



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 238**

128th General Assembly  
(As Passed by the Senate)

**Sens.** Seitz, Grendell, Cates, Stewart, Jones, Niehaus, Schaffer, Gibbs, Schuring, Buehrer, Hughes, Harris, Patton, Widener

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## **BILL SUMMARY**

- Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.
- Prohibits an employer from electing to cover an illegal or unauthorized alien under the Workers' Compensation Law.
- Requires a claimant for workers' compensation benefits to submit documentation demonstrating that, on the date the claimant or deceased employee suffered the injury or contracted the occupational disease, the claimant or the deceased employee who is the subject of the claim was authorized to work in accordance with the Immigration Reform and Control Act ("IRCA").
- Lists procedures for the Administrator of Workers' Compensation or a self-insuring employer to follow to verify whether the claimant or the deceased employee who is the subject of the claim was authorized to work under the IRCA on the date of injury or contraction of the occupational disease.
- Allows an employer, if the employer satisfies specified criteria, to receive a premium or assessment rebate based upon compensation or benefits paid to an individual who is not eligible to receive the compensation or benefits under the bill.
- Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under the IRCA; maintains employer liability for intentional torts.

- Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.
- States that, unless an employer employed an individual knowing that the individual was not authorized to work under the IRCA, no court has jurisdiction over a claim for damages suffered by an illegal or unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal or unauthorized alien in the course of employment caused by the employer's wrongful act or omission or neglect.

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## **CONTENT AND OPERATION**

### **Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law**

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) to include every person in the service of any person, firm, or private corporation, including any public service corporation, that employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens (R.C. 4123.01(A)(1)(b)). The Workers' Compensation Law does not define "alien."

The bill limits the definition of employee with respect to aliens to include only aliens authorized to work by the U.S. Department of Homeland Security or its successor. The bill excludes an illegal alien and an unauthorized alien from the definition of employee. Under the bill, "illegal alien" means an alien who is deportable if apprehended because of one of the following:

(1) The alien entered the United States illegally without the proper authorization and documents.

(2) The alien once entered the United States legally and has since violated the terms of the status under which the alien entered the United States, making that alien an "out of status" alien.

(3) The alien once entered the United States legally but has overstayed the time limits of the original legal status.

The bill defines "unauthorized alien" as an alien who is not authorized to be employed as determined in accordance with the Immigration Reform and Control Act ("IRCA").<sup>1</sup> (R.C. 4123.01(A)(1)(b), (A)(2)(e), (L), and (M).)

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law, any person expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal alien or unauthorized alien. (R.C. 4123.01(A).)

## **Liability for injuries incurred or occupational diseases contracted by illegal or unauthorized aliens**

### **Background**

Ohio's workers' compensation system compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the worker's employment. The Ohio Constitution authorizes the General Assembly to enact legislation that creates a system of workers' compensation payments to injured employees or their families in lieu of all other rights to compensation or damages as a result of death, injuries, or occupational disease. According to the constitutional provision, an employer who pays the premium or compensation as required by the Workers' Compensation Law will not be held liable in damages at common law or by statute for the death, injury, or occupational disease of an employee. (Section 35, Article II, Ohio Constitution and R.C. 4123.74 and 4123.77, not in the bill.)

### **General employer immunity from liability under the bill**

Except as otherwise provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, under the bill if a claim is denied under "**Status verification**" or "**Failure to submit documents**" below, the claimant's employer, or, if the claimant is a dependent of an employee who died as a result of suffering an injury or contracting an occupational disease, the deceased employee's employer, is not liable to that claimant for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the employer. For such a claimant, filing a claim under Ohio's Workers' Compensation

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<sup>1</sup> Section 101(a) of the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a (R.C. 4123.01(N)).

Law is the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the claimant's or deceased employee's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law (R.C. 4127.77, not in the bill) and except as provided below, the bill creates an irrebuttable presumption that the individual assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for that employer. Under the bill, the state or a political subdivision is not liable in any civil action brought by or on behalf of an illegal alien or an unauthorized alien for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the state or political subdivision acting as an employer unless the state or political subdivision employed that illegal alien or unauthorized alien knowing that the illegal alien or unauthorized alien was not authorized to work under the IRCA (see "**Liability for knowingly employing an employee not authorized to work**" below). (R.C. 2743.02(I), 2744.02(A)(1), and 4123.515(A).)

