

10:00 a.m. (EST)
1-866-362-9768
552-970-8972#



Safety & Workers' Compensation Committee

Tuesday, February 13, 2018

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**2018 Safety & Workers'
Compensation Committee
Calendar**

Meetings begin at 10:00 a.m.

Tuesday, February 13, 2018
Wednesday, May 2, 2018
Wednesday, October 17, 2018

**OMA Safety & Workers' Compensation Committee
Meeting Sponsor:**





OMA Safety & Workers' Compensation Committee

February 13, 2018

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Update	Brian Jackson, OMA staff
Guest Speakers	A.J. Groeber, Executive Director, State Medical Board of Ohio Sarah Morrison, Administrator, Ohio BWC
OMA Counsel's Report	Sue Wetzel, Bricker & Eckler LLP
OMA Public Policy Report	Rob Brundrett, OMA Staff

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: dlocke@ohiomfg.com or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

Thanks to Today's Meeting Sponsor:



Administrator/CEO Sarah D. Morrison



Ohio Governor John Kasich appointed Sarah Morrison Administrator/CEO of the Ohio Bureau of Workers' Compensation in May 2016. She leads an agency of more than 1,900 employees that serves more than 250,000 employers and administers nearly 1 million open claims.

Morrison joined BWC in November 2012 with more than 15 years of diverse legal experience. Prior to joining BWC, she was a partner at Taft Stettinius & Hollister, LLP in Columbus. She has specialized in various types of civil and commercial litigation, including complex litigation and class actions. Her trial practice involved appearances in federal and state courts, and she has argued before the Ohio Supreme Court.

Morrison began her career as a law clerk with the Chester Wilcox & Saxbe law firm. She also served one year as a judicial law clerk for Judge John D. Holschuh of the U.S. District Court for the Southern District of Ohio.

She earned a bachelor's degree in political science from Ohio State University and a law degree from the Capital University Law School. She was named an Ohio Rising Star by Law & Politics magazine and was a recipient of Columbus Business First's "40 Under 40 Award" in 2005.

A.J. Groeber – Executive Director, State Medical Board of Ohio

A.J. Groeber currently serves as the executive director for the State Medical Board of Ohio. The board is tasked with establishing the standard of health care in the state, and regulating more than 70,000 licensees across a dozen medical professions.

Under his leadership, the board has focused on administrative efficiency to speed processes and lower costs to licensees and the public. Major initiatives under Mr. Groeber's direction have included the board's efforts to reduce excessive opioid prescribing, the migration to cloud-based, virtual licensing and enforcement, and the development of Ohio's medical marijuana program.

Before leading the board's team of more than 80 staff, he oversaw operations for the Ohio Board of Tax Appeals as executive director. Mr. Groeber has a background in strategic planning for operational efficiencies, cost reductions, and alignment of business processes and performance. He earned his Master of Business Administration from The Ohio State University and his bachelor's degrees from Ohio University.

Ohio Medical Marijuana Control Program

<http://medicalmarijuana.ohio.gov>





Guiding Principles

Medical Marijuana Control Program is:

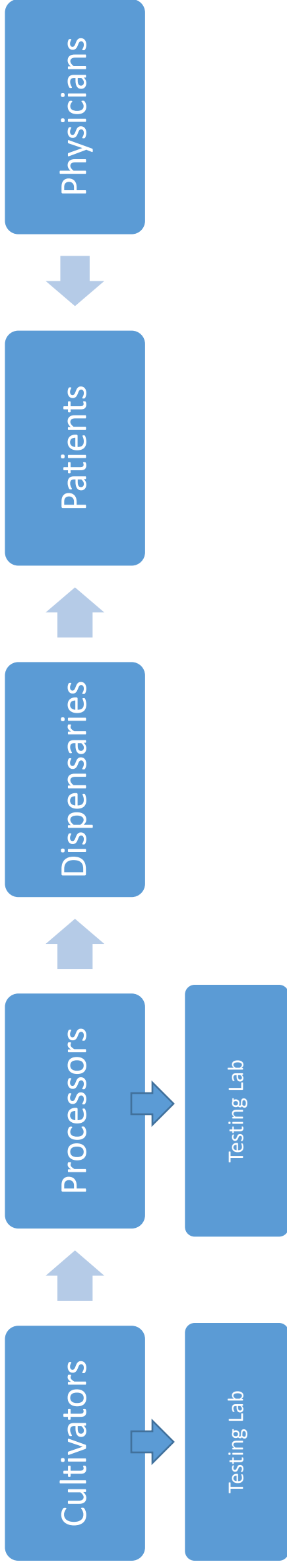
1. Patient-centered and safe.
2. Responsive, data-driven, and transparent.
3. Flexible, scalable, and sustainable.
4. Characterized by consistency, integrity, and collaboration across one program.



Timeline

- September 8, 2016 – House Bill 523 Effective
- November 1, 2016 – First Medical Marijuana Advisory Committee meeting
- May 6, 2017 – Cultivator rules adopted
- September 8, 2017 – All other rules adopted
- September 8, 2018 – Ohio Medical Marijuana Control Program operational
- October 8, 2021 – Medical Marijuana Advisory Committee sunsets

Medical Marijuana Process Flow Chart



Who is Responsible?

Department of Commerce

- Cultivators
- Processors
- Testing laboratories

Pharmacy Board

- Dispensaries
- Patients/Caregivers
- New forms and methods of medical marijuana

Medical Board

- Certified physicians
- New qualifying conditions





Ohio Department of Commerce



Department of Commerce Responsibilities

- Issue licenses to medical marijuana cultivators, processors and testing laboratories in the State of Ohio, which includes the following:
 - Number of licenses issued for each business type;
 - Production control mechanisms; and
 - Eligibility criteria for licensure.
- Develop rules necessary for the administration of the program, such as:
 - Facility security;
 - Product quality control and assurance;
 - Packaging and labeling standards;
 - Product consistency and availability; and
 - Testing laboratory standards and uniformity of analysis.
- Establish enforcement and compliance measures with licensure requirements.



Cultivators

- When drafting the regulations, the MMCP balanced the cost of compliance with the benefit of the regulation.
- Based on conversations with regulators in others states with established medical marijuana programs and industry stakeholders, Ohio pursued different mechanism that are unique in the industry.
 - The MMCP created two levels of cultivator licenses with different production capacities.
 - Level I – up to 12 licenses prior to September 8, 2018.
 - Level II – up to 12 licenses prior to September 8, 2018.
 - Existing licensees have the ability to expand the marijuana cultivation area if certain triggers are met.
 - Level I licensees can have 25,000 sq. ft. of marijuana cultivation area. Expandable to 50,000 sq. ft. and 75,000 sq. ft., dependent on demand.
 - Level II licensees can have 3,000 sq. ft. of marijuana cultivation area. Expandable to 6,000 sq. ft. and 9,000 sq. ft., dependent on demand.
 - The MMCP identified the need for a plant-only processor license to allow for direct shipment of plant material from a cultivator to a dispensary.



Processors

- The O.R.C. 3796 establishes the approved forms and methods of administration for medical marijuana, and the processor rules accommodate the different methods used to manufacture these forms.
 - Flexibility is important as new processes and methods surface as the market matures, as well as new forms are approved by the board.
- Set the annual license fee at an amount that reflects the plant-only processor license and the limited forms available at the Program's inception.
- A ceiling was set at 40 processor licenses to allow for vertical integration and greater product variety for patients.



Testing Laboratories

- Provides a mechanism to issue public university licenses and private laboratory licenses in accordance with H.B. 523.
- Offers testing flexibility at different points during the manufacturing process to eliminate redundancies, control costs, and ensure patient safety.
- Creates a universal standard for licensed labs that can accommodate future advancements in analytical techniques without departing from that standard.

HB 523: Department of Commerce “Seed-to-Sale” Electronic Database

- Establish and maintain an electronic database to monitor medical marijuana through cultivation, processing, testing and dispensing
 - May contract with a separate entity to establish and maintain all or any part of the electronic database
 - Database shall update medical marijuana information instantaneously
 - Cultivator, processor, retail dispensary and testing laboratory all required to submit any information deemed necessary for maintaining the database





State of Ohio Board of Pharmacy

Pharmacy's Role in Rule Development

Responsible for rules relating to:

- Registration of patients/caregivers
- Retail dispensaries
- Form and method of medical marijuana, including a 90-day supply

Authorized to:

- Enforce rules related to patients/caregivers and dispensaries
- Use Ohio Automated Rx Reporting System for the collection of information related to dispensing medical marijuana to registered patients
- Disseminate registered patient information to retail dispensaries





- The Board may issue up to 60 dispensary licenses through a competitive selection process
- Dispensaries will be required to report to the Ohio Automated Rx Reporting System in real-time
- Employees will be required to be licensed with the Board and to wear Board-issued ID cards while on dispensary premises
- Dispensaries will have to develop a policy for the education of patients and caregivers
- Dispensaries will be required to pay a \$5,000 application fee and \$70,000 biennial licensing fee

Dispensaries



- All patients and caregivers must register with the Board to receive a state-issued medical marijuana patient identification card
 - Registration will be electronic and can be submitted by a patient's recommending physician or physician's delegate
 - Annual registration fee is \$50 for patients and \$25 for caregivers
- Patients under 18 must have a parent or legal representative as a caregiver
- A person must be 21 to serve as a caregiver and patient can have up to 2 caregivers; each caregiver can have up to 2 patients

Patients and Caregivers

House Bill 523-Approved Forms



Oils

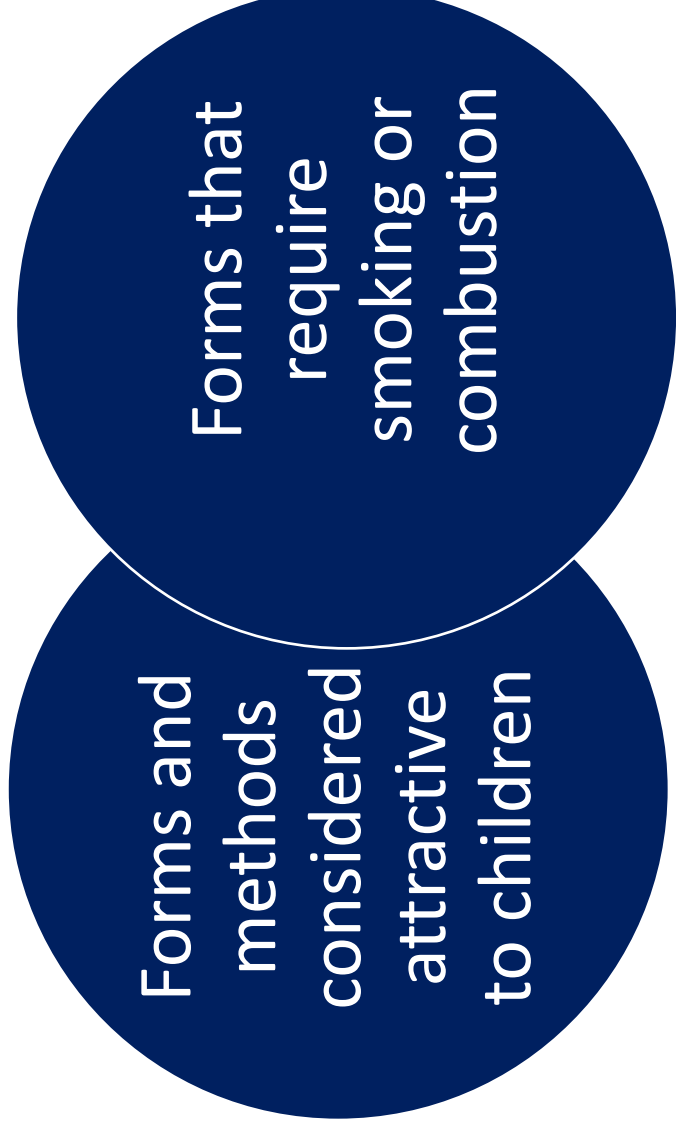
Tinctures

Plant
material

Edibles

Patches

House Bill 523 Prohibitions on Form and Method of Administration





- Responsible for most of the psychoactive effects of cannabis
- Best available clinical data is for less than 23% THC
 - Data focuses on efficacy based on THC content
 - Does not take into account the “Ensemble Effect” (also known as the Entourage Effect)
 - Limited studies demonstrate this effect at this time
- Encouraging stakeholders to provide us with additional studies

THC Content



90-Day Supply of Plant Material

Tier	THC Content	Maximum 90-Day Supply	THC Medical Efficacy	Adverse Events
Tier 1	0 – 23%	8 oz. 10 oz. (terminal exception)	+	+
Tier 2	23.1 – 35%	5.3 oz. 6.6 oz. (terminal exception)		+

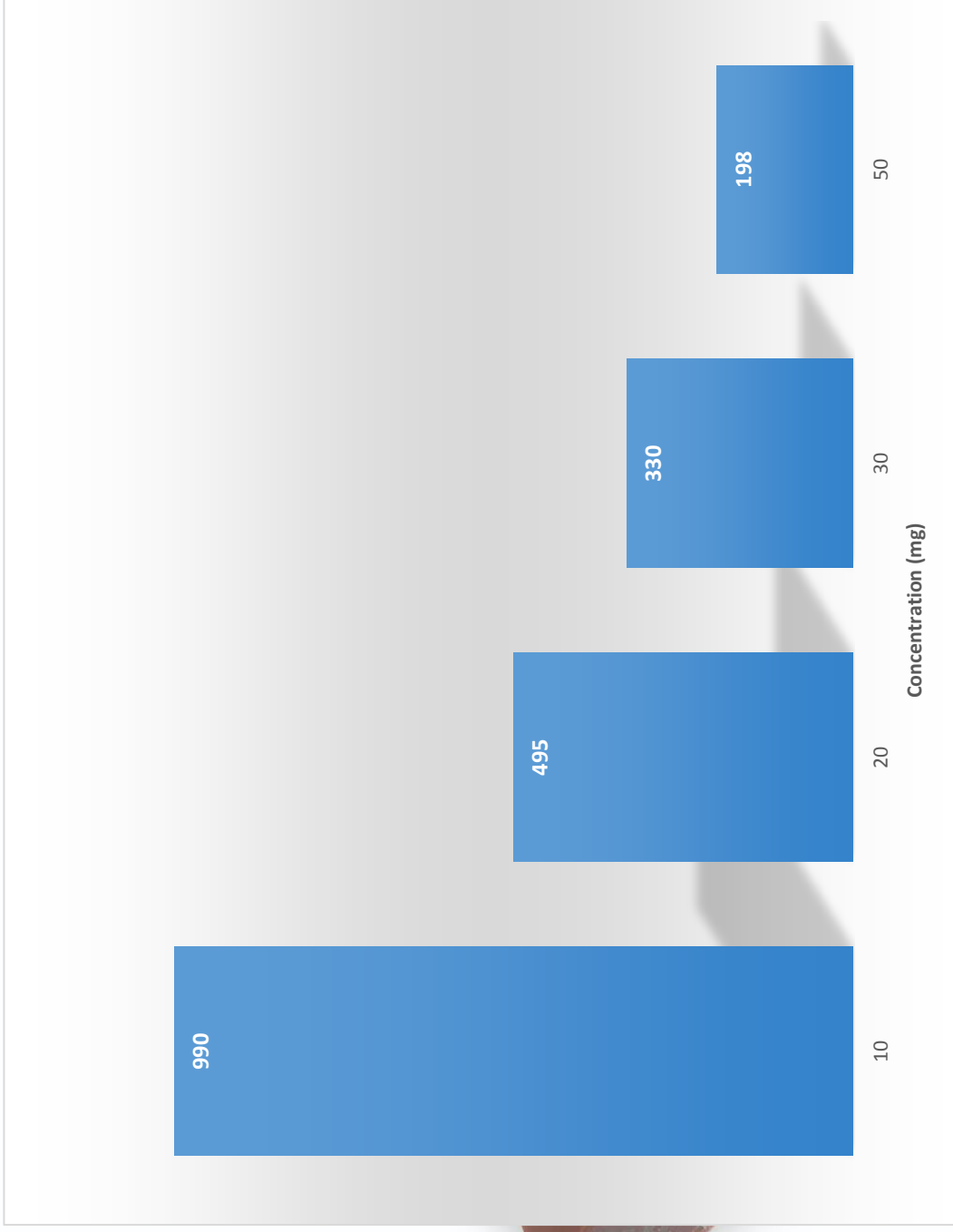


90-Day supply of medical marijuana based on THC content

Form	90-Day Supply
Tier I plant material (up to 23% THC)	8 ounces of plant material; 10 ounces for terminal exception
Tier II plant material (over 23% THC)	5.3 ounces of plant material; 6.6 ounces for terminal exception
Oils for vaporizing	53.1 grams of THC; 65.7 grams for terminal exception
Patches for transdermal administration	26.6 grams of THC; 33.3 grams for terminal exception
Edibles, oils, and tinctures for oral administration	9.9 grams of THC; 11.7 grams for terminal exception



Doses in a 90-day Supply for Oral Administration





State Medical Board of Ohio



Recommending v. Prescribing

- The Federal government prohibits doctors from being able to prescribe marijuana
- Patients must have a recommendation from a certified physician
- Interested physicians must apply for a certificate to recommend (CTR) from the State Medical Board



Certificate to Recommend

Online CTR application slated to be in place Spring 2018

- Currently planning for February 2018 User Acceptance Testing (UAT) of both CTR and patient portal with physicians, including Drs. Sojin and Mitchell

Completion of 2 hours CME required for CTR applicants

- The required courses focus on diagnosing qualifying medical conditions and treating such conditions with medical marijuana
- Information regarding approved continuing medical education courses is available with the Ohio State Medical Association and Ohio Osteopathic Association



Qualifying Conditions

- AIDS
- Amyotrophic Lateral Sclerosis
- Alzheimer's Disease
- Cancer
- Chronic Traumatic Encephalopathy
- Crohn's Disease
- Epilepsy / Seizure Disorder
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory Bowel Disease
- Multiple Sclerosis
- Pain: Chronic/Severe or Intractable
- Parkinson's Disease
- Positive Status for HIV
- Post-traumatic Stress Disorder
- Sickle Cell Anemia
- Spinal Cord Disease or Injury
- Tourette's Syndrome
- Traumatic Brain Injury
- Ulcerative Colitis



Qualifying Conditions

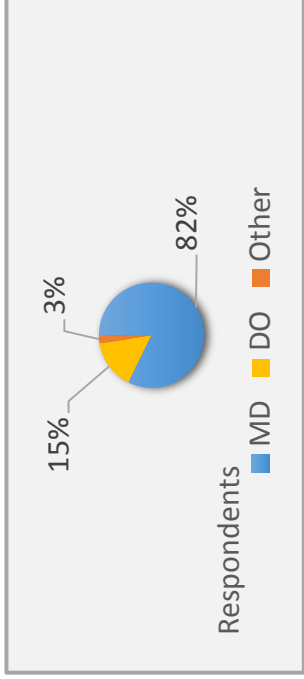
The State Medical Board of Ohio established Nov. 1, 2018 – Dec. 31, 2018 as the first submission period for petitions to add a qualifying medical condition to the Medical Marijuana Control Program.

