



Safety & Workers' Compensation Committee

Thursday, February 19, 2015

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2015 Safety & Workers' Compensation Committee Calendar

Meetings begin at 10:00 a.m.

Thursday, February 19
Tuesday, May 5
Wednesday, October 7

OMA Safety & Workers' Compensation Committee Meeting Sponsor:





OMA Safety & Workers' Compensation Committee

February 19, 2015

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Board Update	Tracie Sanchez, President, Lima Pallet Company Inc.
Safety Update	Dianne Grote Adams, Safex
OMA Counsel's Report	Sue Wetzel, Bricker & Eckler LLP
Public Policy Report	Rob Brundrett, OMA Staff
Guest Speakers	Jeremy Jackson, Chief of Public Policy and Strategy Ohio Bureau of Workers' Compensation
	Sarah Morrison, Chief Legal Counsel and Ethics Officer Ohio Bureau of Workers' Compensation
	Paul Flowers, Director of Self Insurance Ohio Bureau of Workers' Compensation

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:



Tracie J. Sanchez

Vice Chair of the Actuarial Committee, Member of the Medical Services & Safety Committee

Represents employers with 100 or fewer employees

Term expires June 12, 2015

Tracie Sanchez is the corporate president of the Lima Pallet Company, Inc. In 30 years of service to Lima Pallet, she learned to do most of the tasks Lima Pallet has to offer from fork lift operator to sales manager to become the President of Lima Pallet in 2001. She has a strong knowledge of cost savings programs BWC offers to Ohio's employers. She is also involved in the community by serving on the National Federation of Independent Business' Ohio Leadership Council. Mrs. Sanchez is a native of Lima, Ohio, where she lives with her husband, Jeffery, and their three children.

Chief of Public Policy & Strategy Jeremy Jackson

Jeremy Jackson was appointed chief of public policy & strategy in May 2011 after serving as BWC's director of business development and analysis for the past three years. The new division is responsible for:

- Stakeholder relations at the macro-level;
- Policy development at the strategic level;
- All the ways BWC communicates.

Jackson began working with BWC in 2000 as a public information officer in the special projects department. He also served as a media relations assistant, press secretary and chief marketing officer

Jackson obtained a bachelor's degree from Youngstown State University and a master's in business administration from the University of Findlay.

Chief Legal Counsel and Ethics Officer Sarah Morrison

Sarah Morrison joined BWC in November 2012 with more than 15 years of diverse legal experience. Morrison was most recently 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 also has experience representing clients before the Ohio Elections Commission and General Assembly.

Morrison began her career as a law clerk with the Chester Wilcox & Saxbe law firm, which merged earlier this year with the Taft 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.

Director of Self-Insurance at Ohio BWC

Paul Flowers is a graduate of Bowling Green State University. Paul has been with the BWC for other ten years in a variety of capacities including, Management Analyst Supervisor and Regional Business Consultant. He took over as Director for the BWC Self Insurance program in 2011.

Key OSHA Activities – February 2015



Dianne Grote Adams
dgroteadams@safex.us

Proposed Rule Activity

Silica – Late 2015 or early 2016

Beryllium – ANPR expected

OSHA Semi Annual Regulatory Agenda Update

Bloodborne Standard – determine if still needed by May 2015

Infectious Disease – Considering standard

RFI on PEL – until April 2015

PSM –Review June 2015

Recordkeeping Changes Effective Jan. 1, 2015

Topic	Current Requirement	New Requirement Effective 1/1/2015
Fatality	Notify OSHA within 8 hours.	Notify OSHA within 8 hours
Work-related Hospitalization	Notify OSHA within 24 hours of hospitalization of 3 or more employees.	Notify OSHA within 24 hours of hospitalization of 1 or more employees.
Amputation	Not required in 1904	Notify OSHA within 24 hours.
Loss of Eye	Not required in 1904	Notify OSHA within 24 hours.

All employers covered by OSHA, even if exempt from injury and illness records (10 or fewer employees and/or list of low hazard industries) are required to follow reporting requirements. Web portal under development.

Safety and Health Information Bulletins / Preventing Adverse Health Effects From Exposure to Beryllium on the Job



U.S. Department of Labor
Occupational Safety and Health Administration
Directorate of Technical Support and Emergency Management
(formerly Directorate of Science, Technology and Medicine)
Office of Science and Technology Assessment

OSHA Hazard Information Bulletins

Preventing Adverse Health Effects From Exposure to Beryllium on the Job

WARNING!
INHALING BERYLLIUM DUST OR FUMES MAY CAUSE SERIOUS,
CHRONIC LUNG DISEASE AMONG EXPOSED WORKERS;
THIS LUNG DISEASE CAN BE FATAL.
BERYLLIUM CAN ALSO CAUSE LUNG CANCER.

September 2, 1999

The Occupational Safety and Health Administration (OSHA) has recently obtained information suggesting that OSHA's current 2 micrograms per cubic meter of air (micrograms/m³) eight-hour time-weighted average (TWA) permissible exposure limit (PEL) for beryllium in the workplace may not be adequate to prevent the occurrence of chronic beryllium disease (CBD), a disabling and often fatal lung disease, among exposed workers.

OSHA is publishing this Hazard Information Bulletin to alert employees working with beryllium about the hazards associated with their work. It describes engineering controls, work practices, and personal protective equipment recommended for controlling exposures to beryllium through inhalation and skin contact. It also suggests health surveillance methods to identify workers who may have become sensitized to beryllium, or who may have CBD.

Background

Beryllium is a metal that is found in nature, especially in beryl and bertrandite rock. It is extremely lightweight and hard, is a good conductor of electricity and heat, and is non-magnetic. These properties make beryllium suitable for many industrial uses, including: metal working (pure beryllium, copper and aluminum alloys, jet brake pads, aerospace components); ceramic manufacturing (semi-conductor chips, ignition modules, crucibles, jet engine blades, rocket covers); electronic applications (transistors, heat sinks, x-ray windows); atomic energy applications (heat shields, nuclear reactors, nuclear weapons); laboratory work (research and development, metallurgy, chemistry); extraction (ore and scrap metal); and dental alloys (crowns, bridges, dental plates); and sporting goods (golf clubs, bicycle frames).

Current Exposure Limits

The current OSHA PELs for beryllium are 2 micrograms/m³ as an 8-hour TWA, 5 micrograms/m³ as a ceiling not to be exceeded for more than 30 minutes at a time, and 25 micrograms/m³ as a peak exposure never to be exceeded. The OSHA limits have been in place for nearly 30 years and have not been revised in that time. The American Conference of Governmental Industrial Hygienists (ACGIH) current Threshold Limit Value (TLV)^{*} for beryllium is 0.05 micrograms/m³ averaged over an 8-hour work shift [updated 02/23/2010].

Potential Adverse Health Effects From Beryllium Exposure

Chronic Beryllium Disease

Chronic beryllium disease (CBD) primarily affects the lungs. CBD may occur among people who are exposed to the dust or fumes from beryllium metal, metal oxides, alloys, ceramics or salts. It occurs when people inhale beryllium in these forms. CBD usually has a very slow onset, and even very small amounts of exposure to beryllium can cause the disease in some people. In some cases, CBD develops while workers are still on the job, but in others it may not develop until many years after a person has stopped working in the beryllium industry, or has been transferred to a job that does not involve beryllium exposure. The amount or length of exposure to beryllium necessary to cause a specific individual to develop CBD is not known, but recent information suggests that exposure below OSHA's 2 micrograms/m³ TWA PEL over a very short time (weeks or months) can lead to CBD in some workers.

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Signs and Symptoms of Chronic Beryllium Disease

Workers with advanced CBD may have one or more of the following symptoms: unexplained cough; shortness of breath, especially with activity; fatigue; weight loss or loss of appetite; fever; or night sweats. However, because the disease may develop slowly over a period of many years, workers may have the disease for a long time without knowing it.

Beryllium Sensitization

CBD only develops in workers who have become sensitized to beryllium. A sensitized worker is one who has developed an allergic reaction to beryllium. A worker may become sensitized at any point during job exposure, or in some cases may not become sensitized until after leaving a job where there has been beryllium exposure. Beryllium sensitization can be detected through the use of a blood test called the BeLPT, which stands for beryllium lymphocyte proliferation test. This test measures how specific white blood cells called lymphocytes react to beryllium. A positive test result means that a worker is sensitized.

Acute Beryllium Disease

Acute beryllium disease usually has a quick onset and has symptoms that resemble those of pneumonia or bronchitis. The acute form of the disease is believed to occur as a result of exposures well above the current PEL. This form of beryllium disease is now rare.

Cancer

Studies of workers exposed to beryllium have demonstrated significantly elevated risks of lung cancer. The International Agency for Research on Cancer (IARC), the expert cancer agency of the World Health Organization, has concluded that exposure to beryllium can cause lung cancer in humans.

Skin disease

A skin disease, which is characterized by poor wound healing and a rash or wart-like bumps, can occur as a result of the skin being exposed to beryllium dust.

Recommendations

OSHA recommends the following measures to reduce exposure to beryllium in the workplace and to determine whether workers have beryllium sensitization or CBD.

1. Engineering Controls

Employers should use appropriate engineering controls and work practices to ensure that worker exposures to beryllium are maintained below the current OSHA PELs to the extent feasible. The following engineering controls and practices should be used by employers:

- enclose processes;
- design and install appropriate local exhaust ventilation;
- use vacuum systems in machining operations;
- use pellets instead of powders wherever possible;
- use product substitution where possible;
- minimize the number of workers who have access to areas where there is a potential for beryllium exposure;
- monitor employee exposures to airborne beryllium dust and fume, using personal sampling techniques, on a regular basis to ensure that exposures are below the PELs and that proper respiratory protection is being used where necessary.

2. Work Practices to reduce beryllium exposure

Employers should ensure that employees use the following safe practices to reduce their exposure to beryllium:

- use high-efficiency particulate air (HEPA) vacuums to clean equipment and the floor around their work areas;
- do not leave a film of dust on the floor after the water dries if a wet mop is used to clean;
- do not use long vacuum hoses and do not loop the hoses that are used;
- do not disconnect or disable the vacuum system during any machining operation;
- never use compressed air to clean parts or working surfaces;
- avoid prolonged skin contact with beryllium particulate; and
- do not allow workers to eat, drink, smoke, or apply cosmetics at their work stations.

3. Hygiene and Personal Protective Clothing

OSHA is aware of CBD cases that have occurred among family members of beryllium-exposed workers. To reduce "carry-home" exposures, employers should provide showers, clean work clothes, and clean areas for storing street clothes. Protective clothing should be provided to employees who work in areas where beryllium-containing powders are used and where there is a potential for spills. In addition, employers should ensure that employees:

- change into work uniforms before entering their work area;
- place their uniforms in a labeled bin with a cover at the end of the work shift;
- shower and change into street clothes prior to leaving the facility;
- wash their face, hands, and forearms before eating, smoking, or applying cosmetics;
- keep their work clothes as clean as possible during the workshift;
- wipe off their shoes before leaving the work area; and
- do not wear their work uniform (including their work shoes) outside of the facility.

4. Respiratory Protection

Recent data suggest that exposures to beryllium even at levels below the 2 micrograms/m³ PEL may have caused CBD in some workers. Therefore, employers should consider providing their beryllium-exposed workers with air-purifying respirators equipped with 100-series filters (either N-, P-, or R-type) or, where appropriate, powered air-purifying respirators equipped with HEPA filters, particularly in areas where material containing beryllium can become airborne.

5. Training

Employers should give employees exposed to beryllium training and information about the following items:

- material safety data sheets (MSDSs) for beryllium;
- the fatal lung disease that may occur as a result of exposure;
- the availability of the BeLPT blood test to determine whether an exposed worker has become sensitized to beryllium;
- the potential for developing lung cancer as a result of exposure;
- the importance of avoiding skin contact;
- the engineering controls the employer is using to reduce worker exposures to beryllium;
- specific work practices that can be used to reduce exposure to beryllium;
- the use of appropriate protective equipment, including the use of respirators;
- the results of any industrial hygiene sampling for levels of beryllium in the workplace; and
- a copy of this Hazard Information Bulletin.

6. Health screening methods for beryllium sensitization and chronic beryllium disease

To the Employer:

Employers should consider sending beryllium-exposed employees to a physician or other licensed health care professional to be evaluated for beryllium sensitization or the presence of CBD. The screening examination for CBD usually begins with a chest x-ray and a blood test for beryllium sensitization, namely, the BeLPT, plus any further evaluation considered appropriate by the health care professional. The blood test can detect an adverse health response to beryllium exposure earlier than breathing tests or chest x-rays can. The BeLPT is not routinely done in most medical laboratories; however, the health care professional may order this test from any laboratory that has overnight courier service to one of the Medical Research Centers listed below. If a worker is sent to a health care professional for health screening, a copy of this Hazard Information Bulletin should accompany the employee.

To the Employee:

If you work in a place where beryllium is used and have developed any of the symptoms listed below, you should inform your health care professional of your past beryllium exposure, or seek information from a health care professional who specializes in occupational lung diseases to determine whether you may have developed CBD:

- unexplained cough,
- shortness of breath,
- fatigue,
- weight loss or loss of appetite,
- fevers, and/or
- skin rash.

If you do not have any of the above symptoms but are concerned that you may have become sensitized to beryllium, you should inform your health care professional that you would like to be tested with the blood BeLPT. Take a copy of this Hazard Information Bulletin with you.

Blood testing for beryllium sensitization

Only the three medical research centers and the one laboratory listed below currently offer the blood test to identify beryllium-sensitized workers as indicated by a positive blood BeLPT. As other research centers and laboratories develop the capacity to screen workers for beryllium sensitization, they will be added to the list.

Medical Research Centers

Cleveland Clinic Foundation
9500 Euclid Avenue, L-15
Cleveland, Ohio 44195
phone: (800) 628-6816

Division of Environmental and Occupational Health Sciences
National Jewish Medical and Research Center
Denver, Colorado 80206
phone: (303) 398-1722

Pulmonary Immunology Laboratory
Hospital of the University of Pennsylvania
421 Curie Blvd.
844 BRB II/III
Philadelphia, Pennsylvania 19104
phone: (215) 573-9875

Testing Laboratory

Specialty Laboratories, Inc.
2211 Michigan Avenue
Santa Monica, California 90404-3900
phone: (800) 421-4449



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Ohio Manufacturers' Association
Workers' Compensation Counsel Report
February 19, 2015

By: Sue A. Wetzel, Esq.
Bricker & Eckler LLP

Regulatory Actions

UPDATE: O.A.C. § 4123-6-21.6

- Filed with JCARR December 30, 2014
- Public Hearing: November 24, 2014
- EFFECTIVE: February 1, 2015

OAC § 4123-6-21.6 was created to implement RC §4123.66(B) - First fill of prescription drugs prior to BWC Initial Order; See also proposed changes to RC §§ 4123.511 and 4123.66

- only with first fill of Rx drugs prior to BWC's Initial Order
- first fill program will be for a period of ten days or less; no refills
- only certain medications will be covered
- if claim is denied, state-fund employers who pay assessments into the surplus fund will not be charged; costs will be charged to the surplus fund

Full Version of the Code Section attached (see Page 9)

R.C. 4123.351 – Hearing Spikes

OMA has supported the removal of this section from Ohio Revised Code

The statute sets forth a calculation for how to handle an influx of hearings so that they are heard timely (how will hearing officers be determined, etc.) The calculation didn't work and it was rare we ever had a hearing spike under the statute anyway.

Legislative Actions

SB 5 – see additional handout

HB 52 - Proposed BWC Budget Bill

Concerns: Implementation of the Streamlined Administrative Process for Employers

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Judicial Actions

Ohio Supreme Court Cases

Friebel v. Visiting Nurse Association of Mid-Ohio, No. 2014-Ohio-4531

On October 21, 2014, the Supreme Court of Ohio handed down this decision, concluding that Ohio does not recognize the doctrine of dual intent, or dual purpose, to determine eligibility of workers' compensation benefits.

Claimant Tamara Friebel worked as a home health nurse, providing in-home health-care services to clients. On a typical workday, Ms. Friebel would travel to the homes of different patients in her personal vehicle. In January 2011, she decided to drive her children and their friends to a shopping mall on her way to a patient's house. Before she had dropped off the passengers, however, Ms. Friebel was rear-ended and suffered a neck sprain.

