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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Stewart

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SUMMARY

Prison Industries Enhancement Certification Program

- Makes changes regarding the Prison Industries Enhancement Certification Program, including requiring an injured incarcerated worker to request the Department of Rehabilitation and Correction (DRC) to file a claim with the Bureau of Workers' Compensation (BWC) on the worker's behalf and having DRC cover claim costs.

PEO and AEO reporting and disclosure requirements

- Removes a requirement that a self-insuring professional employer organization (PEO) or self-insuring alternative employer organization (AEO) submit payroll and claim information about a former client employer to the Administrator of Workers' Compensation after the PEO or AEO terminates a workers' compensation lease with the former client employer.
- Eliminates the Administrator's authority to require a self-insuring PEO or AEO to submit payroll and claim information at additional times after the initial submission if the Administrator determines additional submissions are necessary.
- Eliminates the Administrator's authority to revoke or refuse to renew a PEO's or AEO's status as a self-insuring employer for failing to submit required information.

Public Employment Risk Reduction Program

- Excludes any person incarcerated in specified facilities from the Public Employment Risk Reduction Program (PERRP).
- Eliminates requirements under PERRP for public employers that employ public health care workers regarding the use of needleless systems and other safe needle devices to reduce exposure incidents that risk spreading bloodborne pathogens that comply with federal bloodborne pathogen standards.

- Eliminates the requirement that the Administrator adopt a rule and Ohio employment risk reduction standard to prevent exposure incidents.
- Eliminates the word “scheduled” to describe workplace inspections and investigations that the Administrator must conduct under the PERRP.

Rebuttable presumption of intoxication

- Updates a cross reference to federal regulations containing cutoff concentration levels for specific substances the presence of which create a rebuttable presumption that a workers’ compensation claimant’s injury or occupational disease was caused by the claimant’s intoxication.

Reimbursements to certain secondary payers

- Modifies the circumstances under which the Administrator may reimburse 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.

Prosthetic devices

- Allows the Industrial Commission or the Administrator to order a payment to purchase, repair, or replace a claimant’s prosthetic device if the purchase, repair, or replacement is necessary due to an amputation or loss resulting from an allowed injury or occupational disease.
- Specifies that an order described above does not extend the period during which the Commission or Administrator may modify or change a former finding or order in a claim.
- Requires a payment to purchase, repair, or replace a claimant’s prosthetic device to be charged against the Surplus Fund Account created under continuing law if the claimant’s injury or occupational disease caused a loss enumerated in a list of scheduled losses in continuing law, even if a payment for the loss itself has not yet been ordered.

BWC Board of Directors

- Eliminates the requirement that the BWC Board of Directors meet annually with the Governor to discuss the Administrator’s performance of duties.
- Requires forfeiture of a BWC Board member’s position for missing nine or more Board meetings in a 12-month period.
- Eliminates the requirement that the BWC’s annual internal operating budget be submitted to the BWC Board for approval.

Status of certain officials regarding the State Insurance Fund

- Specifies that BWC Board members, the Administrator, and BWC’s Chief Investment Officer are fiduciaries, rather than trustees as under current law, of the State Insurance Fund.

Safety and hygiene museums

- Eliminates the requirement for the Administrator to establish safety and hygiene museums.

Appropriations

- Appropriates funds for BWC for the biennium ending June 30, 2027.

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DETAILED ANALYSIS

Prison Industries Enhancement Certification Program

The bill makes various changes to the law governing the Prison Industries Enhancement Certification Program (PIECP). The PIECP is a federal program that allows prison industry enterprises under the program to be exempt from federal restrictions on prisoner-made goods in interstate commerce. Federal law prohibits program participants from denying workers' compensation coverage to inmates who work under the program.¹

The bill uses the term "incarcerated worker," rather than "inmate" as under current law, to refer to a person who is committed to the custody of the Department of Rehabilitation and

¹ 18 United States Code (U.S.C.) 1761.

Correction (DRC) and who is participating in an Ohio Penal Industries Program that is under the PIECP.²

Under the bill, an incarcerated worker, regardless of whether the worker works in a customer model enterprise or an employer model enterprise, must be treated as an employee of DRC for purposes of workers' compensation coverage. Under continuing law, there are two enterprise models under the PIECP: (1) customer model enterprises and (2) employer model enterprises. In a customer model enterprise, a private party participates in the enterprise only as a purchaser of goods. In an employer model enterprise, a private party participates in the enterprise as an operator of the enterprise.

