



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Paul Luzzi

### **H.B. 380**

132nd General Assembly  
(As Introduced)

**Reps.** Seitz and Householder, Schaffer, Henne, Retherford, Vitale, Thompson, Becker, Merrin, Antani, Lang, Keller, Hood, Riedel

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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 to submit an attestation certifying that the claimant or the deceased employee who is the subject of the claim was an eligible "employee" under Workers' Compensation Law.
- 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 claimant establishes, by clear and convincing evidence, that the employer employed the individual knowing that the individual was not authorized to work under federal law.
- 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 the individual knowing that the individual was not authorized to work under federal law, 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

### Illegal aliens and unauthorized aliens

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law<sup>1</sup> 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.<sup>2</sup> 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 U.S. illegally without the proper authorization and documents.

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

(3) The alien once entered the U.S. 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>3</sup>

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law certain individuals expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to

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<sup>1</sup> R.C. Chapters 4121., 4123., 4127., and 4131.

<sup>2</sup> R.C. 4123.01(A).

<sup>3</sup> R.C. 4123.01(A), (O), and (P) and 8 U.S.C. 1324a.



illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal or unauthorized alien.<sup>4</sup>

## **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 employee'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.<sup>5</sup>

### **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 because the claimant is, or the deceased individual who is the subject of the claim was, an unauthorized alien, the claimant's or 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 employer's wrongful act or omission or neglect. For such a claimant, filing a claim under Ohio's Workers' Compensation 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<sup>6</sup> 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

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<sup>4</sup> R.C. 4123.01(A).

<sup>5</sup> Ohio Const., art. II, sec. 35 and R.C. 4123.74 and 4123.77, not in the bill.

<sup>6</sup> R.C. 4127.77, not in the bill.



such an injury or occupational disease, when performing services or providing labor for that employer.<sup>7</sup>

Except as provided below, the bill also denies any Ohio court from having jurisdiction over a claim for damages suffered by an illegal 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 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 that injury or occupational disease (see **COMMENT**).<sup>8</sup>

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

However, under the bill, an employer, including the state or a political subdivision, is liable to a claimant whose claim is denied under "**Attestation of eligibility**" or "**Review by Administrator**" below for damages suffered for the reason described immediately above if the claimant establishes, by clear and convincing evidence, that 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. The bill grants a court jurisdiction over such a claim. In such an action, an employer cannot assert the common law defenses of assumption of the risk, contributory negligence, or the fellow servant rule.<sup>9</sup>

### **Liability for intentional torts**

Nothing in the bill can be construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied because the claimant is or the deceased individual was an unauthorized alien 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.<sup>10</sup>

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<sup>7</sup> R.C. 2743.02(I), 2744.02(A), and 4123.513(A).

<sup>8</sup> R.C. 2307.82(B).

<sup>9</sup> R.C. 2307.82(C), 2743.02(I), 2744.02(A), and 4123.513(B).

<sup>10</sup> R.C. 2307.82(C) and 4123.513(C).



## Change in claim procedure to include attestation and review

Under continuing law, within seven days after receipt of a workers' compensation claim, the Bureau of Workers' Compensation (BWC) must notify the claimant and the claimant's employer of the receipt of the claim and of the facts alleged in the claim. 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 BWC sends the notice of the receipt of the claim, granting or denying the payment of the compensation, benefits, or both as is appropriate to the claimant.<sup>11</sup>

### Attestation of eligibility

Under the bill, to be considered eligible for compensation or benefits, other than for medical benefits, a claimant must submit to the Administrator a signed attestation that the claimant is, or if the claimant is a dependent of an individual who died as a result of suffering an injury or contracting an occupational disease, the deceased employee was, an eligible "employee" as defined in "**Illegal aliens and unauthorized aliens**" above. The Administrator may not pay compensation or benefits, other than medical benefits, unless the Administrator receives the signed attestation.<sup>12</sup>

### Review by Administrator

If the Administrator has reason to believe that a submitted attestation is not valid, the Administrator may request that the claimant submit proof of the attestation's validity. The bill requires the Administrator to make the request in writing and to state in the request the type of proof necessary to determine validity and the date by which the claimant must submit the proof. The Administrator must deny any claim for compensation or benefits other than medical benefits if a claimant fails to comply with a written request to provide proof of the attestation's validity. A claimant who fails to comply with that written request is then barred from refileing that claim for compensation or benefits but may appeal according to the current law appeals process.

### Prosecution for fraud

Under the bill, if a claimant provides a signed attestation and it is later determined that the claimant or deceased individual who is the subject of the claim was

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<sup>11</sup> R.C. 4123.511(A) and (B)(1).

<sup>12</sup> R.C. 4123.511(A) and 4123.01(A).



an illegal or unauthorized alien, the claimant must be prosecuted for workers' compensation fraud.<sup>13</sup>

## Applicability

The bill applies to claims arising on or after the bill's effective date.<sup>14</sup>

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## COMMENT

Because the bill appears to limit remedies for an illegal or an unauthorized alien who sustains an injury or contracts occupational disease in the course of employment caused by the wrongful act or omission or neglect of the employer, it may raise questions under the Ohio constitutional provision governing due process, the right to an open court, and the right to a remedy.<sup>15</sup>

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## HISTORY

ACTION	DATE
Introduced	10-11-17

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<sup>13</sup> R.C. 2913.48, not in the bill, and R.C. 4123.511.

<sup>14</sup> Section 3.

<sup>15</sup> Ohio Const., art. I, sec. 16.

