



# Safety & Workers' Compensation Committee

Wednesday, October 7, 2015

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2015 Safety & Workers'  
Compensation Committee  
Calendar

Meetings begin at 10:00 a.m.

Wednesday, October 7

OMA Safety & Workers' Compensation Committee  
Meeting Sponsor:





## **OMA Safety & Workers' Compensation Committee**

**October 7, 2015**

### **AGENDA**

<b>Welcome &amp; Self-Introductions</b>	Larry Holmes, Fort Recovery Industries Inc.
<b>BWC Update</b>	Brian Jackson, OMA Staff
<b>Safety Update</b>	Dianne Grote Adams, Safex
<b>Guest Speakers</b>	Steve Buehrer, Administrator, Ohio BWC David Sievert, Interim Director, Self Insured Department Ohio BWC
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>OMA Counsel's Report</b>	Sue Wetzel, Bricker & Eckler LLP

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

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

**Thanks to Today's Meeting Sponsor:**



## **Administrator/CEO Stephen Buehrer**



Ohio Governor John Kasich appointed Steve Buehrer as Administrator/CEO of the Ohio Bureau of Workers' Compensation in January 2011. He leads an agency of 1,953 employees that serves more than 250,000 employers and administers nearly 1 million open claims.

Known for his focus on fiscal responsibility, creating jobs and emphasizing technology, Steve has helped engineer significant improvements within various levels of government over the past 25 years. He also has extensive experience in workers' compensation including previously serving as BWC's Chief of Human Resources.

[Schedule request](#)

Steve was an elected member of the Ohio Senate from 2007 until 2011. As a senator, Steve served as chairman of the Insurance, Commerce and Labor committee overseeing Ohio's insurance industry as well as all workers' compensation legislation. He also was chairman of the Senate Highways & Transportation committee. In addition, Steve's colleagues elected him majority whip, the fourth ranking leadership position in the Senate. He also received the Technology Advocate Legislator of the Year award for 2010 from Technology for Ohio's Tomorrow. He won five Watchdog of the Treasury awards and was named National Legislator of the Year by the American Legislative Exchange Council in 2002. A nationally recognized leader, he served as the chairman of the Midwest Council of State Governments (CSG) and as national CSG vice chair.

Steve also served four terms as a state representative in the Ohio House from 1999 to 2006. Steve's peers in the House recognized his leadership by electing him assistant majority floor leader for both the 124th and 125th General Assembly. As chairman of the State Government committee, he had responsibility for all workers' compensation legislation. The author of numerous pieces of legislation, Steve sponsored important bills concerning workers' compensation, government efficiency and transportation funding.

Beyond his legislative experience and accomplishments, Steve also has extensive experience in state government and the private sector. Aside from serving as the Chief of Human Resources at BWC, he also was the Director of Legislative Affairs at the Ohio Bureau of Employment Services. Following that assignment, Steve served six months at the Ohio Department of Human Services, at the request of Governor George Voinovich, assisting with multiple management-improvement initiatives. He later accepted a position as Deputy Director at the Ohio Department of Administrative Services where he oversaw the communications and legislative offices and later the State Human Resources Division. A former small business owner, Steve also practiced law for 13 years at the firm of Barber, Kaper, Stamm and Robinson in his native Fulton County.

Steve earned a bachelor's in social studies education graduating summa cum laude from Bowling Green State University. He later earned his juris doctor from Capital University Law School graduating cum laude. He's married to his wife, Cathy, and has three sons, Benjamin, Simon and Daniel.

## **Dave Sievert Interim Director–Self Insured Department**

Twenty Four years in Worker's Compensation. The past three and a half years with BWC in the Self-Insured department as Supervisor Self Insured Auditing and currently serving as Interim Director. Dave is responsible for overseeing the Self Insured department, including new applications, renewals, securitization and employer's compliance through the Self Insured Complaint and Audit process.

Previously, Dave worked in national and local third party administrators with responsibilities including claims adjusting, IC hearings, supervision, claims operations management, account management and quality control. Primarily managed Ohio self insured workers compensation claims but well versed in several other jurisdictions and Liability claims.

Earned Associate in Risk Management and Enterprise Risk Management designations.

Dave served as an Infantry Officer in the US Army prior to entering the worker's compensation world.

## **SAFETY UPDATE**

- Dr. John Howard has been reappointed for a third six-year term to head the agency.
- **OSHA Activity:**
  - *Confined Spaces in Construction*- OSHA has issued a guidance document to help small businesses.
  - *Inspections*- OSHA has announced a new weighting system that assigns greater value to complex inspections that require more time and resources.
  - *Hazard Communication*- OSHA has published a revised directive on Hazard Communication.
  - *OSHA violations in Fiscal 2015*- OSHA has announced the top 10 categories of most-cited violations.
  - *Revised recordkeeping rule*- OSHA released a notice of proposed rule making in July after a court-ordered ban on issuing citations for recordkeeping violations more than 6 months old. The deadline for comments has been extended until October 28.
  - *Confined spaces in construction enforcement*- OSHA set a date of October 2 to start enforcement of this rule. OSHA is currently defending the rule in a case before the U. S. Court of Appeals for the Fifth Circuit.
  - *Workplace violence*- OSHA hopes to have a new directive available in early 2016.
  - *Beryllium proposed rule*- Stakeholders are preparing comments on the proposed new rule, which are due by November 9.
  - *Process Safety Guidance*- A legal challenge has been mounted against OSHA for issuing two memos in accordance with a multi-agency chemical safety working group.

ATLANTA, Sept. 29, 2015 /PRNewswire-USNewswire/ -- Today the Occupational Safety and Health Administration (OSHA) announced the preliminary Top 10 most frequently cited workplace safety violations for fiscal year 2015. Patrick Kapust, deputy director of OSHA's Directorate of Enforcement Programs, presented the Top 10 on the Expo floor as part of the 2015 NSC Congress & Expo, the world's largest gathering of safety professionals.

"In injury prevention, we go where the data tell us to go," said National Safety Council President and CEO Deborah A.P. Hersman. "The OSHA Top 10 list is a roadmap that identifies the hazards you want to avoid on the journey to safety excellence."

The Top 10 for FY 2015\* are:

1. Fall Protection (1926.501) – 6,721
2. Hazard Communication (1910.1200) – 5,192
3. Scaffolding (1926.451) – 4,295
4. Respiratory Protection (1910.134) – 3,305
5. Lockout/Tagout (1910.147) – 3,002
6. Powered Industrial Trucks (1910.178) – 2,760
7. Ladders (1926.1053) – 2,489
8. Electrical – Wiring Methods (1910.305) – 2,404
9. Machine Guarding (1910.212) – 2,295
10. Electrical – General Requirements (1910.303) – 1,973

The final report on the Top 10 violations for 2015 will be published in the December edition of the Council's [Safety+Health magazine](#).

**TO:** OMA Safety and Workers' Compensation Committee  
**FROM:** Rob Brundrett  
**RE:** Safety and Workers' Compensation Report  
**DATE:** October 7, 2015

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### **Overview**

The General Assembly recently returned from their summer hiatus. Both the House and the Senate have begun hearings on legislation for the fall term. There are several workers' comp bills that will be receiving attention over the next several months.

The BWC has remained engaged with providing information and expertise on a variety of bills. The information has proven very helpful as the General Assembly continues to debate issues such as PTSD, presumptive cancer, and subrogation.

### **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.

The Senate heard powerful testimony from Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). However the bill was referred to Senate Finance because of the price tag and has had several hearings, and one interested party meeting.

The Senate has continued to have hearings on this bill in the Finance Committee. There was an amendment floating around that would have opened the bill up to private employers. The Senate continues to seriously consider the bill for movement this General Assembly.

#### Senate Bill 27 / House Bill 292 – firefighter cancer

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan have introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions. The bills are limited strictly to firefighters.

#### House Bill 51 – IC budget

The Industrial Commission budget was introduced with no real policy changes. The bill passed right before summer recess.

#### 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). The OMA submitted support testimony in both the House and Senate. There was some concern that the budget might get drawn into the Senate Bill 5 discussions. However the bill passed at the budget deadline.

#### Senate Bill 149 – Loss of use

To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

#### House Bill 205 – Private Insurance

Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market. The bill is not expected to move, but is expected to have several hearings.

#### House Bill 206 – Industrial Commission Statistics

Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

#### House Bill 207 – Subrogation

Reps. Henne and Robert McColley introduced HB 207 which would insulate employers from the cost of a claim during litigation when there is third party involvement. The bill had proponent testimony this week. The OMA supports the bill.

### **BWC Agency Notes**

#### Successor Liability

The BWC recently created an AC-4 form for companies to use when purchasing other businesses. The form allows the purchaser to view the workers' comp liabilities attached to the company that is subject of the acquisition.

