

As Introduced

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Representatives Henne, McColley

**Cosponsors: Representatives Boose, Romanchuk, Hambley, Burkley, Hood,
Sprague, Terhar, Maag, Reineke**

A BILL

To amend sections 4123.291, 4123.93, and 4123.931 1
and to enact section 4123.932 of the Revised 2
Code to allow a state fund employer to have a 3
workers' compensation claim that is likely to be 4
subrogated by a third party paid from the 5
surplus fund account in the state insurance fund 6
rather than charged to the employer's 7
experience. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4123.291, 4123.93, and 4123.931 9
be amended and section 4123.932 of the Revised Code be enacted 10
to read as follows: 11

Sec. 4123.291. (A) An adjudicating committee appointed by 12
the administrator of workers' compensation to hear any matter 13
specified in divisions (B) (1) to ~~(7)~~(8) of this section shall 14
hear the matter within sixty days of the date on which an 15
employer files the request, protest, or petition. An employer 16
desiring to file a request, protest, or petition regarding any 17
matter specified in divisions (B) (1) to ~~(7)~~(8) of this section 18

shall file the request, protest, or petition to the adjudicating committee on or before twenty-four months after the administrator sends notice of the determination about which the employer is filing the request, protest, or petition.

(B) An employer who is adversely affected by a decision of an adjudicating committee appointed by the administrator may appeal the decision of the committee to the administrator or the administrator's designee. The employer shall file the appeal in writing within thirty days after the employer receives the decision of the adjudicating committee. The administrator or the designee shall hear the appeal and hold a hearing, provided that the decision of the adjudicating committee relates to one of the following:

(1) An employer request for a waiver of a default in the payment of premiums pursuant to section 4123.37 of the Revised Code;

(2) An employer request for the settlement of liability as a noncomplying employer under section 4123.75 of the Revised Code;

(3) An employer petition objecting to an assessment made pursuant to section 4123.37 of the Revised Code and the rules adopted pursuant to that section;

(4) An employer request for the abatement of penalties assessed pursuant to section 4123.32 of the Revised Code and the rules adopted pursuant to that section;

(5) An employer protest relating to an audit finding or a determination of a manual classification, experience rating, or transfer or combination of risk experience;

(6) An employer request that a claim that is likely

subject to third party subrogation be paid from the surplus fund 48
account and not included in the employer's experience pursuant 49
to section 4123.932 of the Revised Code. 50

(7) Any decision relating to any other risk premium matter 51
under Chapters 4121., 4123., and 4131. of the Revised Code; 52

~~(7)~~ (8) An employer petition objecting to the amount of 53
security required under division (D) of section 4125.05 of the 54
Revised Code and the rules adopted pursuant to that section. 55

(C) The bureau of workers' compensation board of 56
directors, based upon recommendations of the workers' 57
compensation actuarial committee, shall establish the policy for 58
all adjudicating committee procedures, including, but not 59
limited to, specific criteria for manual premium rate 60
adjustment. 61

(D) The administrator, with the advice and consent of the 62
board, shall adopt rules to establish requirements and 63
procedures for an adjudicating committee to follow to determine 64
whether a claim is likely to be subrogated under section 65
4123.931 of the Revised Code. 66

Sec. 4123.93. As used in sections 4123.93 ~~and 4123.931~~ to 67
4123.932 of the Revised Code: 68

(A) "Claimant" means a person who is eligible to receive 69
compensation, medical benefits, or death benefits under this 70
chapter or Chapter 4121., 4127., or 4131. of the Revised Code. 71

(B) "Statutory subrogee" means the administrator of 72
workers' compensation, a self-insuring employer, or an employer 73
that contracts for the direct payment of medical services 74
pursuant to division (P) of section 4121.44 of the Revised Code. 75

(C) "Third party" means an individual, private insurer, 76
public or private entity, or public or private program that is 77
or may be liable to make payments to a person without regard to 78
any statutory duty contained in this chapter or Chapter 4121., 79
4127., or 4131. of the Revised Code. 80

(D) "Subrogation interest" includes past, present, and 81
estimated future payments of compensation, medical benefits, 82
rehabilitation costs, or death benefits, and any other costs or 83
expenses paid to or on behalf of the claimant by the statutory 84
subrogee pursuant to this chapter or Chapter 4121., 4127., or 85
4131. of the Revised Code. 86

(E) "Net amount recovered" means the amount of any award, 87
settlement, compromise, or recovery by a claimant against a 88
third party, minus the attorney's fees, costs, or other expenses 89
incurred by the claimant in securing the award, settlement, 90
compromise, or recovery. "Net amount recovered" does not include 91
any punitive damages that may be awarded by a judge or jury. 92

(F) "Uncompensated damages" means the claimant's 93
demonstrated or proven damages minus the statutory subrogee's 94
subrogation interest. 95