The bill eliminates the following to conform with the bill's requirement that all incarcerated workers be treated as DRC employees for purposes of workers' compensation coverage:

- The requirement that a private party who wishes to participate in an employer model enterprise under the PIECP must provide proof of workers' compensation coverage furnished by the Bureau of Workers' Compensation (BWC);
- The authority of DRC to choose to treat an incarcerated worker in a customer model enterprise under the PIECP as DRC's employee for purposes of workers' compensation coverage;
- The authority of a private participant operating an employer model enterprise to treat an incarcerated worker as the private participant's employee for purposes of workers' compensation coverage.³

Under the Workers' Compensation Law, every employee who is injured or who contracts an occupational disease arising out of the employee's employment, and the dependents of each employee who dies as a result of such an injury or occupational disease, is generally entitled to receive the following:

- Compensation for loss sustained on account of the injury, occupational disease, or death;
- Medical, nurse, and hospital services and medicines; and
- Funeral expenses in the case of death.⁴

Compensation and benefits are paid either directly from the employee's self-insuring employer or from the State Insurance Fund in the case of an employer who pays premiums into the fund.

Workers' compensation while imprisoned

The bill eliminates the ability of an incarcerated worker, or a deceased incarcerated worker's dependent, to file a claim directly with BWC on the worker's or dependent's own behalf.

² R.C. 5145.163(A).

³ R.C. 5145.163(A), (C), and (D).

⁴ R.C. 4123.54.

Instead, the bill allows an incarcerated worker, or the deceased incarcerated worker's dependent, to request that DRC file a claim with BWC regarding an injury, occupational disease, or death arising from participation in the PIECP within the continuing law statute of limitations for these claims (basically, one year from date of injury or death or date the disability from the disease began).⁵

The bill specifies that if DRC determines that an incarcerated worker was injured or contracted an occupational disease in the course of and arising out of participation in authorized work activity in the PIECP, whether by external accidental means or accidental in character or result, both of the following apply to the individual while that individual is in DRC custody:

- The individual may receive medical treatment for the injury or occupational disease;
- The individual is barred from filing for compensation with DRC or BWC.

Under current law, while an incarcerated worker may file a workers' compensation claim while the inmate is in DRC custody, compensation and benefits under the Workers' Compensation Law cannot be paid during the period of a claimant's confinement in any correctional institution or county jail (this is similar for workers' compensation claimants who are not imprisoned; they cannot receive compensation or benefits while incarcerated in a correctional institution or county jail in lieu of a correctional institution). The bill eliminates the prohibition against the incarcerated worker from receiving compensation or benefits while in a county jail, as it does not appear that the PIECP applies to county jails. It retains the prohibition on an incarcerated worker receiving compensation or benefits while confined in any correctional institution.⁶

Medical treatment and determinations

The bill eliminates the ability of an injured incarcerated worker who appeals a medical determination made by DRC to receive a medical evaluation from a medical practitioner in a managed care organization certified by BWC. Under continuing law, an injured incarcerated worker in DRC custody must receive medical treatment from DRC's medical providers. Continuing law allows an incarcerated worker to appeal a claim allowance determination or medical treatment determination made by DRC to DRC's chief medical officer. In the event of a further appeal, continuing law allows an incarcerated worker to receive a medical evaluation from a medical practitioner affiliated within DRC's network of third-party medical contractors located in Franklin County.⁷

Appeals

Excluding appeals related to claim allowance and medical determinations described above, the bill prohibits an injured incarcerated worker from appealing a determination regarding an injury, occupational disease, or death arising from participation in the PIECP while the individual is incarcerated. However, the bill specifically allows a party to use the appeals

⁵ R.C. 5145.163(F), by reference to R.C. 4123.84 and 4123.85, not in the bill.

⁶ R.C. 5145.163(G) and (L) and 4123.54. See also R.C. 5147.30, not in the bill.

⁷ R.C. 5145.163(H) and (I).

process in accordance with continuing law governing workers' compensation claims regarding an application filed by DRC at the request of a dependent of a deceased incarcerated worker.⁸

Release from incarceration

After an injured incarcerated worker is released from incarceration, the bill allows all of the following:

- A party to use the appeals process in accordance with continuing law governing workers' compensation claims regarding any application filed by an injured incarcerated worker;
- The released individual to receive medical treatment consistent with continuing law governing workers' compensation claims;
- The released individual to seek compensation through BWC consistent with continuing law governing workers' compensation claims.

