



Ohio Legislative Service Commission

Bill Analysis

Kelly Bomba

H.B. 207

131st General Assembly
(As Introduced)

Reps. Henne and McColley, Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke

BILL SUMMARY

- Requires workers' compensation claims to be charged to the Surplus Fund Account in lieu of to a state fund employer's experience when a third party may be liable for a claim that is based on an automobile accident involving a third party.
 - Allows a state fund employer to apply to an adjudicating committee appointed by the Administrator to charge the experience resulting from such a claim to the Surplus Fund Account.
 - 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 any amount collected by the Administrator through the subrogation process for compensation or benefits that were charged to the Surplus Fund Account to be credited to the Surplus Fund Account and not applied to an individual employer's account.
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CONTENT AND OPERATION

Charging experience for certain claims to the Surplus Fund Account

The bill requires the Administrator of Workers' Compensation to charge a state fund employer's experience to the Surplus Fund Account created under continuing law within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim if both of the following apply:

- The claim is based on an automobile accident involving a third party;
- The Administrator is likely to be subrogated to the rights of the workers' compensation claimant.¹

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, charging a claim to the Surplus Fund Account in lieu of the employer's experience may result in a mitigation of an increase in the employer's workers' compensation premiums as a result of the claim.

Procedure for charging the experience to the Surplus Fund Account

The bill provides two avenues for charging the experience to the Surplus Fund Account: (1) if the Administrator makes the Administrator's own determination that a state fund employer's claim based on an automobile accident involving a third party is likely to be subrogated, or (2) a state fund employer requests to have such a claim charged to the Surplus Fund Account.²

With respect to the latter avenue, if a state fund employer believes that such 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 have the experience resulting from that claim charged to the Surplus Fund Account. 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 (BWC) 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

¹ R.C. 4123.932.

² R.C. 4123.932(A).



employer receives the adjudicating committee's decision. The Administrator or the designee must hear the appeal and hold a hearing.³

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 for a claim based on an automobile accident involving a third party, the bill requires the Administrator to charge the experience of a state fund employer for any compensation, benefits, or both paid in relation to that claim to the Surplus Fund Account and not to the individual employer's experience.⁴

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, current law requires the Administrator to deposit the money collected into the appropriate account within the State Insurance Fund. The bill requires any amount collected for compensation or benefits that were charged to the Surplus Fund Account pursuant to the bill and not charged to an employer's experience to be deposited in the Surplus Fund Account and not applied to an individual employer's account.⁵

Subrogation

The Workers' Compensation Law⁶ 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.

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

³ R.C. 4123.291 and 4123.932(B).

⁴ R.C. 4123.932(A).

⁵ R.C. 4123.931(K).

⁶ R.C. Chapters 4121., 4123., 4127., and 4131.

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.⁷

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.⁸

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.⁹ 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.¹⁰

⁷ R.C. 4123.93 and 4123.931.

⁸ R.C. 4123.29(A), not in the bill, and Ohio Administrative Code (O.A.C.) 4123-17-04.

⁹ Fulton, Philip J., *Ohio's Workers' Compensation Law*, § 14.4 (4th Ed. 2011).

¹⁰ 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

05-12-15

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