Except as provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, the bill also denies any Ohio court from having jurisdiction over a claim for damages suffered by an illegal alien or an unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal alien or unauthorized alien in the course of employment caused by the wrongful act or omission or neglect of the employer. The bill states that an illegal alien or unauthorized alien assumes the risk of incurring such injury or contracting an occupational disease, and that assumption is a complete bar to a recovery of damages for such injury or occupational disease. (R.C. 2307.82(B).)

### **Liability for knowingly employing an employee not authorized to work**

However, under the bill, an employer is liable to a claimant whose claim is denied under "**Status verification**" or "**Failure to submit documents**" below for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the employer if the employer employed the claimant or the deceased employee who is the subject of the claim knowing that the claimant or deceased employee was not authorized to work under the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease. As discussed above, under the bill the state or a political subdivision is liable in such a claim if the state or political subdivision employed an illegal or unauthorized alien knowing that the illegal or unauthorized alien was not authorized to work.

Additionally, the bill grants a court jurisdiction over such a claim. (R.C. 2307.82(C), 2743.02(I), 2744.02(A)(1), and 4123.515(B).)

### **Liability for intentional torts**

Nothing in the bill must be construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied under "**Change in claim procedure to include status verification**" below from bringing a claim against an employer in a court of competent jurisdiction for an intentional tort allegedly committed by the employer against the illegal or unauthorized alien (R.C. 2307.82(C) and 4123.515(C)).

### **Change in claim procedure to include status verification**

Under continuing law, within seven days after receipt of any claim under the Workers' Compensation Law, the Bureau of Workers' Compensation ("BWC") must notify the claimant and the employer of the claimant of the receipt of the claim and of the facts alleged therein. Generally, in claims other than those in which the employer is a self-insuring employer, if the Administrator of Workers' Compensation determines that a claimant is or is not entitled to an award of compensation or benefits, the Administrator must issue an order no later than 28 days after the sending of the notice of the receipt of the claim, granting or denying the payment of the compensation or benefits, or both as is appropriate to the claimant. (R.C. 4123.511(A) and (B)(1).)

### **Documentation required**

Under the bill, within 28 days after a claimant receives notification from BWC or, if the employee's employer is a self-insuring employer, from the self-insuring employer, of the receipt of a claim for compensation or benefits under the Workers' Compensation Law, the claimant must submit to the Administrator or the self-insured employer, as applicable, documentation demonstrating that the claimant, or, if the claimant is a dependent of an employee who died as a result of suffering an injury or contracting an occupational disease, the deceased employee, was authorized to work in accordance with the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease. The documentation the claimant submits must establish an individual's identity and authority to work in accordance with the IRCA. (R.C. 4123.511(A) and 4123.513(B).)

### **Preliminary status verification**

The bill permits the Administrator or the self-insuring employer, as applicable, to determine whether the claim is a compensable claim under the Workers' Compensation Law during the 28-day period described above. If the Administrator or self-insuring employer, as applicable, determines that the claim is compensable, prior to awarding

the claimant compensation or benefits for that claim, the Administrator or self-insuring employer must use a status verification system to conduct a preliminary verification that the claimant or deceased employee, as applicable, was authorized to work in accordance with the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease. The bill defines "status verification system" as any electronic system the federal government operates to enable a person to verify or ascertain the citizenship or immigration status of any individual, and includes all of the following:

(1) The electronic verification of work authorization program known as the E-Verify Program, 8 U.S.C. 1324a, operated by the U.S. Department of Homeland Security, and any equivalent federal program that the Department or other federal agency designates to verify the work eligibility status of newly hired employees, pursuant to the IRCA;

(2) Any independent, third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in (1) above;

(3) The Social Security Number Verification Service, or any similar online verification process the U.S. Social Security Administration operates.

If the Administrator or self-insuring employer determines that the claimant or deceased employee was authorized to work, the Administrator or self-insuring employer may award the compensation or benefits. The award of compensation or benefits under this provision does not relieve the duty of the claimant to submit the information required under "**Documentation required**" above. If the Administrator or self-insuring employer determines that the claimant or deceased employee was not authorized to work, the Administrator or self-insuring employer must stay awarding the compensation or benefits until after the Administrator or self-insuring employer conducts the verification required under the bill.