The BWC is also looking at ways to mitigate experience rates, when good performing companies purchase poor performing companies.

#### Pilot Program

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO announced a program to reduce delays in the treatment of Ohioans injured on the job. The Enhanced Care Program, developed by BWC in coordination with its partners in the business, labor and medical communities, will give physicians increased flexibility in the treatment of

injured workers, returning them to their jobs more quickly and saving employers money in the process. The program began July 1, with a pilot in 16 northeast Ohio counties.

The program will initially target reducing obstacles that either delay or fragment care to injured workers who sustain a knee injury at work and live in one of the 16 pilot counties. Northeast Ohio was selected due to the number of high-quality health-care providers and systems in the area.

Under the program, participating physicians will be expected to serve as the primary point of care for injured workers. They'll establish a comprehensive care plan and coordinate with specialists and primary-care physicians to manage the claim holistically with a goal of facilitating a faster, safer return to work.

In exchange, physicians will be granted the flexibility to treat with assurance of payment instead of having to wait for approvals and adjudications, which cause delays. They will also be eligible for a 15% incentive payment over BWC's current fee schedule for certain services.

BWC will also provide employers with a 50% credit on eligible claims in the Enhanced Care Program.

The program is expected to run as a pilot between 6-12 months and if it proves successful in improving return-to-work outcomes and lowering claims costs, BWC will work with its partners to expand it.

OMA is one of the organizations that promoted the creation of the program and participated in its design.

### **Ballot Issues**

#### Marijuana Ballot Issue

Ohio Secretary of State Jon Husted certified that ResponsibleOhio, the organization seeking to place a constitutional amendment on the November 2015 ballot that will legalize marijuana for recreational and medical use in Ohio, collected a sufficient number of additional signatures to cure the previously reported shortfall.

In total, 320,267 valid signatures have been collected, whereas 305,591 signatures were needed to secure a place on the ballot.

Having met the constitutional and legal requirements, the issue will appear on the November 3 general election ballot.

The OMA Board of Directors voted to oppose the issue. The OMA has joined with other groups in a campaign to defeat the ballot measure.



June 17, 2015

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

The Honorable Scott Oelslager  
Chair, Senate Finance Committee  
Ohio Statehouse  
Columbus, Ohio 43215

Dear President Faber and Chairman Oelslager:

The above organizations, on behalf of our members, write in opposition to sections 4123.01 and 4123.86 in the Main Operating Budget FY2016-FY2017 (Sub. H.B. 64) which would allow peace officers, firefighters, and emergency medical workers to become eligible for workers' compensation benefits for the condition of post-traumatic stress disorder (PTSD) without the requirement that a compensable physical injury must precede and cause the psychological condition.

This initiative is a drastic departure from current statute which prohibits workers' compensation claims for purely mental conditions. Given the proposed changes, we have multiple concerns, which include, the costs forced upon the Bureau of Workers' Compensation (BWC) and employers, as well as, the propensity for various fairness and equal protection arguments.

First, we are concerned about the costs to the public employers, and ultimately, all employers. When a fundamental parameter of the workers' compensation system, such as the physical injury requirement is compromised, the potential for future liabilities to the program are endless, and the result will be increased workers' compensation costs for both public and private employers. The BWC testified before multiple Senate committees that this bill could nearly double public employer premiums. These increased costs could affect our public employers' abilities to provide essential public safety functions.

Next, the language of the proposed bill leaves employers vulnerable to equal protections arguments. We are concerned about the precedent of including only a narrow subset of workers, and how this could eventually be expanded to Ohio's workforce as a whole. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it will be difficult to justify not including other professionals who seek equal treatment.

We are also concerned about singling out PTSD as the only compensable psychological condition. Selecting one psychological condition to the exclusion of all others—much like selecting only a few occupations—will undoubtedly provoke equal protection challenges in Ohio's courts.

We believe this is not the proper time for the proposed change because other avenues exist that offer solutions to this problem without exposing the BWC, and ultimately the business community, to future, uncertain liabilities. Some of these solutions include: the healthcare system, Employee Assistance Programs, or collective bargaining.

For these reasons, the above organizations ask you to remove these sections from the Main Operating Budget. Thank you for your consideration of our concerns.

cc:      Ohio Senate  
          Ohio House of Representatives



# Ohio Legislative Service Commission

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## Bill Analysis

Nick Thomas

### S.B. 27

131st General Assembly  
(As Introduced)

**Sens.** Patton, LaRose, Skindell, Hughes, Schiavoni, Tavares

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### BILL SUMMARY

- Provides 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 (OP&F) to have incurred the cancer while performing his or her official duties.
  - Allows for the presumption created in the bill to be rebutted upon the presentation of competent or affirmative evidence to the contrary.
  - Allows, for the purposes of OP&F disability, for the bill's presumption to be rebutted if the cancer was revealed during the firefighter's entrance physical examination.
- 

### CONTENT AND OPERATION

#### Presumption of illness incurred while performing official duties

The bill creates a presumption that a member of the Ohio Police and Fire Pension Fund (OP&F) who is a member of a fire department and who incurs and is disabled by the following types of cancer incurred the cancer while performing the member's official duties:

- Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate;
- Non-Hodgkin's lymphoma;
- Leukemia;

- Multiple myeloma;
- Testicular or colorectal cancer.

Firefighters must have been assigned to at least three years of hazardous duty for the presumption to apply.<sup>1</sup> "Hazardous duty" means duty performed under circumstances in which an accident could result in serious injury or death.<sup>2</sup>

The bill also creates the same presumption for firefighters in the Workers' Compensation Law. The cancers listed above are included in the list of occupational diseases that are compensable under current Law.<sup>3</sup>

## **Rebuttal of the presumption**

The bill provides that the presumption created by the bill can be rebutted upon the presentation of competent, in the case of the OP&F, or affirmative evidence, in the case of workers' compensation, to the contrary of the presumption.<sup>4</sup> The presumption can also be rebutted if any evidence of the cancer appeared on the physical examination passed by the member upon entry to the fire department.<sup>5</sup> Note, however, that this second avenue of rebuttal applies only to OP&F.

## **Application**

The bill applies only to applications for disability benefits filed on or after the bill's effective date and to workers' compensation claims arising on or after the bill's effective date.<sup>6</sup>

## **HISTORY**

ACTION	DATE
Introduced	02-09-15

S0027--131.docx/emr

<sup>1</sup> R.C. 742.38(D)(3)(b).

<sup>2</sup> R.C. 742.38(D) and 4123.68(X), by reference to 5 C.F.R. 550.902.

<sup>3</sup> R.C. 4123.68(X), with a conforming change in R.C. 4123.57(D).

<sup>4</sup> R.C. 742.38(D)(3)(b) and 4123.68(X).

<sup>5</sup> R.C. 742.38(D)(3)(b).

<sup>6</sup> Sections 3 and 4 of the bill.





# Ohio Legislative Service Commission

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## Bill Analysis

Kelly Bomba

### H.B. 205

131st General Assembly  
(As Introduced)

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

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#### BILL SUMMARY

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

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## CONTENT AND OPERATION

### **Private workers' compensation insurance**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

### **WCI coverage requirements**

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

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

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

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

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

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

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

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

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



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

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

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

### **Administrative assessment**

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

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

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



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

### **WCI premium rate settings**

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

### **Insolvency of insurer**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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<sup>22</sup> Section 3.

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

### **Administrative assessments**

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

### **Transfer of personnel**

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

### **Organizational changes**

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

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

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

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

<sup>33</sup> Section 3.



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

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## COMMENT

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

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## HISTORY

ACTION	DATE
Introduced	05-12-15

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





**Representative Michael E. Henne**  
Ohio House District 40

**Representative Wes Retherford**  
Ohio House District 51

**HB 205: Workers Compensation Large Group Alternative  
Sponsor Testimony before the House Insurance Committee on 6/9/2015**

I am an Independent Insurance Agent which means I represent multiple companies and can offer my clients a variety of options. If a client is not happy with how they are treated by a company, I can look to another carrier for coverage or, God forbid, the client can look at other companies I do not represent. There are internet agencies which boast they search hundreds of life insurance companies to match the client's characteristics to the right company's underwriting. There are many health insurance companies with multiple plans available for Ohio consumers (at least for the time being) and if they don't meet your needs there is always the exchange. There are options for every type of insurance in the state of Ohio with the exception of workers compensation, in most cases.

Ohio's Bureau of Workers' Compensation (BWC) is how Ohio employers protect their employees from losses due from work related injuries. It is an insurance policy. Administrator Buehrer has done a great job of making BWC work better for both employees and employers but not every shoe fits every foot and not every insurance company is the best option for every employer.

HB 205 will give a couple more options for employers with regard to their employee's work related injuries with two additional choices.