NO PETITIONS WILL BE ACCEPTED BEFORE NOV. 1, 2018.

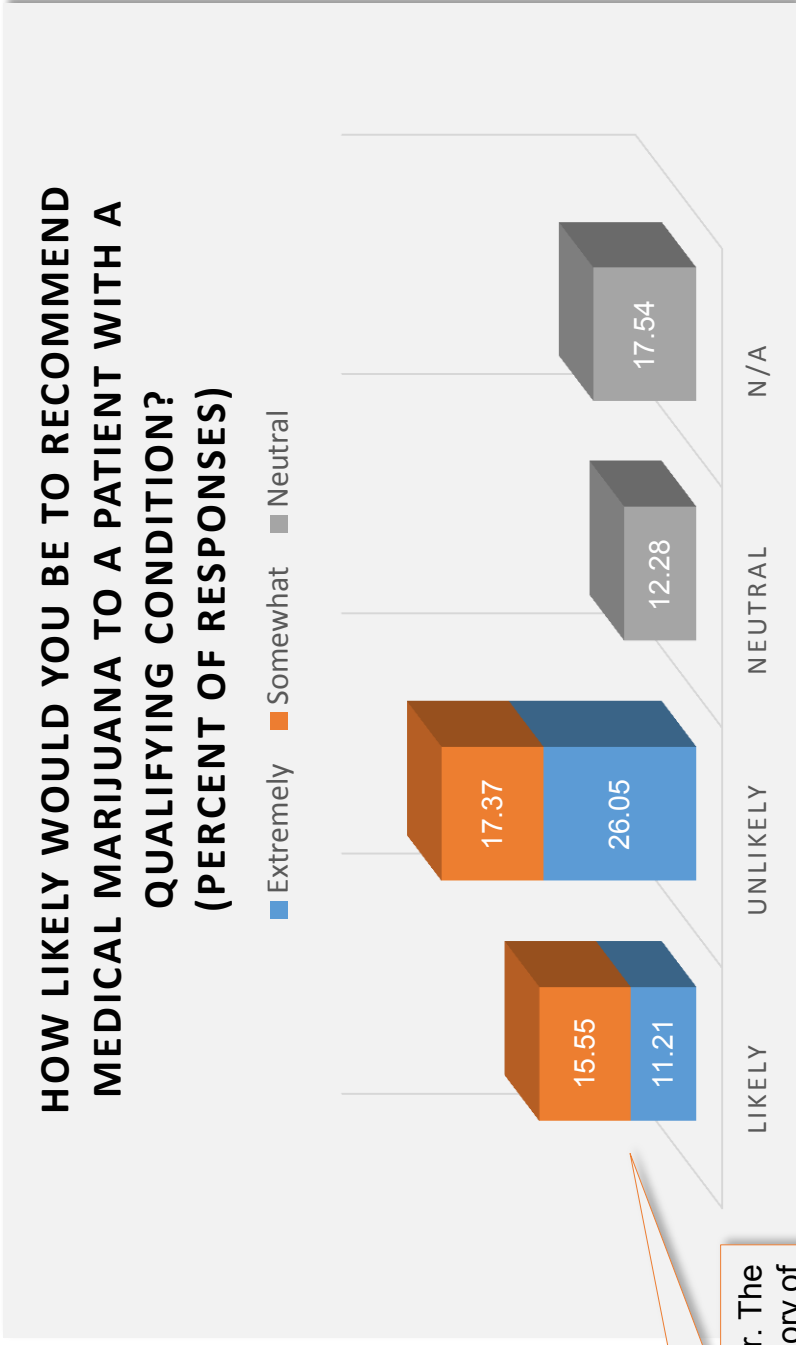
During the submission period next fall, all petitions should be filed electronically through the State’s website, medicalmarijuana.ohio.gov. A petition needs to include:

- Name and contact information
- Specific disease or condition requested to be added
- Information from experts who specialize in the study of the disease or condition
- Relevant medical or scientific evidence
- Consideration of whether conventional medical therapies are insufficient to treat or alleviate the disease or condition
- Evidence supporting the use of medical marijuana to treat or alleviate the disease or condition and other types of medical or scientific documentation
- Letters of support provided by physicians

Physician interest



More than 3,000 licensees responded. There are approximately 46,000 physicians (MDs and DOs) currently licensed with the State Medical Board of Ohio.



Down 7% from the original survey in September. The difference shows up as an increase in the N/A category of respondents who indicated they do not manage patients with qualifying conditions.

House Bill 523

The Medical Board's rules establish following:

- Procedures when applying for a certificate to recommend medical marijuana
- Conditions that must be met to be eligible for a certificate to recommend
- Schedule and procedures for renewing a certificate to recommend
- Reasons for which a certificate to recommend may be suspended or revoked
- Standards under which a suspension of a certificate to recommend may be lifted
- Minimal standards of care when recommending treatment with medical marijuana



Employer Provisions – 3796.28

House Bill 523 does not:

- Require an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana;
- Prohibit an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action because of that person's use, possession, or distribution of medical marijuana;
- Prohibit an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;
- Interfere with any federal restrictions on employment;
- Permit a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana;
- Affect the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program.



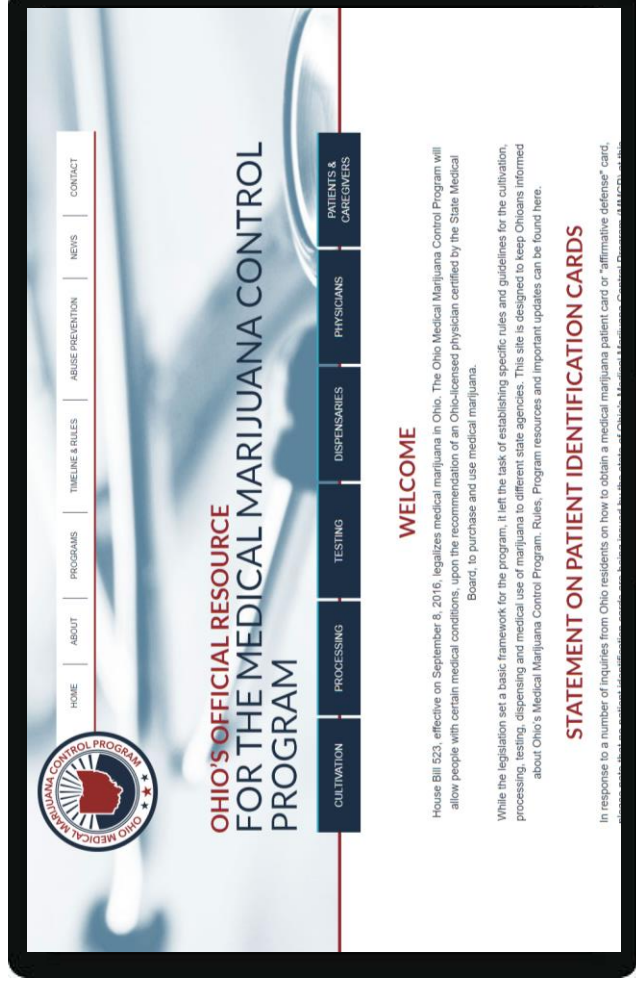
Municipalities and Townships – 3796.29

- The legislative authority of a municipal corporation may adopt an ordinance, or a board of township trustees may adopt a resolution, to prohibit, or limit the number of, cultivators, processors, or retail dispensaries licensed under this chapter within the municipal corporation or within the unincorporated territory of the township, respectively.
- Municipalities or townships cannot adopt an ordinance or resolution limiting research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.

MedicalMarijuana.Ohio.Gov

Designed to keep Ohioans informed about the development of Ohio's Medical Marijuana Control Program

- Important Program milestones
- Announcement of opportunities for public input





COLUMBUS | CLEVELAND
CINCINNATI | DAYTON
MARIETTA

BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
MAIN: 614.227.2300
FAX: 614.227.2390

www.bricker.com
info@bricker.com

Sue A. Roudebush
Of Counsel
614.227.7744
sroudebush@bricker.com

Ohio Manufacturers' Association
Workers' Compensation Counsel Report
February 13, 2018

Sue A. Roudebush, Esq.
Bricker & Eckler LLP

Regulatory Actions

New Rules:

O.A.C § 4123-6-32 Payment for lumbar fusion surgery. (effective 1/1/18; see attached)

Changes to Rules to Comply with H.B. 27:

O.A.C § 4123-3-08* Preparation and filing of applications for compensation and/or benefits

O.A.C § 4123-3-15 Claim procedures subsequent to allowance.

O.A.C § 4123-3-15.1 Dismissal of an application for the determination of percentage of permanent partial disability

O.A.C § 4123-3-32 Temporary Total Examinations

O.A.C § 4123-3-35* Employer handicap reimbursement.

Changes to Rules Under the Five Year Review:

O.A.C § 4123-6-02.3 Provider access to the HPP – provider application and certification. (Five-Year Review)

O.A.C § 4123-6-21.3 Outpatient medication formulary. (Five-Year Review)

O.A.C § 4123-6-37.1 Payment for hospital inpatient services. (Five-Year Review)

* Public Hearing 2/20/18

Executive Order

2017-05K In December, Gov. John Kasich signed an executive order to establish emergency rules allowing the Ohio Bureau of Workers' Compensation to use updated medical coding. The timing of publication for the latest Healthcare Common Procedural Coding System (HCPCS) updates made it impossible for BWC to use the normal rule process to implement the new coding in time for the Jan. 1 implementation date.

The emergency rules stay in effect for four months, giving time for BWC to adopt the new coding into rule through the normal process.

Legislative Actions

Am. Sub. S. B. No. 8 Bill made changes to R.C. § 512.12 to exclude the language from the bill that previously permitted the transfer of monies to the General Revenue Fund from the Bureau of Workers' Compensation and the Ohio Industrial Commission.

S.B. 118 Make safety service workers with PTSD eligible for workers' comp (LaRose; Brown, E.) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year, and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.

H.B. 459 Allow employer groups to be self-insuring worker comp employers (Henne) To allow groups of employers to be granted status as a self-insuring employer for purposes of the Workers' Compensation Law. Am. 1739.02 and to enact section 4123.354

H.B. 268 To make changes to the Workers' Compensation Law with respect to self-insuring employers

H.B. 380 Prohibit unauthorized aliens from receiving Workers' Compensation (Seitz; Householder) This Bill is intended to prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. Amendments were made to the bill as follows:

- Clarify which courts would have jurisdiction over employee claims, specifically, Mayor's Courts do not have jurisdiction over Workers' Compensation cases.

- Clarifies that a U.S. citizen who is a dependent of an undocumented worker may receive a death benefit in the event of the worker's death of an amount equal to that entitled to the dependent of a U.S. citizen.
- Bring the rebuttable presumption for unknowing employers in line with legislation in the previous General Assembly.
- Clarifies that BWC will not require extra paperwork for claims and will be charged with simply adding forms for alien registration numbers and work authorization to existing paperwork.

Judicial Decisions

State ex rel. Sunesis Constr. Co. v. Indus. Comm., Slip Opinion No. 2018-Ohio-3

In *State ex rel. Sunesis Constr. Co. v. Indus. Comm.*, the employer, Sunesis Construction Company ("Sunesis") filed a writ of mandamus with the Tenth District Court of Appeals alleging that the Industrial Commission abused its discretion when it issued an award for the violation of specific safety requirements. The alleged violations concerned the regulation of trenches and excavations. The court of appeals held that the Industrial Commission supported its decision with some evidence and denied the writ of mandamus.

The underlying workers' compensation claim involved an employee, Timothy R. Roark, who was killed in a collapsed trench. Roark was working at the bottom of a 20 foot trench when one of the sides of the trench collapsed. Roark died from a head injury and traumatic asphyxia.

Roark's dependents filed an application for an additional award based on violations of specific safety requirements ("VSSR") that apply to sloping, shoring, and bracing the sides of trenches and excavations. Sunesis properly shored up three of the sides of the trench but Sunesis attempted to shore up the fourth side with a steel plate at the top of the wall and sloped the rest of the wall.

The Industrial Commission found that (1) the fourth wall was not sufficiently supported, (2) the attempted shoring did not meet appropriate engineering standards, and (3) Roark did not disregard any instructions about working in the trench. The court of appeals held that some evidence supported the Industrial Commission's decision, which included relying on engineering specifications noting that wet soil requires "special" treatment. This information was corroborated by testimony from four other employees.

The Ohio Supreme Court affirmed the court of appeals' decision and denied Sunesis' writ of mandamus. First, Sunesis should have supported the fourth wall with sufficient means because four employees' testified that the trench was more than five feet high and consisted of soft or unstable material. Although Sunesis provided support for the top portion of the fourth wall, the remaining bottom portion was left unsupported. Second, the fourth wall did not meet

accepted engineering standards. Sunesis attempted to argue that certain engineering standards were met. But the Court rejected that argument because wet soil required “special treatment” per the engineering standards that Sunesis relied on. Third, the Court rejected the unilateral negligence defense that states that an employee’s deliberate circumvention of a safety device will defeat a VSSR claim. However, the Court noted that the employer must first comply with a VSSR for an employee to then circumvent it. As a result, there was insufficient evidence that Sunesis complied with the safety requirement in the first place and insufficient evidence that Roark circumventing any precautions.

***State ex rel. Ohio Paperboard v. Indus. Comm.*, Slip Opinion No. 2017-Ohio-9233**

In *State ex rel. Ohio Paperboard v. Indus. Comm.*, the employer, Ohio Paperboard (“OP”) filed a writ of mandamus alleging that the Industrial Commission abused its discretion in awarding the employee, John S. Ruckman, an award for a violation of specific safety requirement. The alleged violations involved the regulation of conveyor belts including pinch points and emergency power switches. The Tenth District Court of Appeals denied the writ and the employer appealed the decision to the Ohio Supreme Court.

The underlying workers’ compensation injury occurred while Ruckman was performing maintenance on a conveyor belt that transported wire-bound recycled paper bales into a pulper for shredding. Along the conveyor, overhead saws cut the wire surrounding the bales. Some of those wires get wrapped around the shafts and gears of the conveyor, which requires weekly maintenance to remove. During this routine maintenance, the machine is placed into “maintenance mode” and de-energized.

In this case, however, Ruckman decided to turn the machine back on to loosen some jammed wires. While reaching in to remove the wire, the conveyor caught Ruckman’s hand and crushed it. Ruckman filed a workers’ compensation that was eventually allowed for left-hand amputation and replantation, major depressive disorder, and total loss of use of the left hand.

After allowance, Ruckman alleged that OP violated three safety rules regarding (1) means shall be provided to disengage the conveyor from power where exposed to contact; (2) conveyor belt pinch points shall be guarded or means provided at the pinch point to disengage the power; and (3) means shall be provided at each machine, within easy reach of the operator, to disengage the power. Two conditions must be met for these rules to be applicable. First, the claimant must be an “operator,” which means “any employee assigned or authorized to work at the specific equipment.” Second, the conveyor must be “exposed to contact,” which means “during the course of operation, [the conveyor] is accessible to an employee in performance of the employee’s regular or assigned duty.”

In its opinion, the Ohio Supreme Court agreed with the Industrial Commission and the court of appeals that Ruckman was an operator because he was authorized or assigned to work on the equipment. However, the Court found that OP complied with the safety requirements in question because it had emergency stop buttons within easy reach of the operator in the control

shack and the pinch points were guarded during the normal operation. The Court disagreed with the Industrial Commission's order because it failed to acknowledge that the employee was performing maintenance while the machine was disengaged from the power. The actual cause of the injury was due to Ruckman's disregard for OP's safety procedure and not the violation of any safety requirements (which were not violated anyways). Thus, the Court granted OP's writ ordering the Industrial Commission to deny the application for the award.

4123-6-32 Payment for lumbar fusion surgery.

Effective January 1, 2018, reimbursement for lumbar fusion surgery for treatment of allowed conditions in a claim resulting from an allowed industrial injury or occupational disease shall be limited to claims in which current best medical practices as implemented by this rule are followed.

This rule governs the bureau's reimbursement of lumbar fusion surgery to treat a work related injury or occupational disease. It is not meant to preclude, or substitute for, the surgeon's responsibility to exercise sound clinical judgment in light of current best medical practices when treating injured workers.

A provider's failure to comply with the requirements of this rule may constitute endangerment to the health and safety of injured workers, and claims involving lumbar fusion surgery not in compliance with this rule may be subject to peer review by the bureau of workers' compensation stakeholders' health care quality assurance advisory committee (HCQAAC) pursuant to rule 4123-6-22 of the Administrative Code or other peer review committee established by the bureau.