If the Administrator or self-insuring employer, as applicable, determines during that 28-day period that the claim is not compensable, and if the claimant wishes to appeal that determination in accordance with the procedures specified in continuing law, the claimant must submit to the Administrator or self-insuring employer the information required under "**Documentation required**" above. (R.C. 4123.513(A) and (C).)

### **Status verification**

If the Administrator or self-insuring employer receives the required documentation within the 28-day period described under "**Documentation required**" above, the bill requires the Administrator or self-insuring employer to verify that the

claimant or deceased employee, as applicable, was authorized to work in accordance with the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease. The Administrator or self-insuring employer may use a status verification system to verify the employee's authorization to work. If the Administrator or self-insuring employer determines that the claimant or deceased employee was authorized to work, and if the Administrator or self-insuring employer has not previously issued a determination as to whether the claim is compensable as described under "**Preliminary status verification**" above, the Administrator or self-insuring employer must issue the determination.

If the Administrator or self-insuring employer determines that the claimant or deceased employee was not authorized to work, the Administrator or self-insuring employer must deny the claim. If a self-insuring employer denies a claim under this provision, the self-insuring employer must send written notice of that denial to the Administrator. If the Administrator or self-insuring employer denies a claim under this provision and the Administrator or self-insuring employer previously awarded the claimant compensation or benefits under "**Preliminary status verification**" above, the Administrator or self-insuring employer may, but is not required to, recover the compensation or benefits awarded. Under the bill, an employer must not include a claimant whose claim is denied under this provision in any subsequent report of employer's payroll under continuing law. (R.C. 4123.513(E) and 4123.514(C).)

#### **Failure to submit documentation**

If the Administrator or self-insuring employer does not receive the required documentation at the end of the 28-day period described under "**Documentation required**" above, regardless of whether the claim is compensable, the bill requires the Administrator or the self-insuring employer to deny the claim. If the Administrator or self-insuring employer awarded compensation or benefits under "**Preliminary status verification**" above, the Administrator or self-insuring employer may, but is not required to, recover the compensation or benefits awarded. A claimant may resubmit the claim denied under this provision to the Administrator or a self-insuring employer if the time period specified in continuing law for timely filing a claim has not lapsed. (R.C. 4123.513(D).)

#### **Appeal of determination**

The bill states that, except with respect to a claim denied because the claim is not compensable as described in "**Preliminary status verification**" above, the denial of a claim under "**Status verification**" and "**Failure to submit documentation**" above is appealable under continuing law (R.C. 4123.513(F)).



## Ability to receive premium or assessment rebate

Under the bill, if a claimant's claim is denied under "**Status verification**" above, if the employer of the claimant or the deceased employee who is the subject of the claim is a state fund employer, and if the employer submits proof of using a status verification system to determine whether the employer's employees are authorized to work in accordance with the IRCA, the Administrator must reduce the next premium due to be paid by the employer by the amount equal to the increase in premium resulting from payments made to that claimant on or after the end of the 28-day period described in "**Documentation required**" above. If the Administrator awarded compensation or benefits under "**Preliminary status verification**" above but subsequently denied the claim under "**Status verification**" above, and if the Administrator recovered the payment made to the claimant, the Administrator also must credit the employer's premium with those payments. (R.C. 4123.514(A).)

Similarly, if a claimant's claim is denied under "**Status verification**" above, if the employer of the claimant or the deceased employee who is the subject of the claim is a self-insuring employer, and if the self-insuring employer submits proof of using a status verification system to determine whether the employer's employees are authorized to work in accordance with the IRCA, the Administrator must reduce the self-insuring employer's next assessment due by the amount of assessments paid by the self-insuring employer that reflected the paid compensation on account of the claimant or deceased employee paid on or after the end of the 28-day period described in "**Documentation required**" above. If the self-insuring employer awarded compensation or benefits under "**Preliminary status verification**" above but subsequently denied the claim under "**Status verification**" above, and if the self-insuring employer recovered the payment made to the claimant, the Administrator also must reduce the assessment by the amount reflected in the assessment for that paid compensation. (R.C. 4123.514(B).)

## Applicability of the bill

The bill applies to claims arising on or after the bill's effective date (Section 3).

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## HISTORY

ACTION	DATE
Introduced	03-16-10
Reported, S. Insurance, Commerce & Labor	05-26-10
Passed Senate (21-12)	05-27-10

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