



Ohio Legislative Service Commission

Bill Analysis

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H.B. 539

130th General Assembly
(As Introduced)

Reps. Henne, McGregor, Sears, Becker, Wachtmann, DeVitis, Butler

BILL SUMMARY

- Temporarily defers the charging of workers' compensation claims to a state fund employer's experience when a third party may be liable for the claim.
- Creates the Subrogation Suspense Account (SSA) within the State Insurance Fund to which any such deferral will be charged.
- Allows a state fund employer to apply to an adjudicating committee appointed by the Administrator to defer the experience resulting from that claim.
- Requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, to adopt rules to establish requirements and procedures for an adjudicating committee to follow when determining whether a claim is likely to be subrogated.
- Requires the Administrator, at the end of the deferral period, to charge the employer's experience for the amount of compensation or benefits paid in a claim and charged to the employer's individual account in the SSA for that claim.
- Prohibits the Administrator from charging the employer's experience for any amount credited to the employer's individual SSA as a result of moneys collected through the subrogation process.

CONTENT AND OPERATION

Temporary deference of charging experience

The bill requires the Administrator of Workers' Compensation to temporarily defer a state fund employer's experience for payments made in a workers'

compensation claim if the Administrator is likely to be subrogated to the rights of a workers' compensation claimant. Subrogation involves the Administrator recouping payments made in a workers' compensation claim from a third party (see "**Subrogation**," below). A state fund employer is an employer who pays premiums into the State Insurance Fund to secure workers' compensation coverage. The employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's premium (see "**Background – calculation of premium rates**," below). Thus, a deferral in charging an employer's experience may result in a deferral in an increase in the employer's workers' compensation premiums as a result of the claim.

Procedural for deferral

The bill provides two avenues for the experience deferral: (1) if the Administrator makes the Administrator's own determination that a claim is likely to be subrogated, or (2) a state fund employer requests such a deferral.¹

With respect to the latter avenue, if a state fund employer believes that a workers' compensation claim may be subject to third-party subrogation, the bill allows the employer to file a request with an adjudicating committee appointed by the Administrator to defer the experience resulting from that claim. Under continuing law, the employer must file the request on or before 24 months after the Administrator sends notice of the determination about which the employer is filing the request. The adjudicating committee must hear the request within 60 days of the date on which the employer files the request.

Under the bill, the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, must adopt rules to establish requirements and procedures for an adjudicating committee to follow when determining whether a claim is likely to be subrogated. As under continuing law, if the employer is adversely affected by a decision of the adjudicating committee, the employer may appeal the decision to the Administrator or the Administrator's designee. The employer must file the appeal in writing within 30 days after the employer receives the adjudicating committee's decision. The Administrator or the designee must hear the appeal and hold a hearing.²

¹ R.C. 4123.932.

² R.C. 4123.291 and 4123.933(A).



Determination that a claim is likely to be subrogated

Upon a final determination made pursuant to the adjudicating committee process described above, or upon the Administrator's own determination, that the Administrator is likely to be subrogated to the rights of a claimant under the continuing law subrogation process, the bill prohibits the Administrator from charging the experience of that employer for any compensation, benefits, or both paid in relation to that claim until the earlier of the following:

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

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

Instead, under the bill, during that time period, the Administrator must charge the payments in the workers' compensation claim to the employer's account within the Subrogation Suspense Account.³

Subrogation Suspense Account

The bill creates within the State Insurance Fund the Subrogation Suspense Account (SSA). The SSA is to be used to defer costs related to subrogation claims so that the experience of an employer is not affected by a claim that is likely eligible for third-party subrogation. If a final determination is made under the bill that the Administrator is likely to be subrogated, the bill requires the Administrator to create an individual account within the SSA for the employer whose experience the claimant's claim would otherwise affect.

The bill limits the use of the moneys held in the SSA to reimbursement to the State Insurance Fund of amounts paid on a claim that is not charged to an employer's experience pursuant to the bill. To fund the SSA, the bill requires the Administrator, in establishing premium rates under continuing law, to take into account the necessity of ensuring sufficient money is set aside in the SSA to cover any claim amounts for which the Administrator temporarily suspends charging an employer's experience (similar to the current law procedures regarding the Premium Payment Security Fund).⁴

³ R.C. 4123.932 and 4123.933(B).

