may appeal a late fee penalty and penalty assessment to the Administrator. (Sec. 4123.35(L).)

Self-insuring employer surplus fund opt-out

The act permits a self-insuring employer to elect to pay compensation and benefits after adjudication directly to an employee or an employee's dependents by filing an application with the BWC not more than 180 and not less than 90 days before the first day of the employer's next six-month coverage period. If the self-insuring employer timely files the application, the application is effective on the first day of the employer's next six-month coverage period, provided that the Administrator must compute the employer's assessment for the surplus fund due with respect to the period during which that application was filed without regard to the filing of the application. On and after the effective date of the employer's election, the self-insuring employer must pay directly to an employee or to an employee's dependents compensation and benefits regardless of the date of the injury or occupational disease, and the employer receives no money or credits from the surplus fund on account of those payments and is not required to pay any amounts into the surplus fund based on this election, which election, under the act, is irrevocable. (Sec. 4123.512(H).)

The act requires the Administrator to calculate the assessment for the portion of the surplus fund that is used for reimbursement to a self-insuring employer pursuant to the above-described provision in the normal manner, except that the Administrator must calculate the total assessment for this portion of the surplus fund only on the basis of those self-insuring employers that retain participation in reimbursement to the self-insuring employer, and the individual self-insuring employer's proportion of paid compensation must be calculated only for those self-insuring employers who retain participation in reimbursement rather than electing to opt out, as described above. (Sec. 4123.35(J).)

VIII. Fines and penalties for state fund employers

Increase of penalties for failure to pay premiums when due

The act increases the amount of the penalties assessed for late payment of state fund employer premiums that, under continuing law, the Administrator must adopt by rule. If the premium is late, under the act, the Administrator may add a late fee penalty of not more than $30 to the employer's premium, plus an additional penalty amount calculated as follows:

(1) For a premium from 61 to 90 days past due, the prime interest rate, multiplied by the premium due;

(2) For a premium from 91 to 120 days past due, the prime interest rate plus 2%, multiplied by the premium due;

(3) For a premium from 121 to 150 days past due, the prime interest rate plus 4%, multiplied by the premium due;

(4) For a premium from 151 to 180 days past due, the prime interest rate plus 6%, multiplied by the premium due;

(5) For a premium from 181 to 210 days past due, the prime interest rate plus 8%, multiplied by the premium due;

(6) For each additional 30-day period or portion thereof that a premium remains past due after it has remained past due for more than 210 days, the prime interest rate plus 8%, multiplied by the premium due.

Formerly the Administrator had to assess a penalty amount equal to 3% of the premium to the late premium. If the failure to pay continued for more than one month, the premium was increased further in an amount equal to 2% of the premium for each additional month or part thereof, but the total of all additional amounts could not exceed 12% of the premium.

Under the act, the additional penalty amount assessed cannot exceed 15% of the premium due. For the purposes of calculating these penalties, the "prime interest rate" is determined in the same manner as is described for penalties assessed against self-insuring employers. The act permits an employer to appeal a late fee penalty or additional penalty to an adjudicating committee appointed by the Administrator. (Sec. 4123.32(E)(2) to (4).)

IX. Limitations on the investment policy of the BWC

Political contributions by investment firms and related entities

In addition to other duties specified in continuing law, the Oversight Commission must establish objectives, policies, and criteria for the administration of the investment program for the BWC. Under the Campaign Finance Law (R.C. Chapter 3517.), the Administrator and the employees of the BWC are prohibited from conducting business with or awarding contracts to certain entities who make specified campaign contributions to the Governor or Lieutenant Governor or candidates for those offices (sec. 3517.13(Y) and (Z), not in the act). The act prohibits the Oversight Commission from specifying in the objectives, policies, and criteria it establishes that the Administrator or employees of the BWC are prohibited from conducting business with an investment management firm, any investment management professional associated with that firm, any third party solicitor associated with that firm, or any political action committee controlled by that firm or controlled by an investment management professional of that firm, based on criteria that are more restrictive than restrictions in the Campaign Finance Law. (Sec. 4121.12(G)(6).) The Oversight Commission must establish new objectives, policies, and criteria for the investment program that comply with this provision no later than August 1, 2006 (Section 4).

