SB278

WUUH5EE-1

By Senators Givhan, Butler, Shelnutt, Livingston, Stewart, Gudger, Beasley, Smitherman, Orr, Coleman-Madison, Williams

RFD: Finance and Taxation Education

First Read: 02-Apr-24

SYNOPSIS:

Under existing law, public education employees who are injured on the job must pay out-of-pocket expenses and seek reimbursement from the Board of Adjustment for any on-the-job injury.

This bill would provide compensation benefits to full-time public education employees who are injured on the job.

A BILL

TO BE ENTITLED

AN ACT

Relating to public education; to amend Section 16-1-18.1, as last amended by Act 2023-352, 2023 Regular Session, Code of Alabama 1975; and to add Chapter 1A to Title 16 of the Code of Alabama 1975, creating the Public Education Employee Injury Compensation Program, the Public Education Employee Injury Compensation Trust Fund, and the Public Education Employee Injury Compensation Board; and to provide compensation to full-time public education employees who are injured on the job.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 16-1-18.1, as last amended by Act

2023-352, 2023 Regular Session, Code of Alabama 1975, is amended to read as follows:

"§16-1-18.1

(a) ~~Definitions.~~ When used in this section, the following terms have the following meanings:

(1) EMPLOYEE. Any individual employed ~~full~~ full-time as provided by law by those employers enumerated in this section~~;~~ and adult bus drivers.

(2) EMPLOYER. All public city and county boards of education; the Board of Trustees of the Alabama Institute for Deaf and Blind; the Alabama Youth Services Department District Board in its capacity as the Board of Education for the Youth Services Department District; the Board of Directors of the Alabama School of Fine Arts; the Board of Trustees of the Alabama High School of Mathematics and Science; the Board of Trustees of the Alabama School of Cyber Technology and Engineering; for purposes of subsection (c) only, the Alabama State Senate, the Lieutenant Governor, the Office of the Senate President Pro Tempore, the Speaker of the House of Representatives, the Alabama House of Representatives, the Legislative Services Agency; any organization participating in the Teachers' Retirement System, excluding any state governmental department not listed herein; the Board of Trustees of the Alabama Community College System; and for the purposes of subsection (c) only, all four-year public institutions of higher learning.

(3) EXECUTIVE OFFICER. The superintendent of any public county school system or any public city school system; the

President of the Alabama Institute for Deaf and Blind; the president of any two-year school or college under the auspices of the Board of Trustees of the Alabama Community College System; the Superintendent of the Department of Youth Services School District; the Executive Director of the Alabama School of Fine Arts; the Executive Director of the Alabama High School of Mathematics and Science; the President of the Alabama School of Cyber Technology and Engineering; the Secretary of the Senate; the Clerk of the House of Representatives; the Lieutenant Governor; the Speaker of the House of Representatives; the Director of the Legislative Services Agency; and the chief executive officer of any other employer as provided in this section.

(4) ON-THE-JOB INJURY. Any accident or injury to the employee arising out of and in the course of employment or occurring during the performance of duties or when directed or requested by the employer to be on the property of the employer ~~which prevents the employee from working or returning to his or her job~~.

(5) SICK LEAVE. The absence from duty by an employee as a result of any of the following:

a. Personal illness or doctor's quarantine.

b. Incapacitating personal injury.

c. Attendance upon an ill member of the employee's immediate family (parent, spouse, child, foster child currently in the care and custody of the employee, sibling, child currently in the care and custody of the employee for whom a petition for adoption has been filed); or an individual

with a close personal tie.

d. Death in the family of the employee (parent, spouse, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, nephew, niece, grandchild, grandparent, uncle, or aunt).

e. Death, injury, or sickness of another individual who has unusually strong personal ties to the employee, such as a person who stood in loco parentis.

f. Attendance upon an adopted child~~,~~ who is three years of age or younger.

(b) Sick leave for employees.

(1) ~~EARNINGS.~~ The employee shall earn one sick leave day per month of employment.