(A) Prerequisites to consideration of lumbar fusion surgery.

Authorization for lumbar fusion shall be considered only in cases in which the following criteria are met:

(1) Conservative care.

(a) Except as otherwise provided in paragraph (A)(1)(c) of this rule, the injured worker must have had at least sixty days of conservative care for low back pain, with an emphasis on:

(i) Physical reconditioning;

(ii) Avoidance of opioids, when possible; and

(iii) Avoidance of provider catastrophizing the explanation of lumbar MRI findings.

(b) The injured worker's comprehensive conservative care plan may include, but is not limited to, one or more of the following:

(i) Relative rest/ice/heat;

(ii) Anti-inflammatories;

(iii) Pain management / physical medicine rehabilitation program;

(iv) Chiropractic / osteopathic treatment;

(v) Physical medicine treatment as set forth in rule 4123-6-30 of the Administrative Code;

(vi) Interventional spine procedures / injections.

(c) The requirement of a trial of at least sixty days of conservative care prior to consideration of lumbar fusion surgery may be waived with prior approval from the MCO in cases of:

(i) progressive functional neurological deficit;

(ii) spinal fracture;

(iii) tumor;

- (iv) infection;
 - (v) emergency / trauma care; and/or
 - (vi) other catastrophic spinal pathology causally related to the injured worker's allowed conditions.
- (2) The operating surgeon requesting authorization for lumbar fusion surgery must have personally evaluated the injured worker on at least two occasions prior to requesting authorization for lumbar fusion surgery.
- (3) The injured worker must have undergone a comprehensive evaluation, coordinated by both the injured worker's physician of record or treating physician and the operating surgeon, in which all of the following have been documented:
- (a) Utilization and correlation of all of the following tools:
 - (i) Visual analog scale (VAS);
 - (ii) Pain diagram;
 - (iii) Oswestry low back disability questionnaire.
 - (b) A comprehensive orthopedic / neurological examination, including documentation of all of the following categories:
 - (i) Gait;
 - (ii) Spine (deformities, range of motion, palpation);
 - (iii) Hips and sacroiliac joints;
 - (iv) Motor;
 - (v) Sensation;
 - (vi) Reflexes;
 - (vii) Upper motor neuron signs.
 - (c) Diagnostic testing.
 - (i) Lumbar X-rays (including flexion/extension views), lumbar MRI, or lumbar CT (with or without myelography) must be performed;
 - (ii) Electromyography (EMG) / nerve conduction study (NCS) may be performed if questions still remain during surgical planning.
 - (d) Discussion and consideration of opportunities for vocational rehabilitation.
 - (e) Review of current and previous medications taken.
 - (i) If opioid management is in process, review for best practices;
 - (ii) Consider impact of surgery on opioid load.
 - (f) Health behavioral assessment (pre-surgical).

Biopsychosocial factors that may affect treatment of the injured worker's allowed lumbar conditions are considered modifiable conditions that may change the need for surgery or improve surgical outcomes if appropriately addressed, and must be addressed if identified in the assessment.

(g) Accounting and assessment of the following co-morbidities to stratify additional associated risks:

- (i) Smoking;
- (ii) Body mass index (BMI);
- (iii) Diabetes;
- (iv) Coronary artery disease;
- (v) Peripheral vascular disease.

The co-morbidities indicated above are considered modifiable conditions that may improve surgical outcomes if appropriately addressed, and must be addressed if identified in the assessment.

(h) The injured worker, the physician of record or treating physician, and the operating surgeon must have reviewed and signed the educational document, "What BWC Wants You to Know About Lumbar Fusion Surgery," attached as an appendix to this rule.

(B) Authorization for lumbar fusion surgery where the injured worker has no prior history of lumbar surgery.

(1) Authorization for lumbar fusion shall be considered in cases where the injured worker has no prior history of lumbar surgery only when the injured worker remains highly functionally impaired despite a trial of at least sixty days of conservative care as provided in paragraph (A)(1)(a) of this rule (unless waived with prior approval by the MCO pursuant to paragraph (A)(1)(c) of this rule) and one or more of the following are present:

- (a) Mechanical low back pain with instability of the lumbar segment and no history of lumbar surgery.
- (b) Spondylolisthesis of twenty-five per cent or more with one or more of the following:
 - (i) Objective signs/symptoms of neurogenic claudication;
 - (ii) Objective signs/symptoms of unilateral or bilateral radiculopathy, which are corroborated by neurologic examination and by MRI or CT (with or without myelography);
 - (iii) Instability of the lumbar segment.
- (c) Lumbar radiculopathy with stenosis and bilateral spondylolysis.
- (d) Lumbar stenosis necessitating decompression in which facetectomy of greater than or equal to fifty per cent or more is required.
- (e) Primary neurogenic claudication and/or radiculopathy associated with lumbar spinal stenosis in conjunction with spondylolisthesis or lateral translation of three mm or greater or bilateral pars defect.
- (f) Degenerative disc disease (DDD) associated with significant instability of the lumbar segment.
- (g) Spinal stenosis, disc herniation, or other neural compressive lesion requiring extensive, radical

decompression with removal of greater than fifty per cent of total facet volume at the associated level.

The surgeon must document why the surgical lesion would require radical decompression through the pars interarticularis (critical stenosis, recurrent stenosis with extensive scarring, far lateral lesion).

(2) For purposes of this paragraph, instability of the lumbar segment is defined as at least four mm of anterior/posterior translation at L3-4 and L4-5, or five mm of translation at L5-S1, or eleven degrees greater end plate angular change at a single level, compared to an adjacent level.

(C) Request for lumbar fusion surgery where the injured worker has a history of prior lumbar surgery.

(1) If a trial of at least sixty days of conservative care as provided in paragraph (A)(1)(a) of this rule has failed to relieve symptoms (or has been waived with prior approval by the MCO pursuant to paragraph (A)(1)(c) of this rule) and the injured worker has had a prior laminectomy, discectomy, or other decompressive procedure at the same level, lumbar fusion should be considered for approval only if the injured worker has one or more of the following:

(a) Mechanical (non-radicular) low back pain with instability at the same or adjacent levels.

(b) Mechanical (non-radicular) low back pain with pseudospondylolisthesis, rotational deformity, or other condition leading to a progressive, measureable deformity.

(c) Objective signs/symptoms compatible with neurogenic claudication or lumbar radiculopathy that is supported by EMG/NCS, lumbar MRI, or CT and detailed by a clinical neurological examination in the presence of instability of three mm lateral translation with at least two prior decompression surgeries at the same level.

(d) Evidence from post laminectomy structural study of either:

(i) One hundred per cent loss of facet surface area unilaterally; or

(ii) Fifty per cent combined loss of facet surface area bilaterally.

(e) Documented pseudoarthrosis or nonunion, with or without failed hardware, in the absence of other neural compressive lesion.

(2) For purposes of this paragraph, instability of the lumbar segment is defined as at least four mm of anterior/posterior translation at L3-4 and L4-5, or five mm of translation at L5-S1, or eleven degrees greater end plate angular change at a single level, compared to an adjacent level.

(D) Lumbar fusion surgical after care.

Both the physician of record or treating physician and the operating surgeon must follow the injured worker until the injured worker has reached maximum medical improvement (MMI) for the allowed lumbar conditions.

(1) In the first six months post-operatively, the injured worker must be seen by both the physician of record or treating physician and the operating surgeon at least every two months to monitor the injured worker's progress, rehabilitation needs, behavioral patterns or changes, and return to work willingness and/or status.

During this period, the physician of record or treating physician and the operating surgeon shall

determine the following:

- (a) Fusion status;
 - (b) Pain and functional status;
 - (c) MMI status of injured worker;
 - (d) Residual level of functional capacity;
 - (e) Appropriateness for vocational rehabilitation.
- (2) From six months to one year post-operatively, if the injured worker continues to experience significant functional impairment despite the lumbar fusion, the following actions are recommended:
- (a) Pain and functional status (repeat VAS / pain diagram / Oswestry)
 - (b) Repeat baseline orthopedic / neurological examination;
 - (c) Repeat health behavioral assessment;
 - (d) Revisit appropriate diagnostic imaging.
 - (e) Coordinate with MCO to develop a plan of care / return to functional status.

Effective: 1/1/18

4123-6-32 Appendix

What BWC Wants You to Know About Lumbar Fusion Surgery

(Applies to all workers considering lumbar fusion, regardless of diagnosis)

Ohio Bureau of Workers' Compensation wants you to have the highest quality of care. That can only occur if you know how lumbar fusion surgery may affect your health and recovery. BWC is providing the following instructional form to aid in the process. BWC requires your physician to discuss this information before the surgery, so you can make the best informed decision. In preparation, please study this form, and discuss the information with your healthcare team. Afterwards, you, your physician of record, and your operating surgeon should sign the form. **THIS IS NOT A SURGICAL CONSENT FORM.**

Studies have shown the following post-operative outcomes:

- General Lumbar Fusion Outcomes
 - a. The chance of an injured worker no longer being disabled 2 years after lumbar fusion is 32%.
 - b. More than 50% of workers who received lumbar fusion through the Washington workers' compensation program felt that both pain and functional recovery were no better or were worse after lumbar fusion.
 - c. Smoking at the time of fusion greatly increases the risk of failed fusion
 - d. Pain relief, even when present, is **NOT** likely to be 100%
 - e. The use of spine stabilization hardware (metal devices) in Washington workers nearly doubled the chances of having another surgery
 - f. Lumbar fusion for the diagnoses of disc degeneration, disc herniation, and/or radiculopathy in work comp setting is associated with significant increase in disability, opiate use, prolonged work loss, and poor return to work status.
- Ohio Specific Lumbar Fusion Outcomes Study: (2 year follow-up – 1450 total patients)

- a. Back pain patients treated with fusion were able to return to work (activity) only 26% of the time, workers treated non-surgically were able to return to work (activity) 67% of the time.
- b. Re-operation rate was 27% in fused patients
- c. Complications occurred in 36% of fused patients
- d. Narcotic use increased 41% in fused patients, and continued for over 2 years in 76% of fused patients
- e. 17 of the fused patients died during the course of the study and 11 non-surgical patients
- National/International Lumbar Fusion Statistics
 - a. Surgical fusion outcomes are **NOT** better than cognitive therapy and exercise
 - b. Surgical fusion for previous herniated disk is **NOT** better than non-operative treatment
 - c. Surgical satisfaction was reportedly high even in injured workers with ongoing pain and no improvement in function observed
 - d. Some patients described less pain, improvement of 1 or 2 points on a 10 point pain scale, but any functional benefit of having a fusion was not demonstrated
- Opioid use has been associated with significant long term morbidity and mortality in both surgical and non-surgical patients. Back pain patients are at risk for long term opioid use. Fusion patients have greater narcotic/opioid usage than non-operative patients.

What is expected of you if you proceed to have lumbar fusion surgery:

If the BWC/MCO authorizes your surgery, your surgeon will continue to see you at least every two months for six months after surgery. As your surgeon, I expect you to actively participate in your recovery and rehabilitation plan both prior to and following your surgery.

By signing this form, we (the injured worker, physician & surgeon), attest that we have discussed the information presented here, we understand this information, and we wish to proceed with the fusion surgery. **We also understand that this information does NOT take place of, and is separate and distinct from, any surgical form that we will complete prior to surgery.**

Injured Worker

Date: ___ / ___ / _____

Physician of Record

Date: ___ / ___ / _____

Operating Surgeon

Date: ___ / ___ / _____

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: February 13, 2018

Overview

2018 brings an election year, and with that a little bit less legislative action than 2017. Several workers' compensation bills remain in play at the General Assembly. There is speculation that BWC Administrator may be appointed to a judge seat after being recommended last fall. The BWC is considering making changes to individual workers' compensation programs which would have an impact on group programs.

Legislation and Rules

Senate Bill 118 / House Bill 161 – PTSD

New first responder PTSD bills were introduced last year in the General Assembly. The bills would provide workers' compensation benefits for first responders with post-traumatic stress disorder (PTSD) arising from employment, even without an accompanying physical injury or occupational illness. Benefits could be provided to qualifying claimants for up to one year.

The bills would create a fundamental shift from current workers' compensation law which requires a physical injury before allowing any mental health claims.

The Bureau of Workers' Compensation (BWC) board reviewed a report from the BWC actuarial staff quantifying the financial impact this bill and its companion, Senate Bill 118, would have on the local governments which would pay the claims.

It is estimated that the bill would cost up to an additional \$98.4 million annually in claims. For comparative purposes, currently all public entities in the State Insurance Fund combined pay approximately \$190 million in total annual premium today.

OMA and its business allies have long opposed opening the workers' compensation system to cover claims with no accompanying physical injury or occupational illness.

House Bill 161 had sponsor testimony last May. Senate Bill 118 had its first hearing in November.

House Bill 268 – Makes changes to Ohio's self-insurance workers comp laws

The bill would create a second self-insured guaranty fund for employer who currently cannot meet the financial metrics to go self-insured under today's laws. The bill also allows self-insured companies to purchase private insurance.

During the bill's third hearing the OMA testified in opposition of the bill. OMA Workers' Compensation Committee member Cathy Duhigg Gannon from Eaton provided OMA's testimony.

House Bill 269 – Workers Compensation changes

The bill would rename the BWC to the Worker Safety and Rehabilitation Agency. It would require the agency to develop incentives for employers to participate in safety consultations and loss prevention programs. The bill requires an employee who is

receiving temporary total disability compensation to comply with a return to work plan, and it makes changes with respect to compensation for permanent total disability and death benefits. The bill has had two hearings.

House Bill 380 – Illegal Aliens

The bill prohibits illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. The bill is based off of the amendment that was eventually removed from the workers' compensation budget bill.

The House passed the bill in early December. The Senate has not taken up the bill. There was a lot of pushback in the Senate when this was debated in the workers' compensation budget.

House Bill 459 – Group Self Insurance

The bill would allow groups of employers to be granted status as a self-insuring employer for purposes of the Workers' Compensation Law. The bill would leave it up to the BWC on how to structure and operate any such program. The bill had sponsor testimony earlier this year.

Subrogation Amendment

Representative Henne is shopping new language that would address a problem that has surfaced with the recently passed subrogation legislation. That bill required a citation to be issued to the at fault party in order for the subrogation process to proceed. However in the extreme case where the at fault party dies in the auto accident a citation isn't issued. This prevents any subrogation from taking place. The draft bill would address these situations.

BWC Agency Notes

BWC Proposes 12% Premium Reduction

The Ohio Bureau of Workers' Compensation (BWC) asked its board of directors to reduce private employer premium rates by 12 percent beginning July 1.

The BWC reports that, if approved, the reduction would save private employers \$163.5 million over this year's premiums.

What enables the proposed reduction is fewer workplace injury claims and slow-to-moderate growth in medical inflation according to BWC Administrator/CEO Sarah Morrison.

BWC reported 86,290 allowed claims in 2017, a near 18% drop from 2011. This is the lowest number of claims dating back to at least 1997.

The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various BWC discount programs.

The board is scheduled to vote on the recommendation during its next regular meeting scheduled for Feb. 23.

Safety Issues

Safety Congress Sessions for Manufacturers

The Ohio Safety Congress & Expo will run March 7-9 at the Greater Columbus Convention Center.

Among the 200 educational sessions presented by experts from across the country, this programming has been created specifically for Ohio's manufacturers.

Stop by the expo marketplace and say hi to us at booth #644!

Attendance is free for Ohio employers and their employees.

BWC Administrator Outlines 2018 Focus: Wellness and Workplace Safety

Earlier this year Bureau of Workers' Compensation (BWC) Administrator Sarah Morrison, described the agency's push for wellness and safety in 2018.

She wrote: "An overwhelming amount of research shows us that a healthy lifestyle leads to wellness in virtually every facet of our lives, including the workplace. BWC's new wellness program will offer Ohio workers in small businesses a variety of services. Details are being finalized, but the program will offer services such as health risk assessments, biometric screenings, personalized health plans and coaching, chronic disease management and more. This is geared to help workers live a healthy, balanced life – factors that can prevent injury, or recover more quickly if they are hurt on the job."

And, "Safety will continue to take center stage in 2018. ... To increase the awareness of the importance of safety, we will introduce a public health and safety campaign focused on preventing slips, trips and falls, overexertions and motor vehicle accidents (all of which make up about 60 percent of our injured worker claims each year)."

OSHA Raises Penalty Amounts for 2018

From OSHA: "On Jan. 2, civil penalty amounts for violations of workplace safety and health standards increased by two percent from last year. In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Department of Labor is required to adjust penalties for inflation each year. New penalties for willful and repeat violations are \$129,336 per violation; serious, other-than-serious, and posting requirements are \$12,934 per violation; and failure to correct violations is \$12,934 for each day the condition continues."

Frank LaRose
State Senator
27th District



Ohio Senate

Senate Building
1 Capitol Square, Room 221
Columbus, Ohio 43215
(614) 466-4823

Sponsor Testimony on Senate Bill 118
Senate Insurance and Financial Institutions Committee
November 14th 2017

Chairman Hottinger, Vice Chair Hackett, members of the Insurance and Financial Institutions Committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 118. This legislation will ensure that Ohio's brave first responders get the coverage they deserve to aid in their recovery arising from PTSD. This legislation will exempt peace officers, firefighters and emergency medical personnel in Ohio from the requirement that claimants diagnosed with Post Traumatic Stress Disorder must have suffered an accompanying physical injury in order to apply for compensation with the Ohio Bureau of Workers' Compensation.

Currently, R.C. Sec. 4123.01(C)(1) requires that a claimant diagnosed with a psychiatric condition must have sustained a physical injury precipitating their mental condition to be eligible for workers' compensation. However, experts agree that no scientific evidence exists proving a person has to have a physical injury to be diagnosed with a psychiatric condition. This legislation would assure that first responders diagnosed with PTSD arising from their employment are eligible for covered treatment and compensation, regardless of physical injury.

