



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Kelly Bomba

Sub. H.B. 380

132nd General Assembly
(As Passed by the House)

Reps. Seitz and Householder, Schaffer, Henne, Retherford, Vitale, Thompson, Becker, Merrin, Antani, Lang, Keller, Hood, Riedel, Brenner, Butler, Dean, Ginter, Green, Greenspan, Hagan, McColley, Patton, Perales, Roegner, Romanchuk, Stein, Wiggam, Zeltwanger

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.
- Permits a U.S. citizen who is a dependent of a deceased illegal or unauthorized alien to receive death benefits under the Workers' Compensation Law if the deceased alien would have been eligible to receive compensation or benefits if not for the alien's illegal or unauthorized status.
- Requires a claimant who is not a U.S. citizen to provide the Administrator of Workers' Compensation with the claimant's or, if the claimant is a dependent of a deceased individual, the individual's alien registration number and the expiration date of the claimant's or individual's work authorization.
- 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.
- 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, and denies a court jurisdiction over such a claim, unless the person suing establishes by

clear and convincing evidence that the employer hired the individual knowing that the individual was not authorized to work under federal law.

- Maintains employer liability for intentional torts.

CONTENT AND OPERATION

Illegal aliens and unauthorized aliens

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law¹ 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.² 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).³

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

¹ R.C. Chapters 4121., 4123., 4127., and 4131.

² R.C. 4123.01(A).

³ 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.⁴

Registration number and work authorization required for eligibility

Under the bill, to be considered eligible for compensation or benefits, other than for medical benefits, a claimant who is not a U.S. citizen must provide the Administrator of Workers' Compensation with one of the following, as applicable:

- The claimant's alien registration number or other signifier that the claimant is authorized to work in the U.S. and the expiration date of the claimant's authorization to work;
- 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 individual's alien registration number or other signifier that the individual was authorized to work in the U.S. and the expiration date of the deceased individual's authorization to work.

The bill requires the Administrator to include, on the initial claim form, a place for a claimant to state whether the claimant is a U.S. citizen and a place for a noncitizen claimant to provide the applicable registration number and expiration date.⁵

Death benefits

Under the bill, a U.S. citizen dependent of an illegal or unauthorized alien who died from a workplace injury or occupational disease may receive death benefits under the Workers' Compensation Law if the deceased alien would have been eligible to receive compensation or benefits under the Law but for the alien's illegal or unauthorized status.

Similar to death benefits paid under current law, death benefits paid to an illegal or unauthorized alien's dependents from the State Insurance Fund are charged to a state fund employer's experience. Death benefits paid by a self-insuring employer are reported to the Administrator of Workers' Compensation as part of the self-insuring employer's paid compensation. Paid compensation is used to calculate assessments due from the self-insuring employer for the Safety and Hygiene Fund, the Workers' Compensation Surplus Fund Account, and the costs of administering the Law.⁶

⁴ R.C. 4123.01(A).

⁵ R.C. 4123.51(B) and 4123.513(B).

⁶ R.C. 4123.59(E) and R.C. 4123.35, not in the bill.



Under continuing law, death benefits may be paid to a deceased employee's dependents based on the degree of dependency and according to statutory qualifications. A spouse receives death benefits until the spouse dies or remarries. If the spouse remarries, the spouse is eligible for a final lump sum payment equal to two years of dependent spouse benefits. An individual who is wholly dependent on an employee at the time of the employee's death and who is not the deceased employee's spouse receives death benefits until that individual either turns 18, turns 25 if attending school, or, if mentally or physically incapacitated, ceases being mentally or physically incapacitated. Partially dependent individuals receive death benefits until the Administrator determines that benefits should stop.

Death benefits for wholly dependent individuals are equal to 66⅔% of the employee's average weekly wage (AWW) and can be no greater than the statewide AWW (\$932 in 2018). Death benefits for partly dependent individuals are equal to 66⅔% of the employee's AWW and can be no greater than 66⅔% of the statewide AWW (approximately \$621 in 2018). The Administrator apportions benefit amounts among the deceased employee's eligible dependents.⁷

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.⁸

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 an employer is not liable for damages suffered by reason of personal injury

⁷ R.C. 4123.59(A) through (C) and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2018, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed March 9, 2018).

⁸ Ohio Const., art. II, sec. 35 and R.C. 4123.74 and 4123.77, not in the bill.



sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect if a claim under the Workers' Compensation Law is denied for either of the following reasons:

- The claimant is an unauthorized alien;
- The claimant is not a U.S. citizen and is a dependent of an unauthorized alien who died as a result of suffering an injury or contracting an occupational disease.

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 individual's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law⁹ 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.¹⁰

Except as provided below, the bill also denies any Ohio court from having jurisdiction over a claim brought by or on behalf of an illegal or an unauthorized alien for such damages. 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**).¹¹

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 an illegal or unauthorized alien or a noncitizen dependent of a deceased illegal or unauthorized alien for damages suffered for the reason described immediately above if the person bringing the suit establishes, by clear and convincing evidence, that the employer hired the claimant or the deceased individual who is the subject of the claim knowing that the claimant or deceased individual was not authorized to work under the IRCA. The bill grants a court jurisdiction over the claim if the court would otherwise have jurisdiction. In that action, an employer cannot assert

⁹ R.C. 4123.77, not in the bill.

¹⁰ R.C. 2743.02(I), 2744.02(A), and 4123.513(C).

¹¹ R.C. 2307.82(B).



the common law defenses of assumption of the risk, contributory negligence, or the fellow servant rule.

The bill creates a rebuttable presumption that an employer did not hire an individual knowing that the individual was an illegal or unauthorized alien if the employer complied with ICRA requirements.¹²

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.¹³

Applicability

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

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.¹⁵

HISTORY

ACTION	DATE
Introduced	10-11-17
Reported, H. Insurance	11-29-17
Passed House (65-30)	12-05-17

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¹² R.C. 2307.82(C), 2743.02(I), 2744.02(A), and 4123.513(D).

¹³ R.C. 2307.82(C) and 4123.513(E).

¹⁴ Section 3.

¹⁵ Ohio Const., art. I, sec. 16.

