



# Ohio Legislative Service Commission

---

## Bill Analysis

Kelly Bomba

### H.B. 205

131st General Assembly  
(As Introduced)

**Reps.** Henne and Retherford, Becker, Butler, Hambley, Hood, Terhar, Maag, Brenner, Romanchuk, Amstutz, Reineke

---

### **BILL SUMMARY**

- Allows very large employers and certain employer groups to obtain Workers' Compensation coverage from a private workers' compensation insurer.
- Allows certain self-insuring employers to indemnify against all or part of the employer's loss arising out of liability under the Workers' Compensation Law.
- Transfers oversight of self-insuring employers and the corresponding administrative duties from the Administrator of Workers' Compensation to the Superintendent of Insurance.
- Transfers administration and oversight of the Self-Insuring Employers' Guaranty Fund from the Administrator to the Superintendent.
- Makes the Self-Insuring Employers Evaluation Board, for administrative purposes, a part of the Department of Insurance rather than the Bureau of Workers' Compensation as under current law.
- Requires the Superintendent, in consultation with the Administrator, rather than the Administrator as under current law, to calculate and collect the administrative assessment paid by self-insuring employers under continuing law.
- Revises the requirements an employer must satisfy to be granted the status of self-insuring employer.

---

## TABLE OF CONTENTS

Private workers' compensation insurance .....	2
WCI coverage requirements.....	4
Application and approval to obtain coverage from a WCI .....	4
Compliance with the Workers' Compensation Law.....	4
Administrative assessment.....	5
WCI premium rate settings.....	6
Insolvency of insurer .....	6
Indemnification against loss arising out of liability under the Workers' Compensation Law.....	6
Transfer of oversight over self-insuring employers .....	7
Changes to requirements to become a self-insuring employer .....	8
Self-Insuring Employers' Guaranty Fund .....	10
Self-Insuring Employers Evaluation Board .....	10
Administrative assessments.....	11
Transfer of personnel.....	11
Organizational changes.....	11

---

## CONTENT AND OPERATION

### Private workers' compensation insurance

The bill specifically states that, unless otherwise exempted under the Workers' Compensation Law, an employer must obtain coverage for claims arising under the Law. An employer must cover these claims in one of the following ways:

(1) By obtaining coverage through the State Insurance Fund (thus, by becoming a state fund employer, as under current law);

(2) As added by the bill, by obtaining coverage through a workers' compensation insurer (WCI) (thus, by becoming a privately insured employer);

(3) By being granted the privilege to pay compensation and benefits directly in accordance with continuing law (thus, by becoming a self-insuring employer, as under current law).<sup>1</sup>

Under continuing law, employers who comply with the requirements of the Workers' Compensation Law are not liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of the employee's employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by the premium paid to a WCI, as

---

<sup>1</sup> R.C. 4123.35(A).



added by the bill, or into the State Insurance Fund, or during the interval the employer is a self-insuring employer, whether or not such injury, occupational disease, bodily condition, or death is compensable under the Workers' Compensation Law.<sup>2</sup>

The bill allows an employer who employs a minimum of 1,000 employees in Ohio (including a self-insuring employer) or a group as defined in the bill to elect to obtain coverage for claims arising under the Workers' Compensation Law through a WCI.<sup>3</sup> Under the bill, a WCI is defined as an insurance company holding a certificate of authority issued pursuant to the Insurance Law<sup>4</sup> or any health insuring corporation holding a certificate of authority under the Health Insuring Corporation Law<sup>5</sup> authorized to sell coverage for claims arising under the Workers' Compensation Law. It does not include the Administrator of Workers' Compensation, the Bureau of Workers' Compensation (BWC) Board of Directors, or BWC.<sup>6</sup> A "group" means a trade association that has been organized and maintained in good faith for a continuous period of one year or more for purposes other than obtaining coverage through a WCI and maintains a minimum enrollment of 300 employees in Ohio of two or more employers whose businesses are substantially similar such that risks which are grouped are substantively homogenous.<sup>7</sup>

Unless otherwise noted, continuing law applies to an employer who obtains coverage through a WCI in the same manner as it applies to a state fund employer or self-insuring employer. This includes the payment of compensation and benefits, the appeals process (a WCI determines whether a claim is compensable and appeals are made through the Industrial Commission process), the liability to employees who are injured or contract an occupational disease, and penalties and liabilities for noncomplying employers, for workers' compensation fraud, and for overpayments.

