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## Bill Analysis

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**Primary Sponsor:** Rep. Cera

Paul Luzzi, Attorney

### SUMMARY

#### Occupational Pneumoconiosis Board creation

- Creates the Occupational Pneumoconiosis Board to determine all medical questions relating to workers' compensation claims for compensation and benefits for occupational pneumoconiosis.
- Requires the Board to consist of five physicians who are board-certified internists or board-certified pulmonary specialists appointed by the Administrator of Workers' Compensation.

#### Claim process

- Specifies that the bill applies to occupational pneumoconiosis claims arising on or after the bill's effective date.
- Requires an occupational pneumoconiosis claim to be filed within three years, extended from two years as under current law, after the later of two specified events and, in the case of death, two years after the date of death (similar to current law).
- Requires an employee or employee's dependent to submit a written certification by a board-certified pulmonary specialist stating that the employee is or was suffering from pneumoconiosis or pulmonary massive fibrosis and the occupational pneumoconiosis has or had resulted in the employee's pulmonary impairment of at least 15%.
- Requires the Administrator or a self-insuring employer, within 90 days after receiving the claimant's application and written certification, to determine all nonmedical findings, including whether the employee was exposed to occupational pneumoconiosis over specified time periods.
- Requires the Administrator or a self-insuring employer to provide interested parties written notice of the determination and makes that determination final unless the claimant or employer objects to the determination within 60 days after receiving it.

## Appeals

- Permits a claimant who objects to the Administrator’s determination, to appeal the claim in accordance with continuing law’s procedures governing workers’ compensation appeals.
- Requires, if an employer objects to a determination, that the Administrator refer the claim to the Board.

## Board procedures

- Establishes procedures for claimants and employers appearing before the Board, producing evidence, and submitting to examination.
- Permits the Board to consider x-ray evidence in determining the presence of occupational pneumoconiosis, but prohibits the Board from giving x-ray evidence greater weight than other evidence demonstrating occupational pneumoconiosis.
- Requires the Board, after completing its investigation, to issue to the Administrator or self-insuring employer a written report on its determination of every medical question in controversy and requires the determination to include specified findings.
- Creates a presumption, which is not conclusive, that the employee is or was suffering from occupational pneumoconiosis if the Board makes certain findings.
- Requires any party contesting the Board’s determination to file an appeal with the Industrial Commission in accordance with continuing law’s procedures for workers’ compensation appeals.
- Generally prohibits a claimant who receives a Board determination that the claimant has no evidence of occupational pneumoconiosis from filing a new claim or pursuing an existing but unruled on claim for occupational pneumoconiosis for three years.

## Compensation and benefits

- Provides for an employee or claimant filing an occupational pneumoconiosis claim to receive medical and death benefits under continuing law’s provisions for those benefits under the Workers’ Compensation Law.
- Provides for temporary total disability, permanent partial disability, or permanent total disability compensation for an occupational pneumoconiosis claim that are generally greater than those provided under current law for similar claims.
- Specifies that the percentage of permanent disability is determined by the degree of an employee’s whole body medical impairment, as determined by the Board.

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## **DETAILED ANALYSIS**

### **Workers’ compensation claims for occupational pneumoconiosis**

Ohio’s workers’ compensation system compensates an employee or an employee’s dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the worker’s employment.<sup>1</sup>

The bill establishes separate provisions for workers’ compensation claims for occupational pneumoconiosis and creates a separate board, the Occupational Pneumoconiosis Board, for hearing medical disputes in occupational pneumoconiosis claims. The bill applies to claims for disability or death due to occupational pneumoconiosis arising on or after its effective date.<sup>2</sup>

The bill defines “occupational pneumoconiosis” as a disease of the lungs caused by inhaling minute dust particles over a period of time due to causes and conditions arising out of and in the course of employment. It includes all of the following diseases: (1) silicosis, (2) anthracosilicosis, (3) coal worker’s pneumoconiosis (commonly known as black lung or

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<sup>1</sup> Ohio Constitution, Article II, Section 35 and R.C. Chapters 4121, 4123, 4127, and 4131.

