

**As Passed by the House**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. H. B. No. 207**

**Representatives Henne, McColley**

**Cosponsors: Representatives Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke, Hackett, DeVitis, Retherford, Sears, Amstutz, Anielski, Antani, Antonio, Arndt, Barnes, Bishoff, Blessing, Brenner, Buchy, Butler, Conditt, Cupp, Derickson, Dever, Dovilla, Duffey, Ginter, Green, Grossman, Hall, Hayes, Hill, Huffman, Koehler, LaTourette, Manning, McClain, O'Brien, M., O'Brien, S., Patterson, Pelanda, Perales, Phillips, Rezabek, Rogers, Ruhl, Ryan, Schaffer, Scherer, Schuring, Slesnick, Smith, R., Stinziano, Sweeney, Thompson, Young, Zeltwanger, Speaker Rosenberger**

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**A BILL**

To amend sections 4123.93 and 4123.931 and to enact 1  
section 4123.932 of the Revised Code to allow a 2  
state fund employer to have a workers' 3  
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 4123.93 and 4123.931 be amended 9  
and section 4123.932 of the Revised Code be enacted to read as 10  
follows: 11

**Sec. 4123.93.** As used in sections 4123.93 ~~and 4123.931~~ to 12  
4123.932 of the Revised Code: 13

(A) "Claimant" means a person who is eligible to receive 14  
compensation, medical benefits, or death benefits under this 15  
chapter or Chapter 4121., 4127., or 4131. of the Revised Code. 16

(B) "Statutory subrogee" means the administrator of 17  
workers' compensation, a self-insuring employer, or an employer 18  
that contracts for the direct payment of medical services 19  
pursuant to division (P) of section 4121.44 of the Revised Code. 20

(C) "Third party" means an individual, private insurer, 21  
public or private entity, or public or private program that is 22  
or may be liable to make payments to a person without regard to 23  
any statutory duty contained in this chapter or Chapter 4121., 24  
4127., or 4131. of the Revised Code. 25

(D) "Subrogation interest" includes past, present, and 26  
estimated future payments of compensation, medical benefits, 27  
rehabilitation costs, or death benefits, and any other costs or 28  
expenses paid to or on behalf of the claimant by the statutory 29  
subrogee pursuant to this chapter or Chapter 4121., 4127., or 30  
4131. of the Revised Code. 31

(E) "Net amount recovered" means the amount of any award, 32  
settlement, compromise, or recovery by a claimant against a 33  
third party, minus the attorney's fees, costs, or other expenses 34  
incurred by the claimant in securing the award, settlement, 35  
compromise, or recovery. "Net amount recovered" does not include 36  
any punitive damages that may be awarded by a judge or jury. 37

(F) "Uncompensated damages" means the claimant's 38  
demonstrated or proven damages minus the statutory subrogee's 39  
subrogation interest. 40

**Sec. 4123.931.** (A) The payment of compensation or benefits 41  
pursuant to this chapter or Chapter 4121., 4127., or 4131., of 42

the Revised Code creates a right of recovery in favor of a 43  
statutory subrogee against a third party, and the statutory 44  
subrogee is subrogated to the rights of a claimant against that 45  
third party. The net amount recovered is subject to a statutory 46  
subrogee's right of recovery. 47

(B) If a claimant, statutory subrogee, and third party 48  
settle or attempt to settle a claimant's claim against a third 49  
party, the claimant shall receive an amount equal to the 50  
uncompensated damages divided by the sum of the subrogation 51  
interest plus the uncompensated damages, multiplied by the net 52  
amount recovered, and the statutory subrogee shall receive an 53  
amount equal to the subrogation interest divided by the sum of 54  
the subrogation interest plus the uncompensated damages, 55  
multiplied by the net amount recovered, except that the net 56  
amount recovered may instead be divided and paid on a more fair 57  
and reasonable basis that is agreed to by the claimant and 58  
statutory subrogee. If while attempting to settle, the claimant 59  
and statutory subrogee cannot agree to the allocation of the net 60  
amount recovered, the claimant and statutory subrogee may file a 61  
request with the administrator of workers' compensation for a 62  
conference to be conducted by a designee appointed by the 63  
administrator, or the claimant and statutory subrogee may agree 64  
to utilize any other binding or non-binding alternative dispute 65  
resolution process. 66