First, Ohio employers can now self insure if they are large enough and can meet some standards, which can be quite stringent. This bill will align those standards more with the Multiple Employer Welfare Arrangements (MEWA) as well as reduce the number of required employees from 500 to 300 employees. The bureau will still need to protect the fund so they will still have final say as to the financial requirements but this should give some employees an additional option by self-insuring their workers' compensation.

Second, many employers participate in BWC group rating programs. These groups are administered by several TPAs across the state through many different sponsoring groups, such as NFIB, OMA, PIAA and Chamber of Commerce. This bill would allow groups ... or employers with a minimum of 1,000 employees to secure workers' compensation coverage from a carrier other than BWC.

# Ohio House of Representatives



**Representative Michael E. Henne**  
Ohio House District 40

**Representative Wes Retherford**  
Ohio House District 51

Trade organizations provide a valuable service for their member businesses around the state. Not only do these trade associations give their member businesses a collective voice but they also provide many financial benefits such as group purchasing of health insurance or even discounts on their home and auto insurance. This bill might just give them another benefit to offer their members. It's totally permissive, so if an organization does not want to get involved in the program or if the insurance companies' offers are unattractive, they can just continue offering their group workers' comp plans to the members with a good loss experience but just maybe they can offer something so much better.

Just as trade organizations can choose to participate or not, the insurance carriers can choose to compete for this workers compensation business. Working through trade organizations can pose its own challenges and may require developing a specialty product. Some carrier will choose to participate in this market while some will be comfortable with the status quo.

The goal of this legislation is not to shut down BWC but to provide additional options for employers who may need or desire something different. Once again, Administrator Buehrer has made some valuable improvements to BWC, but BWC may not be the best option for every employer.



# Ohio Legislative Service Commission

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## Bill Analysis

Erika Padgett

### H.B. 206

131st General Assembly  
(As Introduced)

**Reps.** Henne, Butler, Hambley, Hood, Sprague, Terhar, Maag

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## BILL SUMMARY

- Requires the Industrial Commission to keep statistics on specified information regarding individual hearing decisions issued by the Commission, staff hearing officers, and district hearing officers.
  - Requires the Industrial Commission to submit to the Governor and the General Assembly an annual report containing the required statistics.
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## CONTENT AND OPERATION

### Introduction

The bill imposes additional record keeping requirements on the Industrial Commission, the body that adjudicates contested workers' compensation claims. Under Ohio's Workers' Compensation Law, Industrial Commission appeals generally go through the following steps prior to an appeal being filed with a court:

- (1) A district hearing officer (DHO) first hears the contested claim or appeal and issues a decision;
- (2) A party appeals the DHO's decision to a staff hearing officer (SHO) who issues a decision;
- (3) A party appeals the SHO's decision to the Industrial Commission.<sup>1</sup>

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<sup>1</sup> R.C. 4123.511, not in the bill.

## **Statistics**

The bill requires the Industrial Commission to keep statistics on individual hearing decisions issued by the Commission, DHOs, and SHOs. The statistics must include (1) the number of claims at every commission office location decided in favor of an employer and the number of claims decided in favor of a claimant and (2) the number of claims each DHO or SHO decided in favor of an employer and the number of claims decided in favor of a claimant.<sup>2</sup>

### **Report on statistics**

The bill also requires the Industrial Commission to submit a report to the Governor and the General Assembly containing the required statistics for the previous calendar year. The report is due on or before January 31 of each year, with the first report being due on or before the first January 31 occurring one year after the bill's effective date.<sup>3</sup>

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## **HISTORY**

ACTION	DATE
Introduced	05-12-15

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<sup>2</sup> R.C. 4121.36(H)(1).

<sup>3</sup> R.C. 4121.36(H)(2).





**Representative Michael E. Henne**  
Ohio House District 40

**HB 206: Industrial Commission Statistics**  
**Sponsor Testimony before the House Insurance Committee on 6/9/2015**

Whether you are a sports team, a sales office, a law office or a government sponsored entity, you need the ability to analyze the performance of the individuals, departments, regions, or any number of divisions of your organization. An important piece of any analysis is comparing the numbers, but before you can do that you must collect and compile those numbers.

Employers might feel they will always lose if they take a claim to the Industrial Commission while employee groups may feel they never get a fair shake from a particular IC officer. Are they right? Maybe. Are there particular officers or regions which have a bias one way or another? Maybe. The only way to get to feel if there is a problem which may need to be addressed is to compile and analyze the data.

It is true that every case is different and cases are determined on the individual merits, but there is also things we can learn by looking at decisions on an aggregate basis. Just as auto claims are determined by the individual circumstances, we can still learn about people's driving habits, road/traffic hazards or vehicle performance if we look at all the claims as a whole. The insurance industry is based upon the compilation and analysis of data to better predict future losses.

This bill is simple. It just requires the Industrial Commission to track the results of their hearing officers and their regional offices and report these results to the legislature. As asked before, are there things we can learn from analyzing results? Not until we collect and compile the data and see what we have.



# Ohio Legislative Service Commission

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## Bill Analysis

Kelly Bomba

### H.B. 207

131st General Assembly  
(As Introduced)

**Reps.** Henne and McColley, Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke

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#### BILL SUMMARY

- Requires workers' compensation claims to be charged to the Surplus Fund Account in lieu of to a state fund employer's experience when a third party may be liable for a claim that is based on an automobile accident involving a third party.
- Allows a state fund employer to apply to an adjudicating committee appointed by the Administrator to charge the experience resulting from such a claim to the Surplus Fund Account.
- Requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, to adopt rules to establish requirements and procedures for an adjudicating committee to follow when determining whether a claim is likely to be subrogated.
- Requires any amount collected by the Administrator through the subrogation process for compensation or benefits that were charged to the Surplus Fund Account to be credited to the Surplus Fund Account and not applied to an individual employer's account.

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#### CONTENT AND OPERATION

##### **Charging experience for certain claims to the Surplus Fund Account**

The bill requires the Administrator of Workers' Compensation to charge a state fund employer's experience to the Surplus Fund Account created under continuing law within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim if both of the following apply:

- The claim is based on an automobile accident involving a third party;
- The Administrator is likely to be subrogated to the rights of the workers' compensation claimant.<sup>1</sup>

Subrogation involves the Administrator recouping payments made in a workers' compensation claim from a third party (see "**Subrogation**," below). A state fund employer is an employer who pays premiums into the State Insurance Fund to secure workers' compensation coverage. The employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's premium (see "**Background – calculation of premium rates**," below). Thus, charging a claim to the Surplus Fund Account in lieu of the employer's experience may result in a mitigation of an increase in the employer's workers' compensation premiums as a result of the claim.

### **Procedure for charging the experience to the Surplus Fund Account**

The bill provides two avenues for charging the experience to the Surplus Fund Account: (1) if the Administrator makes the Administrator's own determination that a state fund employer's claim based on an automobile accident involving a third party is likely to be subrogated, or (2) a state fund employer requests to have such a claim charged to the Surplus Fund Account.<sup>2</sup>

With respect to the latter avenue, if a state fund employer believes that such a workers' compensation claim may be subject to third-party subrogation, the bill allows the employer to file a request with an adjudicating committee appointed by the Administrator to have the experience resulting from that claim charged to the Surplus Fund Account. Under continuing law, the employer must file the request on or before 24 months after the Administrator sends notice of the determination about which the employer is filing the request. The adjudicating committee must hear the request within 60 days of the date on which the employer files the request.

Under the bill, the Administrator, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, must adopt rules to establish requirements and procedures for an adjudicating committee to follow when determining whether a claim is likely to be subrogated. As under continuing law, if the employer is adversely affected by a decision of the adjudicating committee, the employer may appeal the decision to the Administrator or the Administrator's designee. The employer must file the appeal in writing within 30 days after the

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<sup>1</sup> R.C. 4123.932.

<sup>2</sup> R.C. 4123.932(A).



employer receives the adjudicating committee's decision. The Administrator or the designee must hear the appeal and hold a hearing.<sup>3</sup>

### **Determination that a claim is likely to be subrogated**

Upon a final determination made pursuant to the adjudicating committee process described above, or upon the Administrator's own determination, that the Administrator is likely to be subrogated to the rights of a claimant under the continuing law subrogation process for a claim based on an automobile accident involving a third party, the bill requires the Administrator to charge the experience of a state fund employer for any compensation, benefits, or both paid in relation to that claim to the Surplus Fund Account and not to the individual employer's experience.<sup>4</sup>

### **Deposit of subrogated funds**

Continuing law prescribes procedures that the Administrator (or any other statutory subrogees) and a claimant must follow with respect to the distribution of funds that are subrogated in a third-party claim. With respect to any money collected by the Administrator under that process, current law requires the Administrator to deposit the money collected into the appropriate account within the State Insurance Fund. The bill requires any amount collected for compensation or benefits that were charged to the Surplus Fund Account pursuant to the bill and not charged to an employer's experience to be deposited in the Surplus Fund Account and not applied to an individual employer's account.<sup>5</sup>

### **Subrogation**

The Workers' Compensation Law<sup>6</sup> creates a right of subrogation in favor of the Administrator or other statutory subrogees against a third party. A statutory subrogee is the entity responsible to pay workers' compensation claims. Essentially a statutory subrogee may recoup money from a third party against whom a claimant has a cause of action so that the statutory subrogee is reimbursed for money it pays out on a workers' compensation claim.