<sup>2</sup> Section 3.

miner's asthma), (4) silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), (5) coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, (6) asbestosis, (7) siderosis, (8) anthrax, and (9) any other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis not specified above.<sup>3</sup>

The Workers' Compensation Law contains a schedule of occupational diseases that are compensable under the Law. That schedule, however, is not exclusive; any disease that satisfies the definition of occupational disease is compensable. Current law's schedule of occupational diseases includes (1) anthrax, (2) berylliosis, (3) silicosis, (4) coal miners' pneumoconiosis, and (5) asbestosis. Under the bill, a disease that is included in the bill's definition of occupational pneumoconiosis is subject to the bill's requirements and procedures for occupational pneumoconiosis claims.<sup>4</sup>

## **Occupational Pneumoconiosis Board**

The bill creates the Occupational Pneumoconiosis Board within the Bureau of Workers' Compensation (BWC) to determine, under the direction and supervision of the Administrator of Workers' Compensation, all medical questions relating to workers' compensation claims for occupational pneumoconiosis. The Board consists of five physicians who are board-certified internists or board-certified pulmonary specialists appointed by the Administrator.

Initial members must be appointed to the Board within 90 days after the bill's effective date. The bill staggers members' initial terms from one to three years, and thereafter, terms of office are six years and end on the same day of the same month as the previous term.

Members hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed. The bill includes the standard vacancy provisions. The Administrator annually must select from among the members a chairperson. A majority of board members constitutes a quorum. The Board is not subject to sunset review (existing law that sets expiration dates and renewal procedures for certain agencies, including boards).

Members are compensated for serving on the Board and are reimbursed for travel and necessary expenses. The Administrator must establish the members' compensation under current law's provisions governing employment and compensation of BWC and Industrial Commission employees.<sup>5</sup>

## **Claims process**

### **Statute of limitations**

The bill establishes a separate statute of limitations for filing an occupational pneumoconiosis claim with BWC or a self-insuring employer. For a disability claim, an application must be filed within three years after the later of (1) the last day of the last

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<sup>3</sup> R.C. 4133.01(B).

<sup>4</sup> R.C. 4123.68.

<sup>5</sup> R.C. 4121.121 and 4133.07.

continuous period of 60 days or more during which the employee was exposed to occupational pneumoconiosis or (2) a physician informs the employee of a diagnosed impairment due to occupational pneumoconiosis. Similar to current law, in the case of death, the employee's dependents must file a claim within two years after the employee's death. Under current law, an employee or the employee's dependents generally has two years from the date of disability or death due to the occupational disease to file a workers' compensation claim.<sup>6</sup>

## **Application**

The bill requires an employee or employee's dependent filing an occupational pneumoconiosis claim to submit information to the Administrator or self-insuring employer that is not required to be submitted under current law for similar claims. Under the bill, an employee or employee's dependent must submit a written certification by a board-certified pulmonary specialist stating both of the following:

1. That the employee is or was suffering from complicated pneumoconiosis or pulmonary massive fibrosis;
2. That the occupational pneumoconiosis has or had resulted in the employee's pulmonary impairment of at least 15% (as measured by the Board's standards or methods), as confirmed by valid and reproducible ventilatory testing.

The pulmonary specialist must disclose all evidence on which the written certification is based, including all radiographic, pathologic, or other diagnostic test results the pulmonary specialist reviewed.<sup>7</sup>

## **Nonmedical findings**

As under current law, BWC must notify an employee and the employee's employer of an occupational pneumoconiosis claim within seven days after receiving the claim and inform them of the facts identified in the claim.<sup>8</sup>

The bill requires the Administrator or a self-insuring employer to determine all nonmedical findings regarding each occupational pneumoconiosis claim within 90 days after receiving the claimant's application and the pulmonary specialist's written certification. The Administrator or self-insuring employer must provide each interested party written notice of the determination.<sup>9</sup>

The bill specifies nonmedical findings that must be included in each claim that are not required under current law for similar claims. For a claim filed within three years after the last day of the claimant's exposure to the hazards of occupational pneumoconiosis, the Administrator or self-insuring employer must determine all of the following:

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<sup>6</sup> R.C. 4123.85 and 4133.03.

<sup>7</sup> R.C. 4133.04.

<sup>8</sup> R.C. 4123.511(A) and 4133.02.

<sup>9</sup> R.C. 4133.06(A).