The bill requires, after an injured incarcerated worker is released from DRC's custody, that all claim costs, other than medical costs paid by DRC while the worker was in DRC's custody, be paid by DRC in accordance with continuing law governing workers' compensation claims.⁹

PEO and AEO reporting and disclosure requirements

The bill modifies reporting requirements for a professional employer organization (PEO) or an alternate employer organization (AEO) that terminates an agreement with a client employer or transfers an employee to another PEO or AEO. It also eliminates certain mandatory disclosures a self-insuring PEO or AEO must make when entering an agreement with a client employer.

PEOs and AEOs are business entities that enter agreements with one or more client employers to share the responsibilities and liabilities of being an employer. PEOs and AEOs must register with the Administrator to operate in Ohio.¹⁰ Subject to limited exceptions, continuing law requires a PEO or AEO to maintain workers' compensation coverage for a client employer's employees.¹¹ A PEO or AEO can maintain coverage by paying premiums to the State Insurance Fund (SIF) (a "state fund" employer) or by demonstrating to the Administrator that it has sufficient financial ability to pay claims directly ("self-insure"). If an agreement between a PEO or AEO and a client employer ends, the client employer must pay a premium fixed by the Administrator into the SIF or demonstrate that it can self-insure.¹²

⁸ R.C. 5145.163(F) and (J).

⁹ R.C. 5145.163(K) and (M).

¹⁰ R.C. 4125.01, 4125.05, 4133.01, and 4133.07, not in the bill.

¹¹ R.C. 4125.03 and 4133.03, not in the bill.

¹² R.C. 4123.26 and 4123.35, not in the bill.

Reporting requirements

Under continuing law, not later than 30 days after a PEO or AEO terminates an agreement with a client employer or other specified events occur ending the relationship, the PEO or AEO must submit to the Administrator and the affected client employer a completed workers' compensation lease termination notice form. Currently, a completed lease termination form must include all the client's payroll and workers' compensation claims information and provide notice of all workers' compensation claims that have been reported to the PEO or AEO. Under the bill, only a state fund PEO or AEO must include this information in a lease termination form.¹³

Similarly, within 14 days after a PEO or AEO transfers employees to a related PEO or AEO, the PEO or AEO must report the transfer on a form prescribed by the Administrator. Currently, the PEO or AEO must include in the form all client payroll and claim information regarding the transferred employee and a notice of all workers' compensation claims that have been reported to the PEO or AEO. As with termination forms described above, the bill requires only a state fund PEO or AEO to include this information in a transfer report form.

With respect to a self-insuring PEO or AEO, the bill removes a requirement that the PEO or AEO submit the following information to the Administrator when it terminates an agreement with a client employer:

- The payroll of each client employer involved in the lease termination, organized by manual classification and year;
- The medical and indemnity costs of each client employer involved in the lease termination, organized by claim;
- Any other information the Administrator requires to develop the state fund experience modification factor.

Currently, the Administrator uses this information to develop a state fund experience modification factor for a client employer affected by the lease termination. The bill also eliminates the Administrator's authority to require the PEO or AEO to submit this information at additional times when necessary, and to revoke or refuse to renew a PEO's or AEO's self-insuring status for failing to submit the information.¹⁴

Before entering an agreement with a client employer, currently a self-insuring PEO or AEO must disclose in writing to the client employer the reporting requirements eliminated by the bill. Because the bill removes the reporting requirements, it also removes the disclosure requirement.¹⁵

¹³ R.C. 4125.07(B) and (C) and 4133.10(B) and (C).

¹⁴ R.C. 4125.07(C) and (D), repealed, and 4133.10(C) and (D), repealed.

¹⁵ R.C. 4125.07(F), repealed, and 4133.10(F), repealed.