A WCI is not required to maintain a program similar to the Health Partnership Program or a Qualified Health Plan, which are medical management programs currently used in the workers' compensation systems by BWC or self-insuring employers. The bill allows a WCI to address settlements in the WCI's policy, and if the WCI elects to do so, a settlement agreement entered into under the policy is subject to

---

<sup>2</sup> R.C. 4123.35(A) and 4123.74 and R.C. 4123.77, not in the bill.

<sup>3</sup> R.C. 4123.351(B)(1).

<sup>4</sup> R.C. Title XXXIX.

<sup>5</sup> R.C. Chapter 1751.

<sup>6</sup> R.C. 4123.01(P).

<sup>7</sup> R.C. 4123.351(A)(1).



Industrial Commission review, similar to current law for claims involving state fund and self-insuring employers. Similar to state fund employers, a privately insured employer cannot deduct any portion of the employer's WCI premium from an employee's pay and an employee cannot agree to pay any portion of that premium.<sup>8</sup>

### **WCI coverage requirements**

The bill requires coverage offered by a WCI to provide for the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided by BWC with respect to employees of state fund employers under continuing law.

The bill limits the Disabled Workers' Relief Fund (DWRP) to state fund and self-insuring employers and requires a WCI to provide compensation that is similar to the compensation provided under the DWRP. The DWRP provides cost of living adjustments to individuals who receive permanent total disability compensation.<sup>9</sup>

### **Application and approval to obtain coverage from a WCI**

The bill requires an employer who wishes to obtain coverage through a WCI to apply to the Administrator on a form prescribed by the Administrator. The bill requires the Administrator to adopt rules to govern the application process and the nature and extent of the proof required to justify a finding of fact to allow an employer to be granted the status of a privately insured employer. Upon a finding by the Administrator that an employer satisfies the bill's requirements and any requirements the Administrator adopts in rules, the bill requires the Administrator to grant the employer the ability to obtain coverage through a WCI.<sup>10</sup>

### **Compliance with the Workers' Compensation Law**

The bill requires an employer insured by a WCI to annually provide proof of coverage to the Administrator for the purpose of verifying compliance with the Workers' Compensation Law.

---

<sup>8</sup> R.C. 4123.35(A), with conforming changes in R.C. 1561.04, 1561.34, 1701.86, 1729.55, 2705.05, 2913.48, 3121.01, 3121.0311, 3701.741, 3702.51, 3955.05, 3964.02, 4121.121, 4121.31, 4121.50, 4123.026, 4123.25, 4123.292, 4123.38, 4123.411, 4123.412, 4123.46, 4123.50, 4123.51, 4123.511, 4123.512, 4123.54, 4123.65, 4123.75, 4123.79, 4123.80, 4123.81, 4123.83, 4123.84, 4123.85, 4123.93, 4123.931, and 5119.332.

<sup>9</sup> R.C. 4123.351(F) and 4123.416.

<sup>10</sup> R.C. 4123.351(B).



If an employer fails to pay the employer's premium for WCI coverage, the bill requires the Administrator to consider the employer to be noncompliant for the purpose of having coverage under the Workers' Compensation Law. The Administrator must then calculate the employer's premium in the same manner as the Administrator must otherwise calculate premiums under the Workers' Compensation Law, using the wages the employer claimed would be reported to the WCI for securing coverage.<sup>11</sup>

Under the bill, if an employer is a state fund employer and wishes to obtain coverage through a WCI for workers' compensation claims, the employer must notify the Administrator not less than 30 days prior to the date the employer wishes to change insurers. Similar to a state fund employer who becomes a self-insuring employer, if the Administrator determines that the amount in the employer's account within the State Insurance Fund is not sufficient to cover claims that involve the employer and that exist on the date the Administrator receives the notice, the bill allows the Administrator to charge the employer a fee in an amount that is sufficient to cover the deficit.