1. Whether the employee was exposed to those hazards for a continuous period of not less than 60 days in the course of the employee's employment within three years before filing the claim;
2. Whether the employee was exposed to the hazard in Ohio over a continuous period of at least two years during the ten years immediately preceding the date of last exposure;
3. Whether the employee was exposed to the hazard over a period of at least ten years during the 15 years immediately preceding the date of last exposure.

In the case of a claim filed within three years after the date of the claimant's diagnosis, the Administrator or self-insuring employer must determine both (2) and (3), above.

For a claim filed by a deceased employee's dependent, the Administrator or self-insuring employer must determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of at least 60 days in the course of the employee's employment within ten years before filing the claim, as well as items (2) and (3), above.

The Administrator or self-insuring employer also must determine other nonmedical facts that, in the Administrator's or employer's opinion, are pertinent to a decision on the claim's validity.

The Administrator may allocate and divide any charges resulting from an occupational pneumoconiosis claim among the employers for whom the employee was employed for up to 60 days during the three-year period immediately preceding the date of the employee's last exposure to occupational pneumoconiosis. The Administrator must base the allocation on the employee's time and degree of exposure with each employer.<sup>10</sup>

The Administrator's or self-insuring employer's determination is final unless the claimant or employer objects to the determination within 60 days after receiving it. If the employer objects to the determination, the Administrator must refer the claim to the Board as if the objection had not been filed. If a claimant objects to the Administrator's determination, the claimant may appeal the claim in accordance with current law's procedures for workers' compensation appeals.<sup>11</sup>

## **Examination**

Before awarding compensation for disability or death due to berylliosis, silicosis, asbestosis, or coal miners' pneumoconiosis, current law requires the Administrator to refer the claim to a qualified medical specialist for an examination and to determine medical questions related to the claim, including diagnosis, the extent and nature of disability, and cause of death. The Administrator must schedule the claimant for an examination and BWC then has 28 days

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<sup>10</sup> R.C. 4133.05.

<sup>11</sup> R.C. 4121.34, 4123.511, 4123.512, and 4133.06(B) and (C).

after receiving the report of the claimant's medical examination to determine whether the claim is compensable.<sup>12</sup>

Instead, the bill requires the Board to determine all medical questions concerning an occupational pneumoconiosis claim. The bill establishes procedures (some of which are similar to current law) for claimants and employers appearing before the Board, producing evidence, and submitting to examination.

On referral to the Board, the Board must notify the claimant and Administrator or self-insuring employer, as applicable, to appear before the Board. The Board may require a claimant to appear for an examination before the Board. Similar to current law, a living claimant must submit to any examination, including clinical and x-ray examinations, the Board requires (rather than the Administrator requires, as under current law).<sup>13</sup> If a physician files an affidavit with the Board that the claimant is physically unable to appear at the specified time and place, the Board must, on notice to the proper parties, change the examination time and place or may appoint a qualified respiratory disease specialist to examine the claimant on the Board's behalf. If a claimant refuses to submit to an examination, the claim is suspended during the period of refusal in accordance with current law.<sup>14</sup>

The claimant and employer must submit all medical reports and x-ray examinations that are in the claimant's or employer's possession and that show the employee's condition. In determining the presence of occupational pneumoconiosis, the Board may consider x-ray evidence, but cannot give that evidence greater weight than any other type of evidence demonstrating occupational pneumoconiosis. The bill eliminates current provisions specifying the types of evidence that must be used to demonstrate the presence of silicosis, asbestosis, or coal miners' pneumoconiosis, including x-ray examinations, biopsies, autopsies, and other objective medical or clinical tests.<sup>15</sup>

Similar to current law, the party who referred the claimant to the Board must reimburse a claimant who must submit to a Board examination for loss of wages, reasonable travel expenses, and other expenses connected to the examination. Currently, a claimant required by the Administrator to submit to a medical examination or vocational evaluation outside of the claimant's residence is reimbursed by BWC for necessary and actual expenses for attending the examination or evaluation.<sup>16</sup>

Similar to current law, if the employee is deceased, the Board's notice (under current law, the Industrial Commission's notice) may require the claimant to produce the necessary consents and permits for an autopsy to be performed. The bill requires the Board to order an autopsy if it determines that an autopsy is necessary to accurately and scientifically determine

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<sup>12</sup> R.C. 4123.511(B) and 4123.68.