Ohio's hard-working and dedicated first responders are often subject to scenes of violence, high stress and hazardous situations that can cause lasting psychiatric damage, even in instances where a physical injury was not sustained. This legislation will provide avenues of relief for peace officers and firefighters who have valiantly served the public and suffer from PTSD originating from the performance of their duties. This commonsense change gives our brave men and women time to recover and help them begin the journey back to work.

Thank you for the opportunity to testify this morning. I would be happy to answer any questions that you may have.



STATE SENATOR
EDNA BROWN

11TH DISTRICT

Sponsor Testimony
Senator Edna Brown
Senate Insurance and Financial Institutions Committee
November 14, 2017

Chairman Hottinger, Vice Chair Hackett, and fellow members of the Senate Insurance and Financial Institutions Committee, thank you for your consideration of Senate Bill 118 today. This bill would enable peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder (PTSD) arising from employment without an accompanying physical injury to be eligible for compensation and benefits under Ohio Workers' Compensation Law.

Post-traumatic stress disorder can occur after an individual experiences a traumatic or life-threatening event. While PTSD can happen to anyone, the percentage of people diagnosed with the disorder tends to be especially high among veterans and first-responders due to the nature of their work. PTSD can severely interfere with an individual's wellbeing, potentially leading to substance abuse, alcohol addiction, depression, anxiety, and difficulty sleeping. If left untreated, the condition can worsen.

As this legislation is considered, I want to emphasize several things.

First, the issue of PTSD impacts first responders in all of our districts. We rely on these people every day to protect and save the lives of others; they willingly put aside their own safety to secure ours. We owe them the ability to receive the proper treatment and care that they need.

Secondly, I think it's important to highlight that we are not talking about people permanently leaving the workforce after receiving BWC benefits. Under this bill, a

person would be eligible for compensation and benefits for up to one year. Additionally, they would be prohibited from receiving a disability benefit from a state retirement system for PTSD during the time period in which the person is receiving compensation under the Workers' Compensation Law.

Our goal is to give first responders the resources they need to deal with PTSD quickly and effectively when the symptoms first appear. By providing treatment right away, we can help these brave men and women heal and continue serving their communities.

This is a bipartisan issue, and I'm grateful that Senator LaRose is joining me as a primary sponsor of this important legislation. I urge my colleagues to recognize all of the good this bill does for an invaluable group of people.

Thank you and I will be happy to join Senator LaRose in answering any questions.

To: Legislative Service Commission
Senate Transportation, Commerce and Labor Committee
House Insurance Committee

From: Nicholas W. Zuk, Chairman, BWC Board of Directors

Re: Actuarial Analysis of Legislation – Senate Bill 118

Date: May 23, 2017

Attached you will find an actuarial analysis of Senate Bill 118 and the identical House Bill 161. These bills propose to expand workers' compensation benefits eligibility to safety service workers who suffer from post traumatic stress disorder (PTSD), without the current requirement of an accompanying physical injury. This report fulfills ORC 4121.125 (C)(6) and (7), which require the BWC Board of Directors to have prepared, by or under the supervision of an actuary, an actuarial analysis of any introduced legislation expected to have a measurable financial impact on the workers' compensation system.

Based on the baseline assumptions in the attached report, our Actuarial Committee believes the estimate that these bills may have a potential annual cost of \$98.4 million is reasonable.

This estimate is based on the following assumptions:

- One out of every 28 eligible employees will file a claim, resulting in roughly 2,900 claims per year.
- Each claim will incur \$33,000 in costs, including \$7,000 in medical and \$26,000 in compensation.
- There will be an additional \$2.5 million required to rehabilitate employees for substance abuse

For comparative purposes, currently all public entities in the State Insurance Fund combined pay approximately \$190 million in total annual premium today. Adding the cost of covering PTSD as proposed in SB 118 would likely have an impact on the employer's future premiums.

While data exists to estimate the number of safety service workers, very little data exists to help us determine how many may apply for workers' compensation benefits due to PTSD. Because of this uncertainty, alternative assumptions would likely result in different estimates of annual costs; some estimates that would be higher and some estimates that would be lower. We feel the assumptions and resulting estimated costs are reasonable.

Please feel free to contact our BWC staff if you have further questions.



To: **Christopher S. Carlson**, FCAS, MAAA, Chief Actuarial Officer

From: **Daniel Myers**, FCAS, MAAA, Director of Actuarial Analysis

Date: May 5, 2017

Subject: **Actuarial Report on Senate Bill 118: Safety Service Workers with Post Traumatic Stress Disorder Eligible for Workers' Compensation**

Actuarial Findings:

Senate Bill 118 (SB118) and the identical House Bill 161 propose to expand workers' compensation eligibility to workers in the safety service industry if they suffer from post traumatic stress disorder (PTSD). As required by law for any proposed legislation that has an actuarial impact on the BWC, the Actuarial Division has conducted an actuarial analysis of SB118. As outlined in more detail on Exhibit 1, we estimate that

- One out of every 28 eligible employees will file a claim. With a population of 80,000 eligible employees in Ohio, there will be approximately 2,900 claims per year.
- Each claim will incur approximately \$33,000, split between \$7,000 in medical costs and \$26,000 in wage compensation
- There will be an additional \$2.5 million required to rehabilitate employees for substance abuse
- All together, annual losses are expected to be \$98.4 million higher if SB118 were to be signed into law

In order to develop these estimates, a number of assumptions must be made, some of which have a high degree of uncertainty. Other assumptions would result in different estimated annual costs, some that might be higher while others that might be lower.

Background of SB118:

Under current law, employees with PTSD symptoms are eligible for workers' compensation coverage only if those PTSD symptoms are brought on by an accompanying physical injury or occupational disease; PTSD symptoms arising from the normal course of employment are not covered as a compensable injury. SB118 would expand that to provide workers' compensation coverage to eligible employees if they are diagnosed with PTSD as a result of their employment. Eligible employees for PTSD coverage are specifically defined within SB118 and contain occupations such as police, firefighters, and emergency medical workers.

PTSD coverage in SB118 is limited to one year of wage compensation and one year of medical benefits. This is in contrast to Senate Bill 5 from the 2015 session of the General Assembly which offered no limitation to the length of time an injured worker could seek coverage. Additionally, SB118 appears to be written so that wage compensation and medical benefits would be tracked independently, allowing an injured worker to continue seeking medical care while returning to work.

Analysis of SB118:

In developing the impact of SB118 shown on Exhibit 1, we sought to identify the following pieces of information:

- Number of employees in covered occupations
- Percentage of employees in those occupations who develop PTSD symptoms who will file claims
- Average wage compensation and medical benefits an injured worker will incur for each claim
- Length of time an injured worker will receive compensation and medical care
- Detoxification costs associated with injured workers suffering from substance abuse

For most of the covered occupations, the number of employees is readily available on public websites such as Ohio Department of Jobs and Family Services or Federal Bureau of Labor & Statistics. The percentage of employees who exhibit PTSD symptoms and the percentage of employees who will file PTSD claims proved to be much more challenging to quantify. Some research has been conducted regarding the likelihood of people developing PTSD in extreme scenarios like soldiers in combat or people involved in crimes or accidents. However, a limited amount of research has been done outside of those extreme scenarios and an even narrower body of research exists when limited to PTSD symptoms arising from work conditions (of any occupation, let alone safety responders). This limited body of research was not consistent enough to allow us to determine a reasonably reliable estimate of percentage of employees with PTSD symptoms. We believe reasonable values could be as low as 10% and as high as 25%. We selected 18% as the percentage of employees with PTSD symptoms. The figures shown on Exhibit 1, column 3 reflect this selection.

We were unable to find any research or documentation that explores the likelihood of people with PTSD symptoms to seek professional treatment but it's reasonable to expect some people with PTSD symptoms to not file claims either because they aren't aware their condition qualifies for workers' compensation coverage, they're unaware of how debilitating their condition is, or they're uninterested in seeking professional help. We judgmentally selected 20% as the percentage of employees who exhibit PTSD symptoms to follow through with filing a claim (as shown on Exhibit 1, column 4) but we readily acknowledge that this number could be significantly different in reality.

The average annual compensation of employees is readily available on public websites such as Ohio Department of Jobs and Family Services or Federal Bureau of Labor & Statistics and is shown on Exhibit 1, column 5. Subject to some minimums and maximums, wage compensation is generally awarded on a weekly basis at 72% of the injured employee's weekly wage for the first 12 weeks and then 67% thereafter. Additionally, SB118 limits the length of time to one year that a PTSD claim will be paid wages. Some claims may experience a shorter timespan than one year but research suggests that claims will often run close to – if not all the way up to – one year of coverage. We selected 39 weeks; we recognize it could be less than that but by statute we know it must be less than 52 weeks. The figures shown on Exhibit 1, column 6 reflect these adjustments.

We know that medical benefits will typically manifest as psychotherapy sessions and pharmaceutical costs but may also include accompanying substance abuse treatment costs. These various medical costs as shown on Exhibit 1, columns 8 and 9 were estimated based on internal BWC costs from existing PTSD claims, reliance on research from Freddie Johnson, Director of Medical Services, and guidance from the Official Disability Guidelines.

Comparison to 2015-Senate Bill 5:

SB118 is similar to Senate Bill 5 (SB5) introduced in the 2015 session of the General Assembly. The primary difference between them is that SB5 placed no limitation on length of coverage while SB118 limits coverage to one year of wage compensation and one year of medical benefits. An actuarial analysis conducted on SB5 arrived at an estimated \$182 million increase in annual losses. This analysis for SB118 closely followed the same methodology, refreshing to more recent data and adjusting for the 1-year coverage limitation. The table below illustrates the

material differences between the actuarial estimates of these two bills. Note that the driving force between the \$182 million for SB5 and the \$98 million for SB118 is the length of time we anticipate making payments. For medical costs, we estimated an 80% reduction in length of medical payments while the estimate in SB118 is reduced by a similar amount of 76%. Likewise, we estimated a 25% reduction in time of wage compensation payments with a similar reduction of 21% with the SB118 estimate.

	# years of Medical Payments	Medical	# weeks of Indemnity Payments	Indemnity	Total
2015 - SB5	5 years	87,302,949	52 weeks	95,442,742	182,745,691
2017 - SB118	1 year	20,664,399	39 weeks	75,213,157	95,877,556
% Difference	-80%	-76%	-25%	-21%	-48%

Uncertainty of Assumptions:

As outlined in the Analysis section above, there are a number of assumptions built into this analysis where there was either no readily available data or any readily available data were not ideally suited to be used without some material adjustment. Any users of this report should recognize that while the actuarial analysis tries to contemplate reasonably feasible outcomes, the future may vary from these assumptions beyond what was contemplated in this actuarial analysis.

Qualifications:

This actuarial report is submitted by Daniel Myers, FCAS, MAA, Director of Actuarial Analysis of the Ohio Bureau of Workers' Compensation. Mr. Myers meets the continuing education requirements of the American Academy of Actuaries and the Casualty Actuarial Society to issue this actuarial report.

Reliance:

This actuarial report relies in part on Teresa Arms of the BWC's Analytics Division for conducting much of the research around methodology and underlying assumptions and on Freddie Johnson of the BWC's Medical Services Division for conducting research and providing guidance on medical costs associated with PTSD treatment. Many thanks to them for making this report much more thorough than it would have otherwise been.

Senate Bill 118: Safety Service Workers with PTSD Actuarial Analysis of Estimated Costs

(1) Occupation	(2) Number of Workers	(3) Estimated Workers w/ PTSD Symptoms	(4) Estimated Workers Who Will File Claims	(5) Average Annual Salary	(6) Estimated Average Temp Payment	(7) Estimated Temporary Total Payments	(8) Estimated Average Psychotherapy Costs	(9) Estimated Average Pharmaceutical Costs	(10) Estimated Total Medical Costs	(11) Estimated Total Costs
Ambulance Drivers	800	144	29	\$20,640	\$11,547	334,876	4,616	2,500	206,359	541,235
EMS	10,570	1,903	381	\$31,000	\$15,881	6,050,802	4,616	2,500	2,711,135	8,761,937
Firefighters	32,800	5,904	1,181	\$46,818	\$23,926	28,256,036	4,616	2,500	8,403,807	36,659,843
Police	36,459	6,563	1,313	\$55,076	\$30,900	40,571,443	4,616	2,500	9,343,098	49,914,541
Total	80,629	14,514	2,904		25,900	75,213,157			20,664,399	95,877,556

(12) Estimated Costs for Substance Abuse Rehabilitation 2,558,502

(13) Estimated Total Annual Costs **98,436,058**

- (1) Firefighters include full-time, volunteer, and supervisors. Police include full-time, part-time, special operations, and supervisors.
- (2) Public records
- (3) Estimated that 18.0% of all emergency responders have PTSD symptoms
- (4) Assumed that 20.0% of emergency responders with PTSD symptoms will file workers' compensation claims
- (5) Public records
- (6) Statutorily prescribed weekly wage for an assumed 39 weeks
- (7) = column (4) * column (6)
- (8) Assumes 20 psychotherapy sessions
- (9) Estimated from existing PTSD pharmaceutical costs
- (10) = column (4) * [column (8) + column (9)]
- (11) = column (7) + column (10)
- (12) Exhibit 2, row (12)
- (13) = column (11), Total row + row (12)

Senate Bill 118: Safety Service Workers with PTSD

Actuarial Analysis of Estimated Costs

70%
25%

- (1) % of employees with PTSD symptoms who also have comorbid substance abuse
- (2) % of those employees who require detoxification treatment
- (3) Proportion of treatment done as Inpatient and Outpatient

Inpatient treatment: 30%
 Outpatient treatment: 70%

4,296

- (4) Detoxification Cost = (% IP treatment) * (IP Cost) + (% OP treatment) * (OP Cost)
 Inpatient cost: 5,438
 Outpatient cost (70% of IP cost): 3,807

752

- (5) Estimated detoxification cost per employee = row (1) * row (2) * row (4)

40%
10%
129

- (6) % with comorbid substance abuse that seek additional psychological treatment
- (7) Increase in 1st year therapy costs for those that seek additional treatment[†]
- (8) Additional psychological treatment costs per employee
 = row (1) * row (6) * row (7) * Exh 1, column (8)

- (9) Number of Injured Workers (Exhibit 1, column (4)

- (10) Total Detoxification Costs = row (5) * row (9)

- (11) Total Additional Psychological Treatment Costs = row (8) * row (9)

- (12) Total Substance Abuse Rehabilitation Costs = row (10) + row (11)

Ambulance	EMS	Firefighters	Police	Total
Drivers	381	1,181	1,313	2,904
29	21,802	887,856	987,092	2,183,179
3,748	49,242	152,637	169,697	375,323
25,550	335,671	1,040,493	1,156,788	2,558,502

[†] Assumes no mandate to select a provider that can treat both PTSD and substance abuse concurrently. Therefore, we would need to recognize an increase due to coordination between both providers and additional therapy visits

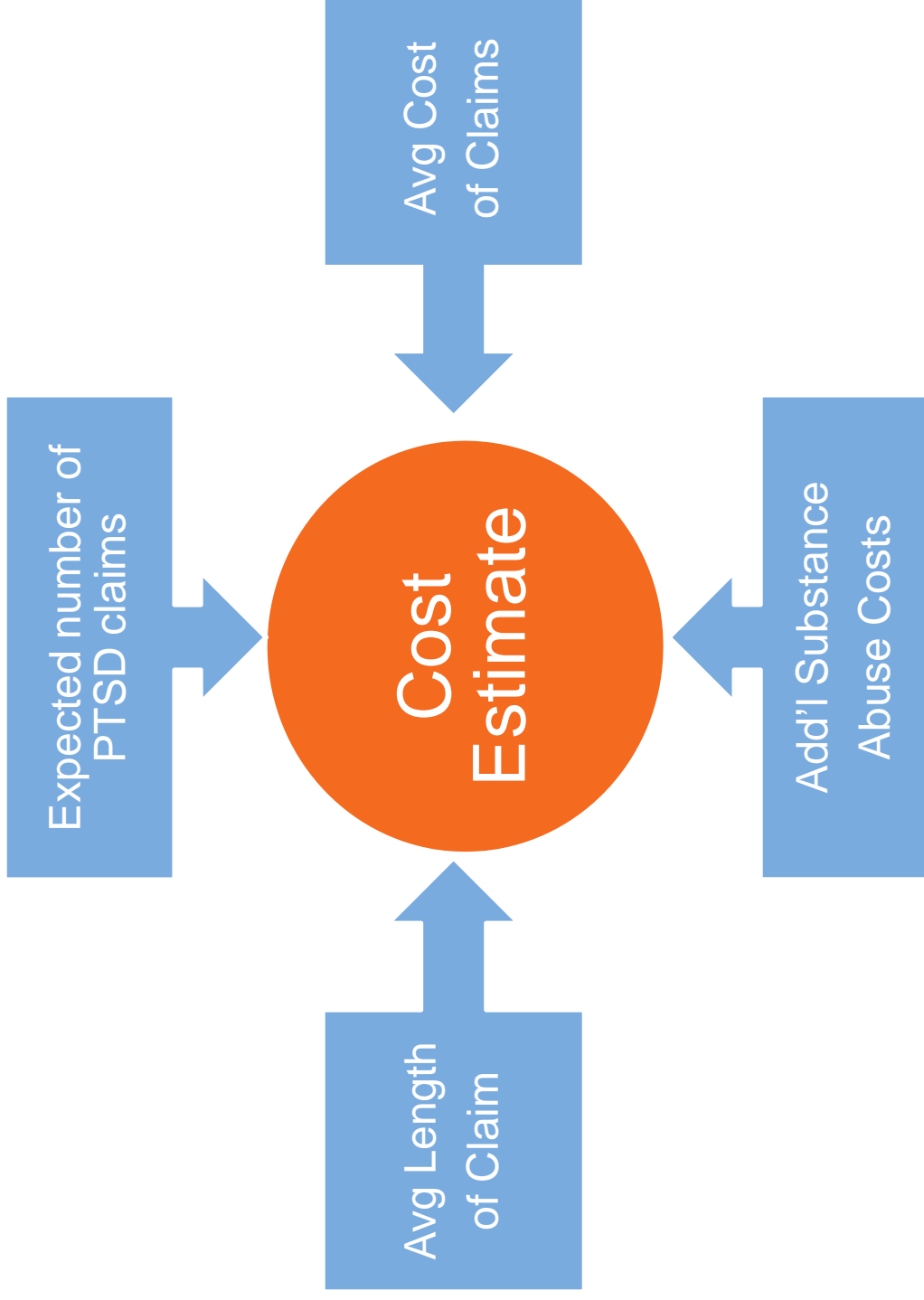
PTSD Cost Estimates: Senate Bill 118 and House Bill 161

5/24/2017

What Would Be Covered?