Stated simply, if Mr. Smith, in the course of his employment, is injured when Mr. Jones collides with his vehicle, Mr. Smith may receive workers' compensation benefits

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<sup>3</sup> R.C. 4123.291 and 4123.932(B).

<sup>4</sup> R.C. 4123.932(A).

<sup>5</sup> R.C. 4123.931(K).

<sup>6</sup> R.C. Chapters 4121., 4123., 4127., and 4131.



and also may sue Mr. Jones. If Mr. Smith sues Mr. Jones, then Mr. Smith's employer, or the Administrator, as appropriate, may seek reimbursement from the amount Mr. Smith recovers in the third-party suit.

The Workers' Compensation Law contains procedures to follow regarding subrogation claims. Under continuing law, the Administrator's right of subrogation is automatic, regardless of whether the Administrator is joined as a party in an action by a workers' compensation claimant against a third party. The Administrator may pursue an action against a third party as well.<sup>7</sup>

## **Background – calculation of premium rates**

Ohio law requires the Administrator to fix premiums "sufficiently large" to provide a fund for the benefits authorized in the Workers' Compensation Law and "to maintain a state insurance fund from year to year." Subject to the approval of the BWC Board, the Administrator classifies occupations or industries with respect to their degree of hazard, determines the risks of different classes according to the categories the National Council on Compensation Insurance establishes, and fixes the premium rates for coverage of the risks based upon the total payroll in each classification.<sup>8</sup>

Premium rates are fixed for each classification based upon total payroll. The Administrator must establish a rate for each classification. The total losses compared with the total payroll of each classification establishes the rate of contribution from employers within that classification. The system includes two basic premium rates – the basic rate and the experience, or merit, rate (employers qualify for one or the other). The Administrator calculates the basic rate for each of the classifications of occupations, and the Administrator does not include any individual employer's experience when calculating basic rates. If an employer is experienced-rated, the employer's rate is determined by modifying the basic rate applicable to the employer by the employer's experience of losses incurred and premiums paid.<sup>9</sup> A premium is expressed as an amount for each \$100 of payroll. Rates are revised annually on July 1, and employers pay premiums in accordance with the schedule specified in the Workers' Compensation Law and in rules adopted by the Administrator.<sup>10</sup>

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<sup>7</sup> R.C. 4123.93 and 4123.931.

<sup>8</sup> R.C. 4123.29(A), not in the bill, and Ohio Administrative Code (O.A.C.) 4123-17-04.

<sup>9</sup> Fulton, Philip J., *Ohio's Workers' Compensation Law*, § 14.4 (4th Ed. 2011).

<sup>10</sup> R.C. 4123.34 and R.C. 4123.35, not in the bill, and O.A.C. 4123-17-01 to 4123-17-04.



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## HISTORY

ACTION	DATE
Introduced	05-12-15

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**Representative Michael E. Henne**  
**Ohio House District 40**

**HB 207: Third Party Subrogation**  
**Sponsor Testimony before the House Insurance Committee on 6/9/2015**

Your employee is sitting at a red light, eyes forward, hands at 2 and 10, just doing everything right. The light turns green and he proceeds into the intersection only to be t-boned by someone who wasn't paying attention and ran the light. The other driver has insurance, (you have uninsured motorist coverage just in case he didn't) yet this incident may cost your company dearly.

It is the responsibility of every employer to provide a safe work environment for their employees. If an employee is injured, the employer is responsible for the damages. Because your employee is operating within the scope of his employment this incident needs to be reported to BWC and could have devastating consequences. This claim may get you kicked out of your group rating program and that causes your premiums to immediately double. In addition, this may cause a rate surcharge and cause your premiums to increase multiple more times. All for a claim in which you and your employee did nothing wrong and there is adequate insurance by the liable party to pay the claim.

An employer can do everything possible to create a safe work place yet there are circumstances beyond their control. There are cases in which another party is negligent, legally liable for the damages and financial responsible but since the employee is injured within the scope of his employment the employer must file the claim under his/her Workers' Compensation Insurance policy which in Ohio is BWC.

Basically speaking, workers' compensation rates employers pay are determined by the class of employee, the company's loss experience and the size of the number of employees. Since larger employers can spread their exposure among a larger pool, they are eligible for larger discounts. To afford these discounts to smaller employers and help even the playing field, employers are permitted to "group" together. The administrators of these groups want to maximize the credits for the group so they are selective to who they invite to join. Each year employers complete an AC-3 which allows the administrators to check the employer's experience and only invite the ones with good experience to join the group.

HB 207 will mutualize a 3rd party surrogates claims and pays it out of surplus. Rather than face this potentially devastating scenario, employees injured from an auto accident where another party is liable and has the financial means to be responsible will not be charged to the employer's experience but paid out of a mutualized account.

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Committees

Ways & Means  
Judiciary  
Government Accountability & Oversight

**ROBERT MCCOLLEY**  
State Representative, 81<sup>st</sup> House District

**H.B. 207 – SPONSOR TESTIMONY – 131<sup>st</sup> General Assembly**

**House Insurance Committee**

**Tuesday, June 9, 2015**

Chairman Hackett, Ranking Member Bishoff and members of the House Insurance Committee, thank you for the opportunity to give testimony in favor of H.B. 207. I believe one of the jobs we have as legislators is to correct inequities that we find in existing law. I can tell you with full confidence that H.B. 207 corrects a major equitable problem we have in our existing Workers' Compensation law, an inequity that results in Ohio's small businesses basically being held at fault for accidents that were not their fault or the fault of their employees.

Under any other circumstance, if you were in a traffic accident that was not your fault, but was the fault of the other driver involved in the accident, the other driver's insurance would pay the damages resulting to your vehicle, your paycheck, your body, and your overall pain and suffering. However, an unfair exception to this rule exists in Ohio's Workers' Compensation Law. While it is true that under our laws an employer is liable for the acts of its employees, this general rule is extended beyond its equitable reach under Ohio's Workers' Compensation laws in that Ohio's employers are essentially liable for the acts of others that happen to their employees, regardless of fault. This simply is not right and H.B. 207 would correct this inequity, while preserving the ability of the injured employee to obtain adequate medical treatment, lost wages, and other damages.

Because Ohio law designates the Bureau of Workers Compensation as the primary insurer for employees' claims that arise in the line of duty, the employers' premiums currently rise by approximately 50% with any claim made against the employers, regardless of fault of the employers or the employers' employees. This is as a result of employers being removed from any group rates that they may be a part of. H.B. 207 would fix this problem by allowing claims that are the fault of a third party to be paid out of a surplus fund that will be maintained by the Bureau of Workers' Compensation, instead of being charged to the employer's policy. Payments out of the surplus fund will allow employees to be made whole, while still preserving the ability of employers to continue paying the group rates for their workers' compensation premiums. H.B. 207 would also provide an incentive for the Bureau of Workers' Compensation to aggressively pursue claims in which it has been subrogated to the rights of the insured employer. This bill will make Ohio Workers' Compensation law more equitable and fair, which will be extremely helpful for small businesses throughout the Buckeye State.

I respectfully urge passage of H.B. 207 and I would be happy to answer any questions at this time.

Respectfully submitted,



Representative Rob McColley





**BEFORE THE INSURANCE COMMITTEE  
OF THE HOUSE OF REPRESENTATIVES  
REPRESENTATIVE BOB HACKETT, CHAIRMAN**

**TESTIMONY  
OF  
LARRY HOLMES  
FORT RECOVERY INDUSTRIES  
OMA CHAIRMAN, SAFETY AND WORKERS' COMPENSATION COMMITTEE**

**OCTOBER 6, 2015**

Mr. Chairman and members of the Committee, my name is Larry Holmes. I'm Vice President of Finance at Fort Recovery Industries. Fort Recovery Industries, headquartered in Fort Recovery, Ohio, manufactures superior die cast hardware and components for market-leading manufacturers worldwide. I also serve as the Chairman of The Ohio Manufacturers' Association's (OMA) Safety and Workers' Compensation Committee. I'm testifying today on behalf of the OMA on House Bill 207. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

First I would like to thank Representatives Henne and McColley for introducing this piece of legislation. The issue of subrogation in workers' compensation has long been an issue of concern for employers. House Bill 207 provides a common sense approach to address a concern employers have regarding motor vehicle accidents and their claims experience rating and costs.