<sup>13</sup> R.C. 4123.53, 4123.68, 4133.08, and 4133.10.

<sup>14</sup> R.C. 4123.53 and 4133.08(A) and (D).

<sup>15</sup> R.C. 4123.68 and 4133.08(B) and (C).

<sup>16</sup> R.C. 4123.53 and 4133.10.

the employee's cause of death. The Board must designate a licensed physician, board-certified pathologist, or any other specialist the Board determines necessary to conduct the autopsy. The findings of the autopsy must be certified in writing to the Board. As under current law, a claimant who fails to produce the necessary consents and permits so that an autopsy may be performed forfeits the claimant's benefit rights.<sup>17</sup>

The bill makes the findings of an autopsy for an occupational pneumoconiosis claim public records under Ohio's Public Records Law.<sup>18</sup> Under current law, a claimant's file is not a public record under the Public Records Law. Generally, no person can access a claimant's file without permission from BWC, a member of the Industrial Commission, the claimant, or the employer involved.<sup>19</sup>

The bill specifies that the claimant and the claimant's employer are entitled to be present at all Board examinations and to be represented by attorneys and physicians.<sup>20</sup>

### **Board determination**

The bill requires the Board, as soon as practicable after completing its investigation of an occupational pneumoconiosis claim, to (1) issue to the Administrator or self-insuring employer a written report on its determination of every medical question in controversy and (2) send one copy of the report to the claimant and the claimant's employer, if the employer is not a self-insuring employer. The Board must return to and file with the Administrator or self-insuring employer all evidence, medical reports, and x-ray examinations produced by or on the claimant's or employer's behalf.

The Board must include certain findings in its determination that are not specified in current law. The Board must include all of the following in its determination:

1. Whether the employee contracted occupational pneumoconiosis and if so, the percentage of permanent disability resulting from the occupational pneumoconiosis;
2. Whether the exposure in the employment caused the employee's occupational pneumoconiosis or aggravated an existing occupational pneumoconiosis or other occupational disease;
3. What, if any, physician appeared before the Board on the claimant's or employer's behalf and what, if any, evidence the physician produced.<sup>21</sup>

### **Presumption of occupational pneumoconiosis**

The bill creates a presumption, which is not conclusive, that the employee is suffering or if the employee is deceased, was suffering at the time of death, from occupational

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<sup>17</sup> R.C. 4123.68 and 4133.08(B) and (D).

<sup>18</sup> R.C. 4133.08(B).

<sup>19</sup> R.C. 4123.88, not in the bill.

<sup>20</sup> R.C. 4133.08(E).

<sup>21</sup> R.C. 4133.09(A) through (C).

pneumoconiosis that arose out of and in the course of the employee's employment if both of the following are shown:

1. The employee has or had been exposed to the hazard of inhaling minute dust particles in the course of and arising from employment for ten years during the 15 years immediately preceding the employee's last exposure to the hazard;
2. The employee has or had sustained a chronic respiratory disability.<sup>22</sup>

Current law does not contain this presumption with respect to similar claims.

## **Appeals**

### **Industrial Commission**

The bill requires a party that contests the Board's determination to file an appeal with the Industrial Commission in accordance with continuing law's procedures for workers' compensation appeals.

Under continuing law, appeals filed with the Industrial Commission generally go through the following steps before 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>23</sup>

### **Courts**

As with other workers' compensation claims, the bill allows occupational pneumoconiosis claims to be adjudicated in a court through appealing the decision of the Industrial Commission or requesting a writ of mandamus.

A claimant or employer may appeal an Industrial Commission decision, but the appeal is limited to whether the claimant has a right to receive compensation and benefits. Neither party can appeal an Industrial Commission decision concerning the extent of disability; a party must obtain a writ of mandamus for that determination. Continuing law includes procedures for these appeals.<sup>24</sup>

### **Debarment**

Under the bill, a claimant who receives a final determination from the Board that the employee who is the subject of the claim has no evidence of occupational pneumoconiosis is generally barred from taking certain claim-related actions for a three-year period. The claimant is barred for three years from filing a new occupational pneumoconiosis claim, pursuing a previously filed but unruled on claim, or requesting a modification of any prior ruling that the

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<sup>22</sup> R.C. 4133.09(D).