Sec. 4123.931. (A) The payment of compensation or benefits 96
pursuant to this chapter or Chapter 4121., 4127., or 4131., of 97
the Revised Code creates a right of recovery in favor of a 98
statutory subrogee against a third party, and the statutory 99
subrogee is subrogated to the rights of a claimant against that 100
third party. The net amount recovered is subject to a statutory 101
subrogee's right of recovery. 102

(B) If a claimant, statutory subrogee, and third party 103
settle or attempt to settle a claimant's claim against a third 104

party, the claimant shall receive an amount equal to the 105
uncompensated damages divided by the sum of the subrogation 106
interest plus the uncompensated damages, multiplied by the net 107
amount recovered, and the statutory subrogee shall receive an 108
amount equal to the subrogation interest divided by the sum of 109
the subrogation interest plus the uncompensated damages, 110
multiplied by the net amount recovered, except that the net 111
amount recovered may instead be divided and paid on a more fair 112
and reasonable basis that is agreed to by the claimant and 113
statutory subrogee. If while attempting to settle, the claimant 114
and statutory subrogee cannot agree to the allocation of the net 115
amount recovered, the claimant and statutory subrogee may file a 116
request with the administrator of workers' compensation for a 117
conference to be conducted by a designee appointed by the 118
administrator, or the claimant and statutory subrogee may agree 119
to utilize any other binding or non-binding alternative dispute 120
resolution process. 121

The claimant and statutory subrogee shall pay equal shares 122
of the fees and expenses of utilizing an alternative dispute 123
resolution process, unless they agree to pay those fees and 124
expenses in another manner. The administrator shall not assess 125
any fees to a claimant or statutory subrogee for a conference 126
conducted by the administrator's designee. 127

(C) If a claimant and statutory subrogee request that a 128
conference be conducted by the administrator's designee pursuant 129
to division (B) of this section, both of the following apply: 130

(1) The administrator's designee shall schedule a 131
conference on or before sixty days after the date that the 132
claimant and statutory subrogee filed a request for the 133
conference. 134

(2) The determination made by the administrator's designee 135
is not subject to Chapter 119. of the Revised Code. 136

(D) When a claimant's action against a third party 137
proceeds to trial and damages are awarded, both of the following 138
apply: 139

(1) The claimant shall receive an amount equal to the 140
uncompensated damages divided by the sum of the subrogation 141
interest plus the uncompensated damages, multiplied by the net 142
amount recovered, and the statutory subrogee shall receive an 143
amount equal to the subrogation interest divided by the sum of 144
the subrogation interest plus the uncompensated damages, 145
multiplied by the net amount recovered. 146

(2) The court in a nonjury action shall make findings of 147
fact, and the jury in a jury action shall return a general 148
verdict accompanied by answers to interrogatories that specify 149
the following: 150

(a) The total amount of the compensatory damages; 151

(b) The portion of the compensatory damages specified 152
pursuant to division (D) (2) (a) of this section that represents 153
economic loss; 154

(c) The portion of the compensatory damages specified 155
pursuant to division (D) (2) (a) of this section that represents 156
noneconomic loss. 157

(E) (1) After a claimant and statutory subrogee know the 158
net amount recovered, and after the means for dividing it has 159
been determined under division (B) or (D) of this section, a 160
claimant may establish an interest-bearing trust account for the 161
full amount of the subrogation interest that represents 162
estimated future payments of compensation, medical benefits, 163

rehabilitation costs, or death benefits, reduced to present 164
value, from which the claimant shall make reimbursement payments 165
to the statutory subrogee for the future payments of 166
compensation, medical benefits, rehabilitation costs, or death 167
benefits. If the workers' compensation claim associated with the 168
subrogation interest is settled, or if the claimant dies, or if 169
any other circumstance occurs that would preclude any future 170
payments of compensation, medical benefits, rehabilitation 171
costs, and death benefits by the statutory subrogee, any amount 172
remaining in the trust account after final reimbursement is paid 173
to the statutory subrogee for all payments made by the statutory 174
subrogee before the ending of future payments shall be paid to 175
the claimant or the claimant's estate. 176

(2) A claimant may use interest that accrues on the trust 177
account to pay the expenses of establishing and maintaining the 178
trust account, and all remaining interest shall be credited to 179
the trust account. 180