- Provide benefits to employees suffering from PTSD symptoms as a result of their employment
- Applicable to emergency responders (fire, police, EMS)
- 1 year of medical benefits and 1 year of wage comp
- Coordination of benefits with public retirement systems for that year of coverage

Developing the Estimate



Estimated Cost:

\$98.4 million per year

QUESTIONS



**BEFORE THE INSURANCE COMMITTEE
OF THE HOUSE OF REPRESENTATIVES
REPRESENTATIVE TOM BRINKMAN, CHAIRMAN**

**TESTIMONY
OF
CATHY DUHIGG GANNON
EATON
OMA SAFETY AND WORKERS' COMPENSATION COMMITTEE**

DECEMBER 13, 2017

Mr. Chairman and members of the Committee, my name is Cathy Duhigg Gannon and I am Eaton's Senior Manager of Workers' Compensation. Eaton is a multinational power management company with its operational headquarters located in Beachwood, Ohio. I also serve on The Ohio Manufacturers' Association's (OMA) Safety and Workers' Compensation Committee. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1,400 members. Its mission is to protect and grow Ohio manufacturing. I'm here today to testify on behalf of the OMA on House Bill 268.

House Bill 268 does essentially two things. First the bill allows all self-insuring employers to purchase private workers' compensation insurance. Second, the bill requires the Administrator of the BWC to waive the requirement that an employer have sufficient assets located in Ohio to qualify for self-insuring status if the employer holds a rating of Ba2 or higher according to Moody's, or a comparable rating from a similar agency. These companies would make up a new Self-Insuring Employers' Guaranty B Fund. It is the second provision of the bill which the OMA would like to address today.

The OMA has long supported self-insurance of workers' compensation in Ohio, and has previously worked with the BWC and this body to ensure that changes to self-insurance qualifications benefit qualified employers without putting the risk pool in jeopardy. An example of this would be when the BWC sought support to waive the 500 employee threshold as one of the considerations for self-insurance so long as the company still had strong financials. This was done first through rule and later statute.

Guarantee Funds act as a mutualized form of insurance that provide coverage for any injured worker whose self-insured employer defaults on its obligations. It is funded by employers granted the privilege to self-insure their worker's compensation losses, and these employers rely on the BWC to ensure that employers granted this privilege have the financial capability to pay for these losses. House Bill 268 would dramatically change which companies would be eligible to self-insure. By lowering the credit threshold to Ba2, Ohio would be allowing companies with non-investment grade financials to be considered for self-insurance for the first time ever, which in turn would create a much weaker guarantee pool. This is a major risk for any company that would

become part of the new “B” fund and likely as well for the state of Ohio, as in the event of cash constraints or bankruptcies during a financial downturn, these sources would be called upon to finance claims in the system as well as claims yet to be filed against these defaulting self-insured employers.

The most significant reason that companies are not granted self-insurance in Ohio is not because of their assets in the state, but rather, it is because their financial positions are not strong enough to cover expected losses from workers’ compensation claims. Strong financials are necessary so that the Guarantee Fund, any guarantee fund, does not go bankrupt under financial pressure. During the Great Recession in 2008, the BWC and the self-insured community shared a significant concern that the Self-Insured Employers’ Guarantee Fund would not be adequate to cover current and future liabilities as companies went out of business and others were teetering on the brink of bankruptcy, and this with the strongest and most financially stable companies. Imagine the potential crisis with a much weaker set of employers.

House Bill 268 adds significant risk to the state of Ohio, potential self-insured employers, and Ohio’s injured workers. Ohio already has a path to self-insurance that works, and there are significant risks to changing this process. At this time and for these reasons, the OMA must oppose House Bill 268. Thank you. I’ll be pleased to attempt to answer any questions you may have.



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Paul Luzzi

H.B. 268

132nd General Assembly
(As Introduced)

Reps. Henne, Butler, Romanchuk, Brenner, McColley, Becker, Hood, Retherford, Seitz, Scherer, Thompson, Goodman, Kick

BILL SUMMARY

- Allows all self-insuring employers to purchase private workers' compensation insurance to cover any workers' compensation claim from an insurer that has an A.M. Best Financial Strength Rating of A or higher.
 - Requires the Administrator of Workers' Compensation to waive a requirement that an employer have sufficient assets located in Ohio to qualify for self-insuring status if the employer holds a rating of B3 or higher according to Moody's or a comparable rating from a similar agency.
 - Creates the Self-Insuring Employers' Guaranty B Fund, which consists of contributions and other payments made by employers granted self-insuring status as a result of the waiver.
 - Provides for payment from the Fund of compensation and benefits to employees of a defaulting employer who is granted self-insuring status as a result of the waiver.
-

CONTENT AND OPERATION

Overview

In Ohio, an employer may provide workers' compensation coverage for the employer's employees in two ways: paying premiums into the State Insurance Fund, or being granted the privilege of paying compensation and benefits directly, known as self-insurance. The bill allows all self-insuring employers to purchase private workers' compensation insurance to cover any claim and revises the law governing how an

employer is granted the status of a self-insuring employer under Ohio's Workers' Compensation Law.¹

Private workers' compensation insurance

The bill allows any self-insuring employer to purchase private workers' compensation insurance from an insurer that has an A.M. Best Financial Strength Rating of A or higher to indemnify the employer against all or part of the employer's loss arising under the Workers' Compensation Law (see **COMMENT**). A.M. Best Rating Services rates the financial strength of insurers. The rating "A" is assigned to "insurance companies that have, in [A.M. Best's] opinion, an excellent ability to meet their ongoing insurance obligations."²

Current law voids most contracts or agreements that indemnify or insure an employer against workers' compensation claims. A self-insuring employer may, however, purchase an insurance policy that indemnifies against all or part of the employer's loss in excess of \$50,000 from a single disaster or event arising out of the employer's workers' compensation liability. But the insurer cannot, directly or indirectly, represent the employer in any settlement, adjudication, determination, allowance, or payment of workers' compensation claims. The bill eliminates this prohibition.³

The bill removes the prohibition against the Administrator considering a private workers' compensation insurance policy, or the employer's ability to obtain a policy, when determining whether an employer possesses sufficient financial ability to become a self-insuring employer.⁴

Self-insurance requirement waiver

Current law requires an employer, in addition to satisfying other requirements, to have enough assets located in Ohio to insure the payment of claims to qualify for self-insuring status. Under the bill, the Administrator of Workers' Compensation must waive the asset requirement if an employer holds a rating of B3 or higher from Moody's

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

² A.M. Best Rating Services, *Best's Rating Methodologies*, <http://www.ambest.com/ratings/methodology.asp> (accessed September 12, 2017) and Best's Financial Strength Rating Guide, <http://www.ambest.com/ratings/guide.pdf> (accessed September 12, 2017).

³ R.C. 4123.82(A) and (B)(1), with conforming changes in R.C. 4123.35(B) and (C).

⁴ R.C. 4123.82(B)(2).

Investors Service, Inc., or a comparable rating by a similar independent rating agency.⁵ According to Moody's Investors Service, the "purpose of Moody's ratings is to provide investors with a simple system of gradation by which future relative creditworthiness of securities may be gauged."⁶ Moody's Investors Service states "[o]bligations rated B are considered speculative and are subject to high credit risk" and the "modifier 3 indicates a ranking in the lower end of that generic rating category."⁷

Current law requires a private sector employer who wishes to be granted self-insuring status to satisfy all of the following requirements:

- The employer has sufficient assets located in Ohio to insure the employer's solvency in paying employees directly (waived for qualifying employers under the bill);
- 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's financial records from the current year and the previous four years provide full financial disclosure;
- The employer has an organizational plan for the administration of the Law;
- The employer has a proposed plan to inform employees about changing from being covered through the State Insurance Fund to being 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

⁵ R.C. 4123.35(B).

⁶ Moody's, "Ratings Definitions," <https://www.moody.com/ratings-process/Ratings-Definitions/002002> (accessed September 12, 2017).

⁷ Moody's Investors Service, *Rating Symbols and Definitions: July 2017*, https://www.moody.com/research/documentcontentpage.aspx?docid=PBC_79004 (accessed September 11, 2017).

payroll checks or the employer clearly indicates that payment will be honored by a financial institution in Ohio.⁸

An employer granted self-insuring status through the waiver is subject to the same requirements that self-insuring employers are subject to under current law. This includes requirements to pay assessments based on the amount of the employer's paid compensation as defined in continuing law and to provide a surety bond sufficient to pay claims, except that the employer must contribute to the Self-Insuring Employers' Guaranty B Fund created under the bill (see "**Self-Insuring Employers' Guaranty B Fund**," below), instead of the Self-Insuring Employers' Guaranty Fund (SIEGF) under current law. Similar to current law for other self-insuring employers, failing to pay into the Self-Insuring Employers' Guaranty B Fund, as well as failing to comply with the Administrator's rules or to pay compensation and benefits in a timely manner, can result in revocation or denial of renewal of self-insuring status.⁹

Self-insuring Employers' Guaranty B Fund

The bill creates the Self-Insuring Employers' Guaranty B Fund, which is a custodial fund that consists of contributions and other payments made by self-insuring employers who are granted the waiver described above (see "**Self-insurance requirement waiver**," above). The Fund operates in a similar manner as the current law SIEGF. An employer granted self-insuring status without the waiver continues to pay into the SIEGF. The Fund created under the bill secures compensation and benefits for employees of a self-insuring employer who is granted the waiver but who defaults on the obligation to make direct payments.¹⁰

If a self-insuring employer defaults in the payment of direct benefits or compensation to an employee, the Bureau of Workers' Compensation (BWC) recovers the benefits and compensation that BWC pays as a result of the default from the Fund. If that self-insuring employer has contributed to the Fund, the employer retains the continuing law immunity from suits for damages for any injury, occupational disease, or bodily condition received or contracted by an employee in the course of or arising out of the employee's employment.¹¹

⁸ R.C. 4123.35(B)(1)(a) through (g).

⁹ R.C. 4123.35(D) and (J) to (M) and 4123.352.

¹⁰ R.C. 4123.354(A) and (D), with conforming changes in R.C. 4123.351 and 4123.352.

¹¹ R.C. 4123.354(B) and (C).

The Administrator has the rights of reimbursement and subrogation and must collect from a defaulting self-insuring employer or other liable person all amounts the Administrator pays or reasonably expects to pay from the Fund on account of a defaulting self-insuring employer.¹²

Contributions

As with the SIEGF, the Administrator must establish a contribution amount each year and require every employer granted self-insuring status through the waiver to pay the established contribution to the Fund. Contribution rates are to be as low as possible but must be sufficient to assure enough money in the Fund to guarantee the payment of any claims against the Fund. The Fund is not subject to regulation by the Superintendent of Insurance or the laws governing deposits required of guaranty companies.¹³

The Administrator, with the advice and consent of the BWC Board of Directors, may adopt rules under the Administrative Procedure Act to implement the Fund. The rules may include a requirement that self-insuring employers who contribute to the Fund provide additional security, which must be sufficient and adequate to meet the obligations of self-insuring employers who contribute to the Fund.¹⁴

Similar to current law with respect to contributions to the SIEGF, the purchase of coverage through the Fund by a self-insuring employer is valid notwithstanding a general prohibition in continuing law against contracts that indemnify loss arising from an employer's workers' compensation liability. The security provided by the Fund is in addition to any private workers' compensation insurance that the bill permits all self-insuring employers to purchase (see "**Private workers' compensation insurance**," above).¹⁵

Administration

Similar to the SIEGF, the Administrator may invest any surplus or reserve belonging to the Fund in the same manner and to the same extent that the Administrator may invest any surplus or reserve belonging to the State Insurance Fund. All investment earnings of the Fund are credited to the Fund. The Administrator can use interest earned on principal investments for only either of the following:

¹² R.C. 4123.354(G).

¹³ R.C. 4123.354(B), by reference to R.C. 3929.10 to 3929.18, not in the bill.

¹⁴ R.C. 4123.354(E), by reference to R.C. Chapter 119., not in the bill.

¹⁵ R.C. 4123.354(F).



- Reducing assessments for Fund contributions;
- Making payments required due to defaults in payments by self-insuring employers who contribute to the Fund.¹⁶

If the Board determines necessary, it may assure the Fund's solvency through reinsurance using any of the following means:

- Entering contracts for the purchase of reinsurance with any company or agency authorized by law to provide reinsurance;
- Requiring the Administrator to pay the cost of reinsurance from the Fund;
- Including the costs of reinsurance as a liability and estimated liability of the Fund.¹⁷

Liability

Except in cases of gross abuse of discretion, the Board, individual Board members, and the Administrator are not individually liable for contributions, the Fund's administration, the Fund's investment, or the payment of liabilities from the Fund.

The bill also specifies that the state of Ohio is not liable for assessments for contributions to the Fund, the Fund's administration, the investment of money in the Fund, or the payment of liabilities incurred by the Fund.¹⁸

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 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

¹⁶ R.C. 4123.354(D)(2), by reference to R.C. 4123.44, not in the bill.

¹⁷ R.C. 4123.354(D)(3).

¹⁸ R.C. 4123.354(H).

of a state fund employer, and (3) applies uniformly within a classification.¹⁹ However, only a court could determine whether any type of private insurance system complies with the constitutional provision

HISTORY

ACTION	DATE
Introduced	06-12-17

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¹⁹ *State ex rel. Turner v. U.S. Fidelity and Guarantee Company*, 96 Ohio St. 250 (1917).





OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Paul Luzzi

H.B. 269

132nd General Assembly
(As Introduced)

Reps. Henne, Brinkman, Schuring, Butler, Lipps, Hambley, Green, Scherer, Brenner, Retherford, Romanchuk, Riedel, Becker, Dean, Seitz, Rezabek, Ginter, Keller, Patton, McColley, Schaffer, Kick, Huffman, Stein, Thompson, R. Smith

BILL SUMMARY

Office of Worker Safety and Rehabilitation

- Renames the Bureau of Workers' Compensation the Office of Worker Safety and Rehabilitation and the Administrator of Workers' Compensation the Administrator of Worker Safety and Rehabilitation, and renames other entities that oversee the workers' compensation system in a similar manner.

Extended benefit compensation

- Replaces permanent total disability (PTD) compensation with extended benefit (EB) compensation when an employee attains full retirement age for the position in which the employee was employed at the time the employee suffered the injury or contracted the occupational disease that led to PTD.
- Sets the "full retirement age" at either (1) the age at which an employee is eligible for an unreduced retirement allowance or benefit from an existing state pension system or any municipal pension system, or (2) the age at which the employee reaches full retirement age under the Social Security Act.
- Calculates the amount of EB compensation that an employee receives by multiplying the PTD compensation the employee received by a percentage that varies based on the number of years the employee received PTD compensation.
- Requires the Administrator to increase the amount of EB compensation payable to an employee by 2% each year.

- Prohibits an employee who is receiving EB compensation from participating in the Disabled Workers' Relief Fund.

Dependent benefits

- Adds a lump sum payment and a scholarship for higher education to the death benefits available to a deceased employee's dependents under continuing law.

Temporary total disability compensation

- Requires the Administrator to develop a written return to work plan for an employee who is receiving temporary total disability compensation that includes an objective of returning the employee to gainful employment and the methods by which to achieve the objective.

Loss prevention

- Requires the Administrator to incentivize employers to participate in loss prevention programs developed by the Superintendent of the Division of Safety and Hygiene.

CONTENT AND OPERATION

Office of Worker Safety and Rehabilitation

The bill renames the entities that carry out workers' compensation functions in Ohio. The following table lists the entities' titles under current law and under the bill:

Title under current law	Title under the bill
Bureau of Workers' Compensation	Office of Worker Safety and Rehabilitation
Administrator of Workers' Compensation	Administrator of Worker Safety and Rehabilitation
Bureau of Workers' Compensation Board of Directors	Office of Worker Safety and Rehabilitation Board of Directors
Bureau of Workers' Compensation Chief Investment Officer	Worker Safety and Rehabilitation Chief Investment Officer
Deputy Inspector General of the Bureau of Workers' Compensation and Industrial Commission	Deputy Inspector General for the Office of Worker Safety and Rehabilitation
Workers' Compensation Actuarial Committee	Actuarial Committee of the Office of Worker Safety and Rehabilitation

Title under current law	Title under the bill
Workers' Compensation Audit Committee	Audit Committee of the Office of Worker Safety and Rehabilitation
Workers' Compensation Investment Committee	Investment Committee of the Office of Worker Safety and Rehabilitation

Under the bill, any reference to the current titles in a statute, rule, contract, or other document will be construed to mean the title used in the bill. The Administrator must implement the name changes within five years after the bill's effective date.¹

Extended benefit compensation

Under the bill, permanent total disability (PTD) compensation generally terminates and is replaced with extended benefit (EB) compensation when the employee reaches full retirement age for the position held by the employee at the time the employee sustained the injury or contracted the occupational disease that led to PTD compensation (see "**Full retirement age**," below). However, if an employee has reached full retirement age or is within one year of reaching that age when the employee's injury occurred or the occupational disease was contracted, PTD compensation terminates after two years, and then the employee receives EB compensation.²

Under current law, an eligible employee receives PTD compensation until the employee's death, provided one of the following applies:

- (1) The employee cannot engage in any form of sustained remunerative employment using the employment skills that the employee has or may reasonably be expected to develop;
- (2) The employee has lost or has lost the use of multiple body parts.³

Full retirement age

The bill establishes an employee's "full retirement age" as one of the following:

- (1) The age at which an employee is eligible for an unreduced retirement allowance or benefit from the Public Employees Retirement System, the State Teachers

¹ R.C. 4121.124, with conforming changes throughout the bill.