The claimant and statutory subrogee shall pay equal shares 67  
of the fees and expenses of utilizing an alternative dispute 68  
resolution process, unless they agree to pay those fees and 69  
expenses in another manner. The administrator shall not assess 70  
any fees to a claimant or statutory subrogee for a conference 71  
conducted by the administrator's designee. 72

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

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

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

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

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

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

(a) The total amount of the compensatory damages;

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

(c) The portion of the compensatory damages specified

pursuant to division (D) (2) (a) of this section that represents 101  
noneconomic loss. 102

(E) (1) After a claimant and statutory subrogee know the 103  
net amount recovered, and after the means for dividing it has 104  
been determined under division (B) or (D) of this section, a 105  
claimant may establish an interest-bearing trust account for the 106  
full amount of the subrogation interest that represents 107  
estimated future payments of compensation, medical benefits, 108  
rehabilitation costs, or death benefits, reduced to present 109  
value, from which the claimant shall make reimbursement payments 110  
to the statutory subrogee for the future payments of 111  
compensation, medical benefits, rehabilitation costs, or death 112  
benefits. If the workers' compensation claim associated with the 113  
subrogation interest is settled, or if the claimant dies, or if 114  
any other circumstance occurs that would preclude any future 115  
payments of compensation, medical benefits, rehabilitation 116  
costs, and death benefits by the statutory subrogee, any amount 117  
remaining in the trust account after final reimbursement is paid 118  
to the statutory subrogee for all payments made by the statutory 119  
subrogee before the ending of future payments shall be paid to 120  
the claimant or the claimant's estate. 121

(2) A claimant may use interest that accrues on the trust 122  
account to pay the expenses of establishing and maintaining the 123  
trust account, and all remaining interest shall be credited to 124  
the trust account. 125

(3) If a claimant establishes a trust account, the 126  
statutory subrogee shall provide payment notices to the claimant 127  
on or before the thirtieth day of June and the thirty-first day 128  
of December every year listing the total amount that the 129  
statutory subrogee has paid for compensation, medical benefits, 130

rehabilitation costs, or death benefits during the half of the 131  
year preceding the notice. The claimant shall make reimbursement 132  
payments to the statutory subrogee from the trust account on or 133  
before the thirty-first day of July every year for a notice 134  
provided by the thirtieth day of June, and on or before the 135  
thirty-first day of January every year for a notice provided by 136  
the thirty-first day of December. The claimant's reimbursement 137  
payment shall be in an amount that equals the total amount 138  
listed on the notice the claimant receives from the statutory 139  
subrogee. 140

(F) If a claimant does not establish a trust account as 141  
described in division (E) (1) of this section, the claimant shall 142  
pay to the statutory subrogee, on or before thirty days after 143  
receipt of funds from the third party, the full amount of the 144  
subrogation interest that represents estimated future payments 145  
of compensation, medical benefits, rehabilitation costs, or 146  
death benefits. 147

(G) A claimant shall notify a statutory subrogee and the 148  
attorney general of the identity of all third parties against 149  
whom the claimant has or may have a right of recovery, except 150  
that when the statutory subrogee is a self-insuring employer, 151  
the claimant need not notify the attorney general. No 152  
settlement, compromise, judgment, award, or other recovery in 153  
any action or claim by a claimant shall be final unless the 154  
claimant provides the statutory subrogee and, when required, the 155  
attorney general, with prior notice and a reasonable opportunity 156  
to assert its subrogation rights. If a statutory subrogee and, 157  
when required, the attorney general are not given that notice, 158  
or if a settlement or compromise excludes any amount paid by the 159  
statutory subrogee, the third party and the claimant shall be 160  
jointly and severally liable to pay the statutory subrogee the 161