(2) ~~REASONS FOR TAKING SICK LEAVE.~~ The employee may take sick leave for any of the reasons enumerated and defined in this section. Sick leave taken for the purpose of attending to an adopted child may be taken for a maximum of eight weeks~~,~~ or 320 consecutive hours. Nothing in this section shall permit an employee to use sick leave that he or she has not earned or has not been donated.

(3) ~~EMPLOYEE PAY WHILE ON SICK LEAVE.~~ Reimbursement of pay for the employee per day of sick leave shall be at the daily rate of pay for the employee.

(c) Sick leave accumulation and transfers.

(1) An employee may accumulate an unlimited number of sick leave days. Earned sick leave days that have been accrued by an employee shall be transferrable from one employer to another. The executive officer of the employer shall ensure

that certification of the number of unused sick leave days is provided to the new employer when an employee transfers employment. All of the earned and unused sick leave days that an employee has accumulated shall be transferred to the new employer for use by the employee as provided by law. However, for purposes of applying accrued sick leave as credit for retirement purposes, an employee is limited to a maximum of sick leave as authorized in subdivision (b)(1). As pertains to receiving retirement credit for accrued sick leave, the ~~Teacher's~~Teachers' Retirement System Board of Control may adopt policies and procedures necessary to effectuate a uniform policy pursuant to this section.

(2) Employees of the Alabama State Senate, the Lieutenant Governor, the Office of the Senate President Pro Tempore, the Speaker of the House of Representatives, the Alabama House of Representatives, and the Legislative Services Agency may only accrue unlimited sick leave under this section until January 1, 2013. On January 1, 2013, an employee subject to this section may carry over only the actual number of sick leave hours the employee has or the number allowed under Section 36-26-36, whichever is greater. After January 1, 2013, sick leave earned by an employee subject to this section in excess of the amount determined on January 1, 2013, is subject to Section 36-26-36(d).

(d) ~~On-the-job injury.~~ The following ~~regulations~~policies, procedures, and rights are established pertaining to employees who are injured while on the job:

(1) ~~NOTICE OF INJURY.~~ a. The employee shall ~~make proper~~

~~notification~~ provide verbal or written notice of the injury to an immediate supervisor, the executive officer, or to the principal of the school, if applicable, within ~~24 hours~~ 10 working days after the injury occurred, or where the employee has died or is not clinically able to make notification, another person who is reasonably knowledgeable may make the notification of the injury within 30 days of the date of the injury. Notice from the employee is not required where the employer has actual knowledge of the injury.

b. Other notification procedures ~~and forms~~ shall be as established by written policy of the employer. The State Superintendent of Education and the Chancellor of the Alabama Community College System shall adopt and distribute uniform injury reporting forms to the institutions under their respective supervision. The employer shall prepare the first report of injury form and the employee shall sign the completed injury report form. The employer shall then forward the employee-signed form to the Public Education Employee Injury Compensation Board.

(2) ~~PHYSICIAN CERTIFICATION.~~ The employer may require medical certification from the employee's physician that the employee was injured and cannot return to work as a result of the injury. The executive officer, at his or her discretion, may require a second opinion from another physician at the expense of the employer. The employer may require a statement from the physician that there is a reasonable expectation that the employee will be able to return to work. A uniform physician certification form shall be adopted by the State

Board of Education and distributed to each executive officer.

(3) ~~SALARY CONTINUED.~~ Upon determination by the executive officer that an employee has been injured on the job and cannot return to work as a result of the injury, the salary and fringe benefits of the employee shall be continued for a period of up to 90 working days consistent with the employee's injury and the subsequent absence from work resulting from the injury. This provision shall apply to the temporary disability of the employee as applicable to the job-related injury.

(4) ~~EXTENSION OF DAYS.~~ The employer may adopt a written policy to extend the 90-day sick leave period for on-the-job injuries. Additional ~~job-~~on-the-job injury policies may be adopted by the employer if the policies do not conflict with ~~the~~ this section.