² R.C. 4123.58(C).

³ R.C. 4123.58(B) and (E).

Retirement System, the School Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Highway Patrol Retirement System, or any municipal retirement system in Ohio;

(2) The age at which the employee reaches full retirement age under the old age, survivor, and disability insurance program established by the Social Security Act,⁴ regardless of whether the employee is eligible for a benefit.⁵

Extended benefit calculation

Under the bill, the amount of EB compensation that an employee receives is a percentage of the PTD compensation the employee received. As shown in the following table, the percentage is based on the number of years the employee received PTD compensation:⁶

Number of years of PTD compensation	EB Compensation
At least one year but less than two years	10% of PTD compensation
At least two years but less than three years	20% of PTD compensation
At least three years but less than four years	30% of PTD compensation
At least four years but less than five years	40% of PTD compensation
At least five years but less than six years	50% of PTD compensation
At least six years but less than seven years	60% of PTD compensation
At least seven years but less than eight years	70% of PTD compensation
At least eight years but less than nine years	80% of PTD compensation
At least nine years but less than ten years	90% of PTD compensation
Ten years or more	100% of PTD compensation

Under continuing law, PTD compensation is 66⅔% of the employee's average weekly wage, not to exceed a maximum amount of weekly compensation equal to 66⅔% of the statewide AWW (\$902 for 2017) and not to fall below 50% of the statewide AWW (\$451 for 2017) on the date of injury or on the date the disability due to the occupational disease began. An employee whose AWW is less than 50% of the statewide AWW at the time of the injury or disability due to occupational disease receives the employee's AWW. If an employee receives disability benefits under the

⁴ 42 U.S.C. 401, *et seq.*

⁵ R.C. 4123.58(A).

⁶ R.C. 4123.58(D)(1).



Social Security Act in addition to PTD compensation, the total benefit may not exceed the statewide AWW.⁷

Annual adjustments

The bill requires the Administrator to increase the amount of EB compensation payable to an employee by 2% each year. The first increase is payable to the employee when the employee has received EB compensation for 12 months. The increased amount is payable for the following 12-month period or until the next increase is granted, whichever is later. Subsequent increases are determined from the date of the first increase paid to the employee. The date of the first increase becomes the anniversary date for any future increases. The amount of compensation used by the Administrator in calculating the initial increase is the base for all future increases, unless a new base is established.⁸

An employee receiving EB compensation under the bill is not eligible to participate in the Disabled Workers' Relief Fund. Under continuing law, the Fund provides eligible people with an additional payment that is essentially a cost-of-living adjustment for PTD compensation.

To be eligible for a payment from the Fund under current law, a person must be permanently and totally disabled and be receiving workers' compensation payments, the total of which, when combined with disability benefits received pursuant to the Social Security Act is less than \$342 per month adjusted annually based on the consumer price index (\$1,618.72 for 2017).⁹

Effective dates

The bill's provisions governing PTD compensation and EB compensation apply to awards of PTD compensation made on or after the following dates:

(1) For an employee whose injury or occupational disease arises from employment with a private employer, July 1, 2018;

⁷ R.C. 4123.58(B) and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2017, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed September 12, 2017).

⁸ R.C. 4123.58(D)(2).

⁹ R.C. 4123.412 and 4123.413, with conforming changes in R.C. 4121.125, and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2017, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed September 12, 2017).

(2) For an employee whose injury or occupational disease arises from employment with a public employer, January 1, 2019.¹⁰

Death benefits

Lump sum payment and scholarship

The bill adds a lump sum payment and a scholarship for higher education to the death benefits available to a deceased employee's dependents. Under the bill, wholly or partly dependent individuals receive a \$35,000 lump sum payment in addition to the current law benefits described in "**Death benefits**," below. If there is more than one dependent at the time of the employee's death, the Administrator must apportion the lump sum payment in the same manner as required under current law.¹¹

The bill also grants each dependent a scholarship in the amount of \$5,000 per year for up to four years. The scholarship can be used to pay the expenses of attending college, university, technical school, vocational school, or other post-secondary education. A dependent cannot receive the scholarship until the dependent graduates from high school or is awarded a certificate of high school equivalence. Additionally, a dependent who ceases being a dependent as discussed under "**Death benefits – current law**," below, or who stops attending an educational institution without enrolling in another institution forfeits any remaining scholarship amount.¹²

The Administrator must adopt rules for the purpose of administering the scholarships, which must include provisions for the forfeiture of scholarships due to loss of dependent status or withdrawal from enrollment.¹³

Death benefits – current law

Currently, 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

¹⁰ Section 4.

¹¹ R.C. 4123.59(A)(5).

¹² R.C. 4123.59(A)(6).

¹³ R.C. 4123.59(C).



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 AWW and can be no greater than the statewide AWW (\$902 in 2017). 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 \$601 in 2017). The Administrator apportions benefit amounts among the deceased employee's eligible dependents.¹⁴

Temporary total disability – return to work plan

Under the bill, when an employee receives temporary total disability (TTD) compensation, the Administrator must develop a written return to work plan for the employee. The Administrator must include in the plan an objective of returning the employee to gainful employment and the methods by which to achieve the objective. The Administrator may include any of the following objectives in the plan:

- (1) Returning the employee to full-time employment in the same position;
- (2) Returning the employee to part-time employment in the same position or full-time employment in the same position with modified duties;
- (3) Retraining the employee for employment in a different position.¹⁵

Beginning 90 days after the date an employee is determined to be TTD, and at the end of each consecutive 90-day period during which the employee receives TTD compensation, the Administrator must review the employee's return to work plan to determine whether the employee is complying with the plan and whether the plan needs to be revised.¹⁶

If the Administrator determines that the plan does not need to be revised and that the employee is in compliance, the Administrator continues paying TTD compensation to the employee until an event that causes payments to cease under continuing law occurs. If the Administrator determines that the plan does not need to be revised and that the employee is not in compliance with the plan, the Administrator

¹⁴ R.C. 4123.59(A) through (C) and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2017, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed September 12, 2017).

¹⁵ R.C. 4123.561(A).

¹⁶ R.C. 4123.561(B).

must suspend TTD compensation until the employee complies with the plan. Failure to comply with a return to work plan cannot result in dismissal of the employee's claim.

If an employee's return to work plan needs to be revised, the Administrator must revise the plan and provide notice of the revision to the employee and any person necessary to achieving the revised plan's objective. An employee who complies with the revised plan continues receiving TTD compensation until an event that causes payments to cease under continuing law occurs.¹⁷

The bill also requires the Administrator to adopt rules under the Administrative Procedure Act that are necessary to implement and administer the provision.¹⁸

Currently, managed care organizations (MCOs) and healthcare providers are responsible for promoting an employee's safe and timely return to work. A healthcare provider or MCO that fails to promote safe and timely returns to work can be decertified.¹⁹

Loss prevention programs

The bill requires the Administrator to develop and make available incentives for employers to participate in loss prevention programs, including safety consultations, prescribed by the Superintendent of the Division of Safety and Hygiene. The Superintendent must establish goals for participation in programs for protecting the workforce and reducing occupational injury and illness frequency and severity, with a focus on high risk employers and industry sectors.²⁰

Continuing law requires the Superintendent to offer loss prevention programs and courses to employers. Participation in the programs is voluntary, but the Administrator may grant a discounted premium rate to an employer who successfully completes a program or course.²¹

¹⁷ R.C. 4123.561(C).

¹⁸ R.C. 4123.561(D).

¹⁹ Ohio Administrative Code 4123-6-02.3, 4123-6-03.7, and 4123-6-04.3.

²⁰ R.C. 4123.29(A)(7).

²¹ R.C. 4121.37 and 4123.34(E).

HISTORY

ACTION

DATE

Introduced

06-12-17

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OHIO LEGISLATIVE SERVICE COMMISSION

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

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.

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

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.⁵

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 Law⁶ 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

⁴ R.C. 4123.01(A).

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

⁶ R.C. 4127.77, not in the bill.



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

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**).⁸

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.⁹

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.¹⁰

⁷ R.C. 2743.02(I), 2744.02(A), and 4123.513(A).

⁸ R.C. 2307.82(B).

⁹ R.C. 2307.82(C), 2743.02(I), 2744.02(A), and 4123.513(B).

¹⁰ 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.¹¹

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.¹²

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

¹¹ R.C. 4123.511(A) and (B)(1).

¹² R.C. 4123.511(A) and 4123.01(A).



an illegal or unauthorized alien, the claimant must be prosecuted for workers' compensation fraud.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

H0380-I-132.docx/emr

¹³ R.C. 2913.48, not in the bill, and R.C. 4123.511.

¹⁴ Section 3.

¹⁵ Ohio Const., art. I, sec. 16.





OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Paul Luzzi

H.B. 459

132nd General Assembly
(As Introduced)

Reps. Henne, Hambley, Becker, Romanchuk, Seitz, Kick, Hood

BILL SUMMARY

- Allows the Administrator of Workers' Compensation to grant self-insuring status to a group of employers.
 - Requires the Administrator to adopt rules necessary to implement the bill.
-

CONTENT AND OPERATION

Overview

In Ohio, an employer may provide workers' compensation coverage for the employer's employees in two ways: paying premiums into the State Insurance Fund, or being granted the privilege of paying compensation and benefits directly, known as self-insurance. An employer who wishes to be granted self-insuring status must satisfy factors specified in continuing law and any other factors specified by the Administrator of Workers' Compensation to demonstrate sufficient financial and administrative ability to assure that all of the employer's workers' compensation obligations are promptly met.¹ The bill allows the Administrator to grant self-insuring status to a group of employers and requires the Administrator to adopt rules implementing the bill.

Group self-insurance

Under the bill, groups of employers who can abide by the Administrator's rules and who have sufficient financial ability to pay their obligations under the Workers' Compensation Law² may be granted self-insuring status. An employer does not need to be

¹ R.C. 4123.35, not in the bill.

² R.C. Chapters 4121., 4123., 4127., and 4131.

a self-insuring employer to join a self-insuring group, and the Administrator cannot require an employer who wishes to join a self-insuring group to qualify individually for the right to self-insure.³

Rule adoption

Criteria for self-insurance groups

Under the bill, the Administrator must adopt rules to implement group self-insurance. In the rules the Administrator must establish criteria for determining whether a group wishing to be granted self-insuring status is financially and administratively capable of promptly meeting the obligations of a self-insuring employer. The bill also requires the Administrator to establish requirements that an employer must meet to join a self-insuring group.⁴

Under the bill the factors that the Administrator must consider to determine whether an individual employer demonstrates the ability to meet all of the obligations under continuing law do not apply to a group of employers who wish to self-insure under the bill.⁵ The continuing law requirements for individual employers vary depending on the type of employer and are summarized in the following table:

Factors the Administrator considers for private employers and boards of county commissioners that wish to self-insure sports facility construction projects⁶	Requirements any other public employers who may self-insure must satisfy⁷
The sufficiency of the employer's or board's assets located in Ohio to insure the employer's solvency in paying compensation directly.	For the two fiscal years preceding the application, the unreserved and undesignated year-end fund balance in the public employer's general fund is equal to at least 5% of the public employer's general fund revenues.
The employer or board has operated in Ohio for at least two years (the Administrator may waive this requirement for a private sector employer if certain conditions are met).	For the two years preceding the application, the public employer has maintained an unvoted debt capacity equal to at least two times the amount of the current annual premium established by the Administrator for that public employer.
If the employer or board previously paid into	For the five years preceding the application,

³ R.C. 4123.354(A) and (C), by reference to R.C. 4123.35(B) and (C), not in the bill.

⁴ R.C. 4123.354(B)(1) and (2).

⁵ R.C. 4123.354(A)(1) and (2).

⁶ R.C. 4123.35(B)(1) and (C), not in the bill.

⁷ R.C. 4123.35(B)(2), not in the bill.



Factors the Administrator considers for private employers and boards of county commissioners that wish to self-insure sports facility construction projects⁶	Requirements any other public employers who may self-insure must satisfy⁷
<p>the State Insurance Fund, the amount of the buyout from the Fund.</p> <p>The employer's or board's financial records from the current year and the previous four years provide full financial disclosure (the Administrator may waive this requirement for a private sector employer if certain conditions are met).</p> <p>The employer's or board's organizational plan for the administration of the Law.</p> <p>The employer's or board's proposed plan to inform employees of the change to self-insurance, the procedures the employer or board will follow as a self-insuring employer, and the employee's right to compensation and benefits.</p> <p>The employer or board has an account in an Ohio financial institution or, if the account is with an out-of-state financial institution, the employer or board ensures that workers' compensation checks are drawn from the same account as payroll checks or the employer or board clearly indicates that payment will be honored by an Ohio financial institution.</p> <p>The board provides a surety bond in an amount equal to 125% of projected losses as determined by the Administrator (does not apply to a private sector employer).</p>	<p>the public employer has complied fully with disclosure requirements established by the U.S. Securities and Exchange Commission, as applicable.</p> <p>For the five years preceding the application, the public employer has not had its Local Government Fund distribution withheld on account of the public employer being indebted or otherwise obligated to the state.</p> <p>For the five years preceding the application, the public employer has not been under a fiscal watch or fiscal emergency pursuant to state law.</p> <p>For the public employer's fiscal year preceding the application, the public employer has obtained an annual financial audit as required under continuing law that has been released by the Auditor of State within seven months after the end of the public employer's fiscal year.</p> <p>On the date of the application, the public employer holds a debt rating of Aa3 or higher according to Moody's Investors Service, Inc., or a comparable rating by an independent rating agency.</p> <p>The public employer agrees to generate an annual accumulating book reserve in its financial statements reflecting an actuarially generated reserve adequate to pay projected claims.</p> <p>For a public employer that is a hospital, the public employer submits audited financial statements showing the hospital's overall liquidity characteristics.</p> <p>The public employer satisfies any additional criteria that the Administrator adopts by rule</p>

Transfer procedures

The bill requires the Administrator to adopt rules to establish procedures for, and determine the liability of, an employer who transfers coverage between the State Insurance Fund and a self-insuring group.⁸ This liability might include the amount employers must pay to cover their liability for existing claims in the Fund, any administrative assessments paid by self-insuring employers under continuing law, and any payments made to the Self-Insuring Employers Guaranty Fund.⁹

Multiple employer welfare arrangements

Under the bill the Multiple Employer Welfare Arrangement Law¹⁰ does not apply to a group of employers that have been granted self-insuring status for purposes of the Workers' Compensation Law. Under the Multiple Employer Welfare Arrangement Law, only certain groups – such as a chamber of commerce or a business league – are permitted to establish, maintain, or operate a group self-insurance program under a multiple employer welfare arrangement.¹¹

HISTORY

ACTION	DATE
Introduced	01-09-18

H0459-I-132.docx/ts

⁸ R.C. 3123.354(B)(3).

⁹ See, e.g., R.C. 4123.35 and 4123.351, not in the bill.

¹⁰ R.C. Chapter 1739.

¹¹ R.C. 1739.02.





Representative Michael E. Henne
Ohio House District 40

Sponsor Testimony – HB 459
January 24th, 2018

Chairman Brinkman, Ranking Member Bocchieri and members of the Insurance Committee, thank you for the opportunity to present HB 459, Group Self-Insurance.

A self-insurance group is a method by which small to medium sized employers within the same industry can pool their workers' compensation liability together and spread it amongst multiple employers. Many self-insured employers can disperse their risk within their own company and have the means to meet the financial obligations of their workers' compensation program. By allowing employers to group together, they can have the same characteristics of the employers that are self-insured.

Benefits of self-insurance groups:

- Demonstrated cost savings: Faster return to work timeframes and loss control programs
- Predictable workers' compensation rates for employers who may be bidding for contracts
- Greater continuity with and accountability for medical providers
- Reduced service confusion and communication challenges
- No more multiple MCOs injured workers may have to deal with

Many associations already have industry wide self-insured health plans, retirement plans, and safety and training programs to attract skilled workers. Yet, workers' compensation is the only "insurance" benefit that is not coordinated through a self-determination approach.

Ohio is one of just 10 states that do not allow group self-insured workers' compensation, creating a competitive disadvantage with our neighboring states of Michigan, Pennsylvania, Kentucky and West Virginia, and the Midwestern states of Illinois, Missouri, Iowa, Minnesota, Kansas, and Nebraska who all allow group self-insurance.

This is a rare occasion of business and unions aligned on an issue. Creating a loss transfer mechanism lowers the overall costs for the benefit of employers, employees, and customers. The bill gives businesses more options in Ohio, and leaves determination of criteria and eligibility up to the BWC administrator.

Committees:

Insurance- Vice Chair
Education
Ways and Means

www.ohiohouse.gov
77 S. High Street, Columbus, Ohio 43215-6111

Contact Information:

Office: 614-644-8051
Toll-Free: 1-800-282-0253
FAX: 614-719-3590
Email: rep40@ohiohouse.gov

I_132_2037

132nd General Assembly
Regular Session
2017-2018

. B. No.