If the Administrator charges this fee, the Administrator must send to the employer a written fee statement that details the outstanding amounts due for each claim that is not covered by the amount in the employer's account within the State Insurance Fund. If the employer disagrees with the amount of the fee charged or any of the amounts identified in the fee statement, the employer may file a protest with an adjudicating committee. The Administrator may charge this fee only at the time the employer exits the State Insurance Fund. If, at a later date, the Administrator determines that the amount of the fee charged was miscalculated and the fee paid by the employer does not cover the outstanding claims, the bill prohibits the Administrator from collecting the additional amount necessary to cover those claims from the employer. The Administrator must transfer funds from the Surplus Fund Account to cover the necessary amount for those claims. If the Administrator charged the employer a fee in an amount that was higher than the amount necessary to cover the outstanding claims, the bill requires the Administrator to refund to the employer the amount of the fee that is in excess of the actual amount owed.<sup>12</sup>

### **Administrative assessment**

The bill requires an employer who obtains coverage through a WCI to pay an annual assessment to the Administrator for administrative costs borne by the employer. The assessment is required to be based upon the paid compensation (generally, amounts a WCI pays under the Workers' Compensation Law except for medical and

---

<sup>11</sup> R.C. 4123.351(B) and (E) and 4123.75.

<sup>12</sup> R.C. 4123.351(C).

death benefits) attributable to the privately insured employer, similar to the way the administrative assessment is calculated under continuing law for self-insuring employers. The bill requires a privately insured employer to report to the Administrator its amount of paid compensation annually. The bill also requires the Administrator to adopt rules for the calculation and collection of the assessments.<sup>13</sup>

### **WCI premium rate settings**

The bill specifies that a WCI is subject to the Casualty Insurance and Motor Vehicle Insurance Law<sup>14</sup> for the purpose of setting rates.<sup>15</sup> The Casualty Insurance and Motor Vehicle Insurance Law lists basic provisions for rate making and relevant factors to consider in setting premium rates. The Law requires every insurer to file with the Superintendent of Insurance every form of a policy, endorsement, rider, manual of classifications, rules, and rates, every rating plan, and every modification of any of them which it proposes to use. The filing must state any proposed effective date and indicate the character and extent of the coverage contemplated. Continuing law also describes how an insurer may deviate from the rates filed with the Superintendent.<sup>16</sup>

### **Insolvency of insurer**

If a WCI ceases to operate in Ohio, any claims under the Workers' Compensation Law covered by that WCI at the time the insurer ceases operations must be administered in accordance with the Ohio Insurance Guaranty Association Law.<sup>17</sup> If an employer insured by that insurer does not select a different WCI or is not granted the privilege of self-insurance, that employer must obtain coverage through the State Insurance Fund.<sup>18</sup>

### **Indemnification against loss arising out of liability under the Workers' Compensation Law**

Current law generally prohibits an employer from indemnifying or insuring the employer's payments for workers' compensation claims, except that a self-insuring employer may indemnify against all or part of such employer's loss in excess of at least

---

<sup>13</sup> R.C. 4123.351(D), 4123.342, and 4123.351(A)(2).

<sup>14</sup> R.C. Chapter 3937.

<sup>15</sup> R.C. 4123.351(G).

<sup>16</sup> R.C. 3937.02, 3937.021, 3937.03, and 3937.06, not in the bill.

<sup>17</sup> R.C. Chapter 3955.

<sup>18</sup> R.C. 4123.351(H).