Although the Industrial Commission and lower courts continued to reverse each decision at every procedural level, the Supreme Court ultimately determined that the dual-intent or dual-purpose doctrine does not have a place in analyzing workers' compensation cases in Ohio. In declining to adopt the doctrine, the Court held that the proper way to analyze workers' compensation claims is to apply the "in the course of" and "arising out of" tests described in *Fisher v. Mayfield*. Looking to an employee's subjective intent regarding the purposes of her travel would elevate her subjective intent over the objective review of her actions and the nature of her employment. According to the Court, this would distract from the core analysis as established in *Fisher*.

State ex rel. RFFG, LLC v. Ohio Bur. Of Workers' Comp., 2014-Ohio-5199

On November 25, 2014, the Supreme Court of Ohio handed down this per curiam decision holding that the bureau did not abuse its discretion when it found, based on the small amount of evidence available, that Ameritemps, Inc. ("Ameritemps") had transferred in whole to RFFG. Accordingly, the Court denied RFFG's request for a writ of mandamus.

In December 2008, WTS Acquisition Corporation ("WTS") purchased Ameritemps. In executing the assets-purchase agreement, the parties referred to two schedules that identified the specific assets, customers, and employees that would and would not transfer to the new company. WTS then transferred the assets to its wholly owned subsidiary, RFFG, which continued operating under Ameritemp's name. RFFG filed a U-118 stating that it had purchased certain assets from Ameritemps and that it had the right to contact Ameritemps clients, use the business name, and conduct business in a similar manner.

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When RFFG failed to provide the bureau with a requested copy of one of the purchase agreement schedules, the bureau determined that RFFG was a successor employer for workers' compensation purposes. The bureau informed RFFG that it intended to calculate RFFG's workers' compensation premium rates based on Ameritemp's experience rating.

Thereafter, RFFG filed a protest, claiming that it was not a successor, or at the very least was only a partial successor. The bureau's adjudicating committee found, and the bureau affirmed, that many factors indicated that Ameritemps had transferred in whole to RFFG. This included the fact that the business name and locations remained the same, and the fact that the clients and employees significantly remained the same.

RFFG then filed a complaint for a writ of mandamus alleging that the bureau had abused its discretion in determining that RFFG was a successor in interest to Ameritemps. The magistrate found, and the court of appeals affirmed, that the bureau had not abused its discretion in light of RFFG's failure to produce the purchase agreement schedules requested by the bureau. Because the purchase agreement did not contain language from which the bureau could conclude that a full transfer had not occurred, the bureau acted appropriately given the scant amount of evidence available.

On appeal, the Supreme Court of Ohio found that RFFG had failed to demonstrate that the bureau had acted in an arbitrary, capricious, or discriminatory manner and was therefore not entitled to the extraordinary remedy of a writ of mandamus. Although RFFG alleged that only a portion of the business was transferred, it failed to produce documents verifying its claim.

State ex rel. Varney v. Indus. Comm., 2014 Ohio 5510

On December 18, 2014, the Supreme Court of Ohio handed down this per curiam decision, holding that the Tenth District Court of Appeals abused its discretion in applying the standard articulated in *State ex rel. Rodriguez v. Indus. Comm.*—analyzing the loss of a thumb due to total stiffness of the joint—to the loss of use of a finger.

In this case, the four fingers on Dennis Varney's left hand were amputated in a November 1983 work-related accident. A surgeon was able to reattach the middle, ring, and little finger, and performed a revision amputation on his index finger. The bureau initially allowed Mr. Varney's claim for amputation of the fingers and paid him temporary-total-disability compensation. Thereafter, in 1985 and 1990, he applied for and was awarded compensation for the partial loss of use of his fingers. In 1998, he was awarded compensation for one-half loss of the use of his hand. Finally, in 2010, Mr. Varney filed a motion for the total loss of use of his hand. While this motion was pending, Mr. Varney filed another motion for the total loss of use of his index, ring, and little fingers.

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The DHO denied this motion for three reasons. First, there was no valid medical report in the record to support the loss of the functional use of the fingers. Second, the issue of how much use was lost in the three fingers had been decided more than 20 years prior. Because there had been no new treatments or changes in circumstances, the DHO determined that the issue had already been decided. Finally, the DHO found that a February 2011 medical report by Dr. Burdge evidenced that Mr. Varney had not lost total functional use in the three fingers. The SHO affirmed, and the Industrial Commission refused further appeal.

After a recommendation from a magistrate judge, the Tenth District Court of Appeals concluded that the Commission should have used the standard articulated in *State ex rel. Rodriguez v. Indus. Comm.* to analyze Dr. Burdge's report. Specifically, the court found that the reasoning in *Rodriguez* regarding the loss of a thumb should have been applied to the loss of use of a finger.

The Supreme Court reversed this decision, finding that the Court of Appeals had abused its discretion in issuing the writ of mandamus directing the Commission to apply the *Rodriguez* standard here. Specifically, the Supreme Court found that *Rodriguez* is distinguishable from this matter based on both the body part at issue and the type of impairment. Because, unlike with thumbs, the relevant statute contains no provision requiring a finding of total loss of a finger based upon the loss of two-thirds of that finger, the Commission must apply the mandated method for measuring loss of use: a physician's report on the extent of impairment/loss.

Here, the Commission relied on Dr. Burdge's report finding that Mr. Varney had some functional use of his finger. The Supreme Court therefore concluded that the Commission used the proper standard in analyzing the loss of function and could properly rely on that report to deny compensation for the total loss of the three fingers.

State ex rel. McCormick v. McDonald's, 2015 Ohio 123

On January 20, 2015, the Supreme Court of Ohio handed down this per curiam decision, finding that its decision in *Sellards v. Indus. Comm'n*, 2006 Ohio 1058, does not automatically render premature a doctor's opinion that a claimant has reached MMI when there is a subsequent request for and approval of additional treatment.

In December 2006, Ruth McCormick was injured while working at a McDonald's restaurant. On August 13, 2010, Dr. Amardeep Chauhan conducted an independent medical examination of Ms. McCormick at the request of the BWC. He determined that she had reached MMI and therefore did not require any additional treatment for her allowed conditions. However, shortly thereafter, on August 27, Ms. McCormick's treating physician requested authorization for three steroid injections, which were eventually approved.

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On August 31, 2010, the BWC moved to, and the DHO granted the request to, terminate TTD compensation based on Dr. Chauhan's opinion. Between September 14 and October 19, 2010, Ms. McCormick received the requested injections, before a SHO affirmed the order terminating TTD compensation on November 17, 2010.

After the Industrial Commission refused to hear her appeal, Ms. McCormick filed a complaint for a writ of mandamus, alleging in relevant part that the Commission's decision to terminate her benefits was not supported by the evidence. However, to be entitled to relief in mandamus, Ms. McCormick needed to establish that she had a clear legal right to the relief that the Commission had a clear legal duty to provide. In so proving, Ms. McCormick needed to demonstrate that the Commission's order was not supported by "some evidence" in the record.

Here, the Supreme Court of Ohio found that the Commission's order terminating Ms. McCormick's TTD compensation was supported by some evidence—specifically, Dr. Chauhan's report finding that she had reached MMI. Accordingly, the Court found that, contrary to Ms. McCormick's assertion, Sellards does not apply to invalidate Dr. Chauhan's opinion. Specifically, the Supreme Court found that Sellards was narrowly decided based on a set of unique facts and refused to broadly interpret the case to automatically indicate that a finding of MMI is premature and invalid whenever other evidence comes into existence after the MMI finding is made.

State ex rel. Evert v. Indus. Comm'n, 2015 Ohio 120

On January 20, 2015, the Supreme Court of Ohio handed down this per curiam decision remanding this matter to the court of appeals on the basis that the lower court had relied on case law that has since been reversed. Specifically the Tenth District Court of Appeals had concluded that the then-recent decision in *State ex rel. Sigler v. Lubrizol Corp.*, 2011 Ohio 4917 ("Sigler I") was binding. However, because the Supreme Court had subsequently reversed this holding in *Sigler v. Lubrizol Corp.*, 2013 Ohio 3686 ("Sigler II"), it remanded the matter to the court of appeals for additional consideration.

On January 10, 2007, the Industrial Commission allowed Donna Evert's claim for death benefits after her husband died as a result of complication from surgery related to a 2004 industrial injury. Nine days later, Ms. Evert filed a motion with the BWC requesting an award for decedent's loss of use of his arms and legs prior to his death. This motion was denied, however, because it had not been filed within one year of the date of death, as required by law. In April 2009, Ms. Evert filed a motion asking the Commission to exercise continuing jurisdiction to rehear the issue based on changed circumstances and an alleged mistake of law, but a SHO ultimately denied this request in March 2010.

Ms. Evert then requested reconsideration of this decision, and the Commission thereafter held a hearing on the matter in October 2010. During this hearing, only two commissioners were in

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attendance. In addition to signing the Order, the commissioner who did not attend the hearing included a statement saying that she had discussed the matter with the SHO—who summarized the arguments presented by all sides—and reviewed the evidence contained in the claim file. By a 2-1 vote, the Commission determined that Ms. Evert had failed to demonstrate sufficient grounds for the Commission to exercise continuing jurisdiction and denied reconsideration. Ms. Evert then filed a complaint in mandamus in May 2011 alleging, that (1) the Commission had abused its discretion in failing to exercise continuing jurisdiction, and (2) she had been denied due process of law when the commissioner who was absent from the hearing voted on the motion.

In *Sigler II*, the Supreme Court found that the due process requirement of a full and fair hearing requires that the decision maker, “in some meaningful manner, consider and appraise all the evidence to justify the decision.” Because the absent commissioner here had discussed the matter with the experienced SHO and reviewed the entire claim file, the Court found that, in accord with its opinion in *Sigler II*, the absent commissioner had conducted a meaningful review of the matter sufficient to satisfy the due process requirements.

The Supreme Court of Ohio therefore reversed the judgment of the court of appeals and remanded with instructions to consider the merits of Ms. Evert’s complaint that the Commission had abused its discretion.

State ex rel. Hildebrand v. Wingate Transport, Inc., No. 2015 Ohio 167

On January 22, 2014, the Supreme Court of Ohio issued this per curiam decision finding that the court of appeals did not abuse its discretion in denying the requested writ of mandamus. Specifically, the Court found that the Commission had based its order denying TTD compensation on evidence in the record that the claimant had voluntarily quit his job for reasons unrelated to his industrial injury.

In June 2009, Brian Hildebrand injured his back while working for Wingate Transport, Inc. He returned to work on June 9 with a doctor’s note restricting him to modified duty. During a conversation with the company owner in which the owner confirmed Mr. Hildebrand could perform light-duty work, the owner requested that Mr. Hildebrand return the key to a car the owner had loaned him. Although the owner assured him that he was not being fired, Mr. Hildebrand became agitated and an altercation ensued. Subsequently, Mr. Hildebrand did not return to work.

One week later, Mr. Hildebrand’s application for unemployment benefits was denied because it was determined that he had quit his job for personal reasons without just cause. Mr. Hildebrand then filed a report of his injury with the BWC. The hearing officer ultimately denied Mr. Hildebrand’s request for TTD compensation, finding that he had voluntarily quit his job. The Commission refused to hear an appeal and denied Mr. Hildebrand’s request for reconsideration.

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Mr. Hildebrand then filed a complaint seeking a writ of mandamus to require the Commission to find he was entitled to TTD compensation.

On appeal, the Supreme Court explained that TTD compensation is intended to compensate an injured worker who is temporarily unable to return to work because of his workplace injury. Because TTD compensation requires a causal connection between the worker's inability to work and the injury, an injured worker who voluntarily leaves his job is generally barred from receiving TTD compensation. Accordingly, the Supreme Court held that, because the record supports the notion that Mr. Hildebrand voluntarily quit his job following an unrelated altercation with his employer, his departure was not casually related to the industrial injury. The Court therefore affirmed the lower court's finding that the Commission had not abused its discretion.

Court of Appeal Case

Ferguson v. Ohio, Cuyahoga Co. Case No. CV-810584 (C.P. 2014)

On December 31, 2014, the Cuyahoga County Court of Common Pleas handed down this declaratory judgment finding Ohio Revised Code ("ORC") Section 4123.512 as amended in 2006 unconstitutional. The relevant portion of the statute in question reads, "[P]leadings shall be in accordance with the Rules of Civil Procedure... and provided that the Claimant may not dismiss the complaint without the employer's consent if the employer is the party that filed the notice of appeal to court pursuant to this section."

Prior to the 2006 amendment to ORC 4123.512, plaintiffs/claimants in a workers' compensation appeal had the ability to voluntarily dismiss their own petitions with the right to re-file within one year. In cases where the claim had been allowed and the employer appealed to the court, employers were faced with the issue that claimants would continue to receive benefits and compensation for as long as the case was pending. Employers challenged the right of the claimant to voluntarily dismiss in these circumstances because such dismissal could result in a claimant being able to extend his benefits for nearly three years¹ before being forced to trial—a trial which could still result in complete disallowance of the claim.

Here, the Plaintiff challenged the constitutionality of the above portion of ORC 4123.512. Having found that the Ohio Rules of Civil Procedure ("ORCP") apply to workers' compensation cases in the Court of Common Pleas, the court determined that a plaintiff/claimant may voluntarily dismiss his petition/complaint in accordance with ORCP Rule 41. Specifically, a

¹ For example, after an employer appeals to the court, there could be up to one year before the trial is held. If the claimant dismissed the petition on the eve of trial, that claimant would have up to one more year to re-file. After re-filing, the employer may have to wait up to one more year before the trial actually arrives—all the while pay benefits and/or compensation in a claim that the employer felt was not properly allowed.

October 15, 2014

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workers' compensation plaintiff/claimant may "dismiss all claims asserted by that plaintiff against a defendant by... filing a notice of dismissal at any time before the commencement of trial."

Using a rational-basis test analysis², the court determined that the 2006 amendment to ORC 4123.512 was unconstitutional. Specifically, the court found that the portion of the statute restricting a claimant's right to voluntarily dismiss is arbitrary on its face because, if enforced, the statute would afford a right to only one party of the case. The court found that this also was a violation of equal protection, as the employer and claimant would be treated as two different classes with no basis to do so.

Additionally, the court found that a remedy already exists to prevent claimants from continuing to seek benefits during the potential one-year hiatus from litigation: the "savings statute," ORC 2305.19. The court noted that nothing prevents challenges to those benefits during the pendency of the appeal to the Common Pleas Court and, in the event that the employer is ultimately successful in having the claim denied at trial, recovery of the benefits paid is available.

NOTE: the BWC has appealed this decision; OMA is deciding whether to join other statewide organizations in an amicus brief

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4123-6-21.6 [Effective 2/1/15] First fill of outpatient medications.

(A) In accordance with division (B) of section 4123.66 of the Revised Code, the administrator has established a program to make immediate payment, under the circumstances set forth in this rule, for the first fill of prescription drugs for medical conditions identified in an application for compensation or benefits under section 4123.84 or 4123.85 of the Revised Code that occurs prior to the date the administrator issues an initial determination order under division (B) of section 4123.511 of the Revised Code.

(B) The appendix to this rule shall constitute the complete list of medications, and the maximum quantity of such medications, that are approved for reimbursement by the bureau for first fill prior to issuance of an initial determination order. Except as otherwise provided in paragraph (C) of this rule, drugs not listed in the appendix to this rule are not eligible for reimbursement by the bureau under the first fill program.

(C) Notwithstanding paragraph (B) of this rule, in cases of medical necessity supported by clinical documentation and evidence of need the bureau may, with prior authorization, reimburse for the first fill of medications that are listed in the appendix to rule 4123-6-21.3 of the Administrative Code but are not listed in the appendix to this rule.

(D) Reimbursement of outpatient medications by the bureau under the first fill program shall be subject to the following limitations:

(1) Approval for reimbursement of medications under the first fill program will be for a period of ten days or less, at the most commonly prescribed dosing schedule, and no refills will be approved;

(2) Approval for reimbursement of medications under the first fill program will be limited to one drug per therapeutic drug class listed in the appendix to the rule;

(3) Extemporaneous compounded prescriptions are not eligible for reimbursement by the bureau under the first fill program.

(E) Pharmacy providers shall be reimbursed for dispensing drugs under this rule in the manner described in rule 4123-6-21 of the Administrative Code provided that the prescriber, or their agent has written "Work Related Injury" on and signed the prescription blank. A pharmacist or pharmacy intern who receives a telephone prescription may also write and sign the phrase on the prescription.

