Ohio Legislative Service Commission

Bill Analysis

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H.B. 52*

131st General Assembly
(As Re-referred to H. Finance)
(Excluding appropriations, fund transfers, and similar provisions)

Rep. Hackett

BILL SUMMARY

Coverage and benefits

- Exempts volunteer corporate officers who work for a nonprofit corporation from coverage under Ohio's Workers' Compensation Law and prohibits these officers from electing coverage under the Law.
- Requires persons who under continuing law may elect to be covered under the Law to make that election in accordance with rules adopted by the Administrator of Workers' Compensation with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors.
- Allows for a mentally or physically incapacitated dependent to continue receiving workers' compensation death benefits while employed in a sheltered workshop if the dependent earns $2,000 or less in a calendar quarter.
- Allows temporary total disability compensation to be paid without an offset for supplemental sick leave benefits provided by an employer if the employer and employee mutually agree in writing.

Self-insuring employers

- Allows a self-insuring employer to furnish rehabilitation services directly to injured employees without prior approval from BWC.

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* This analysis was prepared before the report of the House Insurance Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires a self-insuring employer to furnish or pay directly for various compensation and benefits that under current law may be temporarily paid for from the Surplus Fund Account.

Notice on Appeal

- Adds to the notice that the Administrator must provide to an employer, upon appeal of an Industrial Commission order, that the results of the appeal may result in a recovery against an employer who is a noncomplying employer.

Health Partnership Program appeals

- Requires appeals of BWC decisions regarding participation in the Health Partnership Program to be filed in the Franklin County Court of Common Pleas.

Adjudicating Committee appeals

- Eliminates the requirement that the Administrator or the Administrator's designee must hold a hearing on an employer's appeal of an adverse decision of an adjudicating committee, but requires a hearing if the employer requests.

Administration

- Changes recommendation and reporting requirements of the Workers' Compensation Audit Committee and the Workers' Compensation Actuarial Committee.

- Allows the Administrator, with the Board's advice and consent, to employ occupational safety and health professionals and support staff in the Division of Safety and Hygiene.

- Allows the Administrator to designate more than six positions in the unclassified civil service in the Division if continuing law requirements for those designations are satisfied.

- Removes the requirement that the Administrator make those civil service designations only with the Board's advice and consent.

Additional changes

- Allows the Administrator to transfer investment earnings to fund the Disabled Workers' Relief Fund for claims occurring before January 1, 1987, rather than assessing private and public taxing district employers.

- Eliminates the Long-term Care Loan Fund Program and Fund.

CONTENT AND OPERATION

Coverage and benefits

Volunteer corporate officers and coverage

(R.C. 4123.01(A))

Under the bill, a volunteer corporate officer who works for a nonprofit corporation is not considered an "employee" for purposes of the Workers' Compensation Law. As a result, a nonprofit corporation (the "employer") is not required to obtain workers' compensation coverage for these individuals. Further, the bill prohibits a nonprofit corporation and a volunteer corporate officer from electing coverage under the Law.

Under continuing law, the following individuals are not considered "employees" for the purposes of the Workers' Compensation Law, but an employer may elect to cover these individuals: (1) a church minister in the exercise of ministry, (2) an officer of a family farm corporation, (3) an individual incorporated as a corporation, and (4) an employee of an employer who the Administrator of Workers' Compensation exempts from coverage requirements due to the employer's religious objection to insurance coverage. An employer who is a partnership or sole proprietorship also may elect to cover members of the partnership or the owner of the sole proprietorship.

The bill continues these provisions but requires an employer who is electing to cover the above individuals to make the election in accordance with rules adopted by the Administrator with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors (Board). The bill prohibits an individual from receiving benefits or compensation until BWC receives the election, rather than prohibiting an individual electing coverage from receiving coverage until BWC receives notice of the election as under current law.

Death benefit eligibility

(R.C. 4123.59)

Under continuing law, a dependent of an employee who is killed as a result of an occupational disease or injury is eligible to receive death benefits until certain conditions are met. For a dependent who is mentally or physically incapacitated from having any earnings, death benefits continue until the person is no longer so incapacitated. The bill allows for such a dependent to continue receiving death benefits, even though the dependent is employed in a sheltered workshop, as long as the dependent does not receive income, compensation, or remuneration from that employment in excess of $2,000 in any calendar quarter.