(3) If a claimant establishes a trust account, the 181
statutory subrogee shall provide payment notices to the claimant 182
on or before the thirtieth day of June and the thirty-first day 183
of December every year listing the total amount that the 184
statutory subrogee has paid for compensation, medical benefits, 185
rehabilitation costs, or death benefits during the half of the 186
year preceding the notice. The claimant shall make reimbursement 187
payments to the statutory subrogee from the trust account on or 188
before the thirty-first day of July every year for a notice 189
provided by the thirtieth day of June, and on or before the 190
thirty-first day of January every year for a notice provided by 191
the thirty-first day of December. The claimant's reimbursement 192
payment shall be in an amount that equals the total amount 193
listed on the notice the claimant receives from the statutory 194

subrogee. 195

(F) If a claimant does not establish a trust account as 196
described in division (E) (1) of this section, the claimant shall 197
pay to the statutory subrogee, on or before thirty days after 198
receipt of funds from the third party, the full amount of the 199
subrogation interest that represents estimated future payments 200
of compensation, medical benefits, rehabilitation costs, or 201
death benefits. 202

(G) A claimant shall notify a statutory subrogee and the 203
attorney general of the identity of all third parties against 204
whom the claimant has or may have a right of recovery, except 205
that when the statutory subrogee is a self-insuring employer, 206
the claimant need not notify the attorney general. No 207
settlement, compromise, judgment, award, or other recovery in 208
any action or claim by a claimant shall be final unless the 209
claimant provides the statutory subrogee and, when required, the 210
attorney general, with prior notice and a reasonable opportunity 211
to assert its subrogation rights. If a statutory subrogee and, 212
when required, the attorney general are not given that notice, 213
or if a settlement or compromise excludes any amount paid by the 214
statutory subrogee, the third party and the claimant shall be 215
jointly and severally liable to pay the statutory subrogee the 216
full amount of the subrogation interest. 217

(H) The right of subrogation under this chapter is 218
automatic, regardless of whether a statutory subrogee is joined 219
as a party in an action by a claimant against a third party. A 220
statutory subrogee may assert its subrogation rights through 221
correspondence with the claimant and the third party or their 222
legal representatives. A statutory subrogee may institute and 223
pursue legal proceedings against a third party either by itself 224

or in conjunction with a claimant. If a statutory subrogee 225
institutes legal proceedings against a third party, the 226
statutory subrogee shall provide notice of that fact to the 227
claimant. If the statutory subrogee joins the claimant as a 228
necessary party, or if the claimant elects to participate in the 229
proceedings as a party, the claimant may present the claimant's 230
case first if the matter proceeds to trial. If a claimant 231
disputes the validity or amount of an asserted subrogation 232
interest, the claimant shall join the statutory subrogee as a 233
necessary party to the action against the third party. 234

(I) The statutory subrogation right of recovery applies 235
to, but is not limited to, all of the following: 236

(1) Amounts recoverable from a claimant's insurer in 237
connection with underinsured or uninsured motorist coverage, 238
notwithstanding any limitation contained in Chapter 3937. of the 239
Revised Code; 240

(2) Amounts that a claimant would be entitled to recover 241
from a political subdivision, notwithstanding any limitations 242
contained in Chapter 2744. of the Revised Code; 243

(3) Amounts recoverable from an intentional tort action. 244

(J) If a claimant's claim against a third party is for 245
wrongful death or the claim involves any minor beneficiaries, 246
amounts allocated under this section are subject to the approval 247
of probate court. 248

(K) The Except as otherwise provided in this division, the 249
administrator shall deposit any money collected under this 250
section into the public fund or the private fund of the state 251
insurance fund, as appropriate. Any money collected under this 252
section for compensation or benefits that were charged pursuant 253

to section 4123.932 of the Revised Code to the surplus fund 254
account created in division (B) of section 4123.34 of the 255
Revised Code and not charged to an employer's experience shall 256
be deposited in the surplus fund account and not applied to an 257
individual employer's account. If a self-insuring employer 258
collects money under this section of the Revised Code, the self- 259
insuring employer shall deduct the amount collected, in the year 260
collected, from the amount of paid compensation the self-insured 261
employer is required to report under section 4123.35 of the 262
Revised Code. 263

Sec. 4123.932. (A) Any compensation and benefits related 264
to a claim that is compensable under this chapter or Chapter 265
4121., 4127., or 4131. of the Revised Code shall be charged to 266
the surplus fund account created under division (B) of section 267
4123.34 of the Revised Code and not charged to an individual 268
employer's experience if, upon a final determination made 269
pursuant to section 4123.291 of the Revised Code or upon the 270
administrator's own determination, all of the following apply to 271
that claim: 272

(1) The employer of the employee who is the subject of the 273
claim pays premiums into the state insurance fund. 274

(2) The claim is based on an automobile accident involving 275
a third party. 276

(3) The administrator is likely to be subrogated to the 277
rights of the claimant under section 4123.931 of the Revised 278
Code. 279

(B) If an employer believes division (A) of this section 280
applies to a claim about which an employee of the employer is 281
the subject, the employer may file a request for determination 282

with an adjudicating committee pursuant to section 4123.291 of 283
the Revised Code. 284

Section 2. That existing sections 4123.291, 4123.93, and 285
4123.931 of the Revised Code are hereby repealed. 286