(5) ~~REIMBURSEMENT TO EMPLOYER.~~ Any reasonable on-the-job injury costs incurred by the employer~~,~~ to hire a substitute~~,~~ per absent injured employee in a fiscal year shall be reimbursed to the employer by the state during the next succeeding fiscal year upon application by the employer to the appropriate State Board of Education department on a form adopted by the state board, not to exceed 90 working days. The department shall subsequently submit the request to the Legislature as a line-item in its budget request for reimbursement to the employer, and, if approved by the Legislature, shall reimburse the employer at the amount per day for sick leave authorized and funded in the annual budget act for public schools and colleges.

(6) ~~EMPLOYEE'S SICK LEAVE.~~ Sick leave shall not be deducted from the employee's account if absence from work is found to be a result of an on-the-job injury.

(7) ~~ADDITIONAL EXPENSES.~~ Any unreimbursed medical expenses and costs that the employee incurs as a result of an on-the-job injury may be filed for reimbursement with the State Board of Adjustment. Reimbursement to the employee shall be determined by the Board of Adjustment's policies, rules, and regulations which may be adopted from time to time. The Board of Adjustment shall adopt appropriate rules, regulations, and forms for submission by the employee.

(8) The executive officer, or his or her designee, shall inform the employee who is injured on the job of his or her rights about appearing before the Board of Adjustment and ~~also about~~the applicable written policies within ~~30~~seven calendar days after notification of the injury. The employee's 90 working days of paid injury leave provided in this section shall be extended by every working day past seven calendar days that the employer does not provide notification to the employee. The State Superintendent of Education and Chancellor of the Alabama Community College System shall adopt and distribute a uniform notice of rights to the employers under their respective supervision for distribution to injured employees.

(e) ~~Vacations and leaves of absences.~~ The employer, under the rules and ~~regulations~~ policies adopted from time to time by the State Board of Education, may provide for paid leaves of absences and vacations for its employees. Payment

may be from public funds. The employer may provide for leaves of absence during the times the schools are, or are not, in session when the teacher or employee devotes the leave to instructing in or attending schools for appropriate training, or when approved by the State Board of Education as beneficial to the state's educational objectives. The employer may also provide for the payment of any full-time teachers or employees for absences during the time schools are in session when the absence results from an unavoidable cause that prevents the teacher or employee from discharging his or her duties. Pay for the absences resulting from unavoidable causes other than sickness shall not be allowed for a longer time than one week during any one scholastic year.

(f) ~~Alabama Community College System annual leave.~~ As applied to Alabama Community College System employers, any employee who earns and accumulates annual leave may accumulate up to 60 days of annual leave at a rate not to exceed that provided in the policy established by the State Board of Education.

(g) ~~Policies.~~ The policies and procedures required and permitted by this section shall be adopted by the employer consistent with and as required by Section 16-1-30."

Section 2. Chapter 1A is added to Title 16 of the Code of Alabama 1975, to read as follows:

§16-1A-1

The following terms have the following meanings:

(1) BOARD. The Public Education Employee Injury Compensation Board.

(2) EMPLOYEE. Any individual employed full-time as provided by law by those employers enumerated in this section and adult bus drivers.

(3) EMPLOYER. All public city and county boards of education; the Board of Trustees of the Alabama Institute for Deaf and Blind; the Alabama Youth Services Department District Board in its capacity as the Board of Education for the Youth Services Department District; the Board of Directors of the Alabama School of Fine Arts; the Board of Trustees of the Alabama High School of Mathematics and Science; the Board of Trustees of the Alabama School of Cyber Technology and Engineering; and the Board of Trustees of the Alabama Community College System.

(4) EXECUTIVE OFFICER. The superintendent of any public county school system or any public city school system; the President of the Alabama Institute for Deaf and Blind; the president of any two-year school or college under the auspices of the Board of Trustees of the Alabama Community College System; the Superintendent of the Department of Youth Services School District; the Executive Director of the Alabama School of Fine Arts; the Executive Director of the Alabama High School of Mathematics and Science; the President of the Alabama School of Cyber Technology and Engineering; and the chief executive officer of any other employer.