Sick leave and temporary total disability compensation

(R.C. 4123.56)

Continuing law requires the amount of an employee's temporary total disability compensation (TTD) award to be offset by certain benefits the employee simultaneously receives. The bill creates an exception to this requirement, allowing TTD to be paid without an offset for supplemental sick leave benefits provided by an employer if the employer and employee mutually agree in writing.

Continuing law requires TTD to be offset by payments paid for the same period or periods from either of the following sources:

- Temporary nonoccupational accident and sickness insurance paid pursuant to an insurance policy or program to which the employer has made the entire contribution or payment for providing insurance;
- A nonoccupational accident and sickness program fully funded by the employer.

Self-insuring employers

Rehabilitation services living maintenance and wage loss

(R.C. 4121.61, 4121.65, 4121.66, 4121.67, 4121.68, 4123.34, and 4123.35, with a conforming change in R.C. 4123.56)

Continuing law requires the Administrator to pay the expense of providing rehabilitation services, training, counseling, and living maintenance payments (payments to make up wage differentials when an employee returns to work) from the Surplus Fund Account within the State Insurance Fund. Under current law, an employer who is allowed to pay directly for compensation and benefits under the Workers' Compensation Law (known as a self-insuring employer) may either pay these expenses directly with approval of the Administrator or may have the expenses paid for through the Surplus Fund Account and reimburse that Account.

The bill eliminates a self-insuring employer's ability to have these expenses paid for from the Surplus Fund Account and the requirement to reimburse that account. Instead, the bill requires a self-insuring employer to pay these expenses directly and eliminates the requirement that a self-insuring employer obtain approval from the Administrator to do so. Under continuing law, the rehabilitation services furnished by a self-insuring employer must be of equal or greater quality and content as those provided by BWC.

Under continuing law if an employee is injured, contracts an occupational disease, or dies in the course of and arising out of participation in a rehabilitation program, the employee or the employee's dependents may receive compensation and benefits under the Workers' Compensation Law. These payments are paid from the Surplus Fund Account. Under the bill, a self-insuring employer must pay the compensation and benefits directly as part of the claim.

Handicap Reimbursement Program

(R.C. 4123.343 and 4123.35)

The bill also requires a self-insuring employer to furnish or pay directly for all compensation, benefits, or services due to an employee for an injury, occupational disease, or death caused by the employee's preexisting mental or physical handicap, rather than allowing that employer to participate in the Handicap Reimbursement Program.

Under current law, a self-insuring employer may elect to participate in the Handicap Reimbursement Program. Under that Program, a portion of the compensation or benefits payable for a claim involving an employee with a preexisting handicap may be charged to or reimbursed from the Surplus Fund Account. The Administrator must apportion the amount to be charged or reimbursed based on the percentage of the injury attributable to the preexisting mental or physical handicap. But with respect to claims under the Handicap Reimbursement Program involving a self-insuring employer, the Administrator must recoup payments from the Surplus Fund Account through assessments on the self-insuring employer participating in the Program based on the employer's proportion of paid compensation (payments made under the Workers' Compensation Law other than for medical benefits).

Technical change

(R.C. 4123.351)

The bill corrects an erroneous cross-reference.

Notice to employer of appellate obligations

(R.C. 4123.512)

Under continuing law, if an Industrial Commission decision (or, in lieu of the Industrial Commission, a designated staff hearing officer decision) is appealed to a court, the Administrator must notify the employer involved in the claim that if the employer fails to become an active party to the appeal, the Administrator may act on the employer's behalf and the results of the appeal could have an adverse effect on the employer's premium rates. Under the bill, the Administrator also must inform the employer that the results of the appeal may result in a recovery from the employer if the employer is determined to be a noncomplying employer under continuing law.

Health Partnership Program appeals

(R.C. 119.12; R.C. 4121.44 and 4121.441, not in the bill)

The bill requires appeals from BWC decisions regarding participation in the Health Partnership Program (HPP) to be filed in the Franklin County Court of Common Pleas. Under current law, those appeals generally are filed in the court of common pleas of the county in which the place of business of the provider or managed care organization is located or the provider is a resident. A current administrative rule requires also that a copy of that appeal be filed in the Franklin County Court of Common Pleas.

