



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 268

132nd General Assembly
(As Introduced)

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

BILL SUMMARY

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

Overview

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

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

Private workers' compensation insurance

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

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

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

Self-insurance requirement waiver

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

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

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

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

⁴ R.C. 4123.82(B)(2).



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

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

- The employer has sufficient assets located in Ohio to insure the employer's solvency in paying employees directly (waived for qualifying employers under the bill);
- The employer has operated in Ohio for at least two years;
- The employer is able to pay the buyout from the State Insurance Fund, if applicable;
- The employer's financial records from the current year and the previous four years provide full financial disclosure;
- The employer has an organizational plan for the administration of the Law;
- The employer has a proposed plan to inform employees about changing from being covered through the State Insurance Fund to being a self-insuring employer, the procedures the employer will follow as a self-insuring employer, and the employee's right to compensation and benefits;
- The employer has an account in an Ohio financial institution or, if the account is with an out-of-state financial institution, the employer ensures that workers' compensation checks are drawn from the same account as

⁵ R.C. 4123.35(B).

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

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



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

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

Self-insuring Employers' Guaranty B Fund

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

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

⁸ R.C. 4123.35(B)(1)(a) through (g).

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

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

¹¹ R.C. 4123.354(B) and (C).



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

Contributions

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

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

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

Administration

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

¹² R.C. 4123.354(G).

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

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

¹⁵ R.C. 4123.354(F).



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

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

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

Liability

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

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

COMMENT

Ohio's Workers' Compensation Law stems from Section 35, Article II of the Ohio Constitution. Currently, Ohio has an "exclusive" state fund into which employers must pay premiums for their workers' compensation coverage unless they have been granted the privilege of self-insurance. It remains unclear as to the extent to which Ohio could depart from the scheme utilized under current law without at least some amendment of the constitutional provision. Analogizing from the Ohio Supreme Court decision that authorizes the self-insurance option, Ohio might be able to allow private insurance if the legislation (1) does not depart from the underlying purpose of the constitutional provision, (2) guarantees employees the same benefits as are available to an employee

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

¹⁷ R.C. 4123.354(D)(3).

¹⁸ R.C. 4123.354(H).



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

HISTORY

ACTION	DATE
Introduced	06-12-17

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