(F) If a claim in which the first fill of outpatient medication was reimbursed by the bureau pursuant to this rule is ultimately disallowed in a final administrative or judicial order, and if the employer is a state fund employer who pays assessments into the surplus fund account created under section 4123.34 of the Revised Code, the payment for outpatient medication made pursuant to this rule shall be charged to and paid from the surplus fund account and not charged through the state insurance fund to the employer against whom the claim was filed.

Effective: 2/1/2015

Five Year Review (FYR) Dates: 02/01/2020

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Public Policy Report
DATE: February 19, 2015

Overview

The 131st General Assembly was sworn into office the beginning of January. A new Speaker of the House was elected. Speaker Cliff Rosenberger (R-Clarksville) takes control over the House and among his interests are possible BWC changes.

The General Assembly will be focused on passing the state budget and other budgets over the next several months. Both the Industrial Commission and Bureau of Workers' Compensation have budgets now pending in the House of Representatives. Other possible BWC legislation will be heard across both Chambers the next few months.

Legislation and Rules

Senate Bill 5 – mental / mental

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) have introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

"Mental/mental," as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

This would be a major change for public employers and possibly private employers in the future. The Senate passed a similar measure three times last year, only to be rebuffed by the House on each occasion.

Senate Bill 27 – firefighter cancer

Senator Tom Patton (R-Strongsville) introduced a bill that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions. The bill is limited strictly to firefighters.

House Bill 51 – IC budget

The Industrial Commission budget was recently introduced with no real policy changes.

House Bill 52 – BWC budget

The BWC budget was introduced with minimal policy changes, following the same path the Kasich Administration paved with earlier versions of the budget. Perhaps the most noteworthy change in the bill would give the BWC authority to use funds from its current net position to cover the unfunded liabilities of the Disabled Workers Relief Fund I (DWRF I).

HB 64 – State Operating Budget

The Governor introduced the state operating budget in early February. The bill contains the budget appropriations to fund Ohio's general government provisions. However the 2,700 page bill often contains policy changes impacting numerous state agencies. Some workers' comp amendment may be slipped into the bill prior to the June 30 deadline for passage.

BWC Medical Reform

The BWC is preparing to launch a medical management pilot later this year focused in northeast Ohio. The pilot will be focusing on comprehensive care for knee injuries.

Bureau of Workers' Compensation

Another Billion Back

Governor John R. Kasich and Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer announced a \$1 billion rebate to Ohio's private and public sector workers' compensation customers, as well as a major new investment in worker safety research and training. "Another Billion Back" comes on the heels of last year's \$1 billion rebate for workers' comp customers. Both rebates were made possible by strong investment returns in the workers' compensation fund.

Eligible employers received a rebate equal to 60 percent of premiums paid during the July 1, 2012 through June 30, 2013 policy year.

Safety Congress

Registration is open for the 2015 Ohio Safety Congress & Expo (OSC15), which will run from March 31 to April 2 at the Greater Columbus Convention Center.

More than 6,000 people attended last year's event, which is hosted annually by Bureau of Workers' Compensation (BWC). It is the largest regional safety and health conference in the U.S.

There's no charge for Ohio employers and their employees to attend the event.

OSC15 aims to help Ohio employers prevent workplace injuries and achieve better outcomes for injured workers. Professional certifications are offered for safety professionals, industrial hygienists, ergonomists, registered nurses, attorneys, rehabilitation, claims managers, disability managers, rehabilitation counselors, paramedics and other professions that accept IACET CEUs for certification maintenance.

In addition, educational tracks for physicians and environmental specialists as well as certified medical education for physicians and medical providers are also being offered this year.

A workers' compensation policy number is required to register.

BWC Staff Proposes Rate Cut

Bureau of Workers' Compensation (BWC) proposed to again reduce overall rate levels for private employers beginning July 1. The proposed reduction is 10.8%.

The proposed reduction is attributable to a number of factors, including lower expected claim frequency, as well as the upcoming adoption of a prospective billing system. BWC

currently bills employers in arrears. Under the new system of prospective billing, BWC will collect premiums before extending coverage. Prospective billing enables BWC to lower rates to reflect the increased investment income.

The proposed 10.8% reduction is an overall statewide average. The actual premium paid by individual private employers will depend on a number of factors, including the expected future costs in their industry segment, their recent claims history, and their participation in various premium credit and savings programs.

The BWC board of directors will vote on the proposal during its next meeting, which is scheduled for Friday, February 27, 2015.

Ohio BWC: 33rd Lowest Rates in Nation

The Oregon Premium Rate Ranking Study, a biennial review of workers' compensation rates recently released, ranked Ohio 33rd lowest among all 50 states. Ohio ranked third highest in the nation as recently as 2008. Ohio's jumped 30 spots in just six years.

In a media release, the Bureau of Workers' Compensation (BWC) notes: "The Oregon study compares each state's base rates across a selection of 50 widely used classification codes that are assigned by occupation to indicate their degree of risk. Ohio ranked 28th in 2012, 17th in 2010, and 3rd in 2008. Ohio's base rate index in the 2014 study of \$1.74 per \$100 of payroll is below the national median of \$1.85. Ohio's base rate index was \$3.32 in 2008, when the national median was \$2.26."

Ballot Issues

Marijuana Ballot Issue

Responsible Ohio, the group pushing for a 2015 marijuana ballot amendment, released the full text of the proposed amendment this week. The group also made headlines by naming the ten sites throughout Ohio where marijuana would be grown in compliance with the new constitutional amendment. The sites are specific parcels of land named in the amendment.

The group is currently collecting the initial 1,000 signatures needed for the Ohio Attorney General to review the amendment. If okayed by the Attorney General, the group would then need to collect approximately 306,000 valid signatures to make the November ballot.



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SB 5: HISTORY OF MENTAL-MENTAL CLAIMS IN OHIO

By: Sue A. Wetzel, Esq.
Bricker & Eckler LLP

Senate Bill 5

POST-TRAUMATIC STRESS (Patton, T., 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.

Where does Ohio stand regarding “Mental-Mental” claims now?

Prior to 1986

The Supreme Court never had before it the issue of whether a purely psychiatric condition (mental-mental) was compensable. R.C. § 4123.68, however, does not preclude compensation for purely psychiatric conditions under the definition of occupational disease.

1986 Amendment

R.C. § 4123.01(C)(1) provided injury does not include psychiatric conditions except where the conditions have arisen from an injury or occupational disease.

Common arguments regarding statutory interpretation after the Amendment which led to confusing case law:

Employers' Position: Psychiatric conditions must arise from *the allowed conditions* in the claim

Claimants' Position: Psychiatric conditions arise from *an injury* when they are contemporaneous to the injury.

With this said, the case law consistently held an employee must allege that a physical injury proximately caused the psychiatric condition. Sometimes the Industrial Commission would allow psychiatric conditions that were not proximately caused, but if appealed, the trial courts would require a physical injury that is not merely contemporaneous to the physical injuries. Once they were appealed beyond the trial court is when things got confusing as the Courts tried to interpret the statute.

1991

Cuyahoga County Court of Appeals heard the cases of *Rambaldo v. Accurate Die Casting*, No. 58588 (Cuyahoga Co. Ct. App. June 20, 1991) and *Rini v. City of East Cleveland*, No. 58589 (Cuyahoga County Ct. App. June 27, 1991), as companion cases. The *Rambaldo* claim was filed prior to the 1986 amendment, but the *Rini* claim was filed after. The Court held that purely psychiatric conditions were compensable *as occupational diseases*, citing R.C. § 4123.68. The majority concluded that while the definition of “injury” now excludes psychiatric conditions, there is no express limitation in the definition of “occupational disease.” These cases did not go to the Supreme Court of Ohio.

2001

Bailey v. Republic Engineerd Steels, Inc., (2001) 91 Ohio St.3d 38, was the first Supreme Court case after the 1986 Amendment to take up the issue of mental-mental claims. (Bailey caused and witnessed the death of a coworker. Baily suffered minor injuries himself). The Court held that a psychiatric condition of an employee arising from a compensable injury or occupational disease suffered by a third party is compensable under [R.C. 4123.01\(C\)\(1\)](#). Additionally, in coming to this conclusion, the Court indicated that the plain reading of the statute reveals that the intent of the General Assembly is to limit claims for psychiatric conditions to situations where the conditions arise from an injury or occupational disease. This clarified whether a physical injury must first be present for a psychiatric condition to be alleged.

NOTE: Court followed the claimant bar’s logic and took the approach that a contemporaneous injury is sufficient to give rise to a psychiatric claim

2005

The Supreme Court specifically denied mental-mental claims when it decided *McCrone v. Bank One Corp.*, 2005-Ohio-6505. (McCrone was a teller at a bank and was present for two bank robberies; no physical injuries). The Supreme Court held that “psychologic conditions that do not arise from a compensable physical injury or occupational disease are excluded from the definition of ‘injury’ under R.C. 4123.01 (C)(1) and from workers’ compensation coverage.”

NOTE: Court followed the employer bar’s logic and took the approach that 1) a physical injury must be present, and 2) the allowed conditions themselves must give rise to a psychiatric claim, refusing to interpret “injury” as an overall injurious exposure.

2006 Amendment (S.B. 7)

R.C. § 4123.01(C)(1) provided injury does not include psychiatric conditions except where the *claimant's psychiatric* conditions have arisen from an injury or occupational disease *sustained by the claimant*.

This Amendment overruled *Bailey* and clarified that the claimant must sustain a physical injury, not a third party. The Amendment did not clarify the necessary nexus between a physical injury and a psychiatric condition. Thus, we still deal with the common arguments raised after the 1986 Amendment. With this said, it is clear that the claimant must at least sustain a physical injury prior to request the additional psychiatric condition.

2013

The Supreme Court has sided completely with the employer's position, thereby finally clarifying the necessary nexus between a physical injury and psychiatric condition, in the case of *Armstrong v. John R. Jurgensen Co.*, 2013-Ohio-2237. (Armstrong sustained minor injuries in a motor vehicle accident where the other individual died. Armstrong saw the other individual after the accident slumped over the steering wheel and learned of his death while still in the hospital.) The Supreme Court held that for a claimant's psychiatric condition to qualify as a compensable injury under R.C. § 4123.01 (C)(1), the claimant must establish that his psychiatric condition was causally related to his compensable physical injuries and not simply to his involvement in the accident. Here, Armstrong's PTSD arose contemporaneously as a result of the accident and was not caused by the physical injuries sustained as a result of the accident, and thus, his request for the condition of PTSD was denied.



Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

S.B. 5

131st General Assembly
(As Introduced)

Sens. Patton and Brown, LaRose, Gentile, Bacon, Eklund, Lehner, Yuko, Cafaro, Schiavoni, Manning

BILL SUMMARY

- Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder eligible to receive compensation and benefits under Ohio's Workers' Compensation Law under certain circumstances, regardless of whether the person suffers an accompanying physical injury.

CONTENT AND OPERATION

Workers' compensation coverage for PTSD

Under the bill, a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD), received in the course of and arising from the person's employment as a peace officer, firefighter, or emergency medical worker, may be eligible to receive compensation and benefits under Ohio's Workers' Compensation Law¹ regardless of whether the PTSD is connected to a compensable physical injury.²

Background – psychiatric conditions as "injuries"

Other than injuries falling under specific exceptions (self-inflicted injuries or injuries caused by the employee's intoxication), Ohio's Workers' Compensation Law entitles every employee who is injured or contracts an occupational disease to receive compensation, benefits, or both on account of the injury or occupational disease.³

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

² R.C. 4123.01(C), (O), (P), and (Q), with conforming changes in R.C. 4123.01(A), 4123.026, and 4123.46.

³ R.C. 4123.54, not in the bill.

Continuing law defines "injury" as any injury received in the course of, and arising out of, the injured employee's employment. Currently, psychiatric conditions generally are excluded from the definition of injury, except where:

(1) The employee's psychiatric conditions have arisen from an injury or occupational disease sustained by that employee; or

(2) The employee's psychiatric conditions have arisen from sexual conduct in which the employee was forced to engage or participate by threat of physical harm.⁴

Thus, under current law, an employee is not eligible to receive compensation or benefits under Ohio's Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.⁵

Background – PTSD

PTSD is an illness caused by living through or seeing a traumatic event, such as war, a violent crime, or a bad accident. PTSD can cause flashbacks, trouble sleeping, thoughts of hurting oneself or others, angry outbursts, and feelings of worry, guilt, sadness, or loneliness. Signs of PTSD may start soon after a traumatic event or may start or intensify years after the event.⁶

Definitions

Under continuing law, a "peace officer" means any of the following:

(1) A sheriff or deputy sheriff;

(2) A marshal or deputy marshal;

(3) A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio;

(4) A member of a police force employed by a metropolitan housing authority;

(5) A member of a police force employed by a regional transit authority;

⁴ R.C. 4123.01(C).

⁵ *Armstrong v. Jurgensen Co.*, 136 Ohio St.3d 58, 2013-Ohio-2237.

⁶ National Institute of Mental Health, *Post-Traumatic Stress Disorder (Easy-to-Read)*, <http://www.nimh.nih.gov/health/publications/post-traumatic-stress-disorder-easy-to-read/index.shtml> (accessed February 2, 2015).

- (6) A state university law enforcement officer;
- (7) An enforcement agent of the Department of Public Safety;
- (8) An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
- (9) An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest officer, a preserve officer, a wildlife officer, a park officer, or a state watercraft officer;
- (10) A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
- (11) A veterans' home police officer;
- (12) A special police officer employed by a port authority;
- (13) A township police constable;
- (14) A police officer of a township or joint police district;
- (15) A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
- (16) The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
- (17) The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
- (18) Certain Bureau of Criminal Identification and Investigation employees or officers;
- (19) A state fire marshal law enforcement officer;
- (20) The Superintendent and troopers of the State Highway Patrol, for specified purposes.⁷

Under continuing law, an "emergency medical worker" means any of the following persons, whether the person is paid or a volunteer, so long as the person is certified under Ohio law:

⁷ R.C. 4123.01(O), by reference to R.C. 2935.01, not in the bill.



- A first responder;
- An emergency medical technician-basic;
- An emergency medical technician-intermediate;
- An emergency medical technician-paramedic.⁸

HISTORY

ACTION	DATE
Introduced	02-02-15

S0005-I-131.docx/ks

⁸ R.C. 4123.01(A) and(Q).





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December 8, 2014

The Honorable Keith Faber
President, Ohio Senate
Ohio Statehouse
Columbus, OH 43215

The Honorable Jim Hughes
Chairman, Senate Insurance & Financial Institutions Committee
Ohio Statehouse
Columbus, OH 43215

Dear President Faber and Chairman Hughes:

The above organizations, on behalf of our members, are greatly concerned and strongly opposed to the language of Senate Bill 252 on PTSD, which we understand may be considered in other legislation in the Senate Insurance and Financial Institutions Committee this week. While we recognize that changing the criteria for compensating Post Traumatic Stress Disorder (PTSD) merits discussion, the establishment of such a benefit without a thorough examination is not in anyone's best interest.

Ohio's workers' compensation system was designed to compensate physical injuries and any mental conditions that arise as a result of such injuries. The proposed amendment would permit compensating PTSD without there being an underlying physical harm. The impact that such a significant change would have on many aspects of the Ohio workers' compensation system and elsewhere deserves more consideration.

Frankly the language as drafted will lead to major cost increases for both Ohio's public employers and private businesses. In addition, given that mental health benefits now have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about whether or not health insurance, or workers' compensation insurance, is the most appropriate place for these individuals to receive treatment for PTSD arising separately from a physical workplace injury.

Bottom line, the general language used in the amendment will lead to varying interpretations by the medical community, leading to unequal results and the potential for significant cost increases to all of our members. As well, state pension funds could be impacted since most of these claims would likely result in a permanent disability status for the claimant.

We urge the committee to reject any amendments related to allowing workers' compensation coverage for PTSD at this time.

cc: Senate Insurance and Financial Institutions Committee

STRENGTHEN economic development IMPROVE health and safety

OHIO'S WORKERS

Ohio Bureau of Workers' Compensation Budget Bill

Governor John Kasich and the Ohio Bureau of Workers' Compensation's (BWC) commitment to prudent fiscal management and strengthening the state's economic vitality is reflected in its proposed 2016/2017 biennial budget. The \$552.4 million budget is a 4% decrease compared to the appropriation for fiscal years 2014/2015, saving Ohio employers over \$23 million.

