

As Reported by the House Insurance Committee

131st General Assembly

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Sub. H. B. No. 207

Representatives Henne, McColley

**Cosponsors: Representatives Boose, Romanchuk, Hambley, Burkley, Hood,
Sprague, Terhar, Maag, Reineke, Hackett, DeVitis, Retherford, Sears**

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 73
conference be conducted by the administrator's designee pursuant 74
to division (B) of this section, both of the following apply: 75

(1) The administrator's designee shall schedule a 76

conference on or before sixty days after the date that the 77
claimant and statutory subrogee filed a request for the 78
conference. 79

(2) The determination made by the administrator's designee 80
is not subject to Chapter 119. of the Revised Code. 81

(D) When a claimant's action against a third party 82
proceeds to trial and damages are awarded, both of the following 83
apply: 84

(1) The claimant shall receive an amount equal to the 85
uncompensated damages divided by the sum of the subrogation 86
interest plus the uncompensated damages, multiplied by the net 87
amount recovered, and the statutory subrogee shall receive an 88
amount equal to the subrogation interest divided by the sum of 89
the subrogation interest plus the uncompensated damages, 90
multiplied by the net amount recovered. 91

(2) The court in a nonjury action shall make findings of 92
fact, and the jury in a jury action shall return a general 93
verdict accompanied by answers to interrogatories that specify 94
the following: 95

(a) The total amount of the compensatory damages; 96

(b) The portion of the compensatory damages specified 97
pursuant to division (D) (2) (a) of this section that represents 98
economic loss; 99

(c) The portion of the compensatory damages specified 100
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

<u>any law or ordinance regulating the operation of a motor vehicle</u>	224
<u>arising from the accident on which the claim is based.</u>	225
<u>(4) Either of the following circumstances apply to the</u>	226
<u>claim:</u>	227
<u>(a) Any form of insurance maintained by the third party</u>	228
<u>covers the claim.</u>	229
<u>(b) Uninsured or underinsured motorist coverage as</u>	230
<u>described in section 3937.18 of the Revised Code, covers the</u>	231
<u>claim.</u>	232
<u>(C) If an employer believes division (B) of this section</u>	233
<u>applies to a claim about which an employee of the employer is</u>	234
<u>the subject, the employer may file a request with the</u>	235
<u>administrator for a determination by the administrator as to</u>	236
<u>whether the claim is to be charged to the surplus fund account</u>	237
<u>pursuant to this section.</u>	238
<u>(D) Upon receipt of a request made under division (C) of</u>	239
<u>this section, the administrator shall determine whether the</u>	240
<u>claim for which the request is made shall be charged to the</u>	241
<u>surplus fund account pursuant to this section.</u>	242
<u>(E) This section does not apply if the employer of the</u>	243
<u>employee who is the subject of the claim is the state or a state</u>	244
<u>institution of higher education, including its hospitals.</u>	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