Public Employment Risk Reduction Program

Inmate participation

The bill excludes any person incarcerated in one of the following facilities from the Public Employment Risk Reduction Program (PERRP):

- An alternative residential facility;
- A community-based correctional facility;
- A jail;
- A halfway house;
- A prison.¹⁶

Under continuing law, PERRP requires public employers to comply with Ohio employment risk reduction standards, rules, and orders adopted or issued by the Administrator under PERRP. PERRP is similar to the Occupational Health and Safety Act of 1970¹⁷ (OSHA Act). The OSHA Act does not apply to federal, state, or local governments or their employees.¹⁸ PERRP generally applies to any branch of public employment and any individual who engages to furnish services subject to the direction and control of a public employer, unless excluded under the law.¹⁹

Public health care workers and exposure incidents

The bill eliminates requirements under PERRP for public employers that employ public health care workers regarding the use of needleless systems and other safe needle devices to reduce exposure incidents that risk spreading bloodborne pathogens that are in compliance with the U.S. Occupational Safety and Health Administration's (OSHA) bloodborne pathogen standards.²⁰ It also eliminates the requirement that the Administrator adopt a rule and Ohio employment risk reduction standard to prevent exposure incidents.²¹ Under continuing law, a public employer that employs workers who may be exposed to blood or other materials while performing their duties must comply with the OSHA bloodborne pathogen standards, which require the employer to develop and annually update an exposure control plan and maintain a record of exposure incidents.²²

¹⁶ R.C. 4167.01.

¹⁷ 29 U.S.C. 651, *et seq.*

¹⁸ 29 U.S.C. 652.

¹⁹ R.C. 4167.01.

²⁰ R.C. 4167.25 and 4167.28, repealed, with conforming changes in R.C. 4121.12.

²¹ R.C. 4167.27, repealed.

²² R.C. 4167.07, not in the bill, and Ohio Administrative Code 4167-3-01. See also 29 Code of Federal Regulations (C.F.R.) 1910.1030.

PERRP inspections

Continuing law requires the Administrator or a designee to conduct workplace inspections and investigations under PERRP. With certain exceptions, current law requires scheduled inspections and investigations to be conducted under specified circumstances. The bill eliminates the word “scheduled” to describe these inspections.²³

Rebuttable presumption of intoxication

The bill updates a cross reference to the federal regulations containing cutoff concentration levels for specific substances the presence of which create a rebuttable presumption that an employee’s injury or occupational disease was caused by the employee’s intoxication. Due to changes in the federal regulation organization, the current cross-referenced regulation relates to validity tests a certified drug testing laboratory must conduct, not to cutoff levels for controlled substances.²⁴

The bill refers to the federal standard establishing cutoff levels as “it existed on January 1, 2024, or as subsequently amended by a successor statute or rule.” According to the Ohio Supreme Court, a reference to a federal law in the Revised Code refers only to the law as it existed when the state statute was enacted. The reference to federal law does not include future amendments or additions to the federal law. If challenged, a reviewing court might examine a law that requires a state agency to follow future federal laws or rules to determine whether it is unlawful delegation of legislative authority in violation of Ohio’s Constitution.²⁵

As discussed above, an employee or employee’s dependent generally is entitled to compensation and benefits for an injury, occupational disease, or death occurring in the course of employment. However, an employee or dependent is ineligible if the injury or disease is purposely self-inflicted or if the injury’s proximate cause was the employee being intoxicated or under the influence of marijuana or of a controlled substance not prescribed by a physician.²⁶

A rebuttable presumption that being intoxicated or under the influence was the proximate cause of the injury may be established by either a drug test, or the employee’s refusal to submit to the test (as long as the employee is notified that refusal may affect eligibility for compensation and benefits). For the presumption to apply, the drug test must be requested after an injury by (1) an employer who has reasonable cause to suspect that the employee may be under the influence, (2) a police officer who has reasonable grounds to believe that the employee was operating a vehicle while under the influence, or (3) a physician.

“Reasonable cause” means evidence that an employee is or was using alcohol, a controlled substance, or marijuana drawn from specific, objective facts and reasonable inferences drawn from these facts considering experience and training. These facts and

²³ R.C. 4167.10.

²⁴ R.C. 4123.54(B)(1)(b); see also 29 C.F.R. 40.87 and 40.91.

²⁵ See Ohio Constitution, Article II, Section 1, and *State v. Gill*, 63 Ohio St.3d 53 (1992).

²⁶ R.C. 4123.54(A).

inferences may be based on observation, a pattern of abnormal behavior or deteriorating work performance, the identification of an employee as the focus of a drug-related criminal investigation, a report of use by a reliable and credible source, or repeated or flagrant violations of the employer's safety or work rules.²⁷

Reimbursements to certain secondary payers

The bill modifies the circumstances under which the Administrator may reimburse 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.

