



COMPARISON DOCUMENT

House Bill 27

132nd General Assembly

**Bureau of Workers' Compensation Budget
(FY 2018 – FY 2019)**

**As Introduced
In House Insurance
(LSC 132 0003-5)**

www.lsc.ohio.gov

May 10, 2017

Executive

In House Insurance

JCRCD4

Prohibition on retrospective rulemaking and other actions

No provision.

R.C. 1.481

Prohibits a state agency from rulemaking, or from taking any other quasi-legislative or quasi-judicial action, that has a substantive or procedural retrospective effect unless the General Assembly expressly has authorized rulemaking or other action that has such an effect.

Fiscal effect: Uncertain.

Executive

In House Insurance

BWCCD25 **Firefighter cancer presumptions**

No provision.

R.C. 742.38, 4123.68; Section 707.10

Adds the following to the list of situations under which the presumption that a firefighter's cancer was incurred while performing official firefighter duties may be rebutted: Evidence that the firefighter failed to use or improperly used protective equipment while performing official duties, unless the firefighter was instructed to do so by the firefighter's employer or supervisor or the supervisor or employer failed to make the equipment available to the firefighter.

No provision.

Specifies that the presumption does not apply if it has been more than 15 years (instead of 20 years as under current law) since the firefighter was last assigned to hazardous duty as a firefighter.

Fiscal effect: This could potentially reduce the number of these types of firefighter claims approved by the Ohio Police and Fire Pension Fund or BWC.

BWCCD26 **Claims filed by illegal and unauthorized aliens**

No provision.

R.C. 2307.82, 2743.02, 2744.02, 4123.01, 4123.511, 4123.513, Section 741.40

Prohibits illegal and unauthorized aliens from receiving compensation and certain benefits and prohibits an employer from electing to cover those aliens.

No provision.

Requires a claimant to submit an attestation certifying that the claimant or deceased employee who is the subject of

Executive

In House Insurance

No provision.

the claim was an eligible "employee" under Workers' Compensation Law.

Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the claimant proves, by clear and convincing evidence, that the employer employed the individual knowing that the individual was not authorized to work under federal law.

No provision.

Maintains employer liability for intentional torts.

No provision.

Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.

No provision.

States that, unless shows that a claimant can prove by clear and convincing evidence that an employer employed an individual knowing that the individual was not authorized to work under federal law, no court has jurisdiction over a claim for damages suffered by an illegal or unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal or unauthorized alien in the course of employment caused by the employer's wrongful act or omission of neglect.

No provision.

Does not allow an employer to assert the fellow servant rule, assumption of risk, or contributory negligence to

Executive

In House Insurance

No provision.

defend against a claim for damages permitted under this provision.

Creates a rebuttable presumption that an employer did not knowingly hire an illegal or unauthorized alien if the employer complied with federal law.

Fiscal effect: Potential reduction in claims received and paid by BWC from the State Insurance Fund.

BWCCD28

Employee medical examinations

No provision.

R.C. 4113.21

Prohibits a public employer from requiring an employee, prospective employee, or applicant for employment to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment.

Fiscal effect: Uncertain.

BWCCD17

Provider participation standards

No provision.

R.C. 4121.44

Requires the Administrator of Workers' Compensation, in consultation with the Health Care Quality Assurance Advisory committee, to develop and periodically revise standards for maintaining adequate numbers of certified health care providers for services used by workers' compensation claimants.

No provision.

Specifies that the standards ensure that: (1) claimants have access to a choice of providers for similar services within the geographic area that the claimant resides, and

Executive

In House Insurance

(2) providers within a geographic area are actively accepting new claimants as required in rules adopted by the Administrator.

Fiscal effect: Possible increase in administrative costs to develop and revise the required standards.

BWCCD21

Actuarial reporting

R.C. 4121.125

No provision.

Revises the current law parameters concerning the contents of the required annual actuarial report in the following ways: (1) Requires the report to consist of the estimates of unpaid liabilities of the State Insurance Fund and other funds created in the Workers' Compensation Law, rather than a valuation of assets, liabilities, and funding requirements of those funds.

No provision.

(2) Requires an actuary or a person supervised by an actuary to include in the actuarial analysis, produced every five years under continuing law, an update of claim level reserves in the unpaid liabilities report. Requires the analysis to consider certain factors that affect employer experience ratings, including the mortality experienced used in estimating future costs of survivor benefits.

No provision.

(3) Eliminates the actuarial assumption summaries that currently must be included in the five-year report.

No provision.