\$50,000 from any one disaster or event arising out of the employer's liability under the Workers' Compensation Law. Otherwise, under current law, no insurance corporation may, directly or indirectly, represent an employer in the settlement, adjudication, determination, allowance, or payment of claims. The bill provides an exception to the current law prohibition by allowing a WCI to enter into a contract of indemnity with an employer as explained above (see "**Private workers' compensation insurance**").<sup>19</sup>

The bill eliminates a current provision of law that prohibits the Administrator, when making the finding of fact with respect to the financial ability of an employer to grant the employer self-insuring status, from considering any contract of indemnity, or the ability of the employer to procure such a contract, as increasing the financial ability of the employer.<sup>20</sup>

### **Transfer of oversight over self-insuring employers**

The bill transfers oversight of self-insuring employers from the Administrator to the Superintendent. Thus, under the bill, an employer must apply to the Superintendent to obtain self-insuring status, and must abide by the Superintendent's rules. However, under the bill, an employer that is a self-insuring employer on the bill's effective date is not required to obtain approval from the Superintendent to remain as a self-insuring employer, and the self-insuring employer must continue to pay claims directly in accordance with the Workers' Compensation Law. Except as otherwise noted below (see "**Changes in requirements to become a self-insuring employer**," below), the bill maintains the current law requirements for applying for and obtaining self-insuring status.<sup>21</sup>

Business commenced but not completed pursuant to current law governing the administration of the self-insurance program, as that law existed immediately prior to the bill's effective date, by the Administrator and BWC must be completed by the Superintendent or the Department in the same manner, and with the same effect, as if completed by the Administrator or BWC. All of the rules, orders, and determinations enacted or adopted by the Administrator or BWC that relate to the transfer of functions, duties, and offices required by the bill continue in effect as rules, orders, and determinations of the Superintendent until modified or rescinded by the Superintendent. If necessary to ensure the integrity of the numbering of the

---

<sup>19</sup> R.C. 4123.82(B)(1) and 4123.351.

<sup>20</sup> R.C. 4123.82(B)(2).

<sup>21</sup> R.C. 3971.01 to 3971.15 and Sections 3 and 4, with conforming changes in R.C. 9.315, 4121.44, 4121.61, 4121.65, 4121.66, 4123.01, 4123.25, 4123.38, 4123.411, 4123.412, 4123.416, 4123.50, 4123.51, 4123.512, 4123.63, 4123.83, 4123.931, and 4125.05.



Administrative Code, the Director of the Legislative Service Commission must renumber the Administrator's rules to reflect their transfer to the Superintendent.<sup>22</sup>

### **Changes to requirements to become a self-insuring employer**

The bill revises some of the requirements an employer must satisfy to be granted the status of self-insuring employer.

The bill limits the application fee for any type of employer who applies for self-insuring status to a reasonable fee of not more than \$1,000. Under current law, the Administrator may charge a reasonable application fee. The bill also requires all fees relating to granting self-insurance status to be deposited into the Department of Insurance Operating Fund created under continuing law.<sup>23</sup>

With respect to a private sector employer applying for self-insuring status or a board of county commissioners applying to self-insure the construction of a sports facility, the bill lowers the minimum number of employees required for self-insuring status from 500 to 300.<sup>24</sup>

In determining whether an employer is able to become a self-insuring employer, the bill requires that a private employer or a public employer allowed to self-insure specified construction projects maintain minimum reserves that are necessary in the exercise of prudent actuarial judgment and that are certified by a member of the American Academy of Actuaries as having been computed in accordance with accepted loss reserving standards and as being fairly stated in accordance with sound loss reserving principles, or determined to be sufficient through other documentation acceptable to the Superintendent. This provision replaces the current law requirement that the Administrator must consider the sufficiency of the employer's assets located in Ohio to insure the employer's solvency in paying compensation directly.<sup>25</sup>

The bill reduces the look-back period for financial disclosure for boards of county commissioners applying for self-insuring status for sports facility construction and for private employers. Under the bill, the Superintendent must examine financial records of an employer seeking self-insuring status for the current year, and the

---

<sup>22</sup> Section 3.

<sup>23</sup> R.C. 3971.04(E) and 3971.07.

<sup>24</sup> R.C. 3971.03(B)(1) and 3971.04(D)(1).