House Bill 207 would allow an employer to request that a worker's comp claim resulting from a motor vehicle accident in which the employer was not at fault, and which is likely to be subrogated, to be paid from the Bureau of Workers' Compensation (BWC) surplus fund and not be charged to the employer's experience.

Allowing the claim to initially be charged to the surplus fund will relieve negative consequences that employers face in these situations today. For example, the subrogation process can take a very long time, during which time the claim costs affect the employer's experience rating and premium, and further, in some cases, recoveries are less than the claim costs assigned. In the current system when these claims are charged to an employer's experience, it can often lead to an employer being removed from its group rating program and its premiums increase significantly. In the extreme, the possibility of closing shop is real due to increases in workers' compensation costs.

As drafted, the narrow tailoring of House Bill 207 is a positive step to create fair treatment of motor vehicle related claim costs where the employer is not at fault. This legislation has no ill affect whatsoever on the systems that ensure that Ohio's workers receive the best available treatment to get them healthy and back to work.

Thank you. I'll be pleased to attempt to answer any questions you may have.

# What is Issue 3?

Issue 3 is an amendment, promoted by ResponsibleOhio PAC that seeks to alter Ohio's Constitution by granting a small group of wealthy self-selected investors a marijuana monopoly. The amendment legalizes recreational use and growth of marijuana by individuals 21 years of age and older, and allows every adult (21 and older) in Ohio to grow, possess, and use marijuana.



The amendment locks into the Ohio Constitution 10 specified growing sites, the rights to which have already been promised to the small group of self-selected wealthy investors who are supporting and funding the campaign to pass the amendment.



The amendment permits more than just "joints." It allows for marijuana-infused products such as marijuana brownies, marijuana cookies, and marijuana candy (lollipops and gummy bears), posing a very attractive threat to young people. Often, these infused products contain extremely high concentrations of THC, the active component in marijuana.



In addition to allowing for recreational use, Issue 3 will flood Ohio with marijuana. This amendment allows for the creation of 1,159 retail marijuana stores – that's more locations than Starbucks or McDonald's, and nearly three times the number of state liquor stores.

- ✖ **Issue 3 creates a marijuana monopoly**
- ✖ **Issue 3 will expose Ohio's children to marijuana**
- ✖ **Issue 3 will flood Ohio with marijuana**



Paid for by Ohioans Against Marijuana Monopolies

# Who Opposes Issue 3?

Ohio Children's Hospital Association  
Ohio Chamber of Commerce  
Ohio State Medical Association  
Ohio Hospital Association  
Cincinnati Children's Hospital Medical Center  
Nationwide Children's Hospital  
Ohio Chapter, American Academy of Pediatrics  
Ohio School Boards Association  
Buckeye Association of School Administrators  
Ohio Association of School Business Officials  
ADAMHS Board of Cuyahoga County  
ADAMHS Board of Hancock County  
Buckeye State Sheriffs' Association  
Columbus Chamber of Commerce  
Greater Cleveland Partnership  
Council of Smaller Enterprises (COSE)  
Cincinnati USA Regional Chamber  
County Auditors' Association of Ohio  
Ohio Township Association  
Fraternal Order of Police of Ohio  
Associated General Contractors of Ohio  
Affiliated Construction Trades  
Allied Clubs and Charities of Ohio  
Ohio Hotel & Lodging Association

International Union of Operating Engineers Local 18  
Columbus Medical Association  
Ohio High School Athletic Association  
Findlay-Hancock County Chamber of Commerce  
Ohio Chemistry Technology Council  
Ohio Recorders' Association  
Ohio Society of CPAs  
Ohio Insurance Institute  
Ohio Trucking Association  
Dayton Area Chamber of Commerce  
Dayton Regional Employers Against Marijuana (DREAM)  
Canton Chamber of Commerce  
Youngstown-Warren Regional Chamber of Commerce  
Drug Free Action Alliance  
NFIB/Ohio  
Ohio Association of County Behavioral Health Authorities  
Ohio Council of Behavioral Healthcare Providers  
Ohio Council of Retail Merchants  
Ohio Business Roundtable  
Ohio Farm Bureau Federation  
Ohio Grocers Association  
Ohio Manufacturers' Association  
Ohio Prosecuting Attorneys Association

Ohio State Coroners Association  
Prevent Blindness Ohio Affiliate  
Toledo Regional Chamber of Commerce  
Tuscarawas County Chamber of Commerce  
Ohio Association of Secondary School Administrators  
National Organization of Black Law Enforcement  
Ohio Association of Chiefs of Police  
County Commissioners' Association of Ohio  
County Treasurers Association of Ohio  
Ohio Nurses Association  
Ohio Clerk of Courts Association  
Cuyahoga Democratic Women's Caucus  
Licking County Chamber of Commerce  
Ohio Restaurant Association  
Indiana/Kentucky/Ohio Regional Council of Carpenters  
Ohio Psychiatric Physicians Association  
Ohio Contractors Association  
Ross County Commissioners  
Morrow County Commissioners  
Ohio Farmers Union  
Construction Employers Association  
Ohio AgriBusiness Association  
Ohio State Bar Association  
League of Women Voters of Ohio

**NO!**Protected Monopoly **NO!**Marijuana candy **NO!**Marijuana On Every Street Corner

**VOTE NO<sup>ON</sup> 3**  
NO MARIJUANA MONOPOLY

As of Sept. 28, 2015



COLUMBUS | CLEVELAND  
CINCINNATI-DAYTON  
MARIETTA

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Ohio Manufacturers' Association  
Workers' Compensation Counsel Report  
October 7, 2015

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

### **Regulatory Actions**

#### ***O.A. C. § 4123-3-37 Lump sum advancements***

Proposed changes would clarify the lump sum advancements for a surviving spouse and increase the scenarios when an injured worker could be paid a lump sum advancement.

\*\* Withdrawn from JCARR Jurisdiction 8-18-15\*\*

### **Legislative Actions**

#### ***H.B. 205***

Proposed bill to amend numerous sections of the Ohio revised Code which would modify the requirements for an employer to become a self-insuring employer for the purposes of Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.

#### ***H.B. 206***

Proposed bill to amend R.C. § 4121.36 which would require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.

#### ***H.B. 207***

Proposed bill to amend the R.C. §§ 4123.291, 4123.93, and 4123.931 and enact R.C. § 4123.932, which would allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience. (similar to previous H.B. 539)

October 7, 2015

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Criteria for claim charged to surplus fund:

- 1) The employer of the employee who is subject of the claim pays premiums into the state insurance fund;
- 2) The claim is based on a motor vehicle accident involving a third party; and
- 3) The third party is issued a citation on violation of any law or ordinance regulating the operation of a motor vehicle arising from the accident on which the claim is based.

### **Judicial Actions**

#### ***State ex rel. Oldaker v. Indus. Comm'n, slip op. at 2015-Ohio-2569:***

Kenneth Oldaker began receiving TTD compensation after he sustained a workplace injury in April 2009, and, in January 2012, his application for a PTD retirement was granted. Thereafter, in April 2012, he accepted a position with Crosswoods Whitetails, LLC—a company owned by his wife—where he earned approximately \$332.50 per week. This was significantly less than he earned at his prior job.

Mr. Oldaker then applied to the BWC for wage-loss compensation to partially compensate him for the lower earnings he received from Crosswoods. The SHO ultimately denied Mr. Oldaker's application, finding that he had only performed a relatively brief job search and had not continued a good-faith search for comparably paying work after he was hired by Crosswoods.

On appeal, the Supreme Court of Ohio found evidence suggested that Mr. Oldaker failed to make consistent, sincere, and best attempts at obtaining suitable employment. For example, a vocational report indicated that Mr. Oldaker "had expressed no interest in beginning a new career" and apparently planned "on working on a part time basis only" if necessary. Further, although Mr. Oldaker argued that he was not required to continue his job search because the new job was full-time with the potential for future growth, there was no evidence to suggest that he reasonably expected the new job to develop into comparably paying work.

Accordingly, the Court found that the Commission did not abuse its discretion in denying Mr. Oldaker's request for wage-loss compensation.

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***State ex rel. Tradesmen Internat'l v. Indus. Comm'n, 2015-Ohio-2342***

Raymond Smith sustained a workplace injury while working for Tradesmen International (“Tradesmen”) in July 2003. Thereafter, in 2011, Mr. Smith applied for PTD compensation, relying on the April 26, 2011 report of his treating physician, Dr. DePaz. In this report, Dr. DePaz opined that Mr. Smith was seriously limited in his ability to lift, push, and pull, and that he would require frequent rest breaks. According to Dr. DePaz, this made Mr. Smith unable to maintain any type of regular working schedule.