The HPP is the medical management portion of Ohio's Workers' Compensation system used by state fund employers. Under continuing law, to participate in the HPP a provider or managed care organization must be certified by BWC. To be certified, a provider or managed care organization must satisfy standards and criteria established in law and adopted by the Administrator, with the Board's advice and consent.

Appeals from adjudicating committee decisions

(R.C. 4123.291)

Under continuing law, an adjudicating committee appointed by the Administrator hears an employer's request, protest, or petition concerning certain premium-related matters. An employer may appeal an adverse decision of an adjudicating committee. The bill eliminates the current law requirement that the Administrator or the Administrator's designee must hold a hearing on such an appeal, simply requiring the Administrator or designee to consider and issue a decision on the appeal. However, the Administrator or designee must hold a hearing if the employer requests.

Administration

Workers' Compensation Audit and Actuarial Committees

(R.C. 4121.129; R.C. 4123.47, not in the bill)

The bill requires the Workers' Compensation Audit Committee to recommend to the Board an accounting firm to perform the Auditor of State's annual audit of the Safety and Hygiene Fund and the administration of the Workers' Compensation Law. Under continuing law, this audit must be conducted by the Auditor of State and must include audits of all fiscal activities, claims processing and handling, and employer premium collections.

The bill eliminates a current law requirement that the Audit Committee recommend to the Board an actuarial firm to perform the required annual actuarial analysis of the workers' compensation funds.

The bill also requires the Workers' Compensation Actuarial Committee to review and approve the various rate schedules prepared and presented by the BWC Actuarial Division or by actuarial consultants who contract with the Board. Under current law, the Actuarial Committee must review calculations on rate schedules and performance, but only those prepared by contracted actuarial consultants.

Division of Safety and Hygiene employees

(R.C. 4121.37)

The Division of Safety and Hygiene within BWC conducts investigations and researches for the prevention of industrial accidents and diseases, conducts loss prevention programs and courses for employers, establishes and administers cooperative programs with employers for the purchase of individual safety equipment for employees, and distributes information that benefits employers and employees.

The bill allows the Administrator, with the Board's advice and consent, to employ occupational safety and health professionals and support staff in the Division and eliminates references to employing investigators, clerks, and stenographers in the Division.

The bill allows the Administrator to designate an unlimited number of Division positions in the unclassified civil service if continuing law requirements for those designations are satisfied. Current law limits the Administrator to six designations. The bill also removes the current law requirement that the Administrator make these designations only with the Board's advice and consent. Under continuing law, positions designated in the unclassified civil service must be primarily and distinctively administrative, managerial, or professional in character. All other employees are in the classified service.

DWRF assessments and alternative funding

(R.C. 4123.411 and 4123.419)

Under current law, the Administrator, with the Board's advice and consent, annually levies assessments against all employers to carry out the purposes of the Disabled Workers' Relief Fund (DWRF). DWRF is a fund that is used to make essentially cost-of-living payments to recipients of permanent and total disability compensation. DWRF consists of two accounts: one for claims occurring before January 1, 1987, and one for claims occurring on or after that date.

With respect to claims occurring before 1987, the bill allows the Administrator to decide whether to levy assessments on employers for amounts necessary to sustain DWRF for those claims. Rather than levying these assessments, the bill allows the Administrator, with the Board's advice and consent, to transfer amounts to DWRF from investment earnings of the Surplus or Reserve accounts in the State Insurance Fund in amounts necessary to cover DWRF claims involving private and public taxing district employers (public employers other than the state as an employer). The bill does not allow for these transfers to cover DWRF claims involving the state as an employer.

The bill also eliminates a current law requirement that the Administrator make transfers from DWRF to the General Revenue Fund to reimburse the General Revenue Fund for moneys appropriated for disabled worker relief. These transfers are no longer being made.

Long-term Care Loan Fund Program

(R.C. 4121.48 (repealed) and 4121.37)

The bill eliminates the Long-term Care Loan Fund Program and Fund operated by the Administrator. The Program allows the Administrator to make interest-free loans to nursing homes or hospitals so that they may purchase, improve, install, or erect, sit-to-stand floor lifts, ceiling lifts, other lifts, and fast electric beds and to pay for the education and training of personnel to implement a facility policy of no manual lifting of residents by employees.

The Fund is currently funded through transfers from the Safety and Hygiene Fund.

HISTORY

ACTION	DATE
Introduced	02-10-15
Reported, H. Insurance	---
Re-referred to H. Finance	---

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