



# FY 2020-21 Workers' Compensation Budget (House Bill 80) 133<sup>rd</sup> Ohio General Assembly (as passed by the House)

## Health Note

### Summary of health note findings

House Bill 80, as passed by the House of Representatives, funds Ohio's workers' compensation system, provides additional coverage for first responders, discourages employers from misclassifying employees as independent contractors, and prohibits undocumented workers from receiving benefits if false information on immigration status is provided.

1. Workers' compensation helps relieve the economic burden of workplace injuries, that would otherwise be borne largely by workers, by covering costs of medical care and rehabilitation, providing reimbursement for lost wages, and compensating for permanent impairment.<sup>ii</sup>
2. Coverage of post-traumatic stress disorder for first responders can help ensure first responders get needed medical care while also reducing risk of on-the-job injury,<sup>iii</sup> improving rates of return to work.<sup>iv</sup>
3. Penalties for misclassifying employees as independent contractors will improve access to medical care,<sup>v</sup> and reduce financial strain and stress-related health conditions for workers.<sup>vi</sup>
4. New questions on claim form, related to immigration status, along with denial of benefits and threat of criminal prosecution for providing false answers, could further deter undocumented workers from filing claims.<sup>vii</sup>

**Bill number:** H.B. 80, as passed by the Ohio House of Representatives

**Bill topic:** Workers' Compensation Budget

**Primary Sponsor:** Rep. Scott Oelslager

**Summary of selected components:**<sup>viii</sup>  
Appropriates funds for the Bureau of Workers' Compensation.

Makes first responders diagnosed with post-traumatic stress disorder eligible to receive workers' compensation regardless of accompanying physical injury.

Creates a test to determine whether an individual is an "employee" or an "independent contractor" for the purpose of specified labor laws. Penalizes employers for misclassifying an employee.

Requires compensation claim form to include questions about the employee's immigration status and authorization to work in the U.S. Untruthful answers subject claimants to criminal prosecution and result in denial of benefits.

**Health Note analysts:** Policy Matters Ohio

**Additional Information:** This health note was produced using a methodology and approach developed by the Health Impact Project at The Pew Charitable Trusts, and is part of a pilot program in several jurisdictions to test the use of health notes to inform policymaking at state and local levels. This health note is supported by a grant from the Health Impact Project. The views expressed are those of the authors and do not necessarily reflect the views of the Health Impact Project or the Pew Charitable Trusts.

Please visit Health Impact Project at [www.healthimpactproject.org](http://www.healthimpactproject.org) for more information.

### What is the goal of this health note?

Policy decisions made outside of public health and health care sectors, such as in education, transportation or criminal justice, can affect health and well-being. Health notes are intended to provide objective, nonpartisan information to help legislators understand the connections between these sectors and health. Health notes are not intended to make definitive or causal predictions.

### Why was this bill selected?

Policy Matters Ohio selected this bill as an illustrative example to demonstrate the potential health impacts of proposed legislation.

## What are the potential health impacts of H.B. 80?

- 1. Funding Ohio workers' compensation system could improve health outcomes of workers injured at work,** increase the likelihood that workers get treatment for acute injuries, reduce financial stress on workers and their families created by workplace injuries, lower the risk of injured workers developing associated anxiety-related health conditions, and help ensure injured workers return to work.<sup>ix</sup> Employers benefit by being shielded from lawsuits by injured workers.<sup>x</sup> There is strong evidence that prolonged financial strain increases levels of anxiety, depression and risk of suicide.<sup>xi</sup> A fair amount of evidence supports a link between economic stress and physical manifestations of that stress, such as hypertension and heart disease.<sup>xii</sup> A fair amount of evidence suggests workers' compensation premiums, based on employer safety records, encourage employers to put in place safety measures<sup>xiii</sup> that result in fewer on-the-job injuries.<sup>xiv</sup>
- 2. The health of first responders can benefit from expanded coverage for post-traumatic stress disorder (PTSD).** Very strong evidence shows emergency personnel are at least four times more likely to experience PTSD than the general population.<sup>xv</sup> Strong evidence indicates emotional trauma is linked to higher risk of occupation injury,<sup>xvi</sup> hypertension, coronary heart disease, and Type 2 diabetes.<sup>xvii</sup> A fair amount of evidence suggests PTSD reduces the chances a person will return to work,<sup>xviii</sup> and that better workers' compensation insurance coverage for PTSD is likely to result in more first responders seeking help.<sup>xix</sup> Strong evidence indicates psychiatric treatment will reduce PTSD symptoms and help first responders get back to work.<sup>xx</sup>
- 3. Penalizing employers for misclassifying employees as independent contractors will likely increase the number of workers covered by Ohio's workers' compensation insurance system.** This provision will extend workers' compensation coverage to some workers currently misclassified as independent contractors, improving worker access to medical care following workplace injury or illness<sup>xxi</sup> and reducing financial stress from missed work and temporary or permanent work limitations due to injury.<sup>xxii</sup>
- 4. Posing questions about immigration status on workers' compensation claim forms, under threat of criminal prosecution for falsifying information, may further discourage undocumented workers from filing claims.** Undocumented workers already file for workers' compensation at relatively low rates,<sup>xxiii</sup> in part out of fear of employer retaliation.<sup>xxiv</sup> This provision could further shift the financial burden of workplace injuries from employers to undocumented workers and the public health care system.<sup>xxv</sup>

### Methods summary

To complete this health note, staff conducted an expedited literature review using a systematic approach to minimize bias and identify studies to answer each of the identified research questions. The strength of the evidence is quantitatively described and categorized as: not well researched, a fair amount of evidence, strong evidence and very strong evidence. It was beyond the scope of this analysis to consider the fiscal impacts of this bill or the effects any funds dedicated to implementing the bill may have on other programs or initiatives in the state. To the extent that this bill requires funds to be shifted away from other purposes or would result in other initiatives not being funded, policymakers may want to consider additional research to understand the relative effect of devoting funds for this bill relative to another purpose. It should be noted that the workers' compensation system is primarily funded through employer contributions to the insurance system and operates independently of the general revenue fund. A detailed description of the methods is provided in Analysis Methodology on page 8.