The proposed budget builds upon BWC's successes over the last five years in improving services for each of its customers by securing low and stable rates for employers, preventing workplace injuries and achieving better outcomes for those individuals who are hurt on the job.

Ohio employers have received more than \$2 billion in rebates from BWC over two years and will soon see an additional \$1.2 billion credit this year as BWC modernizes its billing system. Private employer rate cuts over the past four years, coupled with the 10.8% reduction proposed for next year, will bring their overall rates 21.4% lower than they were just five years ago. Similarly, local government rates are nearly 20 percent lower and they are paying their lowest rates in at least 30 years.

BWC has simultaneously invested in the state's most important asset — its workforce. BWC tripled funding for Safety Grants, further increasing its commitment to workplace safety by \$35 million over the next two years. Leading the way in workplace safety, BWC has also introduced several new and innovative safety initiatives that will ultimately enhance the safety, health and wellness of Ohio's workforce.

The proposed budget will allow BWC to continue its endeavors of enhancing the quality of life for Ohio's workforce and promoting economic success for Ohio's employers. Along with keeping employer costs low, BWC is proposing to streamline business, alleviate costs for nonprofits and employers and ensure benefits for those in need. Below is a sampling of the proposals contained in BWC's 2016/2017 biennial budget bill:

Ensuring mentally or physically incapacitated adult dependents remain eligible for death benefits while participating in a sheltered workshop – Adult dependents with disabilities have opportunities to participate in work programs focused on rehabilitating activity and promoting a higher functioning life. BWC wishes to make clear this activity should not have an impact on any death benefits they are receiving.

Funding for the Disabled Workers Relief Fund I (DWRF I) – Employers currently pay into DWRF I, a fund that provides relief to a worker whose injuries occurred prior to January 1, 1987, and whose regular benefits have not kept pace with inflation. BWC is seeking authority to use funds from its current net position to cover the unfunded liabilities of this fund. Injured workers would continue to receive this benefit and employers would benefit from lower future rates with removal of the burden of covering costs associated with claims that may have occurred prior to their time in business.

Removing the current mandate for unpaid corporate officers to have workers' compensation coverage – Current law requires BWC to treat corporate officers of nonprofit organizations as if they were earning an income regardless of whether they are receiving remuneration. This places a cost and burden on charitable organizations that in turn could create a barrier to their humanitarian business or mission. BWC proposes to remove this mandate so any officer who is a true volunteer would not be mandated to have workers' compensation coverage.

Streamlining the administrative process for employer appeals – The adjudicating process currently requires employers to appear in-person at two separate hearings when appealing BWC policies and decisions. BWC's proposal to make the last level optional for employers supports greater efficiency and will simplify the process, without compromising the employer's right to an in-person hearing if the employer desires.

BWC believes this budget bill and continued partnership with its stakeholders will yield positive improvements to Ohio's workers' compensation system. BWC can be a partner in making a difference – at keeping employees safe and keeping premiums low and stable so businesses can prosper and Ohio can continue its economic recovery.



February 3, 2015

Memo

To: Administrator/CEO Steve Buehrer
The Ohio Bureau of Workers' Compensation

From: Robert (Rob) Brundrett
Director, Public Policy Services
The Ohio Manufacturers' Association

Subject: BWC Budget for Fiscal Years 2016 / 2017

The Ohio Manufacturers' Association (OMA) is encouraged by the budget summary prepared by the Bureau of Workers' Compensation (BWC) for the fiscal years 2016 and 2017.

In recent years, the BWC has increased its investments in employer safety programs, returned dollars generated by its investments to employers in a prudent fashion, reduced base premium rates, initiated medical management model improvements, and implemented projects that continue to modernize the operations. BWC is now proposing a biennial budget that is less than its last budget, while continuing important strategic programs.

OMA congratulates the BWC for its management improvements on behalf of the state's workers and employers, and will be pleased to work with Administrator Buehrer on the BWC's budget proposal.

Please contact me at any time at (614) 629-6814 or rbrundrett@ohiomfg.com.

cc: E. Burkland, R. Augsburger



Ohio Legislative Service Commission

Bill Analysis

Kelly Bomba, Nicholas A. Keller,
Amy J. Rinehart

H.B. 52

131st General Assembly
(As Introduced)

(Excluding appropriations, fund transfers, and similar provisions)

Rep. Hackett

BILL SUMMARY

Coverage and benefits

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

Self-insuring employers

- Allows a self-insuring employer to furnish rehabilitation services directly to injured employees without prior approval from BWC.
- Requires a self-insuring employer to furnish or pay directly for various compensation and benefits that under current law may be temporarily paid for from the Surplus Fund Account.

Notice on Appeal

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

Health Partnership Program appeals

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

Adjudicating Committee appeals

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

Administration

- Changes recommendation and reporting requirements of the Workers' Compensation Audit Committee and the Workers' Compensation Actuarial Committee.
- Allows the Administrator, with the Board's advice and consent, to employ occupational safety and health professionals and support staff in the Division of Safety and Hygiene.
- Allows the Administrator to designate more than six positions in the unclassified civil service in the Division if continuing law requirements for those designations are satisfied.
- Removes the requirement that the Administrator make those civil service designations only with the Board's advice and consent.

Additional changes

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



CONTENT AND OPERATION

Coverage and benefits

Volunteer corporate officers and coverage

(R.C. 4123.01(A))

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

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

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

Death benefit eligibility

(R.C. 4123.59)

Under continuing law, a dependent of an employee who is killed as a result of an occupational disease or injury is eligible to receive death benefits until certain conditions are met. For a dependent who is mentally or physically incapacitated from having any earnings, death benefits continue until the person is no longer so incapacitated. The bill allows for such a dependent to continue receiving death benefits, even though the dependent is employed in a sheltered workshop, as long as the

dependent does not receive income, compensation, or remuneration from that employment in excess of \$2,000 in any calendar quarter.

Sick leave and temporary total disability compensation

(R.C. 4123.56)

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

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

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

Self-insuring employers

Rehabilitation services living maintenance and wage loss

(R.C. 4121.61, 4121.65, 4121.66, 4121.67, 4121.68, 4123.34, and 4123.35)

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

The bill eliminates a self-insuring employer's ability to have these expenses paid for from the Surplus Fund Account and the requirement to reimburse that account. Instead, the bill requires a self-insuring employer to pay these expenses directly and eliminates the requirement that a self-insuring employer obtain approval from the Administrator to do so. Under continuing law, the rehabilitation services furnished by a



self-insuring employer must be of equal or greater quality and content as those provided by BWC.

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

Handicap Reimbursement Program

(R.C. 4123.343 and 4123.35)

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

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

Technical change

(R.C. 4123.351)

The bill corrects an erroneous cross-reference.

Notice to employer of appellate obligations

(R.C. 4123.512)

Under continuing law, if an Industrial Commission decision (or, in lieu of the Industrial Commission, a designated staff hearing officer decision) is appealed to a



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

Health Partnership Program appeals

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

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

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

Appeals from adjudicating committee decisions

(R.C. 4123.291)

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

Administration

Workers' Compensation Audit and Actuarial Committees

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

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

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

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

Division of Safety and Hygiene employees

(R.C. 4121.37)

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

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

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

administrative, managerial, or professional in character. All other employees are in the classified service.

DWRF assessments and alternative funding

(R.C. 4123.411 and 4123.419)

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

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

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

Long-term Care Loan Fund Program

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

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

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



HISTORY

ACTION

DATE

Introduced

02-10-15

H0052-I-131.docx/emr



COMPARISON DOCUMENT BASE

House Bills 51 and 52
131st General Assembly

Budget Bills for the
Ohio Industrial Commission and
Bureau of Workers' Compensation
(FY 2016-FY 2017)

As Introduced

**Legislative Service Commission
February 12, 2015**

Executive

OICCD1 Rent - William Green Building

Section: 1

Requires that appropriation item 845402, Rent - William Green Building, be used to pay for rent and operating expenses for the space occupied by the Industrial Commission in the William Green Building.

Executive

BWCCD7 Appeals regarding Health Partnership Program participation**R.C. 119.12**

Requires appeals of the Bureau of Workers' Compensation decisions regarding participation in the Health Partnership Program to be filed in the Franklin County Court of Common Pleas rather than, as under current law, filing the appeal in the court of common pleas of the county in which the place of business of the provider or the managed care organization is located or the provider is a resident and, pursuant to administrative rule, filing a copy of that appeal in the Franklin County Court of Common Pleas.

Fiscal effect: Potential increase in court costs for the Franklin County Court of Common Pleas to hear these appeals. Possible administrative savings for BWC to be realized under Fund 7023 line item 855407, Claims, Risk and Medical Management.

BWCCD4 Elimination of the Long Term Care Loan Program**R.C. 4121.37, 4121.48 (repealed)**

Eliminates the Long-term Care Loan Program that allows BWC to make interest-free loans to nursing homes or hospitals so that they may purchase, improve, install, or erect certain lift equipment and electric beds to implement a facility policy of no manual lifting of residents by employees.

Fiscal effect: Few such loans have been made in recent fiscal years. Interest paid by BWC amounted to \$644 in FY 2013 and no payments were made during FY 2014.

Executive**BWCCD5 Number of unclassified employees in Division of Safety and Hygiene****R.C. 4121.37**

Allows the Administrator of Workers' Compensation to designate more than six unclassified positions in the Division of Safety and Hygiene (current law limits the number of such designated employees to six) and removes the requirement that the BWC Board of Directors advise and consent on those designations.

Fiscal effect: None apparent. However, if the Administrator were to hire additional unclassified employees, there could be some additional payroll costs.

BWCCD12 Self-insured employers: BWC rehabilitation and handicap reimbursement programs**R.C. 4121.61, 4121.65, 4121.66, 4121.67, 4121.68,
4123.34, 4123.35, and 4123.56**

Eliminates the requirement that a self-insuring employer be approved by the Bureau of Workers' Compensation prior to furnishing rehabilitation services directly.

Requires a self-insuring employer to furnish or pay directly for rehabilitation services, counseling, training, living maintenance payments, and certain wage loss compensation, or compensation and benefits for an injury, occupational disease, or death that results from a claimant's participation in a rehabilitation program rather than allowing for those payments to be made initially from the Surplus Fund Account within the State Insurance Fund.

Requires a self-insuring employer to furnish or pay directly, for all compensation, benefits, and services due to an employee for injury, occupational disease, or death caused by a pre-existing mental or physical handicap of the employee, rather than allowing a portion of those payments to be made initially from the Surplus Fund Account within the State Insurance Fund as under current law.

Fiscal effect: None. No self-insured employers in recent years have participated in either BWC's rehabilitation program or handicap reimbursement program. If a self-insured employer elects to participate in either program, BWC charges an assessment that is deposited into the Surplus Fund to cover related expenses.

Executive

BWCCD8 Duties of BWC Audit and Actuarial Committees**R.C. 4121.129**

Requires the Workers' Compensation Audit Committee to recommend an accounting firm to the BWC Board of Directors to perform the Auditor of State's annual audit of the Safety and Hygiene Fund and administration of the Workers' Compensation Law.

Eliminates the requirement that the Audit Committee recommend to the Board an actuarial firm to perform the required annual actuarial analysis of the workers' compensation funds.

Requires the Workers' Compensation Actuarial Committee to review and approve rate schedules prepared and presented by the BWC actuarial division or by contracted actuarial consultants rather than reviewing only those rate schedules prepared by contracted actuarial consultants as under current law.

Fiscal effect: Minimal. There may be some administrative savings for BWC if the rate schedules that the Actuarial Committee are to review and approve can be done by BWC actuarial staff rather than contract actuarial consultants.

BWCCD11 Volunteer corporate officers and workers' compensation**R.C. 4123.01**

Exempts volunteer corporate officers who work for a nonprofit corporation from coverage under Ohio's Workers' Compensation Law, and does not allow these volunteer corporate officers to elect coverage under the law.

Requires persons who under continuing law may elect to be covered under the law to make that election in accordance with the rules adopted by the Administrator of Workers' Compensation with the advice and consent of the Bureau of Workers' Compensation Board of Directors.

Fiscal effect: Potential for few claims to be filed if these individuals would no longer be receiving coverage, However, the number of such claims would likely be small.

Executive

BWCCD2 Sick leave and temporary total disability leave compensation**R.C. 4123.56**

Allows temporary total disability compensation to be paid without an offset for supplemental sick leave benefits provided by the employer if the employer and employee mutually agree in writing.

Fiscal effect: None apparent.

BWCCD1 Workers' compensation death benefit eligibility**R.C. 4123.59**

Allows for a mentally or physically incapacitated dependent to continue receiving workers' compensation death benefits while the dependent is working in a sheltered workshop, as long as the dependent does not receive income, compensation or remuneration from that employment in excess of \$2,000 in any calendar quarter.

Fiscal effect: Potential increase in death benefit payments from the State Insurance Fund for dependents that meet these criteria.

BWCCD6 Appeals from adjudicating committee decisions**R.C. 4123.291**

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

Fiscal effect: Potential reduction in administrative hearing costs if some employers choose not to have a hearing on an adverse decision.

Executive

BWCCD9 DWRP assessments and alternative funding of claims for certain private and public taxing district employers**R.C. 4123.411, 4123.419**

Permits, rather than requires under current law, the Administrator of Worker's Compensation to levy assessments on employers for amounts necessary to sustain Disabled Worker Relief Fund (DWRP) for claims occurring before January 1, 1987.

Allows the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, to transfer investment earnings of the surplus or reserve accounts in the State Insurance Fund amounts necessary to the DWRP to cover DWRP claims involving private and public taxing district employers, rather than levying these assessments against these employers.

Eliminates the current law requirement to make transfers from the Disabled Worker Relief Fund to the GRF to reimburse the GRF for moneys appropriated for disabled worker relief.

Fiscal effect: Potential reduction in moneys within the surplus and reserve accounts in the State Insurance Fund; however, DWRP claims in this provision are becoming rare. Also, potential small savings for certain private and public taxing district employers that will no longer be charged DWRP assessments.

BWCCD3 Notice to employer of appellate obligations**R.C. 4123.512**

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

Fiscal effect: None apparent.

Executive

BWCCD13 Workers' Compensation Fraud Unit**Section: 3**

Earmarks \$828,200 in each fiscal year of appropriation item 855410, Attorney General Payments, to fund the expenses of the Workers' Compensation Fraud Unit within the Attorney General's Office, and requires these payments to be processed at the beginning of each quarter of each fiscal year and deposited into the Workers' Compensation Section Fund (Fund 1950) used by the Attorney General.

Fiscal effect: None apparent.

BWCCD14 Safety and Hygiene**Section: 3**

Requires the Treasurer of State to transfer \$21,661,132 in cash in each fiscal year from the State Insurance Fund to the Safety and Hygiene Fund (Fund 8260).

BWCCD15 OSHA On-Site Consultation Program**Section: 3**

Allows a portion of appropriation item 855609, Safety and Hygiene Operating, to be used to match federal funding for the federal Occupational Safety and Health Administration's On-Site Consultation Program operated by the Division of Safety and Hygiene..

Executive

BWCCD16 Interagency agreement for provision of vocational rehabilitation services**Section: 3**

Requires BWC and the Opportunities for Ohioans with Disabilities Agency to enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. Specifies that BWC may provide up to \$605,407 in each fiscal year from the State Insurance Fund as part of the interagency agreement.

BWCCD17 Deputy Inspector General for BWC and OIC funding**Section: 4**

Requires the Director of Budget and Management to transfer \$212,500 in cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0) on July 1 and January 1 of each fiscal year, or as soon as possible after these dates, to pay for the costs of the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission over the FY 2016-FY 2017 biennium. Authorizes the Inspector General to seek Controlling Board approval for additional cash transfers and appropriations if needed.

BWC Budget Proposals

Governor John Kasich and the Ohio Bureau of Workers' Compensation's (BWC) commitment to prudent fiscal management and strengthening the state's economic vitality is reflected in its proposed 2016/2017 biennial budget. The \$552.4 million budget is a 4% decrease compared to the appropriation for the previous biennium, saving Ohio employers more than \$23 million. Along with keeping employer costs low, BWC is proposing changes to streamline business, alleviate costs for nonprofits and employers, and ensure benefits for Ohioans injured in the workplace.