<sup>23</sup> R.C. 4121.34, 4123.511, 4133.06(C), and 4133.09(E).

<sup>24</sup> R.C. 4123.512.

claimant was not suffering from occupational pneumoconiosis. The three-year prohibition does not apply if the claimant demonstrates that the employee's occupational pneumoconiosis has deteriorated. The bill does not specify standards for determining whether that is the case.

The three-year period described above begins on the earlier of the date of the Board's decision or the date the employee's employment with the employer who employed the employee on the employee's last date of exposure in the denied claim terminated. The employment is considered terminated if the employee has not worked for that employer for more than 90 days.

Under the bill, the Administrator or a self-insuring employer must consolidate any previously filed but unruled on claim with the claim in which the Board's decision is made and must be denied together with the decided claim. The Administrator or self-insuring employer is prohibited from applying the limitations to a claim if doing so would later cause a claimant's claim to be forever barred for failing to file within the applicable time limitation.<sup>25</sup>

## **Compensation and benefits**

### **Medical benefits**

The bill applies continuing law's provisions governing medical benefits to occupational pneumoconiosis claims. Under continuing law, an employee who qualifies for benefits under the Workers' Compensation Law is entitled to receive medical, nurse, and hospital services and medicines as necessary to treat an injury or occupational disease. The Law allows for the Administrator to pay, from the State Insurance Fund, any amounts for medical, nurse, and hospital services and medicine that the Administrator deems proper.<sup>26</sup>

### **Compensation – generally**

Generally, the bill's compensation amounts for an occupational pneumoconiosis claim are greater than the compensation amounts for similar claims under current law. The Workers' Compensation Law provides three major forms of compensation: temporary total disability (TTD), permanent partial disability (PPD), and permanent total disability (PTD).

The bill specifies that payments of compensation for an occupational pneumoconiosis claim commence on the earlier of the following:

1. Fourteen days after the Administrator issues an order (similar to current law), unless the claim has been appealed (current law) or has been referred to the Occupational Pneumoconiosis Board;
2. Fourteen days after the Board makes its determination on every medical question in controversy;
3. The date on which the employer has waived appeal rights (similar to current law);

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<sup>25</sup> R.C. 4133.09(F).

<sup>26</sup> R.C. 4123.54, 4123.66, and 4133.11.

4. If no appeal has been filed, the expiration of the time to an appeal (as under current law);
5. The date on which an employer receives a DHO, SHO, or Commission order (as under current law).<sup>27</sup>

### Temporary total disability

Under continuing law, payments for TTD compensation are not available until a claimant has missed at least eight days of work.<sup>28</sup> Continuing law's eight-day waiting period appears to apply to TTD claims.<sup>29</sup>

The table below compares TTD compensation payments awarded under the bill and current law.

Topic	The bill (R.C. 4133.12)	Current law (R.C. 4123.56, not in the bill)
Benefit amount	Weekly benefit of 66 <sup>2</sup> / <sub>3</sub> % of the employee's average weekly wage (AWW), not to exceed 100% of the statewide average weekly wage (SAWW) (currently \$980), with a minimum of the lower of 33 <sup>1</sup> / <sub>3</sub> % of the SAWW (\$326.67) or an amount equal to the federal minimum wage (\$7.25 per hour) multiplied by 40 (\$290).	Weekly benefit of between 33 <sup>1</sup> / <sub>3</sub> % of SAWW (\$326.67) or the employee's AWW, whichever is lower, and 66 <sup>2</sup> / <sub>3</sub> % of employee's AWW, not to exceed the SAWW (\$980), except that for the first 12 weeks, TTD equals 72% of the employee's full weekly wage, up to a statutory maximum. <sup>30</sup>
Length	Payable up to 104 weeks.	Payable up to 200 weeks or until specified events occur, whichever occurs first.

### Permanent partial disability

Continuing law provides that payments for PPD compensation are available 26 weeks after the last TTD payment was made or, if no TTD was paid, 26 weeks after the occupational disease was contracted. It appears that this provision applies to PPD compensation payments for occupational pneumoconiosis claims under the bill.<sup>31</sup>

The bill establishes different procedures than those under current law for determining the percentage of an employee's permanent disability for occupational pneumoconiosis claims.

