

129th General Assembly Senate Report

OF THE

Competitive Workers' Compensation Task Force

FROM

December 1, 2009 to June 30, 2011

TASK FORCE PURPOSE

The Competitive Workers' Compensation Task Force was formed by the Ohio Senate to review the feasibility of allowing Ohio employers the option to obtain private insurance to insure their obligations under the workers' compensation system in Ohio. The Task Force is required to make findings on the issues and report its findings to the Governor, the Speaker of the House of Representatives, and the President of the Senate not later than June 30, 2011. The mission of the Competitive Workers' Compensation Task Force is to do and to issue a report concerning, all of the following:

- (1) Evaluate the current workers' compensation insurance offerings offered by the Bureau of Workers' Compensation to determine if such offerings are actuarially sound and competitive with similar offerings in other states while taking into account variations in available benefit levels;
- (2) Evaluate and describe the efforts made by other states within the last fifteen years to open those states' workers' compensation markets to private competition, which shall include the identification and description of those states' best practices in planning for and implementing a transition from a state-fund monopolistic workers' compensation system to a market that includes private competition; and
- (3) Identify at least three business plan options through which this Ohio can introduce viable private workers' compensation competition along with or without the current state fund administered by the Bureau of Workers' Compensation and the Industrial Commission.

MEMBERSHIP

See [Overview No. 1a](#).

TASK FORCE TIMELINE

1. [Senate Resolution 118](#) established the Competitive Workers' Compensation Task Force
 - a. Created the mission for the group and detailed the [composition of the members](#)
 - Passed in the Senate on November 18, 2009
 - Report was to be issued before June 30, 2010
2. [Senate Resolution 322](#) extended the deadline to June 30, 2011 for the official report
 - Adopted on December 1, 2010
3. 1st BWC Task Force meeting: **February 17, 2010**
 - a. NCCI gave a [presentation](#) explaining their organization and their analysis on BWC models in the United States
4. [Senate Resolution 168](#) addressed the appointment of Task Force members
 - Passed in the Senate on February 24, 2010
5. 2nd BWC Task Force meeting: **April 15, 2010**
 - a. Chairman Lhota and Administrator Ryan gave a [presentation](#) on Bureau of Worker's

- Compensation's current practices
- b. They also provided an article from [Claims magazine](#), [Enterprise Report](#), and a [slideshow](#) describing the role of the BWC
6. 3rd BWC Task Force meeting: **May 27, 2010**
- a. Ann Nelson gave a [presentation](#) regarding the State of Nevada's competitive market
7. 4th BWC Task Force meeting: **June 17, 2010**
- a. Philip Fulton, Robert Kendis, and Stuart Jaffy represented the Workers' Compensation Attorney Panel provided [information](#) to the Task Force at that meeting
8. 5th BWC Task Force meeting: **August 19, 2010**
- a. Dr. Robert P. Hartwig, CPCU and President of Insurance Information Institute gave an [economist's perception](#) of BWC matters, including a [white paper](#) concerning the potential impacts on Ohio business and insurance sectors.
9. 6th BWC Task Force meeting: **September 16, 2010**
- a. Psychologist Panel
 - i. [H. Owen Ward](#) Ph.D., Springfield
 - ii. [David Schwartz](#), Ph.D., Cincinnati, on behalf of the Ohio Psychological Association.
 - iii. [William Friday](#), Ph.D., Columbus
 - b. [Ohio Civil Service Employee Association](#) (OCSEA) provided a statement on their stance against change to the current BWC system
10. 7th BWC Task Force meeting: **May 12, 2011**
- a. [Chad Readler](#) from Jones Day informed the Task Force on constitutionality issues surrounding private market competition and Ohio's Workers' Compensation system
 - b. NCCI gave a [presentation](#) updating the members on BWC issues around the US
 - i. Representatives: Mona Carter, Lori Lovgren, Barry Llewellyn
 - a. [Philip Fulton](#) issued an opinion in response to Chad Readler's testimony
 - i. Received on May 23, 2011

SUMMARY

The Task Force reviewed Ohio's current workers' compensation system, considered the worker's compensation systems used in other states with a concentration on Nevada and West Virginia, and discussed the advantages, disadvantages, and impediments to a market place competition approach (both a state BWC and private insurer process) in Ohio. NCCI ([Overview No. 3a](#)) provided comparative information on other state systems and options available to Ohio. A panel of Workers' Compensation Attorneys discussed the workers compensation process and privatization from their viewpoint. Dr. Robert P. Hartwig, CPCU, presented an economist's perception on the issue. OCSEA provided a statement

on their stance on the issue and the potential loss of public jobs. Chad Readler, ESQ. from Jones Day informed the Task Force on constitutionality issues concerning private market competition and workers' compensation in Ohio. Phil Fulton, ESQ. submitted a rebuttal ([Overview No.10c](#).)