Streamline Business

Administrative process for employer appeals – The adjudicating process currently requires employers to appear in-person at two separate hearings when appealing BWC policies and decisions. BWC's proposal to make the last level optional for employers supports greater efficiency and will simplify the process, without compromising the employer's right to an in-person hearing if the employer desires.

File decertification appeals in Franklin County- Today, BWC decertification appeals can be filed in the Court of Common Pleas of the county where the provider practices or lives. To ensure consistency, BWC proposes all appeals are filed in the Franklin County Court of Common Pleas. This aligns BWC with standard practice of the liquor control commission and the state medical, chiropractic and nursing boards.

Remove Long-Term Care Loan Program- BWC developed the Long-Term Care Loan Program to help Ohio's nursing homes and hospitals reduce the frequency and severity of injuries sustained by employees when lifting residents or patients. The program has generated little interest with no participation in more than five years. Additionally, BWC offers assistance in purchasing these same items through the Safety Intervention Grant Program, which offers a better financial option for employers. Therefore, BWC proposes removing the Long-Term Care Loan Program.

Alleviate Costs

Funding for the Disabled Workers Relief Fund I (DWRF I) – Employers currently pay into DWRF I, a pay-as-you-go fund that provides relief to a worker whose injuries occurred prior to January 1, 1987, and whose regular permanent total disability benefits have not kept pace with inflation. BWC is seeking authority to use funds from its current net position to cover the unfunded liabilities of this fund. Injured workers would continue to receive this benefit and employers would benefit from lower future rates with removal of the burden of covering costs associated with claims that may have occurred prior to their time in business.

Removing the current mandate for unpaid corporate officers to have workers' compensation coverage - Current law requires BWC to treat corporate officers of nonprofit organizations as if they were earning an income regardless of whether they are receiving remuneration. This places a cost and burden on charitable organizations that in turn could create a barrier to their humanitarian business or mission. BWC proposes to remove this mandate so any officer who is a true volunteer would not be mandated to have workers' compensation coverage.

Ensure benefits

Ensuring mentally or physically incapacitated adult dependents remain eligible for death benefits while participating in a sheltered workshop – Adult dependents with disabilities have opportunities to participate in work programs focused on rehabilitating activity and promoting a higher functioning life. BWC wishes to make clear this activity should not have an impact on any death benefits they are receiving.

Employers' ability to pay sick leave with compensation - Currently, some employers agree to pay supplemental sick leave to their employees when the employee is receiving compensation benefits in order to return the injured worker to 100% of his or her earnings. The law is not clear on this practice and thus BWC proposes to provide the option for employers who wish to pay these additional benefits without jeopardizing the amount of workers' compensation benefits the employee can receive from BWC.

Updating current code:

Hiring ability at the Division of Safety and Hygiene – The Division of Safety and Hygiene is an important component of BWC's continued efforts to help Ohio employers prevent injuries and increase safety in their workplaces. To provide more flexibility and support its mission of workplace safety education and training, BWC proposes to remove the current limit placed in law on the number of unclassified positions in this division.

Clarify responsibilities for board of directors' audit and actuarial committees- In order to ensure the appropriate BWC board members are involved in their areas of expertise, BWC proposes to clarify current law that the audit committee recommends the firm to perform the annual audit and the actuarial committee reviews and approves the rate schedules recommended by contracted consultants and the BWC's actuarial division.

Non-complying employers' liability – Current law states if an employer receives notice but still fails to become an active party in an appeal to the court system, BWC may act on behalf of the employer and the result could have an adverse impact on the employer's premium rate. BWC proposes to clarify in that same scenario, if it is a non-complying employer who does not have a policy, BWC can assess dollar for dollar recovery from the employer.

Remove requirements and optional programs that are no longer being utilized for self-insured employers- Many years ago BWC established two optional programs for self-insured employers to utilize BWC resources for vocational rehab services and to participate in a handicap fund. Today, self-insured employers directly pay for compensation, benefits and services, and see no financial benefit to be reimbursed for the amount they pay into these funds. Therefore, BWC proposes to remove these outdated programs. Additionally, to remain current with governmental accounting standards, BWC proposes to remove an outdated requirement that a public employer have unreserved/undesignated general fund balances equal to at least 5% of the general fund reserves. Because this has no impact on BWC's ability to determine a public employer's financial situation and is no longer required as part of a public employer's audited financial statements, BWC requests the requirement be removed from statute.

For immediate release: October 17, 2014

Ohio's ranking improves in national workers' compensation rate study

Ohio moved up 30 spaces in Oregon Study since 2008

COLUMBUS - Ohio is again being recognized nationally for improvement in its workers' compensation rates. The Oregon Premium Rate Ranking Study, a biennial review of workers' compensation rates that was released last week and is used by many as a national benchmark, ranked Ohio 33rd lowest among all 50 states. Ohio ranked third highest in the nation as recently as 2008.

"We believed early on that one of the most productive steps we could take to support the success of Ohio employers was to keep their workers' comp rates low and stable," said Steve Buehrer, Administrator/CEO of the Ohio Bureau of Workers' Compensation (BWC). "Ohio's continued ascension in this national study is another positive sign for Ohio's employers, and indication of our economic recovery and rise in competitiveness."

The Oregon study compares each state's base rates across a selection of 50 widely used classification codes that are assigned by occupation to indicate their degree of risk. Ohio ranked 28th in 2012, 17th in 2010, and 3rd in 2008. Ohio's base rate index in the 2014 study of \$1.74 per \$100 of payroll is below the national median of \$1.85. Ohio's base rate index was \$3.32 in 2008, when the national median was \$2.26.

The 2014 study uses Ohio's private employer base rates effective July 1, 2013, however average rates are currently lower due to a 6.3% reduction effective July 1, 2014. While the study compares base rates, the average amount per \$100 of payroll that BWC anticipates that it will collect from private employers across all classifications during the 2014/2015 policy period is projected to be \$1.61. The collectible rate represents the amount BWC receives after applying experience modifications and discounts for participation in various BWC programs.

In total, average base rate reductions for Ohio private employers over the last four years brings the combined premium collections over the last four years down by \$409 million. While not included in this study, Ohio local government employers have also seen overall rate reductions and are paying their lowest rates in 30 years.

The rankings, produced by the Oregon Department of Consumer & Business Services, are available [here](#). The entire report will be released early next year.

Follow BWC on [Twitter](#).

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BWC Update

News from the Ohio Bureau of Workers' Compensation

Private employers: Rating plan, program signups changing for prospective billing

The way you pay BWC for workers' compensation coverage is changing. BWC is transitioning private employers to prospective billing on July 1, 2015, meaning that payments will be made before coverage is extended. This effort will help BWC modernize its operations and provide better service to Ohio's employers.

This switch to prospective billing impacts rating plan and program sign-up deadlines. For the policy year beginning July 1, 2015, these deadlines are:

- Nov. 24, 2014 – group-experience rating;
- Jan. 30, 2015 – group-retrospective rating, individual-retrospective rating, Deductible Program and One Claim Program;
- May 29, 2015 – Destination: Excellence programs.

In May 2015, private employers will receive estimated premium notices and certificates of coverage. Employers should review the certificates for accuracy and contact BWC if something is incorrect. Each certificate will have new language that says coverage is conditional upon payment of premium.

A transition credit will be provided to private employers, as long as they are in good standing. Lapsed policies must be rectified prior to July 1, 2015, to receive the transition credit.

You will receive an invoice from BWC for your September and October premium payment, which will be due Aug. 31, 2015. On that invoice, you will see a transition credit for July and August.

A private employer timeline, frequently asked questions and more resources about prospective billing are available at bwc.ohio.gov.

Questions? Please contact your local BWC customer service office, call 1-800-644-6292, or email BWC.



INITIATIVE PETITION

To the Attorney General of Ohio: Pursuant to Ohio Revised Code § 3519.01(A), the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed Amendment to the Ohio Constitution and a summary of the same.

TITLE

Medical Marijuana and Personal Use Amendment

SUMMARY

This Amendment would add a new section 12 to Article XV of the Ohio Constitution to provide for the legalization of the use of medical marijuana by patients with debilitating medical conditions if a medical marijuana certification has been provided by the patient's treating physician and the use of marijuana and marijuana-infused products for personal use in amounts of one ounce or less by individuals 21 years of age or older, by providing, among other provisions:

1. Establishing the Ohio Marijuana Control Commission ("Commission") to regulate the acquisition, growth, cultivation, extraction, production, processing, manufacture, testing, distribution, retail sales, licensing, and taxation of medical marijuana, marijuana and marijuana-infused products and the operations of marijuana establishments as defined in the Amendment. The Commission would be composed of seven members appointed by the governor with varying backgrounds and qualifications and for terms as set forth in the Amendment. All are required to be Ohio residents. The Amendment sets forth specific subject matter for regulations to be promulgated by the Commission and requires the Commission to establish a system for real-time tracking of all medical marijuana, marijuana and marijuana-infused products from initial germination and/or extraction through the final consumer transaction. The Commission would also serve as a clearing house for scientific and medical research on medical marijuana, marijuana and marijuana-infused products. The Commission is required to employ necessary and qualified persons, including enforcement agents, and retain services of qualified third parties, including experts, to perform its duties.
2. Providing ten site specific locations for Commission licensed Marijuana Growth, Cultivation and Extraction ("MCGE") facilities. Setting forth conditions under which the Commission may relocate a MCGE facility or issue a license for a MCGE facility at a site other than the ten designated sites. Providing that marijuana and medical marijuana may be grown, cultivated and extracted for sale and medical use only at these state regulated and licensed facilities. One of each of the ten specified sites are in the following counties: Butler, Clermont, Franklin, Hamilton, Licking, Lorain, Lucas, Montgomery, Stark, and Summit.
3. Providing for Commission licensed Marijuana Product Manufacturing ("MPM") facilities to produce marijuana-infused and medical marijuana-infused products and that such products may be produced only at these state regulated and licensed facilities. The Commission would be required to regulate the chemical content and potency of marijuana-infused products and create a special division within the Commission to assist in promulgation of standards regulating the manufacture, packaging and advertising of marijuana-infused products, including ensuring that the products are not manufactured, packaged or advertised in ways that create a substantial risk of attractiveness to children.
4. Providing for Commission licensed not-for-profit medical marijuana dispensaries ("MMD") to dispense medical marijuana to patients with debilitating medical conditions and to their Commission licensed caregivers with a medical marijuana certification issued by the patient's current treating physician in accordance with specific requirements set forth in the Amendment and in accordance with Commission and other state regulations, and providing that medical marijuana may only be sold and dispensed by such state licensed and regulated dispensaries. Both the patient and the patient's physician must be Ohio residents. The Amendment defines "debilitating medical condition," including specific medical conditions, and requires the Commission to establish and annually update, consistent with current, peer-reviewed research, the list of debilitating medical conditions for which medical marijuana certifications may be issued. The number of such state licensed and regulated dispensaries that may be within any subdivision would be determined by the Commission. MMDs must be incorporated under Ohio law. If the patient is under the age of 18, require that treatment involving medical marijuana may not be provided without the informed consent of a custodial parent, guardian, conservator or other person with lawful authority to consent to medical treatment. Provide that a physician may not be disciplined or subject to certain other actions based solely on discussing with a patient or providing a professional opinion on the use of medical marijuana as a treatment option or

issuing a medical marijuana certification under the Amendment. Require MGCE and MPM facilities to sell medical marijuana and medical marijuana-infused products, respectively, to MMDs at their lowest wholesale prices and in sufficient quantity to satisfy patient demand. Provide that nothing in the Amendment shall require any health insurance provider or government agency to reimburse a patient for expenses for medical marijuana.

5. Providing for Commission licensed retail marijuana stores (“RMS”) to sell marijuana and marijuana-infused products to individuals 21 years of age or older for personal use and that marijuana and marijuana-infused products for personal use may only be sold by such state licensed and regulated stores. The Commission would determine the number of RMSs that may be within any political subdivision. However, the total number of stores statewide would be limited by the ratio of one to ten thousand based on the state’s population, and the location of any such store must first be approved by the electors of the precinct where the store would be located at a special election similar to elections for the sale of alcohol at a particular location in a precinct, except for provisions unique to liquor local option elections. The Amendment also sets forth provisions governing the timing, holding, funding, and conduct of such elections. A RMS could purchase marijuana only from licensed MGCE facilities and marijuana-infused products only from licensed MPM facilities and sell no other goods or services, except for marijuana accessories and related products. No marijuana or marijuana-infused product could be consumed on the store’s premises or be sold at a price below what the store paid for it.

6. Providing for Commission licensed Marijuana Testing Facilities (“MTF”) to engage in research related to and/or certify safety and potency of medical marijuana, marijuana and marijuana-infused products. Such facilities, at a minimum, must be located near colleges and universities in Athens, Lorain, Mahoning, Scioto and Wood Counties.

7. Imposing a special flat tax of 15% on all gross revenue of each MGCE facility, MPM facility and RMS, without any deduction for expenses or distribution of any profit. Such tax would be collected and distributed by the state as follows: 55% to a Municipal and Township Government Stabilization Fund to be distributed to all municipalities and townships on a per capita basis to be used for public safety and health, including police, fire and emergency medical services, road and bridge repair, and other infrastructure improvements; 30% to a Strong County Fund to be distributed to all counties on a per capita basis to be used for public safety and health, including police, fire and emergency medical services, road and bridge repair, and other infrastructure improvements; and 15% to a Marijuana Control Commission Fund to be distributed in the following order for: the operating costs of the Commission; to the extent the Commission elects, the reasonable and necessary operating costs of the MMDs; mental health and addiction prevention and treatment programs and services; research by Ohio’s public universities and Ohio not-for-profit institutions on marijuana, medical marijuana and marijuana-infused products; and, to the extent the Commission elects, a program to provide low-cost medical marijuana to qualifying patients unable to afford the full cost. Distributed funds from the 15% special tax are to supplement, not supplant, funding obligations of the state and local governments imposed by other laws.

8. In addition to the 15% special tax, each MGCE facility, MPM facility and RMS would be required to pay the state commercial activities tax and all other taxes, assessments, fees and charges as are required to be paid by businesses in general and would be prohibited from receiving any credit, deduction or abatement that is unavailable to other businesses. MMDs would be required to pay the same taxes, assessments, fees and charges that other not-for-profit organizations are required to pay. Additional, taxes, assessments, fees or charges, other than license fees required under the Amendment, could not be imposed on the operations, revenue or distributed income of marijuana establishments.

9. Providing that it is lawful for persons 21 years of age or older to purchase, possess, transport, and use marijuana of one ounce or less or its equivalent in marijuana-infused products, as determined by the Commission, and marijuana accessories.

10. Prohibiting a marijuana establishment from being located within 1,000 feet of the primary building structure used for any of the following: a house of worship, a state chartered elementary or secondary school, a publicly owned library, or a state licensed child day-care facility; or within 1,000 feet of any public playground or a playground adjacent to any of the foregoing primary building structures, if such school, library, playground, day-care facility, or house of worship was located within the 1,000 zone on or before 1/1/15 in the case of a MGCE facility, or the date of an applicant’s first application for a license in the case of a MPM facility, MMD or RMS.

11. Prohibiting knowingly selling or transferring medical marijuana, marijuana or marijuana-infused products to a person under the age of 21, except for transfers or sales by a MMD to a qualifying patient or caregiver in accordance with Commission regulations, and requiring the General Assembly to pass laws defining such conduct as child endangerment and enacting enhanced penalties for violations of such laws.

12. Prohibiting the employment of any person under the age of 21 by any marijuana establishment. Prohibiting any person under the age of 21 from being on the premises of a marijuana establishment, except in the case of a patient 18 to 20 years old at a MMD to obtain medical marijuana under a medical marijuana certification issued for such patient. Providing that a caregiver must be 21 years of age or older, be the person responsible for managing the well-being of a patient with a debilitating medical condition and that the person's responsibilities to the patient must include more than the provision of medical marijuana.

13. Prohibiting persons from operating or being in physical control of a vehicle, aircraft, train or motorboat while under the influence of medical marijuana, marijuana or marijuana-infused products, and requiring the General Assembly to pass laws imposing criminal penalties for doing so.