(4) Eliminates the BWC Board of Directors' authority to contract with an outside actuary or other professional person to compare Ohio's workers' compensation system to other state and private workers' compensation systems.

Executive

In House Insurance

No provision.

Eliminates the following information from actuarial reports required under current law on proposed workers' compensation legislation: (1) a description of the participant group or groups included in the report; (2) the percent of premium increase that would be required to amortize the increase in actuarial accrued liabilities as a level percent of employer premiums over a period not to exceed 30 years; and (3) a statement of whether employer premiums paid to BWC after enactment of legislation are expected to satisfy funding objectives established by the Board.

Fiscal effect: Possible reduction in costs to produce these reports and analyses.

BWCCD1 Premium rate revisions

R.C. 4123.29

Requires the BWC Administrator, when revising premium rates for employers that are part of a group rating plan, to provide an explanation of the rate revision to the group administrator instead of a copy of the invoice as under current law.

Fiscal effect: Minimal additional administrative expense paid from the Workers' Compensation Fund (Fund 7023) for sending explanations of rate revisions, which are longer than invoices.

R.C. 4123.29

Same as the Executive.

Fiscal effect: Same as the Executive.

Executive

In House Insurance

BWCCD12 Waiver of required medical examinations for certain temporary total disability (TTD) claims**R.C. 4123.53**

Authorizes the BWC Administrator, for good cause, to waive the requirement that an employee receiving temporary total disability (TTD) compensation undergo a medical examination.

Requires the Administrator to refer an employee receiving TTD compensation for a medical examination if the employee's employer objects to the waiver.

Fiscal effect: May reduce the number of individuals required to undergo medical examinations that would be paid for from the State Insurance Fund.

R.C. 4123.53

Same as the Executive.

Same as the Executive.

Fiscal effect: Same as the Executive.

BWCCD2 BWC drug testing - rebuttable presumption**R.C. 4123.54**

Revises the list of the controlled substances and the necessary levels of some of the controlled substances specified in continuing law to be those used by the federal Department of Transportation drug testing program under the continuing law rebuttable presumption that an employee's intoxication with certain controlled substances at specified levels following an injury was the proximate cause of injury, thus making the employee ineligible to receive compensation or benefits under the Workers' Compensation Law under certain circumstances.

R.C. 4123.54

Same as the Executive, but restores current law with respect to testing for barbiturates, benzodiazepines, and methadone for purposes of continuing law's rebuttable presumption regarding drug testing.

Executive

In House Insurance

Fiscal effect: Potential reduction in benefits paid from the State Insurance Fund if more claims are rejected because of the rebuttable presumption thresholds for these substances are reached under the U.S. Department of Transportation drug testing rule.

Fiscal effect: Same as the Executive.

BWCCD13 Prohibition against payment of compensation or benefits to incarcerated dependents
R.C. 4123.54, Section 741.20

Prohibits, for all claims on or after the effective date of this provision, compensation or benefits from being paid to a deceased employee's dependent while the dependent is incarcerated as a result of a conviction of any state or federal criminal law.

Fiscal effect: Potentially reduces some payments made to dependents from the State Insurance Fund; however, the overall magnitude of this reduction would appear to be rather minimal.

R.C. 4123.54, Section 741.20

Same as the Executive.

Fiscal effect: Same as the Executive.

Executive

In House Insurance

BWCCD4 Minimum compensation for temporary total disability claims**R.C. 4123.56**

Requires, if an employee's average or full weekly wage has not been determined at the time temporary total disability (TTD) compensation becomes payable, that an employee receive the minimum calculable compensation for TTD under the Workers' Compensation Law. Requires TTD compensation based on such a determination to be adjusted - overpayments to be recovered and underpayments to be paid - on determination of an employee's average or full weekly wage.

Fiscal effect: No net fiscal effect since overpayments are to be recouped and underpayments to be remitted. TTD payments constituted 13.7% of all State Insurance Fund benefit payments in FY 2016.

R.C. 4123.56

Same as the Executive, but makes the following two changes: (1) requires the initial TTD compensation to be set at 33 1/3% of the statewide average weekly wage rather than the minimum amount calculable under the Workers' Compensation Law, and (2) uses only a claimant's full weekly wage information rather than full or average weekly wage information to determine whether the initial TTD compensation amount set at 33 1/3% of the statewide average weekly wage results in any necessary subsequent payment adjustments.

Fiscal effect: Same as the Executive.