<sup>27</sup> R.C. 4123.511(H).

<sup>28</sup> R.C. 4123.55 and 4123.56, not in the bill.

<sup>29</sup> R.C. 4133.02.

<sup>30</sup> Ohio Bureau of Workers' Compensation, *Compensation Rates*, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf>.

<sup>31</sup> R.C. 4123.57 and 4133.02.

Under the bill, the Board must determine the degree of the employee's PPD, which is determined by the degree of whole body medical impairment that the employee has suffered (see "**Whole body medical impairment**," below).<sup>32</sup>

Under current law, an employee files an application with BWC to determine the percentage of the employee's PPD resulting from an injury or occupational disease. After the application is filed, the BWC Medical Section must schedule the employee for a medical examination. BWC sends a copy of the medical examination report to the employee, the employer, and their representatives. The Administrator must then review the employee's claim file and make a tentative order. If the employee or the employer timely objects to the tentative order, the claim is referred to a DHO who must determine the percentage of the employee's permanent disability resulting from the occupational disease and causing permanent impairment evidenced by medical or clinical findings.<sup>33</sup>

The table below compares PPD compensation provided under the bill and under current law.

Topic	The bill (R.C. 4133.13)	Current law (R.C. 4123.57)
Benefit amount	Same as TTD, except the maximum amount cannot exceed 70% of the SAWW (\$686).	Weekly benefit of $66\frac{2}{3}\%$ of employee's AWW, not to exceed $33\frac{1}{3}\%$ of statewide SAWW (\$326.67) for percentage of 200 weeks that equals the percentage of employee's partial disability. <sup>34</sup>
Length	Either of the following: <ol style="list-style-type: none"> <li data-bbox="493 1163 883 1304">1. Four weeks of compensation for each percent of disability that the Administrator determines is permanent;</li> <li data-bbox="493 1325 883 1535">2. Six weeks of compensation for each percent of disability if an employer fails to re-employ the employee at the employee's preinjury job or a comparable job.</li> </ol>	Number of weeks determined by multiplying the percentage of the employee's disability due to the injury or occupational disease by 200 (e.g., if a claimant is 50% disabled, the claimant receives PPD for 100 weeks), unless the disability is on the statutory schedule of losses, in which case the duration of benefits is per that schedule (ranging from 10 weeks to 200 weeks).

<sup>32</sup> R.C. 4133.13.

<sup>33</sup> R.C. 4123.57.

<sup>34</sup> Ohio Bureau of Workers' Compensation, *Compensation Rates*, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf>.

## Permanent total disability

Similar to PPD, the bill requires the Board to determine the degree of the employee's PTD, which is determined by the degree of whole body medical impairment that the employee has suffered (see "**Whole body medical impairment**," below).<sup>35</sup>

Under current law, payments for PTD compensation are awarded when the impairment resulting from the employee's injury or occupational disease prevents the employee from engaging in sustained remunerative employment utilizing the employment skills that the employee has or may reasonably be expected to develop or when the employee has lost or lost the use of two or more body parts (the loss or loss of use of one limb does not constitute the loss or loss of use of two body parts).<sup>36</sup>

The table below compares PTD compensation provided under the bill and under current law.

Topic	The bill (R.C. 4133.14)	Current law (R.C. 4123.58, not in the bill)
Benefit amount	Same as TTD.	Weekly benefit of between 66 $\frac{2}{3}$ % of employee's AWW, with a maximum of the SAWW at the time of injury (\$980), and a minimum of 50% of SAWW (\$490).
Length	Until age 70.	Until the employee's death.

## Whole body medical impairment

To determine the amount of PPD or PTD compensation to be awarded to an employee for an occupational pneumoconiosis claim, the bill requires the Board to determine the degree of the employee's PPD or PTD. The degree of PPD or PTD is determined by the degree of whole body medical impairment that the employee has suffered. The Administrator must adopt standards to determine an employee's degree of whole body medical impairment. The Board must premise its decision on the degree of pulmonary function impairment that an employee suffers solely on whole body medical impairment.<sup>37</sup>

The bill specifies that in cases of permanent disability or death due to occupational pneumoconiosis accompanied by active tuberculosis of the lungs, compensation is payable for disability or death due to occupational pneumoconiosis alone.<sup>38</sup>

<sup>35</sup> R.C. 4133.14.