A BILL

To amend section 4123.932 of the Revised Code 1
regarding the circumstances under which a 2
workers' compensation claim that is likely to be 3
subrogated by a third party is paid from the 4
surplus fund account in the State Insurance Fund 5
rather than charged to the employer's 6
experience. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4123.932 of the Revised Code be 8
amended to read as follows: 9

Sec. 4123.932. (A) As used in this section, "motor 10
vehicle" has the same meaning as in section 4501.01 of the 11
Revised Code. 12

(B) Any compensation and benefits related to a claim that 13
is compensable under this chapter or Chapter 4121., 4127., or 14
4131. of the Revised Code shall be charged to the surplus fund 15
account created under division (B) of section 4123.34 of the 16
Revised Code and not charged to an individual employer's 17


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experience if, upon the administrator's determination, all of 18
the following apply to that claim: 19

(1) The employer of the employee who is the subject of the 20
claim pays premiums into the state insurance fund. 21

(2) The claim is based on a motor vehicle accident 22
involving a third party. 23

(3) Any of the following circumstances apply to the claim: 24

(a) The third party is issued a citation for violation of 25
any law or ordinance regulating the operation of a motor vehicle 26
arising from the accident on which the claim is based. 27

~~(4) Either of the following circumstances apply to the~~ 28
~~claim:~~ 29

~~(a)~~ (b) Any form of insurance maintained by the third 30
party covers the claim. 31

~~(b)~~ (c) Uninsured or underinsured motorist coverage, as 32
described in section 3937.18 of the Revised Code, covers the 33
claim. 34

(C) If an employer believes division (B) of this section 35
applies to a claim about which an employee of the employer is 36
the subject, the employer may file a request with the 37
administrator for a determination by the administrator as to 38
whether the claim is to be charged to the surplus fund account 39
pursuant to this section. 40

(D) (1) Within one hundred eighty days after the 41
administrator receives a request made under division (C) of this 42
section, the administrator shall determine whether the claim for 43
which the request is made shall be charged to the surplus fund 44
account pursuant to this section. 45

(2) If the administrator fails to make a determination 46
under division (D) (1) of this section within the time required, 47
the administrator shall charge the claim for which the request 48
was made to the surplus fund account pursuant to this section. 49

(E) This section does not apply if the employer of the 50
employee who is the subject of the claim is the state or a state 51
institution of higher education, including its hospitals. 52

Section 2. That existing section 4123.932 of the Revised 53
Code is hereby repealed. 54

Section 3. Section 4123.932 of the Revised Code, as 55
amended by this act, applies to a claim under Chapter 4121., 56
4123., 4127., or 4131. of the Revised Code arising on or after 57
the effective date of this act. 58

For immediate release: Jan. 25, 2018

Double-digit workers' comp rate reduction proposed

COLUMBUS - The Ohio Bureau of Workers' Compensation (BWC) asked its board of directors today to reduce private employer premium rates by 12 percent beginning July 1.

If approved, the reduction would save private employers \$163.5 million over this year's premiums, which are already at their lowest rates in at least 40 years.

"Ohio is in an outstanding position as the cost of workers' comp coverage continues to fall, thanks to fewer workplace injury claims and slow-to-moderate growth in medical inflation," said BWC Administrator/CEO Sarah Morrison. "We know the less employers spend on premiums, the more they can invest in their communities and in safer work environments for their employees. And when that happens, we all benefit."

BWC experienced 86,290 allowed claims in 2017, a near 18 percent drop from 2011. This is the lowest number of claims dating back to at least 1997, when there were more than 277,000 claims.

Morrison attributes the declining numbers to several factors, including BWC's efforts to promote safe and healthy workplaces, increased safety funding and more employers putting safety education and resources to work. From 2010 through 2015, BWC's Division of Safety & Hygiene saw a 71 percent increase in the number of employers using its safety programs and services.

BWC's private employer rates have decreased or remained unchanged every year since 2007, with the last reduction occurring in 2016. Public rates have fallen, too, including a 6.1 percent cut that took effect Jan. 1 this year.

The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various BWC discount programs.

The board will vote on the recommendation during its next regular meeting scheduled for Feb. 23.

Media Contacts:

Melissa Vince, 614-466-2956 or 614-202-2329, melissa.vince@bwc.state.oh.us

Tony Gottschlich, 614-644-4940 or 614-296-1734, anthony.gottschlich@bwc.state.oh.us

Established in 1912, the Ohio Bureau of Workers' Compensation provides workers' compensation insurance to 244,000 public and private Ohio employers. With nearly 1,900 employees and assets of approximately \$27 billion, BWC is the largest state-run insurance system in the United States. Our mission is to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. For more, visit www.bwc.ohio.gov.

###

BWC Health and Wellness Program

Taking Care of Ohio's Workforce

BWC's mission is to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. BWC is ready to lead a sustained, scalable effort to address the quality of life and health challenges for Ohio's workforce. Our unique position enables us to positively impact the quality of life and health for Ohio's workforce and improve the efficiency of Ohio's businesses.

Having a healthy workforce gives employers the ability to focus on their businesses and manage their workers' compensation and health-care costs. A Health and Wellness Program that benefits Ohio's workforce can:

- o Prevent injuries because of improved workforce health;
- o Reduce the severity of an injury;
- o Increase the speed of recovery from an injury;
- o Reduce time away from work due to an injury.

A key element for a successful Health and Wellness Program is offering appropriate services by a qualified, provider network. Once built, our network and available services will offer a one-stop shop for all to find and use health-prevention resources. A sample of services includes:

- o Health and wellness awareness, education and training;
- o Health-risk assessments and biometric screenings;
- o Personalized health coaching, nurse advice line;
- o Lifestyle management programs;
- o Disease-management programs.

While all Ohioans could benefit from this initiative, BWC will focus initially on a smaller participant group and based on feedback - expand the program. BWC will offer program funding on a first come, first serve basis to Ohio's workforce and injured workers whose employers do not have such a program until the \$6 million are utilized.

Workforce eligibility criteria	Injured worker eligibility criteria
<p>Ohio employers with 50 employees or less in the following industries:</p> <ul style="list-style-type: none"> • Agriculture; • Automotive repair and service; • Construction; • Firefighters; • Health care; • Manufacturing; • Police and public safety; • Public employers; • Restaurant and food service; • Transportation and trucking; • Trash collection; • Wholesale and retail. 	<p>BWC will invite an injured worker to participate after consulting with their employer and managed care organization.</p> <p>Additional eligibility criteria could include:</p> <ul style="list-style-type: none"> • Comorbid conditions; • Injury diagnosis (ICD-10); • Occupation and industry; • Time away from work.

For immediate release: Nov. 22, 2017

Safe workplaces another reason to be thankful in Ohio

Ohio's injury rate below national average, claims dip to record low

COLUMBUS - Ohioans can count safe workplaces as another reason to be thankful this week.

Results from a national study show nonfatal workplace injuries and illnesses in Ohio took a nine percent tumble last year and fell well below the national average for the fourth consecutive year. Ohio experienced 2.7 injuries per 100 full-time employees in 2016, bettering the national average of 3.2.

"The commitment of Ohio workers and employers to safety is impressive and clearly growing, making our state a leader in tackling workplace injuries and illnesses," said Sarah Morrison, Administrator/CEO of the Ohio Bureau of Workers' Compensation (BWC). "We are thankful for the opportunity to partner with employers and workers to build a culture of safety across the state."

The labor statistics show an injury rate among Ohio private employers at 2.7 per 100 workers, below the national average of 2.9. A 6.1 percent decline in total private sector injuries from 2015 means 17 fewer Ohio workers were injured each day in 2016 than in the previous year.

Ohio public sector employees also outperformed their peers across the nation. Rates for public employers were 3.1 injuries per 100 workers, compared to a national average of 4.7.

The results coincide with an overall drop in workplace injury claims in the BWC system. There were 87,883 allowed claims for Ohio employers insured by BWC in 2016, a 16.8 percent drop from 2010. This is the lowest number of claims dating back to at least 1997, when there were more than 277,000 claims.

BWC attributes the decline to a number of factors, including the agency's efforts to promote safe and healthy workplaces, increased safety funding and more employers putting safety education and resources to work. From 2010 through 2015, BWC's Division of Safety & Hygiene saw a 71 percent increase in the number of employers using its [safety programs and services](#).

The BLS survey can be found [here](#).

Media Contacts:

Melissa Vince, 614-466-2956 or 614-202-2329, melissa.vince@bwc.state.oh.us

Tony Gottschlich, 614-644-4940 or 614-296-1734, anthony.gottschlich@bwc.state.oh.us

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Safety Walk-Arounds for Managers



This fact sheet provides guidance to help managers and business owners identify hazards in the workplace and communicate with workers about hazards in their jobs, by conducting safety walk-arounds.

There are at least two reasons why managers and owners should periodically conduct workplace inspections themselves. First, inspections demonstrate management’s commitment to improving safety and health by finding and fixing hazards. Second, walk-arounds let managers see for themselves how the safety and health program is working and whether it is effective in identifying and eliminating hazards. Safety walk-arounds can also help managers and owners assess how key elements of the safety program are working. For example, how engaged are employees in the program? Do employees feel they have received appropriate training? Do they know how to report a safety or health incident or concern?

PRE-INSPECTION ACTIVITIES

Preparation is important prior to starting an inspection. Take the time to familiarize yourself with the workplace and operations and the hazards that have been previously identified. Pre-inspection activities might include:

- Identify the most hazardous areas by examining past inspection reports, injury and workers compensation records, incident investigation reports, and recent near miss incidents. Plan to focus your inspections on areas where hazards have been identified and check to see if previously-identified hazards have been abated or if further action is needed.
- Talk to workplace safety representatives and other managers or supervisors about their safety observations and concerns.
- If the workplace has a safety committee, meet with the committee prior to the inspection to get their perspective on the most important safety issues.

- Determine what safety equipment you will need to conduct the inspection (it is important to lead by example, and wearing the right personal protective equipment [PPE] sets a good example).
- Practice wearing the PPE to make sure you know how to put it on properly, and that it fits.
- Consider taking the same hazard identification safety training taken by workers, managers, or the safety committee.

ONSITE INSPECTION ACTIVITIES

When onsite, make sure you are wearing the right PPE for each area you enter. Nothing takes away credibility faster than having the wrong PPE, or not wearing it properly. Be safe; don’t expose yourself to hazards during an inspection.

Limit the size of the inspection group. Large groups tend to stifle open communication with employees.

Look for easily observable hazards first, such as:

- Tripping hazards
- Blocked exits
- Frayed/exposed electrical wires
- Missing machine guards
- Poor housekeeping
- Poorly maintained equipment

Look for property damage, such as walls or doors damaged by equipment or forklift traffic. Such damage may indicate a potential for future worker injuries.



Talk to workers at their work stations. Workers are likely to know the most about the hazards and safety issues in their jobs. Tap into that knowledge. Make them comfortable talking with you. Assure them that you are interested in finding problems and fixing them, i.e., improving safety, not blaming anyone for your findings. Avoid yes/no questions. Encourage conversation. Ask open-ended questions such as:

- What is the most hazardous task in your job? What do you recommend to eliminate those hazards?
- If you have been injured in your job, what was the injury and how did it happen? What was done to make your job safer?
- How would you report an injury, hazard, or near miss?

Seek out and talk to the most recently-hired workers to get their perspective on safety. These “fresh eyes” could have valuable insights.

Observe workers as they perform their job. For example, do they lift heavy objects? Do they stand/sit in awkward postures? Are they performing repetitive motions? If so, take notes and photos. If their job involves handling chemicals or exposure to excessive noise and/or heat, a more detailed evaluation by a safety professional may be in order.

Try to find solutions for hazards while you are conducting the inspection by applying your own creativity and inspiring

the creativity of workers. Finding solutions “on the spot” demonstrates your commitment to making the workplace safer.

Prior to completing the inspection, make a list of hazards that need to be addressed and prioritize them according to the severity of the potential injuries that might occur as a result of workers being exposed to the hazards.

POST-INSPECTION ACTIVITIES

Post-inspection follow-up is important to establishing your credibility as a manager who is committed to improving safety. Failure to follow up can often stifle worker participation and enthusiasm, which can be hard to regain.

Very soon after your inspection, prepare an abatement plan containing a list of the hazards found, corrective actions needed, and a reasonable timeline for implementation. Some complex hazards may require further evaluation, study, or engineering work to design and implement appropriate controls. Describe briefly how the hazards will be addressed and identify interim controls that will be used while more permanent measures are developed.

Share the abatement plan with managers, supervisors, and workers as a way of showing your commitment to fixing the safety issues found during your inspection. Track progress by sharing or posting periodic updates to the plan. Ensure all corrective actions are implemented in a timely fashion.

Safety & Workers' Compensation

New OSHA Safety Walk-Around Fact Sheet February 9, 2018

OSHA's new fact sheet, Safety Walk-Arounds for Managers, provides suggestions for conducting inspections that can help you evaluate the effectiveness of your current safety and health efforts, and communicate directly with workers about job hazards. 2/5/2018

BWC Names Safety Innovation Award Finalists February 9, 2018

To spotlight employers' ingenuity and commitment to workplace safety, The Bureau of Workers' Compensation (BWC) annually sponsors Safety Innovation Awards.

The program recognizes innovations that result in risk reduction, cost savings, and potential application to other workplaces, industries or operations.

After considering dozens of applications and visiting the sites of eight semifinalists, BWC has announced the following employers as the four finalists for the 2018 Safety Innovation Awards:

- **MPW Industrial Services** (Hebron) – *M1-RV crawler* – A remote-controlled vacuuming system that cleans clarifier tanks; it eliminates employee exposure from hazards of entering and cleaning clarifier tanks
- **Navistar** (Springfield) – *Cab destructive weld tear down* – An articulating arm that holds a worker's pneumatic tool during weld tear down of truck cabs; it reduces the potential of falling, bad postures and awkward positions due to high reaction forces on employees during the process
- **Ramco Electric Motors** (Greenville) – *Aluminum die-casting automated biscuit return* – A conveyor system that delivers aluminum die-casting byproducts (aka "biscuits") from the casting machine back to the 1,300-degree liquid aluminum bath; the system eliminates the exposures of an individual

performing the task of dropping the biscuits back in the crucible

- **Terracon Consultants Inc.** (Cincinnati) – *YM3000 pin puller* – A redesigned T-handle that is adjustable in height and allows employees to remain standing when pulling 28-inch pins (used for soil density readings) from the ground; it decreases the potential of back or wrist strains from pin pulling, helps reduce fatigue and increases productivity

The four finalists will present their innovations to an independent three-judge panel and the public at the Ohio Safety Congress & Expo 2018 in Columbus on March 7-9. OSC18 attendees can cast a vote for their favorite innovation to determine the recipient of The People's Choice award. 2/6/2018

Employers: Post OSHA 300A Until April 30 February 9, 2018

Employers are reminded to post their 2017 OSHA Form 300A, Summary of Work-Related Injuries and Illnesses, from February 1–April 30, 2018.

OSHA Form 300A lists the total number of job-related injuries and illnesses that occurred during the previous year, and must be posted even if no work-related injuries or illnesses occurred during the year. It should be displayed in a common area where notices to employees are usually posted so that employees are aware of the injuries and illnesses occurring in the workplace.

A company executive must certify that he or she has examined the employer's OSHA Form 300, Log of Work-Related Injuries and Illnesses, and that he or she reasonably believes—based on his or her knowledge of the process by which the information was recorded—that the OSHA Form 300A is correct and complete. More info here. 2/5/2018

BWC has Mailed Corrected 1099s February 2, 2018

The Bureau of Workers' Compensation (BWC) said that due to a printing error, the 1099s it sent to employers related to the 2017 Billion Back rebate were not accurate. BWC has mailed corrected 1099s.

Because this was a printing error, it did not impact the data sent to the IRS. The file BWC sent to the IRS was accurate.

You can view your corrected/accurate 1099 on the BWC website. After you log in, go to the [View IRS 1099s](#) service offering located on the About Us page. 1/31/2018

Do You Have a Good Safety Intervention Idea? It Might Qualify for a BWC Safety Grant **February 2, 2018**

Fourteen Ohio employers will share \$341,020 in grants from the Ohio Bureau of Workers' Compensation (BWC) to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

The Safety Intervention Grant program matches an employer's investment 3-to-1 up to a maximum of \$40,000. Quarterly data reports and follow-up case studies measure the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention. Learn more about the [Safety Intervention Grant Program](#). 2/1/2018

BWC Proposes 12% Premium Reduction **January 26, 2018**

This week, the Ohio Bureau of Workers' Compensation (BWC) [asked its board of directors](#) to reduce private employer premium rates by 12 percent beginning July 1. The BWC reports that, if approved, the reduction would save private employers \$163.5 million over this year's premiums.

What enables the proposed reduction is fewer workplace injury claims and slow-to-moderate growth in medical inflation according to BWC Administrator/CEO Sarah Morrison.

BWC reported 86,290 allowed claims in 2017, a near 18% drop from 2011. This is the lowest number of claims dating back to at least 1997.

The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various BWC discount programs.

The board is scheduled to vote on the recommendation during its next regular meeting scheduled for Feb. 23. 1/25/2018

Group Self-Insurance Bill has Hearing **January 26, 2018**

This week Rep. [Mike Henne](#) (R-Clayton) provided [sponsor testimony](#) on [House Bill 459](#) in the House Insurance Committee. The bill would allow groups of employers to be granted self-insured status under the state's Workers' Compensation Law provided the employers have sufficient financial ability to pay their workers' compensation obligations and abide by the regulatory framework which would be established by the BWC Administrator.

Rep. Henne testified: "A self-insurance group is a method by which small to medium sized employers within the same industry can pool their workers' compensation liability together and spread it amongst multiple employers. Many self-insured employers can disperse their risk within their own company and have the means to meet the financial obligations of their workers' compensation program. By allowing employers to group together, they can have the same characteristics of the employers that are self-insured."