BWCCD5 Dismissal of permanent partial disability applications without required medical examination**R.C. 4123.57, Section 741.10**

Requires the dismissal of an application for a determination of an employee's permanent partial disability (PPD) if the employee fails to schedule a medical examination with the BWC Medical Section or fails to attend a scheduled medical examination. Allows an employee to refile a dismissed application, subject to the continuing jurisdiction of the Industrial Commission.

R.C. 4123.57, Sections 741.10 and 741.30

Same as the Executive, but also requires the Administrator to adopt rules addressing the way an employee is to be notified of a possible dismissal and how the employee may refile an application for PPD.

Executive

Applies this dismissal requirement to all pending claims, as well as those filed on or after the provision's effective date.

Allows all applications pending on the provision's effective date that are dismissed to be refiled within two years after the dismissal.

No provision.

Fiscal effect: Potential reduction in benefits paid from the State Insurance Fund if claimants fail to attend the required medical examinations or do not appeal the dismissal of their permanent partial disability claims. Permanent partial disability claims account for 5.3% of all benefits paid from the State Insurance Fund in FY 2016.

In House Insurance

Modifies the Executive provision to apply the proposed dismissal requirement to applications for PPD determinations filed on or after the provision's effective date.

Replaces the Executive provision with one that allows an employee to refile a dismissed claim subject to the continuing jurisdiction of the Industrial Commission.

Authorizes the Administrator, after providing notice to an employee, to dismiss an application for a determination of PPD that has been suspended for refusing to submit to or obstructing a medical or vocational examination under continuing law on the provision's effective date if the employee does not schedule a medical examination with BWC's Medical Section within 30 days after receiving the notice or fails to appear for a scheduled examination.

Fiscal effect: Same as the Executive.

Executive

In House Insurance

BWCCD6 Reimbursement of secondary payers for medical services provided
R.C. 4123.66

Allows the BWC Administrator, based on an assessment of an employee's claim file, authority to pay reimbursements of up to \$500 to the Centers of Medicare and Medicaid Services, the Ohio Department of Medicaid, or a medical assistance provider to whom the Department has assigned a right of recovery.

Requires the Administrator, before making a payment, to make a reasonable determination that the payment is for reimbursement of benefits for an injury or occupational disease and that the injury or occupational disease is compensable, or is likely to be compensable, under the Workers' Compensation Law.

Requires these payments to be made from the surplus fund account (i.e. not charged against an employer policy) and allows the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules to implement these provisions.

Fiscal effect: May potentially expedite payments to Medicaid, the Ohio Department of Medicaid, or medical service providers that in all likelihood would eventually be paid by BWC under current law. Therefore, there appears to be no net fiscal effect. As a result of the federal Medicaid Secondary Payer Program passed in 2013, stricter scrutiny of medical claim billing for secondary payer status is required. This provision would allow BWC to process these bills more quickly and make the necessary payments and determine secondary payer status.

R.C. 4123.66

Same as the Executive.

Same as the Executive.

Same as the Executive.

Fiscal effect: Same as the Executive.

Executive

In House Insurance

BWCCD22 Firefighter cancer presumption and eligibility for wage loss benefits

No provision.

R.C. 4123.68, Section 741.50

Adds working wage loss (WWL) to the types of compensation or benefits a firefighter may receive under the presumption in the Workers' Compensation Law that a firefighter who is disabled due to cancer incurred the cancer while performing official duties as a firefighter.

No provision.

Specifies that the addition of possible WWL benefits applies to any claim pending or filed on or after the effective date of the provision.

Fiscal effect: Potential increase in benefits paid from the State Insurance Fund. WWL benefits apply when an injured worker returns to work in some capacity other than his or her former job, including with the same employer or with a new employer, at less pay or fewer hours as a result of the injured worker's physical restrictions.

BWCCD3 Occupational disease reports to be transmitted by physicians**R.C. 4123.71, 4123.72 (repealed)**

Repeals the prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to the Bureau of Workers' Compensation and the penalty for violating the prohibition.

Fiscal effect: None apparent.

R.C. 4123.71, 4123.72 (repealed)

Same as the Executive.

Fiscal effect: Same as the Executive.

Executive

In House Insurance

BWCCD18 Statute of limitations for injury or death claims

No provision.

R.C. 4123.84

Decreases the amount of time a person has to initiate a workers' compensation claim based on an employee's injury or death to one year after the employee sustains the injury or dies, from two years under current law.

Fiscal effect: Potential decrease in benefit payments made from the State Insurance Fund.

BWCCD15 Handicap Reimbursement Program

No provision.

R.C. 4123.343

Requires the Administrator of Workers' Compensation to adopt a rule allowing an employer who settles a claim to participate in the Handicap Reimbursement Program, which is prohibited under current law.