14. Prohibiting the use of marijuana and marijuana-infused products in any public place or on the grounds of a state chartered elementary or secondary school, state licensed child day-care center, correctional facility or community corrections facility, or in a vehicle, aircraft, train or motorboat, except that a patient may use medical marijuana in accordance with a medical marijuana certification, and requiring the General Assembly to pass laws enforcing these provisions.

15. Providing that nothing in the Amendment is intended to require an employer to permit or accommodate the possession or use of medical marijuana, marijuana or marijuana-infused products in the workplace, except that a patient with a medical marijuana certification may self-administer the medical marijuana subject to the same conditions applied to prescribed medications.

16. Prohibiting a person from having an ownership interest in or being an officer or director of a marijuana establishment who is under the age of 21 or has been convicted of a felony within the prior five years and from continuing to hold an ownership interest or officer or director position upon conviction of a felony and exhaustion of any appeals

17. Providing that marijuana establishments shall be subject to all applicable state and local laws and regulations related to health, safety and building codes, including signage, but providing that no zoning, land use law, or subdivision or agricultural regulation shall prohibit the development or operation of marijuana establishments, provided that no such establishment shall be located in a district zoned exclusively residential as of 1/1/15 for MGCE facilities or the date that a license application is first filed for a MPM facility, MMD, or RMS.

18. Prohibiting MGCE and MPM facilities from selling or transferring medical marijuana, marijuana or marijuana-infused products directly to consumers and prohibiting a RMS from being located on the premises of a MGCE or MPM facility.

19. Providing a timeline for initial implementation of the Amendment, including for appointment of the members of the Commission, the issuance of initial provisional licenses to MGCE facilities at the 10 designated sites based on required affidavits and payment of a \$100,000 license fee, inspection of such MGCE facilities within six months of issuance of such initial licenses, promulgation of initial regulations for MGCE facilities, MPM facilities, MMDs and RMSs, issuance of forms and procedures for precinct special elections, and the holding of a special election in May of the year following adoption of the Amendment for submission to voters of a precinct the question of approval of a location of a RMS. Initial regulations required to be adopted by specific dates are to be promulgated notwithstanding other provisions of law regarding promulgation of administrative rules, but the Commission must provide an opportunity for public input.

20. Requiring annual license fees of \$50,000 for MGCE facilities, \$25,000 for MPM facilities and \$10,000 for RMSs and marijuana testing facilities and that such fees be adjusted upward annually for inflation.

21. Requiring the Commission beginning in the second year following adoption of the Amendment to annually audit each marijuana establishment to certify that each establishment is in compliance with applicable rules and regulations, and if it determines that there is material non-compliance, authorizing the Commission to order remedial action and suspend or revoke the facility's license for failure to comply with such order within a reasonable time. Marijuana establishments may have their licenses renewed annually unless the Commission determines that a licensee has repeatedly failed to comply with the Commission's remedial orders. Ohio's administrative procedure statutes generally applicable to other licensing bodies would apply to the extent not in conflict with the Amendment. The Commission shall set forth by rule civil penalties for failure to comply with Commission regulations, including enhanced penalties for repeat violations.

22. Requiring in the fourth year following adoption of the Amendment, the Commission to develop annual consumer demand metrics for medical marijuana and marijuana, which may be used by the Commission in conjunction with other findings to issue a license for an additional MGCE facility.

23. Providing that the Commission shall serve as a clearing house for scientific and medical industry research on the use of marijuana, marijuana-infused products and medical marijuana and shall establish a marijuana innovation and business incubator in Cuyahoga County to award support to Ohio-based public and private business entities, colleges and universities, nonprofit medical centers, and other nonprofit research institutions to engage in research and development, as well as to create new products, companies and jobs, associated with the medical marijuana and marijuana industries in Ohio.

24. Authorizing MPM facilities to manufacture and RMSs and MMDs to sell marijuana accessories and legalize possession and use of marijuana accessories, as defined in the Amendment.

25. Providing that the actions of marijuana establishments and their employees and agents are lawful and not subject to civil or criminal penalties so long as the actions are in compliance with the Amendment, laws enacted by the General Assembly and the rules of the Commission.

26. Define various terms used in the Amendment, including, but not limited to, marijuana, medical marijuana, marijuana-infused products, caregiver, physician, and debilitating medical condition.

27. Providing that the provisions of the Amendment are self-executing except as specified in the Amendment, and that they supersede conflicting state and local laws, charters, regulations, and state constitutional provisions, except where otherwise indicated in the text. The General Assembly is authorized to enact laws implementing the provisions of the Amendment that are not in conflict with those provisions. Provide that the Amendment's provisions do not require the violation of federal law or purport to give immunity under federal law.

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

Taylor Deutsche
903 Clayton Dr.
Worthington, OH 43085

Patrick T McHenry
317 N Main St.
Waynesville, OH 45068

Rosemary Robinson
16608 Walden Ave
Cleveland, OH 44128

Barbara Gould
8525 Camargo Club Drive
Cincinnati, OH 45243

Robert J Letourneau
7461 Fitzroy Ct.
Cincinnati, OH 45241

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(Sign with ink. Your name, residence, and date of signing must be given)

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FULL TEXT OF AMENDMENT

Be it Resolved by the People of the State of Ohio that Article XV of the Ohio Constitution is hereby amended to add the following Section:

§12 Legalization, Regulation and Taxation of Medical and Personal Use of Marijuana

(A) Summary

This section provides for the legalization of medical marijuana for use by persons with debilitating medical conditions and for the legalization of marijuana and marijuana-infused products for personal use by individuals 21 years of age and older. This section establishes the Ohio Marijuana Control Commission (“Commission”) to regulate the state’s marijuana industry in a manner similar to the state’s regulation of alcohol. A patient may obtain medical marijuana only after being issued a medical marijuana certification by an Ohio-licensed physician, and only from state-regulated, not-for-profit medical marijuana dispensaries. Sale of marijuana and marijuana-infused products for personal use is limited to licensed retail marijuana stores, and the location of any such store must receive approval of the voters of the precinct in which the store would be located. Growth, cultivation and extraction of marijuana and medical marijuana to be sold within the state will occur only at site-specific, state-regulated facilities, and marijuana-infused and medical marijuana-infused products may be produced only by state-regulated facilities. No marijuana establishment may be within 1,000 feet of a house of worship, a publicly-owned library, playground, an elementary or secondary school, or a state-licensed child day-care center. Each marijuana establishment, other than not-for-profit medical marijuana dispensaries, must pay a special flat tax equal to 15% of its gross revenue without any deduction for expenses. Revenue from this special tax must be allocated as follows: 55% to municipalities and townships, 30% to counties on a per capita basis, and 15% to a Marijuana Control Commission Fund for the reasonable and necessary costs of operating the Commission, to provide additional funding for mental health and addiction and treatment services, and to fund a marijuana innovation and business incubator to award support to Ohio-based companies, colleges and universities, nonprofit medical centers, and other nonprofit research institutions to engage in research and development, and to create new products, companies and jobs associated with the medical marijuana and marijuana industries in Ohio.

(B) Use of Medical Marijuana for Debilitating Medical Conditions

It is lawful for patients with debilitating medical conditions to acquire, administer, purchase, possess, transport, and use, and for their licensed caregivers to acquire, administer, purchase, possess, transport and transfer, medical marijuana pursuant to a valid medical marijuana certification. The state shall regulate the conduct of physicians in issuing medical marijuana certifications in a manner similar to its regulation of medical prescriptions. A treating physician who has examined a patient and determined that he or she has a debilitating medical condition may issue a medical marijuana certification if: (1) a bona fide physician-patient relationship exists; (2) the physician determines the risk of the patient’s use of medical marijuana is reasonable in light of the potential benefit; and (3) the physician has explained the risks and benefits of using medical marijuana to the patient. If the patient is younger than 18 years of age, treatment involving medical marijuana may not be provided without consent by at least one custodial parent, guardian, conservator, or other person with lawful authority to consent to the patient’s medical treatment.

No agency, including a law enforcement agency, of this state or of a political subdivision of this state may initiate an administrative, civil, or criminal investigation of a physician, nor shall a physician be denied any right or privilege or be subject to any disciplinary action, solely on the ground that the physician: (1) discussed with a patient the use of medical marijuana as a treatment option; or (2) issued a medical marijuana certification under this section, or otherwise made a written or oral statement that, in the physician's professional opinion, the potential benefits of the patient using medical marijuana would likely outweigh the health risks.

(C) Establishment of Medical Marijuana Not-For-Profit Dispensaries

Medical marijuana shall only be dispensed and sold to patients and caregivers by not-for-profit medical marijuana dispensaries licensed under this section, in accordance with a medical marijuana certification issued by the patient's current treating physician, who shall exercise the same professional care, ethics and judgment in doing so as is required in issuing medical prescriptions.

The Commission shall issue licenses to, and shall promulgate and enforce regulations governing the operations of, not-for-profit medical marijuana dispensaries. Such regulations shall include rules regarding the number of licenses within any political subdivision of the state. The Commission shall promulgate the initial regulatory rules for such dispensaries by May 30th of the year following adoption of this section.

Marijuana Growth Cultivation and Extraction ("MGCE") facilities and Marijuana Product Manufacturing ("MPM") facilities shall sell to the dispensaries, at their lowest wholesale prices, medical marijuana and medical marijuana-infused products, respectively, sufficient to satisfy patient demand for them in this state.

From the Marijuana Control Commission Fund established herein, the Commission may fund the reasonable and necessary operating costs of the not-for-profit medical marijuana dispensaries and establish a program to provide low-cost medical marijuana to qualifying patients who are unable to afford the full cost. Nothing in this section, however, shall require any health insurance provider or any government agency or authority to reimburse any patient for expenses related to the use of medical marijuana.

(D) Personal Use of Marijuana

It is lawful for persons 21 years of age or older to purchase, possess, transport, use and share with another person 21 years of age or older one ounce or less of marijuana or its equivalent in marijuana-infused products.

(E) Taxation of Marijuana Revenue

The state shall levy and collect a special flat tax of 15% on all gross revenue of each MGCE facility, MPM facility and retail marijuana store. "Gross revenue" as used in this subdivision means 100% of all revenue received without deduction for any expenses or distribution of any profit. Such facilities and stores shall also pay the state commercial activities tax and all other local taxes, assessments, fees and charges as apply to businesses in general. Such facilities and stores shall not receive any abatement, credit or deduction that is unavailable to other businesses. Dispensaries shall pay the same taxes, assessments, fees and charges that other not-for-profit organizations are required to pay. No additional taxes, assessments, fees or charges shall be levied on the operations, revenue, or distributed income of a marijuana establishment, other than the

license fees authorized under this section.

One hundred percent of the revenues generated from the special tax shall be collected and distributed by the state for the following purposes (the “Purposes”):

- (1) 55% to a Municipal and Township Government Stabilization Fund with 100% of such funds being distributed to every municipality and township on a per capita basis, excluding, in the case of a township, population that is also within a municipality. Such funds shall be used for public safety and health, including police, fire and emergency medical services, road and bridge repair, and other infrastructure improvements;
- (2) 30% to a Strong County Fund with 100% of such funds being distributed to each county on a per capita basis. Such funds shall be used for public safety and health, including law enforcement, economic development, road and bridge repair, and other infrastructure improvements; and
- (3) 15% to a Marijuana Control Commission Fund with 100% of such funds being distributed in the following order for: (a) the reasonable and necessary costs of operating the Commission; (b) funding for the marijuana innovation and business incubator established hereunder; (c) to the extent the Commission so elects, the reasonable and necessary operating costs of the not-for-profit medical marijuana dispensaries established under this section, (d) mental health and addiction prevention and treatment programs and services; and (e) to the extent the Commission so elects, a program to provide low-cost medical marijuana to qualifying patients who are unable to afford the full cost.

The above described Funds shall be established in the state treasury and the above described special tax collected and distributed monthly. Funds distributed under this subdivision shall supplement, not supplant, funding obligations of the state and local governments. Accordingly, all such distributions shall be disregarded for purposes of determining whether funding obligations imposed by other sections of this constitution or by the revised code are met. The Funds will be allocated and distributed consistent with the foregoing Purposes by the applicable state or local government entity.

(F) Establishment of Marijuana Growth, Cultivation & Extraction Facilities

The growth and cultivation of marijuana and medical marijuana, and the extraction of cannabinoids from marijuana and medical marijuana, for sale and medical use within this state shall be lawful only at licensed MGCE facilities. Subject to the exceptions set forth herein, there shall be only ten MGCE facilities, which shall operate on the following real properties: (1) Being an approximate 40.44 acre area in Butler County, Ohio, identified by the Butler County Auditor, as of February 2, 2015, as tax parcel numbers Q6542084000008 and Q6542084000041; (2) Being an approximate 13.434 acre area in Clermont County, Ohio, identified by the Clermont County Auditor, as of February 2, 2015, as tax parcel numbers 413103B284 and 373103E301; (3) Being an approximate 19.117 acre area in Franklin County, Ohio, being a portion of a larger parent parcel which is identified by the Franklin County Auditor, as of February 2, 2015, as tax parcel number 040-004959-00. The approximate 19.117 area is described as follows: all of the real property being described as Franklin County, Ohio, tax parcel number 040-004959-00, less and except the portion of such tax parcel lying south of the centerline of the stream known as Grant Run Tributary No. 3; (4) Being an approximate 24.466 acre area in Hamilton County, Ohio, identified by the Hamilton County Auditor, as of February 2, 2015, as tax parcel number 500-0081-0004; (5) Being an approximate 35.031 acre area in Licking County, Ohio, identified by the Licking County Auditor, as of February 2, 2015, as tax parcel number 063-140952-00.000; (6) Being an approximate 76.83

acre area in Lorain County, Ohio, being a portion of two larger parent parcels which are identified by the Lorain County Auditor, as of February 2, 2015, as tax parcel numbers 03-00-053-108-013 and 03-00-054-102-008. The approximate 76.83 acre area is described as follows: all of the real property being described as Lorain County, Ohio tax parcel numbers 03-00-053-108-013 and 03-00-054-102-008, less and except the portions of such tax parcels lying northerly of a line located 2,100 feet southerly of and parallel with Colorado Avenue (also known as State Route 611); (7) Being an approximate 28.459 acre area in Lucas County, Ohio, identified by the Lucas County Auditor, as of February 2, 2015, as tax parcel number 22-74697; (8) Being an approximate 50.8 acre area in Montgomery County, Ohio, identified by the Montgomery County Auditor, as of February 2, 2015, as tax parcel number J44228226-0001; (9) Being an approximate 27.18 acre area in Stark County, Ohio, identified by the Stark County Auditor, as of February 2, 2015, as tax parcel number 7701271; and (10) Being an approximate 29.0052 acre area in Summit County, Ohio, identified by the Summit County Auditor, as of February 2, 2015, as tax parcel number 3009928.

No local zoning, land use laws, agricultural regulations, subdivision regulations or similar provisions or governmental consents and approvals applicable to creating transferrable legal descriptions, or to any subsequent assignment of different parcel numbers to the aforesaid real properties shall prohibit the creation of transferrable and recordable legal descriptions or separate tax parcel numbers for any of the aforesaid real properties. In addition, notwithstanding the identification of the real properties by reference to the parcel numbers as set forth above, any MGCE facility may expand its structures and related operations to adjacent real property which may be identified by different parcel numbers so long as all other applicable terms of this section are met.

The Commission shall promulgate the initial regulatory rules for the operation of MGCE facilities by May 30th of the year following adoption of this section; however, the Commission shall issue the application form for a provisional license within 60 days of the adoption of this section. If an owner of one of the above-designated sites chooses not to apply for a provisional license within 90 days of the passage of this section, the Commission may issue a license to operate a MGCE facility at a different site in lieu of that site so long as all other criteria set forth herein are met.