(5) FUND. The Public Education Employee Injury Compensation Trust Fund.

(6) ON-THE-JOB INJURY. Any accident or injury to the employee arising out of and in the course of employment or

occurring during the performance of duties or when directed or requested by the employer to be on the property of the employer which prevents the employee from working or returning to his or her job.

(7) PEEHIP. The Public Education Employees' Health Insurance Plan.

(8) PROGRAM. The Public Education Employee Injury Compensation Program.

(9) TPA. Third-party administrator or adjuster.

(b) For purposes of this chapter, any term used in this chapter, except the terms "employee" and "employer," that is defined in Section 25-5-1 shall have the same meaning as the term in that section.

(c) The following policies, procedures, and rights are established pertaining to employees who are injured while on the job:

(1)a. The employee shall provide verbal or written notice of the injury to an immediate supervisor, the executive officer, or to the principal of the school, if applicable, within 10 working days after the injury occurred, or where the employee has died or is not clinically able to make notification, another person who is reasonably knowledgeable may make the notification of the injury within 30 days of the date of the injury. Notice from the employee is not required where the employer has actual knowledge of the injury.

b. Other notification procedures shall be as established by written policy of the employer. The State Superintendent of Education and the Chancellor of the Alabama

Community College System shall adopt and distribute uniform injury reporting forms to the institutions under their respective supervision. The employer shall prepare the first report of injury form and the employee shall sign the completed injury report form. The employer shall then forward the employee-signed form to the Public Education Employee Injury Compensation Board.

(d) There is established a separate special trust fund in the State Treasury to be known as the Public Education Employee Injury Compensation Trust Fund. All receipts collected pursuant to this chapter shall be deposited in this fund and used to carry out this chapter. Monies in the fund unspent or unencumbered at the end of each fiscal year shall not revert to any other fund in the State Treasury but shall be carried forward to the succeeding fiscal year. All monies in the fund may be invested and reinvested by the Director of Finance, through the Division of Risk Management, under the same terms as the State Insurance Fund. There is appropriated from the Public Education Employee Injury Compensation Trust Fund such amounts as are necessary to pay claims, benefits, administrative costs, and all other costs of the program.

(e)(1) The program shall be governed by this chapter.

(2) Payments made pursuant to this chapter to physicians licensed to practice medicine for services to injured employees shall be in accordance with the schedule of maximum fees as established by PEEHIP.

(3)a. An employee who does not have PEEHIP coverage must use a physician authorized by the TPA or the employer.

b. If an employee without PEEHIP coverage requests a second opinion, he or she shall request a panel of four alternate physicians, in accordance with the Alabama Workers' Compensation Act.

(4) Any rules, policies, or guidelines adopted by the board to establish and operate the program shall be subject to the Alabama Administrative Procedure Act.

(f) Nothing in this chapter shall be construed to affect any benefit to which an employee is entitled under this title.

(g) Nothing in this chapter shall be construed as a waiver by the state of its sovereign immunity under the Constitution of Alabama 2022.

(h) Appropriations to the fund shall be considered a mandate for local boards of education to participate in the program pursuant to Section 25-5-50(d).

§16-1A-2

(a) The Public Education Employee Injury Compensation Board shall be comprised of the following members:

(1) One member appointed by the State Superintendent of Education.

(2) One member appointed by the PEEHIP Board of Control.

(3) One member appointed by the professional organization that represents the majority of employees statewide.

(b) The initial appointee of the State Superintendent of Education shall serve a term of one year and the successor

shall serve a term of three years. The initial appointee of the PEEHIP Board of Control shall serve a term of two years and the successor shall serve a term of three years. All other members shall serve an initial term of three years and the successor shall serve a term of three years. No member may serve more than two consecutive terms. A board member shall serve until his or her successor is appointed.

(c) Initial appointments to the board shall be made by the appointing authority within 60 days of October 1, 2024.