Fiscal effect: Potentially allows an increase in participation in the Handicap Reimbursement Program. Participating in the program allows an employer to have a percentage of costs associated with a workers' compensation claim to be charged to, or refunded from, the Statutory Surplus Fund.

BWCCD16 Attorney's fees

No provision.

R.C. 4123.512

Increases the amount of attorney's fees a workers' compensation claimant can recover in an appeal to a court of common pleas from \$4,200, as under current law, to \$5,000.

Executive

In House Insurance

Fiscal effect: Potential minimal increase in attorney's fees paid by BWC from the State Insurance Fund.

BWCCD19 Appeal of Industrial Commission order

No provision.

R.C. 4123.512

Extends the time to appeal an Industrial Commission order from 60 days to 150 days, provided the claimant or employer has filed with the Administrator of Workers' Compensation a notice of intent to settle the claim.

No provision.

Requires the notice of intent to settle the claim to be filed within 30 days after the date of the Industrial Commission order for the extension to apply.

No provision.

Sets the time period in which a party who objects to the notice of intent to settle may file an objection to 14 days after receipt of the notice of intent to settle.

Fiscal effect: Uncertain.

BWCCD20 Professional employer organization lease termination

No provision.

R.C. 4125.07

Extends from 14 days to 30 days the amount of time in which the following must occur: (1) that a Professional Employer Organization (PEO) submit a lease termination notice form to the Administrator of Workers' Compensation and to each client employer of the PEO; and (2) that a self-insuring PEO submit to the Administrator information needed to develop an experience modification factor for employers subject to a PEO lease termination.

Fiscal effect: Uncertain.

Executive

In House Insurance

BWCCD14 Public Employment Risk Reduction Program

R.C. 4167.01, 4167.02, and 4167.10; 4167.19
(repealed)

Eliminates the current ability of a public employer to apply to the BWC Administrator for an exemption from the Public Employment Risk Reduction Program (PERRP).

Includes in the definition of a public employee individuals employed as firefighters, emergency medical technicians, and certain corrections officers, thereby covering these employees in the program.

Requires the BWC Administrator to develop rules concerning standards and procedures for an effective safety partnership agreement program that promotes voluntary compliance.

Specifies that the BWC Administrator or the Administrator's designee may "make scheduled inspections" rather than "make inspections" as under current law, and allows those inspections to be conducted in accordance with rules, in addition to pursuant to a complaint or due to a public employee exercising the employee's right to refuse to work due to unsafe conditions under current law.

Eliminates a current law requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation.

R.C. 4167.01, 4167.02, and 4167.10; 4167.19
(repealed)

Same as the Executive.

Same as the Executive.

Same as the Executive.

Same as the Executive.

Same as the Executive.

Executive

In House Insurance

Fiscal effect: This provision does not specifically require BWC to take on any additional duties; however, expanding the number of employment positions that fall under PERRP could increase costs to BWC, specifically the Safety and Hygiene Division. These costs would be paid from the Safety and Hygiene Fund (Fund 8260).

Fiscal effect: Same as the Executive.

BWCCD7

Workers' Compensation Fraud Unit

Section: 201.10

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

Section: 201.10

Same as the Executive.

BWCCD8

Safety and Hygiene

Section: 201.10

Requires the Treasurer of State to remit \$22,000,000 in cash in each fiscal year from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260), equivalent to the amount appropriated in each fiscal year under appropriation item 855609, Safety and Hygiene Operating, to cover the Division's operating expenses.

Section: 201.10

Same as the Executive.

Executive

In House Insurance

BWCCD9 OSHA On-site Consultation Program**Section: 201.10**

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

Section: 201.10

Same as the Executive.

BWCCD10 Vocational Rehabilitation**Section: 201.10**

Permits the Bureau of Workers' Compensation and the Opportunities for Ohioans with Disabilities Agency to enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients, and permits the Bureau to provide funds from the State Insurance Fund to fund vocational rehabilitation services and staff under any such agreement.

Section: 201.10

Same as the Executive.

BWCCD11 Deputy Inspector General for BWC and OIC**Section: 201.20**

Requires the Director of Budget and Management on July 1 and January 1 of each fiscal year, or as soon as possible thereafter, to transfer \$212,500 in cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (5FT0).

Section: 201.20

Same as the Executive.

Executive

In House Insurance

Requires the Inspector General to seek Controlling Board approval for additional transfers of cash and to increase appropriations under appropriation item 965604, Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission.

Same as the Executive.