In March 2012, the Industrial Commission submitted two medical reports, both of which determined that Mr. Smith was incapable of working based on his allowed conditions. Relying on all three of these reports, the SHO determined that Mr. Smith was unable to perform any sustained remunerative employment and awarded Mr. Smith PTD compensation beginning April 26, 2011—the date of the DePaz Report.

In its complaint for a writ of mandamus, Tradesmen argued that the Commission abused its discretion in ordering the PTD compensation to begin on April 26, 2011, asserting that the DePaz Report did not find that Mr. Smith’s disability was solely the result of his medical impairment. The court of appeals determined that the DePaz Report constituted evidence to support the start date for the PTD compensation, specifically finding that the restrictions Dr. DePaz discussed were so narrow that they effectively precluded all sustained remunerative employment.

On appeal before the Supreme Court of Ohio, Tradesmen argued that the DePaz Report held that Mr. Smith was capable of sedentary work with limitations, thus suggesting that PTD compensation was inappropriate on this date.<sup>1</sup> However, the Court did not find this to be persuasive. Specifically, the Court found that the report was not insufficient simply because Dr. DePaz had stated that Mr. Smith was restricted to sedentary activities because Dr. DePaz also listed several other significant restrictions on Mr. Smith’s ability to work.

Accordingly, the Supreme Court held that the Commission did not abuse its discretion in using the DePaz Report as evidence of PTD. Therefore, the Commission did not abuse its discretion by relying on the date of this report as the date on which to begin payment of the PTD award.

***Ohio BWC v. McKinley, 2014 Ohio 1397***

On July 23, 2015, the Supreme Court of Ohio dismissed the case Ohio Bur. of Workers’ Comp. v. McKinley, slip op. 2015-Ohio-2927 sua sponte as “having been improvidently

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<sup>1</sup> Tradesmen concedes that the March 2012 reports constituted evidence that supported the Commission’s award of PTD compensation.

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allowed.” This case had been an appeal from Ohio Bur. of Workers’ Comp. v. McKinley, 2014-Ohio-1397, discussed below.

Mr. McKinley, who was employed by Safway Services, Inc. (“Safway”), sustained a workplace injury in July 2003 while working on the premises of, what is now called, Heritage – WTI (“Heritage”). Following his injury, Mr. McKinley filed for and received workers’ compensation, paid on his behalf by the BWC. He also filed an intentional tort against Safway, and a premises liability lawsuit against Heritage. Mr. McKinley eventually dismissed Safway from the suit and entered into a settlement and release with Heritage.

On October 25, 2004, Mr. McKinley informed the BWC that he had entered into this settlement negotiation. The Ohio Attorney General received notice of the settlement proceedings on November 1, 2004 and, on the same day, Mr. McKinley’s counsel informed the BWC that a settlement could be reached if the BWC reduced the amount of its lien to \$338,856.08. The BWC agreed. On December 10, 2004, Mr. McKinley signed the release and settlement agreement, which did not specifically mention the BWC lien, in exchange for payment of \$1,100,000 from Heritage. He also filed a notice of dismissal in the case against Heritage.

Instead of remitting funds to the BWC to repay the lien, Mr. McKinley filed a declaration of judgment, challenging the constitutionality of Ohio’s subrogation statutes and the amount of the BWC lien. The Ohio Supreme Court ultimately found the statute to be facially constitutional in McKinley v. Ohio Bur. of Workers’ Comp., 2008-Ohio-1736. Then, on November 4, 2008, the BWC filed suit to hold Heritage and Mr. McKinley jointly and severally liable for the full amount of the lien. Although the trial court had found that the statute of limitations had already expired, the Ohio Supreme Court ultimately found in Ohio Bur. of Workers’ Comp., 2011-Ohio-4432 that it had not because a R.C. 4123.931(G) claim has a six-year statute of limitations.

Thereafter, on August 30, 2012, the trial court in this case granted Heritage’s motion for summary judgment. In relevant part, the BWC had argued that it had not been given a reasonable opportunity to assert its subrogation claim and that it had been excluded from the settlement agreement. The trial court found this to be baseless given the BWC’s participation in the settlement negotiations. Further, the court found that, although the settlement agreement did not specifically include the BWC lien, it did not exclude it. Because the settlement was well in excess of the agreed-upon \$338,856.08 subrogation lien, the court found no evidence that the settlement was kept purposefully low to avoid payment of the BWC lien.

Here, on appeal, the Court of Appeals for the Seventh District of Ohio found that, because the BWC was given notice of the settlement, and because the lien amount was clearly not excluded from the settlement total, the trial court did not err in granting Heritage’s motion for summary judgment.

## Safety & Workers' Compensation

### Northeast Ohio Safety Conference & Expo October 16

The Ohio Bureau of Workers' Compensation (BWC) Northeast Safety Conference and Expo in Ashtabula on Oct. 16 at Jefferson Area High School, 207 W. Mulberry St., Jefferson, Ohio will offer area employers an opportunity to learn about improving the safety and health their workforce.

The conference will feature 38 sessions that focus on improving the safety, well-being and quality of life of workers. Attendees can also visit the expo floor to connect with safety service providers, safety equipment suppliers and area health care providers. Employers can earn credit for BWC programs for attending certain classes.

[Learn more here](#) or contact BWC's [David Costantino](#) at 330-301-5825. Advanced registration ends Friday, Oct. 9. 9/30/2015

### BWC Proposes Changes to Group Retrospective Rating Program

The Ohio Bureau of Workers' Compensation (BWC) has proposed to its board of directors a change to its private employer Group Retrospective Rating Program effective for policy year July 1, 2016 to June 30, 2017.

According to the BWC, "Investigations into the basic premium factors and loss development factors for the Group Retrospective Rating Program have revealed that it is necessary to add a provision for Managed Care Organization (MCO) expenses within the calculated premiums. We propose to adjust the Loss Development Factors in the Group Retrospective Rating Program for Private Employers beginning July 1st, 2016 by 12.4%. This increase represents the provision for the MCO costs on the developed losses.

"The impact of this change is estimated to increase the final overall premium income from the Private Employer Group Retrospective Rating Program by 6.3% annually, or approximately \$15.4 million annually."

OMA's Brian Jackson, Managing Director, Workers' Compensation Services, has calculated the projected effect for OMA's two 2016/17 Group Retrospective Rating groups. Group 2016-1 is expected to have a small reduction in its projected premium refund, from 59.4% to 56.9%. The projected refund for OMA's Group 2016-2 is 22.1%, down from 27.5%.

OMA agrees with the BWC's proposed change as it more accurately accounts for the agency's costs.

Contact OMA's [Brian Jackson](#) with any questions. 9/22/2015

### New BWC Training Site will Serve NW Ohio

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer this week announced the opening of a new workplace health and safety training center located at Northwest State Community College in Archbold (Fulton County). The BWC has [12 established training center locations](#) that offer continuing-education courses on occupational safety and health to prevent accidents and injuries in Ohio workplaces.

The BWC's partnership with Northwest State Community College expands its educational and safety reach in northwest Ohio.

Classes at the new center begin September 16. 9/15/2015

### BWC Adds One Minute Videos

Check out BWC's new minute-long how-to videos for quick guidance on:

- [How to create an e-account](#)
- [Who is my Claim Service Specialist \(CSS\)?](#) 9/16/2015

The Bureau of Workers' Compensation (BWC) offered these recent updates and tips regarding its new invoicing practices: "If you have received an invoice from BWC with a Sept. 18 due date, it's because your company had not paid the initial invoice due Aug. 31 when BWC ran its invoices for September.

"Due to BWC's 30-day invoice cycle, the bureau must run invoices about 14 days prior to them going out to employers. For this reason, you may have received an invoice the first couple days of September despite paying your bill on time at the end of August. You can access the most current information for your policy by visiting BWC's [website](#) and logging into your e-account.

"Don't have a BWC e-account? Create one [here](#).

"To avoid a lapse in coverage, do not wait until Sept. 18 to make this payment for your policy. Remember, employers are responsible for any and all claims costs for injuries that occur during a period of lapsed coverage."

Contact OMA's [Brian Jackson](#) with your questions. 9/9/2015

### **Drug-free Program Assistance for Employers in Allen, Auglaize, Hardin & Marion Cos.**

OMA Connections Partner, Working Partners®, is working with county Mental Health & Recovery Services Boards in select counties to provide drug-free workforce programs for employers.

Support includes: 1) Classroom course and individual consultation to develop a company-specific and legally-sound drug-free workplace policy and program; 2) Community-based assistance for prospective and current employees who are dealing with substance abuse issues; 3) Access to discounted drug-testing, employee education, supervisor training and on-going technical assistance; and 4) Assistance with applying for BWC's Drug-Free Safety Program and SafetyGrants.

