



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 207 of the 131st G.A.

**Date:** May 4, 2016

**Status:** As Reported by Senate Insurance

**Sponsor:** Reps. Henne and McColley

**Local Impact Statement Procedure Required:** No

**Contents:** Allows a state fund employer to have a workers' compensation claim that is likely to be subrogated paid from the Surplus Fund Account within the State Insurance Fund

### State Fiscal Highlights

- The bill allows a state fund employer to have a workers' compensation claim that is likely to be subrogated to be paid from the Surplus Fund Account within the State Insurance Fund, rather than charged to the employer's experience.
- This could potentially result in an increase in payments from the State Insurance Fund. The amount of the additional payments that are possible will depend on the total number of claims subject to the provisions of the bill.

### Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

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## Detailed Fiscal Analysis

### Overview

The bill requires the Administrator of the Bureau of Workers' Compensation (BWC) to charge a state fund employer's experience to the Surplus Fund Account, which is created under current law, within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim under three particular conditions. First, the claim must be based on an automobile accident involving a third party. Second, the third party is issued a citation for violation of any law or ordinance regulating the motor vehicle's operation arising from the accident on which the claim is based. Finally, the claim is chargeable to the Surplus Fund Account if either of the following circumstances apply: (1) any form of insurance maintained by the third party covers the claim, or (2) uninsured or underinsured motorist coverage covers the claim. The act of subrogation involves the Administrator recouping payments made in a workers' compensation claim from a third party. The

Administrator, as a statutory subrogee, is responsible to pay workers' compensation claims, but may then recoup such payments from a third party against whom a claimant has a cause of action so that BWC is reimbursed for payments made on a workers' compensation claim.

### **Calculation of premiums**

State fund employers pay 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 premiums. Ohio Law requires the Administrator to fix premiums sufficiently large to provide a fund for the benefits authorized under Workers' Compensation Law and to maintain a state insurance fund from year to year. 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. Premium rates are fixed for each classification based on payroll. There are two basic premium rates, the basic rate and the experience, or merit, rate. If an employer is experience rated, the employer's rate is determined by modifying the basic rate applicable to that employer by the employer's experience of losses incurred and premiums paid. Therefore, charging a claim to the Surplus Fund Account in lieu of the employer's experience may result in a mitigation of an increase to that employer's workers' compensation premiums as a result of that claim.

### **Procedures for charging the experience to the Surplus Fund Account**

The bill provides two methods for charging the experience to the Surplus Fund Account. The first is if the Administrator makes a determination that a state fund employer's claim based on an automobile accident involving a third party is likely to be subrogated. The second is if a state fund employer requests to have such a claim charged to the Surplus Fund Account. Under this method, the bill allows the employer to file a request with the Administrator, and the claim is allowed to be charged to the Surplus Fund Account in lieu of the employer's experience if the administrator determines that the claim qualifies. If a determination is made that the Administrator is likely to be subrogated, the bill requires the Administrator to charge the experience of the employer to the Surplus Fund Account and not to the individual employer's experience. The bill also 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. The bill also specifies that if the employer of the employee who is subject to a subrogation claim is the state or a state institution of higher education, including hospitals, the claim cannot be charged to the Surplus Fund Account.

## Subrogation cases

The impact of the bill on the State Insurance Fund and employer premiums will depend on the number of claims that would fall under the provisions of the bill. LSC was able to find some information related to subrogation from a comprehensive agency study performed by Deloitte Consulting, LLP and published in February 2009. Table 1 below shows the number of subrogation claims in BWC's subrogation tracking database between CY 2003 and mid-April CY 2008. As the table illustrates, there were 13,140 subrogation claims in the five-year time frame analyzed. This number includes all cases referred to the Subrogation Unit for investigation and management.

<b>Table 1. Claims Subject to Review for Possible Subrogation, CY 2003-CY 2008</b>	
<b>Date of Injury</b>	<b>Subrogation Claims</b>
2003	2,247
2004	3,304
2005	2,842
2006	2,448
2007	2,010
2008	289
<b>Total</b>	<b>13,140</b>

This group of claims referred for subrogation had a number of cases dismissed or abandoned by the Subrogation Unit for various reasons. Overall, 1,743 of these claims were deemed "uncollectable" and were not pursued. A further 945 claims were abandoned on first review after it was determined that there was no right to subrogate. There were 314 claims not pursued for what was listed as "Miscellaneous" reasons, while an additional 42 were not pursued with a "BWC Claim Disallowed" designation.

Finally, the study examined the subrogation process with respect to negotiated settlement offers, demands, and final settlement amounts. Table 2 below illustrates the average settlement amounts and average of the final settlement offer for subrogated claims that reached this level over the course of the years examined.

<b>Table 2. Subrogation Settlement Averages, CY 2003-CY 2008</b>		
<b>Accident Year</b>	<b>Average Settlement Amount</b>	<b>Average Final Settlement Offer</b>
2003	\$23,476	\$21,792
2004	\$12,689	\$16,658
2005	\$25,994	\$26,667
2006	\$17,962	\$17,927
2007	\$8,132	\$8,132
<b>Average All Years</b>	<b>\$18,749</b>	<b>\$19,930</b>

The figures presented above were related to all types of claims that went through the subrogation process. The total number of claims subject to the subrogation provisions of the bill would be much smaller.

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