X. Miscellaneous

Attorney's fees and expenses deducted from child support orders

Relative to child support orders, continuing law contains a requirement that, no later than the earlier of 45 days before a lump sum payment is to be made or, if the obligor's right to the lump sum payment is determined less than 45 days before it is to be made, the date on which that determination is made, the payor must notify the child support enforcement agency administering the support order of any lump sum payment of any kind of $150 or more that is to be paid to the obligor, hold each lump sum payment of $150 or more for 30 days after the date on which it would otherwise be paid to the obligor and, on order of the court or agency that issued the support order, pay all or a specified amount of the lump sum payment to the Office of Child Support in the Department of Job and Family Services (sec. 3121.037(A)(10)).

The act specifies, however, that if a lump sum payment consists of workers' compensation benefits and the obligor is represented by an attorney with respect to the obligor's workers' compensation claim, prior to issuing the required notice to the child support enforcement agency, the Administrator, for claims involving state fund employers, or a self-insuring employer, for that employer's claims, must notify the obligor and the obligor's attorney in writing that the obligor is subject to

a support order and that the Administrator or self-insuring employer, as appropriate, must hold the lump sum payment for a period of 30 days after the Administrator or self-insuring employer sends this written notice, pending receipt of the information described below. (Sec. 3121.0311(A).)

The Administrator or self-insuring employer, as appropriate, must instruct the obligor's attorney in writing to file a copy of the fee agreement signed by the obligor, along with an affidavit signed by the attorney setting forth the amount of the attorney's fee with respect to the lump sum payment award to the obligor and the amount of all necessary expenses, along with documentation of those expenses, incurred by the attorney with respect to obtaining the lump sum award. The obligor's attorney must file the fee agreement and attorney affidavit with the Administrator or self-insuring employer, as appropriate, within 30 days after the date the Administrator or self-insuring employer sends the notice described above. (Sec. 3121.0311(B).)

Upon receipt of the fee agreement and attorney affidavit the Administrator or self-insuring employer must deduct from the lump sum payment the amount of the attorney's fee and necessary expenses and pay that amount directly to and solely in the name of the attorney within 14 days after the fee agreement and attorney affidavit have been filed with the Administrator or self-insuring employer. (Sec. 3121.0311(C).)

After deducting any attorney's fee and necessary expenses, if the lump sum payment is $150 or more, the Administrator or self-insuring employer, as appropriate, must hold the balance of the lump sum award in accordance with the normal notification, holding, and payment requirements described above. (Sec. 3121.0311(D).)

Attorney's fee cap

Under continuing law, the cost of any legal proceedings for appealing a claim, including an attorney's fee to the claimant's attorney is taxed against the employer or the Industrial Commission if the Commission or the Administrator rather than the employer contested the right of the claimant to participate in the fund. The act increases the cap the attorney's fee to $4,200 from $2,500 under prior law. (Sec. 4123.512(F).)

Payment by electronic transfer of funds

The act permits the Administrator to *require* any payee to provide a written authorization designating a financial institution and an account number to which a payment made by direct deposit is to be credited instead of *allowing* a payee to

choose to provide this information, as continuing law currently permits. (Secs. 4123.311(A)(2) and 9.37, not in the act.)

The act requires the Administrator to inform claimants about the Administrator's utilization of direct deposit of funds by electronic transfer, furnish debit cards to claimants as appropriate, and provide claimants with instructions regarding use of those debit cards. The Administrator, with the advice and consent of the Oversight Commission, must adopt rules in accordance with the Administrative Procedure Act regarding utilization of the direct deposit of funds by electronic transfer. (Sec. 4123.311(B) and (C).)

The act permits the Administrator to contract with an agent to supply debit cards for claimants to access payments made to them pursuant to the Workers' Compensation Law and credit those cards via electronic transfer with amounts the Administrator specifies. The act more specifically allows the Administrator to enter into agreements with financial institutions to credit debit cards with amounts specified by the Administrator by utilizing direct deposit of funds by electronic transfer. (Sec. 4123.311(A)(3) and (4).)

Qualified health care plan system reporting

Continuing law requires the Administrator to establish and operate a BWC Health Care Data Program. As part of this Program, the Administrator must publish and report compiled data to the Governor, the Speaker of the House of Representatives, and the President of the Senate on January 1 and July 1 each year, reporting the measures of outcomes and savings of both the Health Partnership Program and the Qualified Health Plan System. The act removes the requirement that the Administrator report the outcomes and savings of the Qualified Health Plan System when publishing the required report for the Program. (Sec. 4121.44(H).)