Currently, the Administrator may make a payment of up to \$500 to reimburse any of the entities listed above for the cost of medical assistance paid on behalf of a medical assistance recipient. Before making a payment, the Administrator must reasonably determine that the payment is for reimbursement of benefits for an injury or occupational disease that is compensable, or is likely to be compensable, under the Workers' Compensation Law.

Under the bill, the Administrator may make the \$500 reimbursement payment only if the party seeking reimbursement requests the payment and the payment will resolve the request.

Under continuing law, reimbursements to the Centers of Medicare and Medicaid Services, the Department, or any other entity with a lawful right to reimbursement are charged to and paid from the Surplus Fund Account maintained under continuing law. Charges to the Surplus Fund Account do not directly affect the workers' compensation premium paid by an individual employer.²⁸

Prosthetic devices

For claims pending on or arising on or after the bill's effective date, the bill allows the Industrial Commission or Administrator to order a payment to purchase, repair, or replace a prosthetic device if the purchase, repair, or replacement is necessary due to an amputation or loss that resulted from an injury or occupational disease allowed under the Workers' Compensation Law. The Commission or Administrator may issue the order regardless of the date of injury or the last payment of compensation or benefits.

In most cases, in the absence of statutorily specified events, the Commission and Administrator cannot modify or change a former finding or order, nor award compensation or benefits in a claim, if more than five years have passed since the date of injury. If a statutorily specified event occurs, the Commission's authority to change or modify a finding or order, or award compensation or benefits in the claim, extends for an additional five years from the date of the event. The bill specifies that an order to pay for the purchase, repair, or replacement of a

²⁷ R.C. 4123.54(B) and (C).

²⁸ R.C. 4123.66; see also R.C. 4123.34, not in the bill.

prosthetic device does not extend the period during which the Commission or Administrator may modify or change a former finding or order in a claim.²⁹

Additionally, when a claimant has sustained an amputation or a loss enumerated in continuing law because of an injury or occupational disease, the Administrator must pay the cost to purchase, repair, or replace a prosthetic device even if no award for the loss has yet been granted. The cost for the purchase, repair, or replacement is charged to the Surplus Fund Account created under continuing law.³⁰

Under the bill, “prosthetic device” means a custom fabricated or fitted device used to replace a missing appendage or other external body part. It includes an artificial limb, hand, foot, or eye or an intraocular lens. It does not include a dental appliance, eyeglasses, hearing aid, ostomy product, or any other item that does not have a significant impact on the musculoskeletal functions of the body such as breast prostheses, eyelashes, wigs, and other cosmetic devices.³¹

BWC Board of Directors

The bill eliminates the requirement that the BWC Board of Directors meet annually with the Governor to discuss the Administrator’s performance. The Board may utilize an executive session to conduct this meeting.

In addition, the bill requires forfeiture of a Board member’s position for missing nine or more Board meetings, including regular and special meetings, in a consecutive 12-month period. Accordingly, the bill exempts Board members from an otherwise applicable general provision of continuing law that requires a member of a public body of the state to forfeit the member’s position for failing to attend at least $\frac{3}{5}$ of the body’s regular and special meetings in any two-year period.³²

Continuing law requires the Administrator to prepare an annual budget for internal BWC operating purposes. The bill eliminates the requirement that the Administrator submit this budget to the Board for approval. The internal operating budget is separate from the biennial budget that the Administrator must prepare and submit to the Director of Budget and Management under continuing law.³³

Status of certain officials regarding the State Insurance Fund

The State Insurance Fund was created to pay compensation and benefits under the Workers’ Compensation Law.³⁴ The bill specifies that BWC Board members, the Administrator,

²⁹ R.C. 4123.52; Section 7.

³⁰ R.C. 4123.57; Section 7.

³¹ R.C. 4123.52(B).

³² R.C. 4121.12(F) and (I); R.C. 3.17 and 121.22(G), not in the bill.

³³ R.C. 4121.121(B).

³⁴ Ohio Constitution, Article II, Section 35; R.C. 4123.024, 4123.30, and 4123.35, not in the bill.

and BWC's Chief Investment Officer are fiduciaries, rather than trustees as under current law, of the State Insurance Fund.³⁵

Safety and hygiene museums

The bill eliminates the requirement for the Administrator to establish safety and hygiene museums. Under current law, the museums must exhibit safety devices, safeguards, and other means and methods for the protection of life, health, safety, and welfare of employees.³⁶

HISTORY

Action	Date
Introduced	02-10-25

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³⁵ R.C. 4123.44.

³⁶ R.C. 4121.13.