The Task Force did not have the resources to fully determine the actuarial soundness of the current Ohio BWC offerings, but evidence was presented that BWC has undertaken several measures, based on an outside consultant's report, to address operational issues. The NCCI presented information as to Ohio's premiums as compared to the other states ([Overview No. 3a](#) and [10b](#)). The Task Force reviewed in general various practices of other states, focusing primarily on West Virginia and Nevada because those states are the most recent to convert from a state monopoly system to a private system. It should be noted that West Virginia does not have a constitutional provision like Article II, Section 35 of the Ohio Constitution. Therefore, West Virginia could convert solely by statute.

Ohio has at least three business plan options with respect to workers' compensation. They are:

1. Continue the current state monopoly approach, with its inherent authority to consider reforms as necessary.
2. Pursue a state constitutional amendment permitting a total conversion to private insurance coverage (e.g. West Virginia) that would either eliminate BWC or convert it to a private insurer (e.g. Nevada). Arguably, this might require voter approval of a constitutional amendment to Article II, Section 35 of the Ohio Constitution. (See [Readler](#) letter). The Ohio Workers' Compensation Bar argues that such an amendment would be required. (See [Fulton](#) letter).
3. Pursue a market place competition plan with private insurers competing with BWC. Whether this can be accomplished by statute only or requires a constitutional amendment was the subject of much debate (See [Readler](#) letter and [Fulton](#) letter). The Task Force Chair's opinion is that market place competition can be achieved by statute.

To convert from the current state monopoly to a market place competitive system, the Legislature should consider the following:

1. The Constitutionality of such conversion by statute must be confirmed. See Article II, Section 35 of the Ohio Constitution.

While a complete conversion from the current system to a totally private system, like West Virginia, might require an amendment to The Ohio Constitution (See [Readler](#) vs. [Fulton](#) letters), partial conversion to a market place system of private insurers in competition with the State BWC (or some form thereof) could be accomplished by statute. The Ohio Workers' Compensation Bar disagrees. See Fulton letter ([Overview No.10c](#)).

2. Conversion to a market place approach would likely require a restructuring of the roles of BWC and the Ohio Department of Insurance. While the Industrial Commission process would continue, the state would have to decide the role of BWC.

3. The market place conversion process would require time for development and implementation. This could take 3 – 5 years.
4. A fundamental issue is whether private insurers will have full market autonomy or have to insure some amount of high risk businesses. If the private insurers have full customer autonomy, BWC would have to maintain a system to provide insurer of last resort coverage. Some members of the task force support full insurer autonomy; others would require some shared high risk coverage requirements for private insurers. This is a major policy issue that will affect the role of BWC and premiums for high risk businesses.
5. Further study is required of the tax advantages enjoyed by BWC and its impact on private insurer competitiveness. This requires some economic analysis, but the Task Force did not have the funds to acquire such analysis. Further study also is required of the function of BWC rates and their impact on private competition, and the benefits of a risk-based rate system.
6. While experience in West Virginia post-privatization indicates that private insurer involvement does not have a dilatory impact on services and coverage for injured workers (this is disputed by the Ohio Workers' Compensation Bar), any conversion to a market place competition with BWC should assure that injured workers receive the level of service and coverage to which they are entitled based on their injury. There should be no drop off in services to injured workers or employers.
7. In West Virginia and Nevada, the introduction of private insurer competition resulted in a reduction in workers' compensation coverage premiums and an increase in the number of private insurers. Some members of the Task Force were of the opinion that such a premium reduction could occur in Ohio. However, other members of the Task Force expressed concern that (i) Ohio is not West Virginia or Nevada, (ii) there was no confirmed evidence on this issue, and (iii) an actuarial study on this issue was warranted. In West Virginia, the number of private insurance companies providing workers' compensation coverage now exceeds 100 insurance carriers. This has increased premium tax revenues received by West Virginia. Claims processing time and fraud claims declined in West Virginia after privatization.
8. Further and more complete study of item 1 of the Task Force's purposes. (See page 2).
9. Consideration of the impact of any change in Ohio's workers' compensation system on public employment and private sector employment would be appropriate.
10. Domestic Ohio insurers expressed a concern about the impact of market place competition on their businesses. Dr. Hartwig expressed concern that all insurers, large and small, must have a level playing field. (See [Hartwig slide 38](#) and [white paper](#)).
11. In addition to private insurance, other options should be considered, such as risk sharing pools, similar to those currently available for property, liability, and employee benefits.

SUPPLEMENTAL INFORMATION

Additional information provided by individual members of the Task Force is attached as a supplement hereto or will be provided separately. The supplemental information is incorporated by reference herein.

- I. Philip Fulton of Philip J. Fulton Law Office issued a [supplemental report](#) to the Competitive Workers' Compensation Task Force.
- II. Scott Gilliam, Government Relations Officer of The Cincinnati Insurance Companies, also provided his [opinion](#) on the Task Force.

CONCLUSION

Ohio owes it to its employers and employees to continue to improve its workers' compensation system. The Task Force encourages continued consideration of the many points raised in this report.

Submitted on behalf of the Task Force on June 30th, 2011.

Timothy J. Grendell
Senator, 18th Ohio Senate District
Chair