Sessions start in September and October. To learn more and to apply for scholarship funding for the program, contact [Regina Bond](#) at Working Partners, (614) 337-8200. 8/21/2015

### **BWC Reminder: Payroll and Payments Due August 31**

The Bureau of Workers' Compensation (BWC) reminds employers to submit final retrospective payroll reports for January 1 to June 30, 2015, by August 31. Upon submission, BWC will provide a transition credit equal to the premium due.

The first invoices under the new prospective billing system were issued in late July, and are due August 31.

If you have questions about this, contact OMA's [Brian Jackson](#). 8/18/2015

### **BWC Seeking Your Safety Innovations**

BWC is seeking employers who developed or implemented an innovative solution to an occupational safety or health issue for the next Safety Innovations Competition.

Private, public and self-insuring employers in Ohio are invited to apply for the competition, which showcases successful innovations and helps other Ohio employers in their safety efforts by inspiring more innovative solutions.

The first round of judging starts in October. Finalists will compete for cash awards of \$1,000 to

\$6,000 during the Ohio Safety Congress & Expo 2016, which will be held March 9 to 11, 2016, at the Greater Columbus Convention Center.

The deadline to apply for the Safety Innovations Competition is September 30. [Learn more here](#). 8/18/2015

### **OSHA Updates National Emphasis Program on Amputations**

OSHA has issued an updated [National Emphasis Program \(NEP\) on Amputations](#). The NEP is targeted to industries with high numbers and rates of amputations. OSHA is using current enforcement data and Bureau of Labor Statistics (BLS) injury data to assist with site selection targeting.

According to the most recent BLS data, 2,000 workers suffered amputations in 2013. The rate of amputations in the manufacturing sector was more than twice that of all private industry.

This updated directive applies to general industry workplaces in which any machinery or equipment likely to cause amputations are present. Inspections will include an evaluation of employee exposures during operations such as: clearing jams; cleaning, oiling or greasing machines or machine pans; and locking out machinery to prevent accidental start-up. 8/18/2015

### **OSHA Proposes New Beryllium Rule to Reduce Exposure**

On August 7, OSHA issued a [proposed rule](#) to dramatically lower workplace exposure to beryllium, a widely used material that can cause lung diseases. The proposal would reduce allowable exposure levels by 90% and add other protections.

Comments on the proposed rule will be accepted until November 5, 2015 at this [website](#). More information is available [here](#). 8/18/2015

### **Building a Manufacturing Career Message**

From the Ohio Department of Higher Education: "Ohio manufacturers collectively have identified an initial barrier on the road to a qualified workforce - the lack of a well-publicized, concise message about the depth and breadth of manufacturing careers in the state."

Thousands of hours have been invested by Ohio manufacturers into the never-ending quest for a quality workforce through the donation of equipment, collaboration on an education program, speaking in a

classroom, attending a job or career fair, or offering internship opportunities to students and teachers. As a result of that effort, one consistent message has emerged - you cannot simply "build it and they will come."

The department and partners invite manufacturers to participate in a meeting in Columbus on Monday, September 14 from 12:30 to 3:30 p.m. to discuss a vision for launching a marketing strategy aimed at moving Ohioans into manufacturing careers.

Register [here](#). 8/13/2015

#### **Updated Guide to OSHA Training Requirements Available**

OSHA has posted a fully updated version of its guide to all agency training requirements to help employers, safety and health professionals, training directors and others comply with the law and keep workers safe. [Training Requirements in OSHA Standards](#) organizes the training requirements into five categories: General Industry, Maritime, Construction, Agriculture and Federal Employee Programs. 8/3/2015

#### **OSHA Defying Courts?**

The Occupational Safety and Health Administration (OSHA) this week issued a [Notice of Proposed Rulemaking](#) that, it says, "clarifies an employer's continuing obligation to make and maintain an accurate record of each recordable injury and illness throughout the five-year period during which the employer is required to keep the records."

NAM's Joe Trauger tells us that, by proposing this time period, OSHA "essentially defies the U.S. Circuit Court of Appeals for the D.C. Circuit's decision in the 2012 case [AKM LLC v. Secretary of Labor \(Volks II\)](#)."

Imagine that from this OSHA. More to come. 7/29/2015

#### **BWC Announces Safety Innovations Competition**

The Ohio Bureau of Workers' Compensation (BWC) announces the fifth annual [Safety Innovations Competition](#).

BWC invites all Ohio employers (including self-insuring) to share their innovations that have reduced safety, ergonomic and occupational health risks for their employees. Innovations can be related to equipment, machinery, processes, procedures, adaptation and new creations.

Submit an application to compete for cash awards. Winners will be announced at the 2016 Ohio Safety Congress & Expo (OSC16) on March 8 to 11, 2016, at the Greater Columbus Convention Center. There will be five finalists earning cash awards ranging from \$1,500 to \$6,000. Back by popular demand is the People's Choice award offering \$1,000 cash award.

Entries must be submitted by September 30, 2015. Learn [more here](#). 7/20/2015

#### **OMA's Dennis Davis Retires**



Denny Davis, Managing Director, OMA Workers' Compensation Services, has anchored the workers' compensation underwriting and analysis work of the OMA for more than 25 years. He retires today, Friday, July 17.

Many, many OMA members have worked with Denny through the years to understand their workers' compensation premium calculations and product choices.

Denny has been an OMA staff member since 2002 when OMA created its wholly-owned workers' compensation services third party administration operation.

Prior to the OMA, Denny worked on behalf of OMA's members briefly for Sheakley, and before that, Denny worked at R. E. Harrington, where he played a key role in establishing the state's first group experience rating groups and safety committee on behalf of OMA members.

With a lump in our throats, staff say congratulations and best wishes always, Denny! If you're so inclined, drop [Denny](#) a note today. 7/17/2015

## **Thinking of Buying an Existing Business? Know this!**

When a business owner purchases all or part of another existing business the purchaser (or successor) inherits the workers' compensation rate and liability of the business it has acquired.

That's because the Bureau of Workers' Compensation (BWC) combines the workers' compensation history (also known as the experience) of the acquired business with the purchaser's experience to determine the premium rate it charges to the purchaser.

This transfer of experience can have a major impact on the purchaser's current and future BWC premium rates. It can also jeopardize a purchaser's ability to participate in certain BWC employer programs.

To help business successors avoid unpleasant surprises, the BWC, at the request of the acquiring business, will provide limited information about the business being acquired. To facilitate these requests, use the [BWC Request for Business Transfer Information](#) (AC-4) form.

Visit BWC's [successorship liability page](#) for more information, or [email the BWC](#) or contact OMA's [Brian Jackson](#), or contact your local BWC customer service office. 7/16/2015

## **BWC's New Billing System is Now in Place**

The Bureau of Workers' Compensation (BWC) has made the transition to prospective billing of premium.

Don't forget to submit your payroll reports for January 1 to June 30, 2015 by August 31 to receive the transition credit equal to your premium for that time period.

The first invoices under the new billing system will be issued August 1 and due August 31. [Here's more](#) from the BWC. 7/3/2015

## **How Can OSHA's On-site Consultation Program Help?**

OSHA's On-site Consultation Program offers free and confidential occupational safety and health advice to small and medium-sized businesses, with priority given to high-hazard worksites.

The services are separate from enforcement and do not result in penalties or citations. Consultants work with employers to identify workplace hazards, provide

advice on compliance with OSHA standards, and assist in establishing injury and illness prevention programs.

The Ohio Bureau of Workers' Compensation administers the OSHA On-Site Consultation program in Ohio, through a grant from OSHA. Ohio employers who wish to address and improve safety and wellness in their workplaces can learn more by calling 1-800-OHIO-BWC (1-800-644-6292). [Here's more information](#) from OSHA. 7/2/2015

## **House Stymies PTSD**

Two weeks after the Senate amended posttraumatic stress disorder (PTSD) provisions into HB 64, the state budget, House members of the bill's conference committee [removed](#) them.

The proposed legislation would have allowed emergency first responders who are diagnosed with PTSD, under certain eligibility criteria, to receive compensation and medical benefits under Ohio's workers' compensation law for up to one year, regardless of whether there was an accompanying physical injury.

While this is a victory for the business community, [Senate Bill 5](#), the original vehicle for the PTSD language, is not dead in the Senate. 6/25/2015

## **BWC Pilot Program Targets Improved Quality and Coordination of Care**

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer this week [announced a program](#) to reduce delays in the treatment of Ohioans injured on the job. The Enhanced Care Program, developed by BWC in coordination with its partners in the business, labor and medical communities, will give physicians increased flexibility in the treatment of injured workers, returning them to their jobs more quickly and saving employers money in the process. The program will begin July 1, with a pilot in 16\* northeast Ohio counties.