<sup>25</sup> R.C. 3971.03(B)(4), 3971.04(D)(4), and 3971.05(E)(5).





previous two years. Current law requires the Administrator to examine the employer's financial records from the current year and the previous four years.<sup>26</sup>

The bill adds the existence of an indemnification policy as another factor the Superintendent must consider in deciding whether to grant self-insuring status to a private employer. This allows the Superintendent to take into consideration any catastrophic loss indemnification permitted under current law, and any full indemnification policy permitted for certain employers under the bill (see "**Private workers' compensation insurance**," above).<sup>27</sup>

Because the Superintendent is now determining self-insurance status, the bill requires the Superintendent to notify the Administrator of the employer's initial grant of self-insuring status and to annually certify to the Administrator a list of employers who have met the minimum level of performance as determined by the Superintendent and maintained their self-insuring status.<sup>28</sup>

Under continuing law, a private employer who wishes to self-insure, or a board of county commissioners that wishes to self-insure the construction of a sports facility, must satisfy all of the following requirements in addition to those described above:

- The employer has operated in Ohio for at least two years;
- The employer is able to pay the buyout from the State Insurance Fund, if applicable;
- The employer has an organizational plan for the administration of the Workers' Compensation Law;
- The employer has a proposed plan to inform employees about changing from a state fund employer to a self-insuring employer, the procedures the employer will follow as a self-insuring employer, and the employee's right to compensation and benefits;
- The employer has an account in an Ohio financial institution or, if the account is with an out-of-state financial institution, the employer ensures that workers' compensation checks are drawn from the same account as payroll checks or the employer clearly indicates that payment will be honored by a financial institution in Ohio;

---

<sup>26</sup> R.C. 3971.03(B)(5) and 3971.04(D)(5).

<sup>27</sup> R.C. 3971.03(B)(9).

<sup>28</sup> R.C. 3971.07(D) and (E).



- In the case of the board of county commissioners, the board provides the Superintendent a bond in an amount equal to 125% of the projected losses as determined by the Superintendent.<sup>29</sup>

### **Self-Insuring Employers' Guaranty Fund**

Since the bill transfers oversight of self-insuring employers to the Superintendent, the bill also transfers administration and oversight of the Self-Insuring Employers' Guaranty Fund to the Superintendent. The Fund is used to cover claims in the event a self-insuring employer defaults. The bill requires the Superintendent to administer the Fund in the same manner as the Administrator is currently required under current law.<sup>30</sup>

### **Self-Insuring Employers Evaluation Board**

The Self-Insuring Employers Evaluation Board (SIEEB) hears all complaints or allegations of misconduct forwarded to SIEEB by the Superintendent (rather than the Administrator as under current law) against a self-insuring employer or questions as to whether a self-insuring employer continues to meet minimum standards. Under continuing law, SIEEB must investigate and may order the employer to take corrective action in accordance with the schedule SIEEB fixes. SIEEB's determination in this regard need not be made by formal hearing but must be issued in written form and contain the signature of at least two board members (SIEEB consists of three members). If SIEEB determines, after a hearing conducted pursuant to the Administrative Procedure Act and the Superintendent's rules (as transferred from BWC under the bill), that the employer has failed to correct the deficiencies within the time fixed by SIEEB or is otherwise in violation of the Workers' Compensation Law, continuing law requires SIEEB to recommend to the Superintendent a penalty, which may include revocation of the employer's status as a self-insuring employer, probation, or a civil penalty not to exceed \$10,000 for each failure. Under continuing law, a recommendation to revoke an employer's status as a self-insuring employer must be by unanimous vote, but a recommendation for any other penalty is by majority vote. If SIEEB makes recommendations to the Superintendent for disciplining a self-insuring employer, the Superintendent, rather than the Administrator as under current law, promptly and fully must implement the recommendations.

Additionally, the bill makes SIEEB, for administrative purposes, a part of the Department of Insurance and the Superintendent must furnish SIEEB with necessary

---

<sup>29</sup> R.C. 3971.03 and 3971.04(D).