Designation of BWC's Special Investigation Department as a criminal justice agency

The act specifies that the BWC's Special Investigation Department is a criminal justice agency in investigating reported violations of law relating to workers' compensation, and as such may apply for access to the computerized databases administered by the National Crime Information Center or the Law Enforcement Automated Data System (LEADS) in Ohio and to other computerized databases administered for the purpose of making criminal justice information accessible to state and criminal justice agencies. (Sec. 4121.131.)

Applicability of act's provisions

The act specifies that the act's provisions apply only to claims arising on and after the act's effective date, except that the provisions explained above concerning a self-insuring employer's ability to elect to opt out of receiving reimbursements from the surplus fund also applies with respect to claims relative to that election that are pending on the act's effective date. (Section 3.)

XI. Minimum Wage Law

Minimum hourly wage

The act raises the basic minimum wage under the state Minimum Fair Wage Standards Law (R.C. Chapter 4111.) from $4.25 per hour to the wage rate specified in the federal Fair Labor Standards Act (29 U.S.C. 201, *et seq*.), as now or hereafter amended beginning on the act's effective date, which currently is $5.15 per hour. (Sec. 4111.02(A).) Except for hand harvest laborers and tipped employees, the act eliminates the various minimum wages applicable to employers for other categories of employees and requires those employers to pay the basic minimum wage rate specified in the federal Fair Labor Standards Act.

Similar to the changes described above for all other employees, the act requires all tipped employees to be paid the wage rate specified for tipped employees in the federal Fair Labor Standards Act, as now or hereafter amended. Currently, the federal minimum wage law defines tipped employees in the same manner as former Ohio law and requires that tipped employees be paid at least $2.13 per hour. Thus, the act does not change the wage rate of tipped employees of employers whose gross annual sales are more than $500,000. However, if an employer's gross annual sales are less than $500,000, then the act increases the minimum wage the employer must pay from $2.01 per hour to $2.13 per hour for tipped employees. The act also removes the requirement that an employee receive $30 per month in tips to qualify as a tipped employee. (Sec. 4111.02(D) to (G) and 29 U.S.C. 203, not in the act.)

The table below compares the minimum wage rates that an employer formerly was required to pay and now is required to pay under the act. The act does not increase the minimum wage rate paid to hand harvest laborers.

Employment Description	Minimum Wage Amounts Under Former Law	Minimum Wage Amounts Under the Act
Ohio employers not covered by the federal minimum wage law or otherwise excluded by Ohio law (R.C. 4111.02(A))	$4.25/hour	$5.15/hour
Agricultural workers (R.C. 4111.02(C))	$4.25/hour	$5.15/hour
Hand harvest laborers (R.C. 4111.02(C))	$2.80/hour	No change
Ohio employers whose annual gross sales are less than $150,000 (R.C. 4111.02(E))	$2.01/hour for tipped employees $2.80/hour for all others	$2.13/hour for tipped employees $5.15/hour for all others
Tipped employees who: (1) earn more than $30 in tips per month, (2) are employed by Ohio employers not covered by the federal minimum wage law or otherwise excluded by Ohio law, (3) are not employed by employers in the category directly below (R.C. 4111.02(D)	$2.13/hour*	$2.13/hour
Ohio employers whose annual gross sales are greater than $150,000 but less than $500,000 (R.C. 4111.02(F) and (G))	$2.01/hour for tipped employees $3.35/hour for all others	$2.13/hour for tipped employees $5.15/hour for all others

* *This minimum wage dollar amount is rounded up. Former law did not provide for a rounding mechanism to either round up or round down minimum wage amounts that were 50% of an odd number. For example, technically the minimum wage under former law for tipped employees was $2.125. Whether this should have been rounded up to $2.13 or down to $2.12 is unclear under former law.*

Employment Description	Minimum Wage Amounts Under Former Law	Minimum Wage Amounts Under the Act
Vocational students (R.C. 4111.02(B))	80% of applicable minimum wage for maximum of 180 days	$5.15/hour
Apprentices (R.C. 4111.07)	85% of applicable minimum wage	Percentage of applicable minimum wage is unchanged

HISTORY

ACTION	DATE
Introduced	01-24-05
Reported, S. Insurance, Commerce, & Labor	06-01-05
Passed Senate (21-11)	06-01-05
Reported, H. State Gov't	03-07-06
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