full amount of the subrogation interest. 162

(H) The right of subrogation under this chapter is 163  
automatic, regardless of whether a statutory subrogee is joined 164  
as a party in an action by a claimant against a third party. A 165  
statutory subrogee may assert its subrogation rights through 166  
correspondence with the claimant and the third party or their 167  
legal representatives. A statutory subrogee may institute and 168  
pursue legal proceedings against a third party either by itself 169  
or in conjunction with a claimant. If a statutory subrogee 170  
institutes legal proceedings against a third party, the 171  
statutory subrogee shall provide notice of that fact to the 172  
claimant. If the statutory subrogee joins the claimant as a 173  
necessary party, or if the claimant elects to participate in the 174  
proceedings as a party, the claimant may present the claimant's 175  
case first if the matter proceeds to trial. If a claimant 176  
disputes the validity or amount of an asserted subrogation 177  
interest, the claimant shall join the statutory subrogee as a 178  
necessary party to the action against the third party. 179

(I) The statutory subrogation right of recovery applies 180  
to, but is not limited to, all of the following: 181

(1) Amounts recoverable from a claimant's insurer in 182  
connection with underinsured or uninsured motorist coverage, 183  
notwithstanding any limitation contained in Chapter 3937. of the 184  
Revised Code; 185

(2) Amounts that a claimant would be entitled to recover 186  
from a political subdivision, notwithstanding any limitations 187  
contained in Chapter 2744. of the Revised Code; 188

(3) Amounts recoverable from an intentional tort action. 189

(J) If a claimant's claim against a third party is for 190

wrongful death or the claim involves any minor beneficiaries, 191  
amounts allocated under this section are subject to the approval 192  
of probate court. 193

(K) ~~The~~ Except as otherwise provided in this division, the 194  
administrator shall deposit any money collected under this 195  
section into the public fund or the private fund of the state 196  
insurance fund, as appropriate. Any money collected under this 197  
section for compensation or benefits that were charged pursuant 198  
to section 4123.932 of the Revised Code to the surplus fund 199  
account created in division (B) of section 4123.34 of the 200  
Revised Code and not charged to an employer's experience shall 201  
be deposited in the surplus fund account and not applied to an 202  
individual employer's account. If a self-insuring employer 203  
collects money under this section of the Revised Code, the self- 204  
insuring employer shall deduct the amount collected, in the year 205  
collected, from the amount of paid compensation the self-insured 206  
employer is required to report under section 4123.35 of the 207  
Revised Code. 208

**Sec. 4123.932.** (A) As used in this section, "motor 209  
vehicle" has the same meaning as in section 4501.01 of the 210  
Revised Code. 211

(B) Any compensation and benefits related to a claim that 212  
is compensable under this chapter or Chapter 4121., 4127., or 213  
4131. of the Revised Code shall be charged to the surplus fund 214  
account created under division (B) of section 4123.34 of the 215  
Revised Code and not charged to an individual employer's 216  
experience if, upon the administrator's determination, all of 217  
the following apply to that claim: 218

(1) The employer of the employee who is the subject of the 219  
claim pays premiums into the state insurance fund. 220

(2) The claim is based on a motor vehicle accident 221  
involving a third party. 222

(3) The third party is issued a citation for violation of 223  
any law or ordinance regulating the operation of a motor vehicle 224  
arising from the accident on which the claim is based. 225

(4) Either of the following circumstances apply to the 226  
claim: 227

(a) Any form of insurance maintained by the third party 228  
covers the claim. 229

(b) Uninsured or underinsured motorist coverage as 230  
described in section 3937.18 of the Revised Code, covers the 231  
claim. 232

(C) If an employer believes division (B) of this section 233  
applies to a claim about which an employee of the employer is 234  
the subject, the employer may file a request with the 235  
administrator for a determination by the administrator as to 236  
whether the claim is to be charged to the surplus fund account 237  
pursuant to this section. 238

(D) Upon receipt of a request made under division (C) of 239  
this section, the administrator shall determine whether the 240  
claim for which the request is made shall be charged to the 241  
surplus fund account pursuant to this section. 242

(E) This section does not apply if the employer of the 243  
employee who is the subject of the claim is the state or a state 244  
institution of higher education, including its hospitals. 245

**Section 2.** That existing sections 4123.93 and 4123.931 of 246  
the Revised Code are hereby repealed. 247

**Section 3.** This act applies to a claim under Chapter 248

4121., 4123., 4127., or 4131. of the Revised Code arising on or	249
after July 1, 2016.	250