<sup>30</sup> R.C. 3971.09.

office space, staff, and supplies. Currently, SIEEB is administratively a part of BWC, and the Administrator must furnish SIEEB with office space, staff, and supplies. SIEEB must meet as required by the Superintendent instead of the Administrator as under current law.<sup>31</sup>

### **Administrative assessments**

As part of the transfer of oversight, the bill requires the Superintendent, in consultation with the Administrator, to calculate the administrative assessment paid by self-insuring employers under continuing law. The Superintendent must use the formulas specified in continuing law to calculate the assessments. Currently, the Administrator calculates and collects this assessment. The bill also transfers the Self-Insurance Assessment Fund from the Administrator to the Superintendent.<sup>32</sup>

### **Transfer of personnel**

The bill specifies that, subject to the continuing law layoff procedures applicable to state employees, all employees of the Administrator, who perform functions of the BWC Self-Insurance Division or who are staff of SIEEB are transferred to the Department of Insurance immediately prior to the bill's effective date. The vehicles and equipment assigned to the employees are also transferred to the Department.<sup>33</sup>

### **Organizational changes**

The following table explains the various organizational changes as part of the transfer of authority from the Administrator to the Superintendent under the bill.

<b>Content</b>	<b>Current law location</b>	<b>Location under the bill</b>
Requirement of coverage and payment of premiums for state fund employers	R.C. 4123.35(A)	R.C. 4123.35(B)
Workers' compensation self-insurance, generally	R.C. 4123.35(B)	R.C. 3971.03
Self-insuring status for public employers	R.C. 4123.35(C) and 4123.353	R.C. 3971.04
Self-insuring status for construction projects	R.C. 4123.35(O), (P), (Q), and (R)	R.C. 3971.05
Surety bonds and rules establishing additional proof required to self-insure	R.C. 4123.35 (D) and (E)	R.C. 3971.06

<sup>31</sup> R.C. 3971.12.

<sup>32</sup> R.C. 3971.10 and Section 3, with conforming changes in R.C. 4123.34 and 4123.342.

<sup>33</sup> Section 3.



Application process and prompt payment and processing requirements for self-insuring employers	R.C. 4123.35(B), (E), (F), and (H)	R.C. 3971.07
Procedures for audits and complaints against self-insuring employers	R.C. 4123.35(G)	R.C. 3971.08
Self-insuring employers' guaranty fund	R.C. 4123.351	R.C. 3971.09
Charging assessments to self-insuring employers	R.C. 4123.35(J), (K), (L), and (M)	R.C. 3971.01 and 3971.10
Procedure for self-insuring employers who elect to resume obtaining insurance from the State Insurance Fund	R.C. 4123.35(I)	R.C. 3971.11
Self-Insuring Employers Evaluation Board	R.C. 4123.352	R.C. 3971.12
Reversion if method of assessment declared unconstitutional	R.C. 4123.35(N)	R.C. 3971.15

---

## COMMENT

Ohio's Workers' Compensation Law stems from Section 35, Article II of the Ohio Constitution. Currently, Ohio has an "exclusive" state fund into which employers must pay premiums for their workers' compensation coverage unless they have been granted the privilege of self-insurance. It remains unclear as to the extent to which Ohio could depart from the scheme utilized under current law without at least some amendment of the constitutional provision. Analogizing from the Ohio Supreme Court decision that authorizes the self-insurance option, Ohio might be able to allow private insurance to compete with the State Insurance Fund if the legislation (1) does not depart from the underlying purpose of the constitutional provision, (2) guarantees employees the same benefits as are available to an employee of a state fund employer, and (3) applies uniformly within a classification.<sup>34</sup> However, only a court could determine whether any type of private insurance system complies with the constitutional provision.

---

## HISTORY

ACTION	DATE
Introduced	05-12-15

H0205-1-131.docx/emr

---

<sup>34</sup> *State ex rel. Turner v. U.S. Fidelity and Guarantee Company*, 96 Ohio St. 250 (1917).