<sup>36</sup> R.C. 4123.58, not in the bill.

<sup>37</sup> R.C. 4133.13 and 4133.14.

<sup>38</sup> R.C. 4133.14.

## Death benefits

The bill provides that benefits in case of death due to occupational pneumoconiosis are to be paid in accordance with current law's provisions governing death benefits. If an employee dies as a result of an injury or occupational disease and the employee does not have dependents, the employee's medical benefits, if applicable, are paid and funeral benefits are paid in an amount up to \$5,500 to the individual who paid those expenses.<sup>39</sup>

If the deceased employee has dependents, those dependents also may receive death benefits in addition to funeral expenses. The death benefit amount depends on how dependent the individual was on the deceased employee. Death benefits for wholly dependent individuals are equal to 66⅔% of the employee's AWW and can be no greater than the SAWW (\$980). Eligible dependents are the deceased employee's spouse, and children under age 18 or under 25 if attending school, and mentally or physically incapacitated children. Parents with whom the decedent was living at the time of death also may receive death benefits of a minimum of \$3,000.<sup>40</sup>

## Silicosis claims

Under the bill, the Administrator or a self-insuring employer, in computing compensation for an occupational pneumoconiosis claim, must deduct the amount of all prior compensation or benefits paid to the same claimant due to silicosis. The bill specifies that a prior silicosis award does not preclude an award for occupational pneumoconiosis otherwise payable under the bill.<sup>41</sup>

## Other provisions

The bill applies certain current law workers' compensation provisions to occupational pneumoconiosis claims, treating them the same as other workers' compensation claims. The provisions include the following:

1. The Administrator's duties;<sup>42</sup>
2. Provisions concerning the Qualified Health Plan and Health Partnership Program (the medical management programs used in the workers' compensation system), including provider fraud;<sup>43</sup>
3. Workers' compensation fraud criminal prohibitions;<sup>44</sup>
4. Provisions concerning receipt of initial claims;<sup>45</sup>

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<sup>39</sup> R.C. 4123.66 and 4133.15 and R.C. 4123.59, not in the bill.

<sup>40</sup> R.C. 4123.66 and 4133.15, and R.C. 4123.59 and 4123.60, not in the bill.

<sup>41</sup> R.C. 4133.16.

<sup>42</sup> R.C. 4121.121, 4121.13, and 4123.311.

<sup>43</sup> R.C. 4121.44, 4121.441, 4121.442, and 4121.444.

<sup>44</sup> R.C. 2913.48.

<sup>45</sup> R.C. 4123.51 and 4123.511.

5. Provisions concerning self-insuring employers;<sup>46</sup>
6. Requiring health care providers to provide copies of medical records, without charge, to the Occupational Pneumoconiosis Board;<sup>47</sup>
7. Allocation of Board costs;<sup>48</sup>
8. Other conforming changes.<sup>49</sup>

## HISTORY

Action	Date
Introduced	03-26-19

H0167-I-133/ar

<sup>46</sup> R.C. 4123.35, 4123.351, 4123.353, and 4123.46.

<sup>47</sup> R.C. 3701.741.

<sup>48</sup> R.C. 4123.341 and 4123.342.

<sup>49</sup> R.C. 109.84, 126.30, 145.2915, 715.27, 2307.84, 2307.91, 2307.97, 2317.02, 3121.899, 3923.281, 3963.10, 4115.03, 4121.03, 4121.12, 4121.125, 4121.127, 4121.129, 4121.30, 4121.31, 4121.32, 4121.36, 4121.41, 4121.45, 4121.50, 4121.61, 4123.025, 4123.05, 4123.15, 4123.26, 4123.27, 4123.291, 4123.30, 4123.32, 4123.324, 4123.34, 4123.343, 4123.402, 4123.441, 4123.442, 4123.444, 4123.47, 4123.522, 4123.54, 4123.542, 4123.571, 4123.65, 4123.651, 4123.67, 4123.69, 4123.74, 4123.741, 4123.89, 4123.93, 4123.931, 4125.03, 4125.04, 4125.05, 4131.01, 4729.80, 5145.163, 5502.41, 5503.08, and 5505.01.