The OMA Safety and Workers' Compensation Committee will be discussing this bill and much more at its February 13 meeting. 1/25/2018

Safety Congress Sessions for Manufacturers **January 26, 2018**



The [Ohio Safety Congress & Expo](#) will run March 7-9 at the Greater Columbus Convention Center. Among the 200 educational sessions presented by experts from across the country, [this programming](#) has been created specifically for Ohio's manufacturers.

Stop by the expo marketplace and say hi to us at booth #644! Attendance is free for Ohio employers and their employees. 1/24/2018

Employers Must Post Injury/Illness Summary **Beginning February 1** **January 19, 2018**

OSHA reminds employers of their obligation to post a copy of OSHA's [Form 300A](#), which summarizes job-related injuries and illnesses logged during 2017. Each year, between Feb. 1 and April 30, the summary must be displayed in a common area where notices to employees are usually posted.

Businesses with 10 or fewer employees and those in certain low-hazard industries are exempt from OSHA recordkeeping and posting requirements.

Visit OSHA's Recordkeeping Rule [web page](#) for more information on recordkeeping requirements. Also login to My OMA to view our January 11 recorded webinar, [New to OSHA Recordkeeping?](#) 1/18/2018

OSHA Raises Penalty Amounts for 2018 January 19, 2018

From OSHA: "On Jan. 2, **civil penalty amounts** for violations of workplace safety and health standards increased by two percent from last year. In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Department of Labor is required to adjust penalties for inflation each year. New penalties for willful and repeat violations are \$129,336 per violation; serious, other-than-serious, and posting requirements are \$12,934 per violation; and failure to correct violations is \$12,934 for each day the condition continues." 1/18/2018

House Introduces Group Self-Insurance Bill January 19, 2018

Last week Rep. **Mike Henne** (R-Clayton) introduced yet another workers' compensation bill, this time legislation (**HB 459**) that would permit groups of employers to be granted self-insurance status for the purposes of Ohio's workers' compensation laws. While big on ambition the bill is short on details. The bill kicks the can to the Bureau of Workers' Compensation to develop how the program would work.

OMA will report on developments of this bill and all matters safety and workers' compensation important to manufacturers at its upcoming Safety & Workers' Compensation Committee meeting on February 13. [Register here.](#) 1/18/2018

Worker Deaths Rose Nationwide in 2016 January 19, 2018

Last month, the Bureau of Labor Statistics released its **National Census of Fatal Occupational Injuries in 2016**, which reports 5,190 workplace fatalities in 2016 — a 7% increase from 2015. The fatal injury rate also increased from 3.4 per 100,000 full-time equivalent workers in 2015 to 3.6 in 2016. More workers lost their lives in transportation incidents than any other event in 2016, accounting for about two out of every five fatal injuries. Workplace violence injuries increased by 23%, making it the second most common cause of workplace fatality. The report also shows the number of overdoses on the job increased by 32% in 2016.

To help support safe workplaces, OMA offers monthly safety webinars. [Here's the 2018 schedule.](#)
1/18/2018

BWC's January Webinar for Employers January 12, 2018

The BWC webinar on Thursday, January 25 at 11:30 a.m. provides information about what it means to certify a claim, Other States Coverage, the Ohio Safety Congress & Expo 2018, important dates and deadlines for private and public employers, and the monthly safety tip. Learn [more and register here.](#) 1/5/2018

BWC Administrator Outlines 2018 Focus: Wellness and Workplace Safety January 5, 2018

In [this blog](#), Bureau of Workers' Compensation (BWC) Administrator Sarah Morrison, describes the agency's push for wellness and safety in 2018. She writes: "An overwhelming amount of research shows us that a healthy lifestyle leads to wellness in virtually every facet of our lives, including the workplace. BWC's **new wellness program** will offer Ohio workers in small businesses a variety of services. Details are being finalized, but the program will offer services such as health risk assessments, biometric screenings, personalized health plans and coaching, chronic disease management and more. This is geared to help workers live a healthy, balanced life – factors that can prevent injury, or recover more quickly if they are hurt on the job." And, "Safety will continue to take center stage in 2018. ... To increase the awareness of the importance of safety, we will introduce a public health and safety campaign focused on preventing slips, trips and falls, overexertions and motor vehicle accidents (all of which make up about 60 percent of our injured worker claims each year)." 1/4/2018

BWC Implements Back Surgery Rule January 5, 2018

OMA Connections Partner, Bricker & Eckler, posts about a new lumbar fusion surgery rule: "Effective January 1, 2018, the Ohio Bureau of Workers' Compensation (BWC) has a new rule for when injured workers can request lumbar fusion surgery, as well as requirements that must be met prior to seeking authorization for such a procedure ..."

"This rule was created, in part, as a response to the current opiate crisis that exists in Ohio. According to the BWC, 68 percent of lumbar fusion surgeries are unsuccessful. This leaves the majority of injured workers who utilize this type of treatment unhappy and dependent on pain killers, such as opioids. In an effort to reduce this risk, the BWC is requiring injured workers to engage in conservative care management for at least 60 days, except in specific cases. It is hoped that this approach will enable workers with low back pain to benefit from non-surgical interventions

and return to work more quickly, reserving lumbar fusion surgery for only the few that require it.”

Read [more from Bricker here](#). 1/2/2018

OSHA Accepting Electronically Submitted Injury, Illness Reports through December 31 December 21, 2017

OSHA will continue accepting 2016 OSHA Form 300A data through the **Injury Tracking Application (ITA)** until midnight on December 31, 2017. OSHA will not take enforcement action against those employers who submit their reports after the December 15, 2017, deadline but before December 31, 2017, final entry date. Starting January 1, 2018, the ITA will no longer accept the 2016 data.

If you need more information about this you can access an **OMA recorded webinar here** (use your MY OMA login.) 12/18/2017

BWC Plans New Website in 2018 December 21, 2017

The Bureau of Workers’ Compensation (BWC) plans to launch a new website in 2018. BWC indicates that the site will provide a better customer experience through better design, easier navigation and more relevant content.

The first phase, which is expected go live in early 2018, will focus on those areas users see prior to logging in. Content and services that exist after logging in will be the focus later in the year.

Because the design and content are completely new, users will need to familiarize themselves with the new site. Also, while the **main site** will remain, many individual pages will go away, replaced by new content. This means any saved bookmarks or favorites will no longer work. 12/18/2017

BWC Appoints Pharmacy Program Director December 21, 2017



Ohio Bureau of Workers’ Compensation (BWC) Administrator/CEO Sarah Morrison announced the appointment of Dr. Nicholas D. Trego to lead the agency’s pharmacy operations.

As Pharmacy Program Director, Trego will oversee BWC’s pharmacy benefits program, which manages more than 768,000 prescriptions in the BWC system.

Morrison elevated Trego from clinical operations manager, where he managed BWC’s prior authorization process, updated and improved its formulary and consulted with private medical providers on appropriate medication plans for their patients.

Read [more here](#). 12/19/2017

Next BWC Employer Webinar is Dec. 28 December 21, 2017

The next monthly BWC employer webinar is Thursday, Dec. 28 at 11:30 a.m. Topics will include the Enhanced Care Program, the new lumbar fusion rule, rating plans for the 2018 policy year, deadlines for public employers and the monthly safety tip. Register [here](#) to attend online, or sign up [here](#) if you prefer to attend in person at a claims office. 12/18/2017

OSHA Guidance on Protecting Workers from Weather-Related Hazards December 21, 2017

From OSHA: “As outdoor temperatures drop and winter storms approach, employers should take measures to keep their employees safe. **OSHA’s Winter Weather webpage** provides information on protecting employees from hazards while working outside during **severe cold** and snow storms. This guidance includes information on **staying safe while clearing heavy snow from walkways and rooftops.**” 12/18/2017

OMA Testifies Against Workers’ Comp Self-Insurance Proposal December 15, 2017

This week, OMA member Cathy Duhigg Gannon, Manager, Workers’ Compensation, Eaton, **testified on behalf of the OMA Safety and Workers’ Compensation Committee** before the House Insurance Committee against House Bill 268. The bill proposes, among other things, to create a new, higher risk Ohio Self-Insured Guarantee Fund. In her testimony Duhigg Gannon said, “By lowering the credit threshold to Ba2, Ohio would be allowing companies with non-investment grade financials to be considered for self-insurance for the first time ever, which in turn would create a much weaker guarantee

pool. This is a major risk for any company that would become part of the new "B" fund and likely as well for the state of Ohio, as in the event of cash constraints or bankruptcies during a financial downturn, these sources would be called upon to finance claims in the system as well as claims yet to be filed against these defaulting self-insured employers." 12/14/2017

DOT Drug Testing: Employer DOT Policies – the Part 40 Changes **December 15, 2017**

The Department of Transportation (DOT) and the United States Coast Guard have provided guidance to DOT-regulated employers about what their DOT policies will need to contain about the changes to 49 CFR Part 40, which are effective January 1, 2018.

See the [DOT notice here](#).

Further, participants in the Ohio BWC's Drug-Free Safety Program, DFSP, are required to conform, at minimum, to the federal testing model.

For any questions whatsoever about your drug testing policies or program, contact OMA Connections Partner, [Working Partners®](#). You can also email the [BWC DFSP](#). 12/14/2017

Get Your Share of BWC Safety Grants **December 8, 2017**

The Bureau of Workers' Compensation (BWC) award **16 Ohio employers** a total of \$372,967 in grants in October to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

The Safety Intervention Grant program matches an employer's investment 3-to-1 up to a maximum of \$40,000. Quarterly data reports and follow-up case studies measure the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention.

Learn more about the [Safety Intervention Grant Program here](#). 12/4/2017

OSHA Extends Compliance Date for Electronically Filing 300As to December 15, 2017 **December 1, 2017**

According to a national OSHA [news release](#) issued on Nov. 22, "To allow affected employers additional time to become familiar with a new electronic reporting system launched on August 1, 2017, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has extended the date by which employers must electronically report injury and illness data through the Injury Tracking Application (ITA) to December 15, 2017.

"OSHA's final rule to Improve Tracking of Workplace Injuries and Illnesses sets December 15, 2017, as the date for compliance (a two-week extension from the December 1, 2017, compliance date in the proposed rule). The rule requires certain employers to electronically submit injury and illness information they are already required to keep under existing OSHA regulations. ...

"OSHA is currently reviewing the other provisions of its final rule to Improve Tracking of Workplace Injuries and Illnesses, and intends to publish a notice of proposed rulemaking to reconsider, revise, or remove portions of that rule in 2018."

Here's an OMA [recorded webinar](#) about how to submit your 300A, which is due from virtually every Ohio manufacturer with 20 or more employees. (Use your My OMA login; the webinar is accurate except for the new filing deadline of December 15, 2017.) 11/22/2017

Committee Passes Bill to Deny Illegal Aliens Workers' Comp. Benefits **December 1, 2017**

After listening to a long list of opposition testimony, the House Insurance Committee passed [House Bill 380](#), which **would block illegal aliens** from receiving benefits through Ohio workers' compensation system. A similar provision was included in the House passed version of the Bureau of Workers' Compensation (BWC) budget bill earlier this year. That provision was stripped from the bill during Senate deliberations.

House Bill 380 contains an amendment which would ensure that employers who act ethically and legally during the hiring process would not be subject to new litigation claims. 11/30/2018

Ohio's Injury Rate Below National Average **December 1, 2017**

"Results from a national study show nonfatal workplace injuries and illnesses in Ohio took a nine percent tumble last year and fell well below the national average for the fourth consecutive year. Ohio experienced 2.7 injuries per 100 full-time employees in 2016, bettering the national average of 3.2," [reported](#) the Bureau of Workers' Compensation (BWC).

BWC wrote: "The labor statistics show an injury rate among Ohio private employers at 2.7 per 100 workers, below the national average of 2.9. A 6.1 percent decline in total private sector injuries from 2015 means 17 fewer Ohio workers were injured each day in 2016 than in the previous year. ...

"The results coincide with an overall drop in workplace injury claims in the BWC system. There were 87,883 allowed claims for Ohio employers

insured by BWC in 2016, a 16.8 percent drop from 2010. This is the lowest number of claims dating back to at least 1997, when there were more than 277,000 claims.”

The **Bureau of Labor Statistics survey** can be found here. *11/22/2017*

PTSD Bill has First Senate Hearing November 17, 2017

This week Senators **Frank LaRose** (R-Hudson) and **Edna Brown** (D-Toledo) **provided sponsor testimony** for **Senate Bill 118**, which would provide Ohio workers’ compensation benefits to certain emergency personnel for a diagnosis of post-traumatic stress disorder (PTSD) arising from employment without the current requirement of an accompanying physical injury. This would be a major shift in Ohio’s workers’ compensation law. Unlike previous versions of the bill, Senate Bill 118 would limit benefits to one year and workers who qualify could not simultaneously receive compensation from BWC and a state retirement system disability benefit for PTSD.

A BWC **actuarial analysis** of the bill found that it would cost local governments \$98 million in claims cost. By comparison local governments’ total premium payments now are \$190 million.

This proposal has long been opposed by the business community, including OMA, due to the fundamental shift of providing benefits for mental illness without an accompanying physical injury. *11/16/2017*

Electronic OSHA 300As are Due December 1 November 17, 2017

Here’s a reminder that by December 1 2017, all covered establishments must electronically submit to OSHA information from their completed 2016 Form 300A. Generally speaking, all manufacturers with 20 or more employees are considered **covered establishments**.

OSHA has provided a website that offers three options for data submission: manually enter data into a web form; upload a CSV file to process single or multiple establishments at the same time; or transmit data electronically via an API (application programming interface).

Here’s **more from OSHA**. And here is a **recorded OMA webinar** that reviews the requirements (use your My OMA login). *11/10/2017*

Next BWC Employer Webinar is November 30 November 17, 2017

The Bureau of Workers’ Compensation (BWC) November webinar will cover combinations due to

acquisitions and mergers, the \$15,000 Medical-Only Program and cost-containment strategies, among other topics.

The webinar is scheduled for Thursday, Nov. 30 at 11:30 a.m. To attend online, **RSVP here**. You may also **opt to attend in-person at a BWC office**. *11/15/2017*

NIOSH Creates Robotics Research Center November 17, 2017

The National Institute for Occupational Safety and Health (NIOSH) created the Center for Occupational Robotics Research (CORR) in September 2017 to address the safety of workers who use, wear, or work near robots.

The center’s work includes evaluating potential benefits and risks of robots in the workplace, conducting workplace interventions to prevent robot-related worker injuries, and developing guidance for safe interactions between humans and robots.

Read more here. *11/15/2017*

3 Mistakes to Avoid in a New Workers’ Compensation Claim November 10, 2017

According to OMA Connections Partner, Dinsmore, employers should recognize three common mistakes in determining a valid workers’ compensation claim and in preparing to defend an invalid claim.

Read **about them here**. Dinsmore is one of OMA Workers’ Compensation Services’ trusted firms for Industrial Commission hearing representation. *11/6/2017*

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on February 12, 2018

- HB27** **WORKERS' COMPENSATION BUDGET** (BRINKMAN T) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 6/30/2017 - **SIGNED BY GOVERNOR**; Eff. 6/30/2017
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-27>
- HB28** **INDUSTRIAL COMMISSION BUDGET** (BRINKMAN T) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/28/2017 - **SIGNED BY GOVERNOR**; eff. 6/28/17
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-28>
- HB99** **WORKERS COMPENSATION-PNEUMOCONIOSIS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 6/21/2017 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-99>
- HB133** **DISASTER RELIEF ACT** (RYAN S) To create the Disaster Relief Act to exempt out-of-state disaster businesses and qualifying out-of-state employees from certain taxes and laws with respect to disaster work on critical infrastructure performed in this state during a declared disaster.
Current Status: 11/29/2017 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-133>
- HB161** **WORKERS COMPENSATION-PTSD** (PATTON T) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.
Current Status: 5/24/2017 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-161>
- HB268** **WORKERS COMPENSATION-SELF-INSURERS** (HENNE M) To make changes to the Workers' Compensation Law with respect to self-insuring employers.
Current Status: 12/13/2017 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-268>
- HB269** **WORKERS COMPENSATION OVERHAUL** (HENNE M) To rename the entities who carry

out workers' compensation functions in this state, to require the Administrator of Worker Safety and Rehabilitation to develop incentives for employers to participate in safety consultations and loss prevention programs, to require an employee who is receiving temporary total disability compensation to comply with a return to work plan, and to make changes with respect to compensation for permanent total disability and death benefits.

Current Status: 12/13/2017 - House Insurance, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-269>

HB380 **WORKERS COMP-ILLEGAL ALIENS** (SEITZ B, HOUSEHOLDER L) To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.

Current Status: 12/5/2017 - **PASSED BY HOUSE**; Vote 65-30

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-380>

HB459 **WORKERS COMP-SELF-INSURING EMPLOYERS** (HENNE M) To allow groups of employers to be granted status as a self-insuring employer for purposes of the Workers' Compensation Law.

Current Status: 1/24/2018 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-459>

SB118 **PTSD TREATMENT-FIRST RESPONDERS** (LAROSE F, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.

Current Status: 11/14/2017 - Senate Insurance and Financial Institutions, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-118>

SB140 **PUBLIC-PRIVATE PARTNERSHIP GRANTS** (SCHIAVONI J) To create the Public-Private Partnership Grant Program for fiscal years 2018 and 2019 to develop, enhance, and promote educational programs to address regional workforce needs; to create the Sector Partnership Grant Program for fiscal years 2018 and 2019 to identify and provide grants to industry partnerships; to support programs that improve access to workforce training opportunities for students; to support economic development and revitalization programs; and to make an appropriation.

Current Status: 5/3/2017 - Referred to Committee Senate Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-140>