The Commission shall issue one-year provisional licenses within 90 days of the passage of this section to the owners of the above-designated real properties who have applied for licenses to operate MGCE facilities subject to the following conditions: payment of an initial licensing fee of \$100,000 and the filing of affidavits by the chief executive officer and chief financial officer affirming under oath that the facility will: comply with all requirements under this section; comply with all applicable health, safety, prevailing wage, building code, sanitation, environmental, land use, and employment laws and regulations not in conflict with this section; employ industry best practices with respect to the growth, cultivation and extraction of marijuana; comply with generally accepted accounting principles; comply with Commission regulations upon adoption; and subject the facilities and operations to immediate inspection and review by Commission personnel upon demand. Notwithstanding the foregoing, no existing local or state law shall be applied to prohibit the development or operation of such facilities. No later than six months after the facility commences its operations, the Commission shall inspect such facility and review its operations to confirm that it has complied with the assurances set forth in its officers' affidavits. If the Commission determines it has not, it shall order immediate remedial action as to that facility; and if the facility fails to remediate within 120 days, the Commission may suspend the provisional license until satisfied that all remedial actions have been implemented. The Commission shall issue non-provisional annual licenses to MGCE facilities upon expiration of their provisional licenses so long as such facilities are meeting their obligations under their provisional licenses and demonstrate the ability to comply with all regulations promulgated by the Commission regarding the operation of MGCE facilities.

To ensure that the supply of regulated marijuana is adequate to meet consumer demand in this state, beginning in the fourth year following the adoption of this section, the Commission shall develop and make publicly available annual consumer demand metrics for marijuana and medical marijuana based in substantial part on total gross sales of each within the state in the previous year. If the Commission determines during its annual audits of the MGCE facilities that such facilities collectively failed to produce marijuana and medical marijuana sufficient to substantially meet the published consumer demand metrics for the previous year and cannot demonstrate that they are likely to do so in the ensuing year, the Commission may issue a license for an additional MGCE facility at a site other than what has been designated herein.

If the Commission determines as part of its annual audit that a MGCE facility is in material noncompliance with applicable laws or regulations, the Commission may order remedial action; and, to the extent such MGCE facility fails to materially comply with the Commission's remediation order within the reasonable time period set forth by the order, the Commission may suspend or revoke the MGCE facility's license. If the Commission revokes a MGCE license for failure to remediate material noncompliance, the Commission may issue a license for a MGCE facility at a site other than what has been designated herein. If a MGCE facility terminates or indefinitely suspends its operations, the Commission may relocate that facility or revoke the facility's license and issue a license for a MGCE facility at a site other than what has been designated herein.

(G) Establishment of Marijuana Product Manufacturing Facilities

The manufacturing, processing and packaging of marijuana-infused products, including medical marijuana-infused products, shall be lawful only at licensed MPM facilities pursuant to a licensing and regulatory framework established by the Commission by May 30th of the year following adoption of this section. MPM facilities may also manufacture, process and package marijuana accessories. Such facilities may sell marijuana-infused products made only from marijuana purchased from licensed MGCE facilities.

The Commission shall establish rules regulating the chemical content and/or potency of marijuana-infused products and shall ensure they are prominently displayed on the products' packaging. As part of the regulatory framework governing MPM facilities, the Commission shall create and oversee a special division within the Commission staffed with individuals with extensive experience in food and prescription drug regulation to assist the Commission in promulgating industry-leading standards regulating the manufacture, processing, transportation, packaging and advertising of marijuana-infused products, including ensuring that marijuana-infused products are not manufactured, packaged or advertised in ways that create a substantial risk of attractiveness to children.

(H) Establishment of Retail Marijuana Stores

Marijuana and marijuana-infused products may be sold to individuals 21 years of age and older only by licensed retail marijuana stores. Such stores may sell only marijuana purchased from licensed MGCE facilities and marijuana-infused products purchased from licensed MPM facilities, and shall sell no other goods or services except for marijuana accessories and related products. No retail marijuana store shall allow to be consumed any marijuana or marijuana-infused product that has been opened on the premises. No retail marijuana store shall sell marijuana or marijuana-infused products at a price less than the store paid for such products.

No later than 60 days following adoption of this section, the Commission shall promulgate the initial regulatory rules for licensing such stores. The Commission may promulgate rules regarding the number of licenses within any precinct of the state; provided, however, that the number of stores statewide shall not exceed the ratio of one to ten thousand based on the state's population as determined by the U.S. Census Bureau's Population Estimates Program (PEP) and revised annually according to either the PEP estimates or the decennial Census, and that no such license shall be issued to a store unless the electors of the precinct where the store will be located have approved the use of the location for such purpose at a local option election. Except for provisions unique to authorization of alcohol sales, including limits on resubmitting an issue to the voters, such elections shall be held and conducted by election authorities in the same manner as local option elections for the approval by the electors of a precinct of the sale of alcohol to the public at a specific location. No later than 60 days following adoption of this section, the secretary of state shall prescribe forms for the petition process and procedures for the conduct of retail marijuana store elections. Such elections shall be held on dates authorized by law for special elections for other ballot questions, including dates for primary and general elections, occurring not less than 90 days after a petition for such election is filed. The petitioner shall reimburse the expense of conducting the special election where there are no candidates or other questions on the precinct ballot. In the calendar year following adoption of this section, special elections for such question may also be held on the first Tuesday after the first Monday of May and the petitioner shall reimburse the cost of conducting such election.

(I) Ohio Marijuana Control Commission

There is hereby established the Ohio Marijuana Control Commission, which shall regulate the acquisition, growth, cultivation, extraction, production, processing, manufacture, testing, distribution, retail sales, licensing and taxation of medical marijuana, marijuana and marijuana-infused products and the operations of marijuana establishments. The Commission shall have seven members who have not served as elected public officials in the eight years prior to their appointment, and shall be composed of the following: a licensed Ohio physician, a sworn Ohio law enforcement officer, a licensed Ohio attorney experienced in administrative law, an Ohio-based patient advocate, an Ohio resident with demonstrated experience in owning, developing, managing and operating businesses, an Ohio resident with demonstrated experience in the marijuana industry, and a public member. The initial seven members shall be appointed no later than 40 days after the adoption of this section for terms commencing upon appointment. The initial Commission members shall hold the first meeting of the Commission no later than 45 days after the adoption of this section. In order to create staggered terms, the initial seven appointees shall be for terms lasting as follows: the attorney, the physician, the industry-experienced member and the Ohio-based patient advocate will serve terms lasting until December 31st of the fourth year following adoption; and the business owner, the public member and the sworn law enforcement officer will serve terms lasting until December 31st of the second year following adoption. All subsequent terms on the Commission shall be for four years ending on December 31st of the fourth year of the term. All Commission members shall be appointed by the governor to full or unexpired terms as defined herein and shall be residents of Ohio.

The Commission shall adopt rules to facilitate this section's implementation and continuing operation. The initial regulatory rules required to be adopted herein by specific dates shall be adopted by the Commission notwithstanding any other provision of law regarding promulgation of administrative rules, provided that the Commission shall offer an opportunity for public input. Regulatory rules shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall

include, but not be limited to: procedures for the application for, and the issuance, renewal, transfer, suspension, and revocation of, a license to operate a marijuana establishment or marijuana testing facility or qualify as a Caregiver; a schedule of application, licensing and renewal fees to be deposited into the Marijuana Control Commission Fund, provided such fees shall not exceed \$50,000 for MGCE facilities, save for the \$100,000 provisional license fee required herein, \$25,000 for MPM facilities, or \$10,000 for retail marijuana stores and marijuana testing facilities, with this upper limit adjusted annually for inflation; qualifications for licensure that are directly and demonstrably related to marijuana establishment operations; regulations regarding debilitating medical conditions, medical marijuana certifications, caregiver qualifications; requirements to prevent the sale and diversion of medical marijuana, marijuana and marijuana-infused products to persons under the age of 21; requirements for testing the safety and potency of medical marijuana, marijuana and marijuana-infused products; labeling requirements for medical marijuana, marijuana and marijuana-infused products sold or distributed by a marijuana establishment; health and safety regulations for the acquisition, growth, cultivation, harvesting, processing, packaging, preparation, extraction, handling, distribution, transportation, manufacture, and production of medical marijuana, marijuana and/or marijuana-infused products; restrictions on the advertising and display of medical marijuana, marijuana and marijuana-infused products to persons under the age of 21; civil penalties for failure to comply with regulations made pursuant to this section, including enhanced civil penalties for repeat violations; and rules governing the allocation of resources from the marijuana innovation and business incubator established hereunder to third parties. The Commission shall also establish and implement a system for real-time tracking and monitoring of all marijuana, medical marijuana, and marijuana-infused products from the initial germination and/or extraction through the final consumer transaction.

Beginning in the second year following the adoption of this section, the Commission shall conduct an annual audit of each marijuana establishment to certify, at a minimum, that such marijuana establishment is in compliance with all applicable rules and regulations. To the extent it determines that a marijuana establishment is in material noncompliance with applicable rules and regulations, the Commission may order remedial action; and, to the extent that establishment fails to comply with the Commission's order within the reasonable time period set forth by that order, the Commission may suspend or revoke the establishment's license.

The Commission shall issue annual licenses to marijuana establishment applicants no later than 90 days after receipt of the completed application unless the Commission finds the applicant is not eligible for a license under applicable laws and regulations. Thereafter, licensees shall be entitled to have their licenses renewed pursuant to the Commission's rules, unless the Commission determines that the licensee has repeatedly failed to comply with its remedial orders. Such renewal shall be issued or denied prior to expiration of the current license. Ohio's administrative procedure statutes generally applicable to other licensing bodies not in conflict with this section shall apply to rulemaking, license denials, suspensions and revocations by the Commission.

The Commission shall serve as a clearing house for scientific and medical industry research on the use of marijuana, marijuana-infused products and medical marijuana. The Commission shall establish a marijuana innovation and business incubator in Cuyahoga County to award support to Ohio-based public and private business entities, colleges and universities, nonprofit medical centers, and other nonprofit research institutions to engage in research and development, as well as to create new products, companies and jobs, associated with the medical marijuana and marijuana industries in Ohio. The Commission shall provide the incubator funding and appoint advisors to it who have demonstrated a commitment to the goal of national leadership in job creation and medical, technological, economic, environmental sustainability, product safety, and entrepreneurial innovation in the medical marijuana and marijuana industries.

The Commission shall employ necessary and qualified persons, including enforcement agents, and shall retain services of qualified third parties, including experts, to perform its duties.

(J) General Provisions and Specific Limitations

- 1) No marijuana establishment shall be located within 1,000 feet of the primary building structure used for any of the following: a house of worship exempt from taxation under the revised code; a publicly-owned library; a public or chartered non-public elementary or secondary school; or a state licensed child day-care center, or within 1,000 feet of any public playground or playground adjacent to any of the foregoing primary building structures, so long as such house of worship, library, playground, school or day-care center was in existence within the 1,000-foot zone on or before January 1, 2015 in the case of a MGCE facility or the date of an applicant's first application for a license in the case of a MPM facility, retail marijuana store, or not-for-profit medical marijuana dispensary.

- 2) In no event shall a person consume marijuana or marijuana-infused products in any public place, or in, or on the grounds of, a public or chartered non-public elementary or secondary school, a state licensed child day-care center, a correctional facility or community corrections facility, or in a vehicle, aircraft, train or motorboat. No person shall operate, navigate, or be in actual physical control of any vehicle, aircraft, train or motorboat while under the influence of medical marijuana, marijuana or marijuana-infused products. The foregoing provisions, other than operating or being in physical control of a vehicle, aircraft, train or motorboat, do not prohibit a patient from possessing or using medical marijuana in accordance with a medical marijuana certification. The general assembly shall pass laws for enforcing all of the preceding.

- 3) Other than for medical marijuana transferred or sold by a dispensary to a patient or Caregiver, and for transfers between a patient and Caregiver consistent with Commission regulations, it shall be unlawful for any person to knowingly sell or transfer marijuana, medical marijuana or marijuana-infused products to a person under the age of 21. The general assembly shall enact laws defining this conduct as child endangerment and shall enact enhanced penalties for violations of such laws.

- 4) Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, or transportation of medical marijuana, marijuana, marijuana-infused products or marijuana accessories in the workplace or to affect employers' ability to restrict the use of such products by employees, except that a patient with a medical marijuana certification may self-administer the medical marijuana subject to the same conditions applied to administration of prescribed medications.

- 5) No person shall have an ownership interest in, or be an officer or director of, a marijuana establishment who is under the age of 21 or who has been convicted of a felony offense within the prior five years. No person shall continue to hold an ownership interest in, or an officer or director position with, a marijuana establishment upon conviction of a felony and exhaustion of any appeals.

- 6) No person under the age of 21 shall be permitted to be on the premises of a marijuana establishment, except that a patient 18 to 20 years of age may be on a dispensary's premises for the purpose of obtaining medical marijuana pursuant to a medical marijuana certification issued for such patient.
- 7) It shall be lawful for persons 21 years of age or older to purchase, possess, transfer, transport, use and share with other persons 21 years of age or older marijuana accessories within the state; however, this age limitation shall not apply to patients with valid medical marijuana certifications.
- 8) It shall not be unlawful for a licensed MGCE facility, or its designated employees or agents, to handle, sell, store, deliver, transport or transfer marijuana to a licensed MPM facility, licensed marijuana testing facility or a licensed retail marijuana store; nor shall it be unlawful for a licensed MGCE facility, or its designated employees or agents, to sell, store, handle, deliver, transport or transfer medical marijuana to a licensed MPM facility, licensed dispensary or licensed marijuana testing facility. It shall not be unlawful for a licensed MPM facility, or its designated employees or agents, to handle, sell, store, receive, deliver, transport or transfer marijuana accessories or marijuana-infused products to another licensed MPM facility, a licensed retail marijuana store or licensed marijuana testing facility; nor shall it be unlawful for a licensed MPM facility, or its designated employees or agents, to sell, handle, store, receive, deliver, transport or transfer medical marijuana-infused products to another licensed MPM facility, a licensed dispensary or a licensed marijuana testing facility; nor shall it be unlawful for a licensed MPM facility, or its designated employees or agents, to sell, handle, store, receive, deliver, transport or transfer marijuana accessories to a licensed dispensary. It shall not be unlawful for licensed retail marijuana stores, licensed medical marijuana dispensaries, and licensed marijuana testing facilities, or their designated employees or agents, to purchase, obtain, handle, store, receive, deliver, transport or transfer marijuana accessories, marijuana, marijuana-infused products or medical marijuana from licensed MGCE and MPM facilities, and other retail marijuana stores, licensed medical marijuana dispensaries, and licensed marijuana testing facilities.
- 9) MGCE facilities and MPM facilities are prohibited from selling, delivering, transporting or transferring marijuana, medical marijuana, marijuana-infused products and marijuana accessories directly to consumers, and no retail marijuana store or dispensary may be located on the premises of a MGCE or MPM facility.
- 10) Marijuana establishments shall be subject to all applicable state and local laws and regulations related to health, safety and building codes, including signage. Notwithstanding the foregoing, no local zoning, land use laws, agricultural regulations, subdivision regulations or similar provisions shall prohibit the development or operation of marijuana establishments, provided that no such marijuana establishment shall be located in a district zoned exclusively residential as of January 1, 2015 for MGCE facilities, or as of the date that an application for a license is first filed by a MPM facility, retail marijuana store or not-for-profit medical marijuana dispensary.

(K) Self-Executing, Severability, Conflicting Provisions, and Enactment of Laws

All provisions of this section are self-executing except as specified herein, are severable, and, except where otherwise indicated in the text, shall supersede all conflicting state and local laws, charters and regulations or other provisions of this constitution. The general assembly may pass laws implementing the provisions of this section that are not in conflict with its provisions. Nothing in this section requires the violation of federal law or purports to give immunity under federal law.