⁴ R.C. 4123.34 and 4123.933(A).



Deposit of subrogated funds

Continuing law prescribes procedures that the Administrator (or any other statutory subrogees) and a claimant must follow with respect to the distribution of funds that are subrogated in a third-party claim. With respect to any money collected by the Administrator under that process, continuing law requires the Administrator to deposit the money collected into the appropriate account within the State Insurance Fund. Similar to current law, the bill requires any amount deposited to be credited to the experience of the employer against whom the experience of the corresponding claim was charged (potentially resulting in lower premiums). However, if, at the time an amount is deposited, the corresponding claim is being charged to the employer's individual account in the SSA, the bill requires any amount deposited to be credited to the employer's individual account in the SSA.⁵

End of deferral period

Upon the conclusion of the deferral period during which an employer's experience is not charged under the bill, the bill requires the Administrator to charge the employer's experience for the amount of compensation or benefits paid in a claim and charged to the employer's individual account within the SSA for that claim. However, the Administrator cannot charge the employer's experience for any amount credited to the employer's individual SSA as a result of moneys collected through the subrogation process. The Administrator must then credit the SSA in the amount the Administrator charges to the employer's experience.

The bill requires any additional compensation or benefits incurred in that claim after the deferral period to be charged to the employer's experience.⁶

Subrogation

The Workers' Compensation Law⁷ creates a right of subrogation in favor of the Administrator or other statutory subrogees against a third party. A statutory subrogee is the entity responsible to pay workers' compensation claims. Essentially a statutory subrogee may recoup money from a third party against whom a claimant has a cause of action so that the statutory subrogee is reimbursed for money it pays out on a workers' compensation claim.

⁵ R.C. 4123.931(K).

⁶ R.C. 4123.933(C).

⁷ R.C. Chapters 4121., 4123., 4127., and 4131.



Stated simply, if Mr. Smith, in the course of his employment, is injured when Mr. Jones collides with his vehicle, Mr. Smith may receive workers' compensation benefits and also may sue Mr. Jones. If Mr. Smith sues Mr. Jones, then Mr. Smith's employer, or the Administrator, as appropriate, may seek reimbursement from the amount Mr. Smith recovers in the third-party suit.

The Workers' Compensation Law contains procedures to follow regarding subrogation claims. Under continuing law, the Administrator's right of subrogation is automatic, regardless of whether the Administrator is joined as a party in an action by a workers' compensation claimant against a third party. The Administrator may pursue an action against a third party as well.⁸

Background – calculation of premium rates

Ohio law requires the Administrator to fix premiums "sufficiently large" to provide a fund for the benefits authorized in the Workers' Compensation Law and "to maintain a state insurance fund from year to year." Subject to the approval of the BWC Board, the Administrator classifies occupations or industries with respect to their degree of hazard, determines the risks of different classes according to the categories the National Council on Compensation Insurance establishes, and fixes the premium rates for coverage of the risks based upon the total payroll in each classification.⁹

Premium rates are fixed for each classification based upon total payroll. The Administrator must establish a rate for each classification. The total losses compared with the total payroll of each classification establishes the rate of contribution from employers within that classification. The system includes two basic premium rates – the basic rate and the experience, or merit, rate (employers qualify for one or the other). The Administrator calculates the basic rate for each of the classifications of occupations, and the Administrator does not include any individual employer's experience when calculating basic rates. If an employer is experienced-rated, the employer's rate is determined by modifying the basic rate applicable to the employer by the employer's experience of losses incurred and premiums paid.¹⁰ A premium is expressed as an amount for each \$100 of payroll. Rates are revised annually on July 1, and employers pay premiums in accordance with the schedule specified in the Workers' Compensation Law and in rules adopted by the Administrator.¹¹

⁸ R.C. 4123.93 and 4123.931.

⁹ R.C. 4123.29(A), not in the bill, and Ohio Administrative Code (O.A.C.) 4123-17-04.

¹⁰ Fulton, Philip J., *Ohio's Workers' Compensation Law*, § 14.4 (4th Ed. 2011).

¹¹ R.C. 4123.34 and R.C. 4123.35, not in the bill, and O.A.C. 4123-17-01 to 4123-17-04.

HISTORY

ACTION

DATE

Introduced

05-14-14

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