The program will initially target reducing obstacles that either delay or fragment care to injured workers who sustain a knee injury at work and live in one of the 16 pilot counties. Northeast Ohio was selected due to the number of high-quality health-care providers and systems in the area.

Under the program, participating physicians will be expected to serve as the primary point of care for injured workers. They'll establish a comprehensive care plan and coordinate with specialists and primary-

care physicians to manage the claim holistically with a goal of facilitating a faster, safer return to work.

In exchange, physicians will be granted the flexibility to treat with assurance of payment instead of having to wait for approvals and adjudications, which cause delays. They will also be eligible for a 15% incentive payment over BWC's current fee schedule for certain services.

BWC will also provide employers with a 50% credit on eligible claims in the Enhanced Care Program.

The program is expected to run as a pilot between 6-12 months and if it proves successful in improving return-to-work outcomes and lowering claims costs, BWC will work with its partners to expand it.

OMA is one of the organizations that [promoted](#) the creation of the program and participated in its design. 6/22/2015

*\*Counties included in the program are Ashtabula, Carroll, Columbiana, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull, Tuscarawas and Wayne.*

### **Hot Weather Safety App & Advice**

OSHA worked with the National Weather Service to develop a [smartphone heat safety app](#) that allows users to calculate risk levels at a worksite and learn the protective measures needed to prevent heat illness. The app will let you know instantly if you are in a high risk zone due to heat and humidity and precautions that need to be taken to prevent heat-related illness.

Visit OSHA's [Heat Illness Prevention page](#) for more information. 6/17/2015

### **Update on Chemical Plant Safety**

A working group of federal agencies that was formed as a result of President Obama's Executive Order in August 2013 to prevent chemical plant disasters has issued a new [fact sheet](#) on progress made to improve the safety and security of U.S. chemical facilities.

More info is on [OSHA's website](#). 6/17/2015

### **BWC Moving to ICD 10 Medical Coding System in October**

The Bureau of Workers' Compensation (BWC) is moving off the 30-year old, outdated medical coding

system of ICD 9 to the new, more clinically helpful ICD 10 in October of this year.

The BWC has put together a [fact sheet](#) on the conversion.

[Learn more](#) about ICD 10. 6/17/2015

### **Senate Tinkers with PTSD Provision in Budget Bill**

This week the Senate amended the posttraumatic stress disorder (PTSD) provisions inserted last week into the state budget bill, HB 64.

The original provision would allow emergency first responders who are diagnosed with PTSD, under certain eligibility criteria, to receive compensation and medical benefits under Ohio's Workers' Compensation Law for up to one year, regardless of whether there was an accompanying physical injury.

The [amendment](#) inserted this week prohibits first responders from receiving both workers' compensation benefits for PTSD without an accompany physical condition simultaneously with public pension benefits. The pension system would be required to inform the BWC that the claimant is collecting retirement compensation, and that whoever is paying the workers' compensation benefits can then terminate those benefits.

The OMA and its business partners continue to oppose these provisions in the budget bill and submitted this [letter](#) in opposition. 6/18/2015

### **BWC Budget Finally Moves out of Senate Committee**

The Senate Transportation, Commerce and Labor Committee finally moved the Industrial Commission and Bureau of Workers' Compensation (BWC) budgets out of committee this week, but not before adding a peculiar [amendment](#) to the BWC budget.

Senator [Tom Patton](#) (R-Strongsville) inserted a provision requiring the BWC to study its operations and create a report detailing how BWC's aggregate appropriations over fiscal years 2016 and 2017 may be reduced by 5%. The report must be submitted to the Senate and the House within 90 days of the bill's effective date. The proposed BWC budget request already contains a [4% decrease](#) from the previous biennium.

The bills are not expected to be voted out of the Senate until later next week. 6/18/2015

## Last Minute Learning Opportunities on BWC's Billing Changes

Prospective billing starts July 1 for private employers! To help you prepare, BWC is hosting a series of [webinars](#) in June, July and August. A few [seminar dates](#) are still available as well.

And here are informational videos to learn more about the new billing system:

- [What is prospective billing?](#)
- [How to read your Notice of Estimated Annual Premium](#)
- [How to change your premium installment schedule](#)

You can also contact OMA's [Brian Jackson](#) for information. 6/17/2015

## Senate Adds PTSD Provision to State Budget Bill

The Senate added a controversial posttraumatic stress disorder (PTSD) provision to [HB 64](#), the state budget bill.

The [amendment](#) would make emergency first responders who are diagnosed with PTSD under certain circumstances eligible to receive compensation and medical benefits under Ohio's Workers' Compensation Law for up to one year, regardless of whether there was an accompanying physical injury.

The amendment stems from [SB 5](#) which is currently pending in the Senate and receiving heavy opposition from local government and business groups including the OMA. 6/10/2015

## House Committee Hears Testimony on a Trio of Workers' Compensation Bills

This week the House Insurance Committee heard sponsor testimony on an array of bills spearheaded by Rep. [Mike Henne](#) (R-Clayton).

Reps. Henne and [Wes Retherford](#) (R-Hamilton) presented [sponsor testimony](#) on [HB 205](#) which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market.

Rep. Henne also offered [sponsor testimony](#) on [HB 206](#) which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers.

Finally Reps. Henne and [Robert McColley](#) (R-Napoleon) testified ([Henne](#); [McColley](#)) in support of their bill, [HB 207](#), which would insulate employers from the cost of a claim during litigation when there is third party involvement. 6/10/2015

## Employers Recognized for Safe Workplace Outcomes

The Ohio Bureau of Workers' Compensation (BWC) recognized more than [1,000 Ohio employers](#) that combined for more than one billion hours worked without a lost time workplace injury.

Employers were recognized during annual awards ceremonies of more than 80 safety councils across the state that serve as partners in BWC's efforts to educate employers and workers about the importance of workplace safety.

The Special Award for Safety recognizes businesses that have gone at least 500,000 hours and at least six months without an injury resulting in a day or more away from work.

[Learn more about how to join a safety council.](#) 6/9/2015

## BWC Mails First Notice of Estimated Premium Under New Billing System

This is a big change for BWC state fund employers:

The Bureau of Workers' Compensation (BWC), transitioning to a new prospective billing system beginning in July 1, 2015, just mailed state fund employers' first [Notice of Estimated Annual Premium](#) and draws your attention to three key points:

1. Don't miss out on the 8-month premium transition credit!

To receive the transition credit, private employers must be in an active, reinstated, or debtor-in-possession status on July 1, 2015. You must report your January 1, 2015 - June 30, 2015, payroll by August 31, 2015 to receive the transition credit equal to your premium for that time period. Once you have reported your payroll, BWC will apply the transition credit to your account.

If you are in a lapsed status, correct it before the July 1 deadline!

2. How can you change your payment installment plan after the policy period has started?

BWC will start all private employers on a six-installment payment plan (bi-monthly). If you wish to change your installment plan, you have until July 15, 2015 to make that selection online or by calling (800) 644-6292. BWC is encouraging employers to stay on

the initial payment plan for the first year unless there is a significant reason to change.

3. Can your estimated payroll be adjusted if you know it is not accurate?

BWC has based your estimated premium on payroll amounts that you previously provided to it. If you believe the payroll amount is incorrect, or if you anticipate a change in operations that will affect your payroll for the policy period beginning July 1, 2015, notify BWC at (800) 644-6292.

If you have additional questions, check out all the [information and resources here](#) or send an [email to BWC's prospective billing mailbox](#).

Or, contact OMA's [Brian Jackson](#), who can be your guide to the new billing system. 6/2/2015

### **An Array of Workers' Comp Bills Introduced**

Last month Rep. [Mike Henne](#) (R-Clayton) introduced three separate workers' compensation bills, as follows.

[HB 205](#) would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators, to purchase workers' compensation coverage in the private market.

[HB 206](#) would require the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers.

And, [HB 207](#) would insulate employers from the cost of a claim during litigation when there is third party involvement.

The bills are expected to have a hearing prior to the summer recess. 6/4/2015

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on October 5, 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:** 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 7/1/15; various sections effective 90 days
- 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:** 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15; certain sections effective in 90 days
- 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:** 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205 SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.
- Current Status:** 6/9/2015 - House Insurance, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206 INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.
- Current Status:** 6/9/2015 - House Insurance, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207 WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.
- Current Status:** 10/6/2015 - House Insurance, (Third Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207>

- HB292**      **FIREFIGHTER COMPENSATION** (HAGAN C) 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:* 10/6/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>
- 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:* 4/22/2015 - Senate Finance, (Fifth 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>
- SB149**      **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.  
*Current Status:* 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>