(L) Definitions

As used in this section, unless the context otherwise requires,

- 1) “Adjacent real property” means real property that is within 1,000 feet or less of the existing property line of a licensed MGCE facility.
- 2) “Cannabinoids” means the chemical compounds in marijuana having a variety of pharmacologic properties.
- 3) “Caregiver” means an individual licensed by the Commission, other than the patient and the patient’s physician, who is 21 years of age or older and is the person responsible for managing the well-being of a patient with a debilitating medical condition for whom a medical marijuana certification has been issued under this section. To qualify as a Caregiver, this individual’s responsibilities to the patient must include, at a minimum, provision of services in addition to provision of medical marijuana.
- 4) “Debilitating medical condition” means cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, sickle-cell anemia, ulcerative colitis, dementia, Alzheimer’s disease, or treatment for such conditions; a chronic or debilitating disease or medical condition, or treatment for such conditions, which produces, for a specific patient, one or more of the following, and which, in the professional opinion of the patient’s physician, foreseeably may be alleviated by the use of medical marijuana: cachexia, post-traumatic stress disorder, severe pain, severe nausea, seizures, including those that are characteristic of epilepsy, or persistent muscle spasms, including those that are characteristic of multiple sclerosis. The Commission shall establish and update the list of debilitating medical conditions for which medical marijuana certifications may be issued on an annual basis, consistent with current, peer-reviewed medical research.
- 5) “Marijuana” and “marihuana” mean all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, salt derivative, mixture, or preparation of the plant, its seeds, or its resin. “Marijuana” includes hashish, as defined in the revised code, but does not include medical marijuana or industrial hemp, as defined by the general assembly, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

- 6) “Marijuana accessories” means any equipment, products, or materials of any kind which are used, intended, or designed for vaporizing, ingesting, inhaling, or otherwise introducing, marijuana or medical marijuana into the human body.
- 7) “Marijuana Growth, Cultivation and Extraction Facility” or “MGCE facility” means one or more structures in which, or the real property on which, the growth, cultivation, harvesting, processing, packaging, preparation, and labeling of all marijuana and medical marijuana available for sale or medical use within the state, and the extraction of cannabinoids from marijuana plants for use in marijuana-infused products or medical marijuana-infused products available for sale or medical use within the state, is lawful.
- 8) “Marijuana-infused products” means concentrated marijuana products that are composed of marijuana or medical marijuana and other lawful ingredients and are intended for use or consumption, such as, but not limited to, edible products, marijuana concentrates, sprays, ointments, and tinctures.
- 9) “Marijuana establishment” means a MGCE facility, a MPM facility, a retail marijuana store, or a not-for-profit medical marijuana dispensary. A marijuana establishment’s actions, and the actions of that establishment’s employees and agents, are lawful and are not subject to civil or criminal penalties so long as such actions are in compliance with this section, with any laws passed by the general assembly in furtherance of this section, and with any rules and regulations promulgated by the Commission.
- 10) “Marijuana Product Manufacturing Facility” or “MPM facility” means a facility licensed by the Commission to develop, manufacture, prepare, and/or package marijuana-infused products, medical marijuana-infused products and/or marijuana accessories.
- 11) “Marijuana testing facility” means a facility or laboratory licensed by the Commission to acquire, possess, store, transfer, grow, cultivate, harvest, and process medical marijuana, marijuana and marijuana-infused products for the explicit and limited purposes of engaging in research related to, and/or certifying the safety and potency of, medical marijuana, marijuana and marijuana-infused products. At a minimum, such facilities shall be situated near colleges and universities in Athens, Lorain, Mahoning, Scioto and Wood Counties. Such facilities are prohibited from selling medical marijuana, marijuana and marijuana-infused products to marijuana establishments and consumers, and may transfer medical marijuana, marijuana and marijuana-infused products only to a marijuana establishment that has engaged the facility to perform quality control testing on those products or in connection with a safety and potency certification process developed by the Commission.
- 12) “Medical marijuana” means marijuana used to treat a debilitating medical condition, and includes medical marijuana-infused products used to treat debilitating medical conditions.

- 13) “Medical marijuana certification” means a written certification issued on a form prescribed by the Commission by a patient’s treating physician acting in the usual course of his or her professional practice.
- 14) “Not-for-profit medical marijuana dispensary” or “dispensary” means an entity incorporated under Ohio’s not-for-profit corporation law licensed to purchase medical marijuana from MGCE facilities, medical marijuana-infused products from MPM facilities and marijuana accessories, and to sell medical marijuana and marijuana accessories to patients and Caregivers who present valid medical marijuana certifications pursuant to rules adopted by the Commission.
- 15) “Ohio Marijuana Control Commission” or “Commission” means the agency created herein to regulate the marijuana industry, including, but not limited to, regulating, researching and reporting on the growth, cultivation, production, processing, manufacture, testing, distribution, transportation, retail sales, licensing, and taxation of marijuana, medical marijuana and marijuana-infused products.
- 16) “Patient” means an Ohio resident who has a debilitating medical condition.
- 17) “Physician” means an individual who maintains, in good standing, a license to practice medicine issued by the State of Ohio.
- 18) “Retail marijuana store” means a retail space occupied by an entity licensed to purchase marijuana from MGCE facilities, marijuana-infused products from MPM facilities, and marijuana accessories, and to sell marijuana, marijuana-infused products, and marijuana accessories for personal use to consumers.
- 19) “Unreasonably impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

STATEMENT OF CIRCULATOR

I, _____, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of _____ electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Signed)

(Address of circulator's permanent residence in this state) Number and Street, Road or Rural Route

City, Village or Township

State

Zip Code

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY
OF A FELONY OF THE FIFTH DEGREE.**

Safety & Workers' Compensation

OMA: BWC's Budget is Encouraging

The Bureau of Workers' Compensation (BWC) released a summary of its budget for fiscal years 2016 and 2017. Here is the BWC's [one-page summary](#) as well as the [bill analysis](#) of the proposed budget, House Bill 52.

In a [statement](#) to the BWC, OMA's Rob Brundrett, Director, Public Policy Services, said, "The Ohio Manufacturers' Association (OMA) is encouraged by the budget summary prepared by the Bureau of Workers' Compensation (BWC) for the fiscal years 2016/2017.

"In recent years, the BWC has increased its investments in employer safety programs, returned dollars generated by its investments to employers in a prudent fashion, reduced base premium rates, initiated medical management model improvements, and implemented projects that continue to modernize the operations. BWC is now proposing a biennial budget that is less than its last budget, while continuing important strategic programs.

"OMA congratulates the BWC for its management improvements on behalf of the state's workers and employers, and will be pleased to work with Administrator Buehrer on the BWC's budget proposal." *2/12/2015*

BWC Leaders Coming to OMA

Next week, the OMA Safety and Workers' Compensation Committee will hold its first meeting of 2015. Highlights of the agenda include:

- Jeremy Jackson, BWC Chief of Public Policy & Strategy, will provide an update on BWC initiatives.
- Paul Flowers, BWC Director of Self-Insurance, and Sarah Morrison, BWC Chief Legal Counsel and Ethics Officer, will provide updates about current events at the agency.

If you haven't already, please [register here](#) for in-person or call-in attendance (or email [Denise Locke](#) or call her (800) 662-4463) and join fellow manufacturers to discuss safety and workers' compensation policy and issues on Thursday, February 19, at 10:00 a.m. *2/12/2015*

Ohio Safety Congress & Expo 2015

Registration is open for the 2015 Ohio Safety Congress & Expo (OSC15), which will run from March 31 to April 2 at the Greater Columbus Convention Center.

More than 6,000 people attended last year's event, which is hosted annually by Bureau of Workers' Compensation (BWC). It is the largest regional safety and health conference in the U.S.

Check out the Safety Congress experience in our new [YouTube video](#).

There's no charge for Ohio employers and their employees to attend the event.

OSC15 aims to help Ohio employers prevent workplace injuries and achieve better outcomes for injured workers. Professional certifications are offered for safety professionals, industrial hygienists, ergonomists, registered nurses, attorneys, rehabilitation, claims managers, disability managers, rehabilitation counselors, paramedics and other professions that accept IACET CEUs for certification maintenance.

In addition, educational tracks for physicians and environmental specialists as well as certified medical education for physicians and medical providers are also being offered this year.

A workers' compensation policy number is required to register.

Everything you need to learn about and register for OSC15 [is here](#). *2/5/2015*

BWC Proposes Double Digit Private Employer Rate Reduction

Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer this week proposed to again reduce overall rate levels for private employers beginning July 1. The proposed reduction is 10.8%.

The proposed reduction is attributable to a number of factors, including lower expected claim frequency, as well as the upcoming adoption of a prospective billing system. BWC currently bills employers in arrears. Under the new system of prospective billing, BWC will collect premiums before extending coverage. Prospective billing enables BWC to lower

rates to reflect the increased investment income.

The proposed 10.8% reduction is an overall statewide average. The actual premium paid by individual private employers will depend on a number of factors, including the expected future costs in their industry segment, their recent claims history, and their participation in various premium credit and savings programs.

The BWC board of directors will vote on the proposal during its next meeting, which is scheduled for Friday, February 27, 2015. 1/22/2015

BWC Program Deadline is Next Week

Under its permanently revised calendar, the Bureau of Workers' Compensation (BWC) has set the last day in January as the enrollment deadline for a number of beneficial employer programs, including: Group Retrospective Rating, Individual Retrospective Rating, One Claim, and Deductible.

Workers' compensation third party administrators, including OMA Workers' Compensation Services, may set earlier deadlines in order to guarantee timely and accurate BWC filings.

Contact OMA's [Denny Davis](#) or [Barb Bender](#) if you have any questions or need help with your OMA enrollment. 1/22/2015

Tax Forms for Another Billion Back Available Soon

BWC will soon mail Internal Revenue Service (IRS) 2014 1099 MISC forms to employers who received rebates in 2014 as part of Another Billion Back. BWC is required to send 1099 MISC forms to all employers who received payments of more than \$600.

The rebate amount listed on your 1099 MISC form may be different from the rebate check amount you received in 2014. This difference is due to BWC withholding any outstanding balance owed from your rebate check.

1099 MISC details can be viewed and printed by logging in [here](#) starting Monday, Feb. 2.

[Email BWC](#) if you need more information about your IRS 1099 MISC form.

Rebate recipients are encouraged to consult with their tax professionals regarding tax reporting

requirements. 1/15/2015

OMA Announces Safety & Workers' Compensation 2015 Committee Dates

Consider marking your calendar to attend the 2015 OMA Safety and Worker's Compensation Committees. The meetings provide OMA members an opportunity to work with peers and meet with state leaders on important safety and workers' compensation issues. Meetings are held in-person in Columbus and a call-in option is available.

The committee provides the information and analyses you need to keep up on BWC and Industrial Commission activity, Ohio legislative activity related to workers' comp, as well as OSHA developments.

The 2015 meetings are scheduled for: (click to add to your calendar) [Thursday, February 19](#), [Tuesday, May 5](#), and [Wednesday, October 7](#).

[Register here](#). If you have questions, please contact OMA's [Rob Brundrett](#) who staffs the committee. 1/15/2015

Be Safe!

This month's [BWC Safety Update](#) is chock full of safety tips and news including how using mobile devices is harming our spines! 1/15/2015

Ohio Supreme Court Again Limits Employers' Liability for Intentional Torts

OMA Connections Partner, Roetzel, reports that on December 18, 2014, the Ohio Supreme Court issued another opinion limiting employers' liability for intentional torts in the workplace. This decision is the latest in a series of cases that narrowly interpret Ohio's intentional tort statute and make it very difficult for employees to bring these claims.

Here's Roetzel's [summary](#) of *Pixley v. Pro-Pak Indus., Inc.* in which Roetzel says, "... the Court's decision is another victory for employers in the ongoing battle over Ohio's intentional tort statute. At least for now, a majority of the justices are determined to recognize the General Assembly's decision to restrict liability for intentional tort claims." 12/29/2014

Guest Column from BWC CEO & Administrator

From rate decreases to A Billion Back to more safety resources for employers to a focus on improving the medical management of injured workers, Bureau of

Workers' Compensation (BWC) leader, Steve Buehrer, sums up 2014 and looks ahead to 2015 in this column:

"At the Ohio Bureau of Workers' Compensation, 2014 was dubbed the year of workplace safety, and I'm pleased to report that the year lived up to its name and so much more. The year also continued progress toward fulfilling Gov. John Kasich's vision of a workers' comp system that works as a partner in improving Ohio's business environment and growing the economy." [Read more](#) 12/31/2014

2015: BWC Prospective Premium Payment Plan Kicks In

This year, the Bureau of Workers' Compensation (BWC) continues its transition to a system whereby employers will pay for their workers' compensation coverage prior to the coverage period as opposed to after the period. This modernizes the payment practices of the BWC and aligns it with insurance industry practices.

To facilitate the conversion, in 2015 the BWC provides a one-time "transition credit" – or premium holiday – equal to eight months of premium.

We've outlined the [timeline and milestones](#) that employers need to know. 1/7/2015

Ohio Safety Congress & Expo 2015

Registration is now open for the Ohio Safety Congress & Expo, March 31 to April 2 at the Columbus Convention Center. [Click here](#) to view event information, including the event schedule, hotels, directions and free online registration. You will need your workers' compensation policy number to register. 1/7/2015

BWC Reminds Employers of Address Change

The Ohio Bureau of Workers' Compensation (BWC) will send payroll reports to employers starting Dec. 31, and would like to remind employers of its recent address change.

When submitting payments to BWC via mail, use this address: Ohio Bureau of Workers' Compensation, P.O. Box 89492, Cleveland, OH 44101-6492. Express and overnight payments may be mailed to: Attn: Lockbox 89492, 5575 Venture Drive, Unit A, Parma, OH 44130.

Return envelopes that will be sent with invoices and payroll reports will include the new address. As long

as employers use the envelopes BWC sends out, they will not need to take any additional action. If not using the envelopes provided, employers should take care to update the address in their records. 12/16/2014

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New Year's Resolution: BWC Safety Grant?

The Ohio Bureau of Workers' Compensation (BWC) approved 118 safety intervention grants for Ohio employers totaling \$3,499,148 in September and October. BWC designed the Safety Intervention Grant Program to help employers reduce illnesses and injuries and to create a partnership with them to establish best practices for accident and injury prevention.

This BWC [web page](#) lists by month the entities approved for grants with a summary of interventions financed.

Safety intervention grants have a 3-to-1 matching amount up to a maximum of \$40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices.

Learn more about the Safety Intervention Grant Program and best practices [here](#) and view the stories of previous grant recipients on [BWC's YouTube channel](#). 12/1/2014

BWC Update on Transition to Prospective Premium Payment

The Bureau of Workers' Compensation (BWC) has prepared this [one-page update](#) about the impacts to employers as it transitions to prospective, rather than retrospective, payment of premium.

The first substantial change for employers that participate in group experience rating is that workers compensation third party administrators will file their final group rating rosters with the BWC on Monday, November 24, 2014, three months earlier than historically.

Questions? Please contact OMA's [Scott Weisend](#). 11/14/2014

BWC Guide for Injured Workers

The Ohio Bureau of Workers' Compensation (BWC) has produced a guide exclusively for injured workers. BWC [Basics for Injured Workers](#) is a good resource for injured workers and those learning about the system. 11/13/2014

Don't Miss Group Rating Deadline

Due to the Bureau of Workers' Compensation (BWC) conversion to prospective payment of premium, enrollment deadlines for BWC programs have permanently changed.

If you are enrolling in a group experience rating plan, the deadline is this month. OMA's enrollment due date is November 14, in order to meet the BWC roster filing deadline of November 24.

If you need any extra time to submit your OMA group experience rating enrollment, contact [Scott Weisend](#).

If you miss the deadline, don't panic; ask [us](#) about our competitive group retrospective rating program! 11/6/2014

New BWC Rule Allows for Immediate Fill of Necessary Medications

A [new rule](#) approved last week by the Ohio Bureau of Workers' Compensation (BWC) board of directors will ensure that newly injured workers receive necessary medications while the future of their claims is being determined.

The "first fill" rule will apply to new injuries and allows for immediate fill of prescriptions for acute injury medications prior to formal claim approval. A 1955 statute previously restricted BWC from allowing this change, but recent legislation proposed by BWC allowed for the newly approved first fill rule to develop.

The rule details the circumstances under which BWC will pay pharmacies for the first fill of prescription drugs before BWC issues initial claim determination orders. In cases where the first fill rule is used, but the claim is ultimately denied by BWC, the medication payment will be charged to BWC's surplus fund account and not to the employer associated with the disallowed claim.

If approved by the Joint Committee on Agency Rule Review, this sensible rule is expected to become effective February 1, 2015. 10/27/2014

Employee Injured While Travelling: Compensable Claim?

If an employee is involved in an accident during work hours, when is it compensable? What about when the employee traveling for work is in an accident, but made a personal stop?

OMA workers' compensation counsel, [Sue Wetzel](#), of OMA Connections Partner, Bricker & Eckler LLP, [describes the conditions](#) under which the claim may and may not be compensable. 10/27/2014

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on February 17, 2015

- HB51** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 2/11/2015 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 2/11/2015 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 2/19/2015 - House Finance Subcommittee on Health and Human Services, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- SB5** **WORKERS' COMPENSATION-PTSD** (PATTON T, 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.
Current Status: 2/18/2015 - Senate Transportation, Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>
- SB27** **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 2/17/2015 - Senate Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>