(d) Members of the board shall receive no compensation but shall be reimbursed by the fund for travel and per diem expenses at the same rate and in the same manner as state employees.

(e) The board shall have all of the following powers, duties, and responsibilities:

(1) To administer the programs, including, but not limited to, establishing or contracting with a TPA to oversee benefits paid to employees and coordinate with PEEHIP.

(2) To manage the fund to ensure that adequate funds are maintained to provide all injury program benefits to employees.

(3) To provide reasonable compensation for the hearing officers who hear any dispute arising under this chapter.

(4) To employ professional, clerical, technical, and administrative staff as the board may determine necessary to carry out its duties pursuant to the state Merit System and compensate staff accordingly.

(5) To secure insurance, reinsurance, or other products

the board deems advisable in carrying out its duties.

(6) To retain and compensate legal counsel to represent the board, employers, the fund, the program, and TPA including, but not limited to, appearing before hearing officers or judges in contested cases.

(f) Except as otherwise required by the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d et seq., the board shall be subject to all applicable open meetings and open records laws, shall adopt rules in accordance with the Alabama Administrative Procedure Act, and shall have a fiduciary duty to the fund and the program.

§16-1A-3

(a) There is established the Public Education Employee Injury Compensation Program.

(b)(1) Benefits provided under the program shall be no less than any benefits provided under the Alabama Workers' Compensation Act to employees who are injured on the job.

(2) Benefits shall include, but not be limited to, compensation payments, medical benefits not otherwise paid by PEEHIP, vocational rehabilitation, and the provision of durable medical equipment. Compensation, including temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability, shall be paid for all job injuries, including accidents, occupational disease, repetitive injury, and gradual deterioration and physical stress disorders. Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.

(3) Penalties, consistent with the then current Workers' Compensation Act, shall be assessed for untimely compensation payments.

(c)(1) An injured employee who has exhausted the 90-day on-the-job injury leave period provided by Section 16-1-18.1, and any extensions thereof, whose treating physician certifies that his or her injury continues to prevent a return to work or whose employer determines that the employee cannot safely perform the essential functions of his or her job with the limitations imposed by his or her treating physician, shall be placed on temporary disability status.

(2) The employee shall receive compensation equivalent to two-thirds of his or her salary based upon his or her placement on the employer's salary schedule in the same manner as benefits are paid to employees under the Alabama Workers' Compensation Act.

(3) Employers shall continue to make all required health insurance contributions until any separation from employment.

(4) The board shall establish procedures for employers to be reimbursed by the fund for the costs of an employee's compensation and benefits under this chapter.

(d) An employee who suffers a permanent partial disability as a result of an on-the-job injury shall receive compensation for the number of weeks provided in Section 25-5-57, with the number of weeks multiplied by five days, and that number of days multiplied by the employee's daily rate of pay as defined by the employer's salary schedule.

(e)(1) If, upon reaching maximum medical improvement, the employee's treating physician determines that the employee cannot return to work or the employer determines that the employee's limitations will not allow him or her to perform the essential functions of his or her position, the employee shall revert to permanent disability status.

(2) An employee on permanent total disability shall be entitled to two-thirds of his or her salary, plus an additional amount equal to two-thirds of the employer's average weekly contribution to health insurance benefits for the 52 weeks prior to the accident or injury. The board shall establish procedures to assist employees in applying for vested retirement benefits.

(3) PEEHIP may not subrogate, seek reimbursement, or seek credit for any amount paid to an injured employee under the program.

(f) An employee who received health insurance benefits through PEEHIP at the time of his or her injury shall continue to receive such benefits while on temporary or permanent disability status as provided in Chapter 25A of Title 16 and may continue to use his or her preferred providers consistent with the PEEHIP plan.

(g) An employee who did not receive health insurance benefits through PEEHIP at the time of his or her injury shall notify the board on an approved form. The board shall provide medical benefits to the employee consistent with the Workers' Compensation Act.

(h)(1) Employees may file a claim with the board for

reimbursement of out-of-pocket expenses that are related to treatment for an on-the-job injury, including, but not limited to, copays and mileage. Employees shall submit claims using forms adopted by the board for such purpose.

(2) Reimbursements to employees under this subsection shall be made from the fund.

(3) All undisputed claims for reimbursement of out-of-pocket expenses shall be paid within 25 working days of receipt by the board.

(i) The board shall establish procedures for employers to be reimbursed by the fund for payments to injured employees under the program.

(j) All undisputed medical reimbursements shall be made within 25 working days of receipt of medical charges by the TPA or the local board of education; provided, PEEHIP payments shall be made within the same time schedules as currently exist. For non-PEEHIP reimbursements or payments, failure to comply with the 25-day deadline may result in the board being responsible for an additional amount.

(k) Any on-the-job injuries suffered by part-time, substitute, temporary, or any other non-full-time employees, or volunteers not covered by this chapter shall be conducted in accordance with the Board of Adjustment process outlined in Article 4 of Chapter 9 of Title 41.

§16-1A-4

(a) An employer who refuses to complete and submit an injury report form after timely notice of an injury by an employee pursuant to this chapter shall provide notice in

writing of its findings of fact that support its decision. An employee may challenge the employer's decision pursuant to the dispute resolution provisions of this section.

(b) The submission by an employer of an injury report form to the board shall establish a rebuttable presumption that an employee was injured in the line and scope of his or her employment.

(c)(1) The employer's executive officer or the board shall refer any dispute that arises under this chapter between an employee and employer or between an employee and a TPA contracted with or established under this chapter to the Executive Director of the Alabama State Bar Association. The dispute shall be adjudicated by a hearing officer appointed from the panel of neutrals maintained by the Executive Director of the Alabama State Bar Association pursuant to Section 16-24C-6(e). The hearing officer shall be selected using the same process provided in Section 16-24C-6(g).

(2) The hearing officer selected must certify that he or she has experience in adjudicating workers' compensation disputes or refer the matter back to the state bar association to repeat the selection process. The hearing and appeals process shall be the same as provided in Section 16-24C-6, except that no deference is to be provided to either party and the Alabama Rules of Evidence shall apply in hearings before the hearing officer.

(3) The statute of limitations for a dispute under this subsection is two years from the date of the injury or the date of the last temporary total disability payment.

(d) The decision of the hearing officer and decision on appeal shall be based on a preponderance of the evidence as contained in the record of the hearing, except in cases involving injuries which have resulted from gradual deterioration or cumulative physical stress disorders, which shall be deemed compensable only upon a finding of clear and convincing proof that the injuries arose out of and in the course of the employee's employment. For the purposes of this section, "clear and convincing" shall mean evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt.

(e) The Alabama Rules of Civil Procedure shall govern the methods of discovery, except that the following limitations to pre-hearing discovery shall apply:

(1) Two depositions for each side shall be permitted without leave of court. No additional depositions shall be permitted except with leave of court for good cause shown, including, but not limited to, a claim by the employee for permanent total disability.

(2) Notwithstanding subdivision (1), each party may take the deposition of every other party.

(3) No more than 25 interrogatories, with each subpart to be considered a question, shall be permitted without leave

of court for good cause shown.

(4) Certified sealed copies of records of medical treatment and expenses shall be authenticated in accordance with Rule 44(h) of the Alabama Rules of Civil Procedure, without further need for authenticating testimony.

(5) Copies of records obtained by one party shall be furnished by certified mail to the other party not less than 21 days prior to the hearing, unless the party offering the records can establish unusual circumstances justifying admission of the records.

(6) The party not offering the records of a physician's treatment shall have the right to depose the physician whose records of treatment are to be offered by any other party.

(g) In the same manner as provided in the Workers' Compensation Act, a hearing officer may award a legal fee of up to 15 percent of the compensation awarded in a contested case. This amount is discretionary and will only be awarded if requested by legal counsel for the employee. The award shall be deducted from compensation otherwise payable to the employee.

Section 3. This act shall become effective on October 1, 2024.