## Health Equity

# Workers' Compensation, House Bill 80 (as passed by the House)

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### WHY DOES OHIO'S WORKERS' COMPENSATION SYSTEM MATTER?

In fiscal year 2018, in Ohio, there were more than 97,000 workplace injury or illness claims filed with the state workers' compensation insurance program, including 227 workplace deaths.<sup>xxvi</sup> These workers required medical care, sometimes urgent. Many also required time away from work or became limited in the work they could do (temporarily while recovering or permanently in some cases).<sup>xxvii</sup> That year, Ohio's workers' compensation insurance program paid \$526.4 million in medical costs, and \$937 million in compensation for earnings losses, temporary and permanent disability, death and rehabilitation, among other things.<sup>xxviii</sup> Workers' compensation benefits help relieve financial strain of workplace injuries on workers and their families and encourage the use of medical care. There is a fair amount of evidence that prolonged financial stress is linked to anxiety, depression, and suicide as well as physical illnesses such as heart disease, hypertension, asthma, and diabetes.<sup>xxix</sup>

There is also mixed evidence to suggest that the use of "experience rating" to calculate employer premiums, where higher rates are charged to Ohio employers with a history of workplace injuries, promotes greater adoption of safety practices among employers.<sup>xxx</sup> In a review of six separate studies, four found decreased injury or fatality rates in American workplaces when experience rating was implemented, while two were inconclusive.<sup>xxxi</sup>

House Bill 80 is Ohio's biennial budget bill allocating funds for the Ohio Bureau of Workers' Compensation system for fiscal years 2020 and 2021.<sup>xxxi</sup> Revenues for Ohio's workers' compensation insurance system come largely from insurance premiums purchased by employers. More than 240,000 Ohio employers secure policies from the Bureau of Workers' Compensation, covering 60% of the state's workforce.<sup>xxxiii</sup> As passed by the House, HB 80 also included provisions designed to add coverage for some workers, deter others from filing claims, and reverse some cost shifting by employers (see bill components 2-4 described below).

### BILL COMPONENT 1

**HB 80 funds the Ohio Bureau of Workers' Compensation insurance program which is designed to alleviate the economic burden on workers and their families from workplace injuries and illnesses.**<sup>xxxiv</sup>

The federal Occupational Safety and Health Act of 1970 requires employers to keep their workplaces free of known hazards likely to cause death or serious injury.<sup>xxxv</sup> Despite this, thousands of workers across the country get killed on the job every year while millions of workers are seriously injured or acquire serious illnesses.<sup>xxxvi</sup> The economic costs of workplace injuries can be large, and are often borne by the worker, creating a financial trap for workers and their families: Medical costs for the injured worker accumulate while earnings are lost from missed work and injury-related work limitations.<sup>xxxvii</sup>

The purpose of workers' compensation insurance is to alleviate the economic burden on workers and their families from workplace injuries through employer-sponsored insurance coverage for

related medical costs, rehabilitation, lost wages and reduced future earnings. By creating a fair and balanced administrative system to compensate workers for workplace injuries, both employers and workers benefit from not having to resolve these matters in a costly courtroom battle since covered employers are largely shielded from lawsuits by injured workers.<sup>xxxviii</sup>

Workers' ability to access the full benefits of workers' compensation insurance, however, is limited. This is especially true for low-wage workers, who face considerable barriers to filing, including the threat of retribution and limited knowledge of their rights under the law.<sup>xxxix</sup> National estimates find that employers pay about 20% of the economic costs of workplace injuries and illnesses and lost wages through workers' compensation insurance.<sup>xi</sup> A number of studies show not all workplace injuries are reported, many chronic illnesses occur long after exposure to work-related chemicals, employers use a variety of cost-shifting practices to avoid or reduce liability (see bill components 3 and 4 for examples), and over time it has become increasingly difficult for workers to navigate the system in order to receive payment.<sup>xii</sup> Ultimately, disincentives for workers to file claims that lengthen periods of disability before workers seek treatment are predictive of poorer work-return within one year of treatment, poorer work-retention, and higher pain intensity.<sup>xiii</sup>

## BILL COMPONENT 2

### **Expands coverage for post-traumatic stress disorder among first responders.**

Under current law, workers who experience emotional trauma are eligible for workers' compensation only when those conditions were the result of a physical injury or work-related illness.<sup>xliii</sup> A worker diagnosed with post-traumatic stress disorder (PTSD) resulting from "cumulative exposure to work-related traumatic events" is not currently eligible for workers' compensation in Ohio, despite evidence that such exposure is "specifically associated with PTSD."<sup>xliv</sup>

House Bill 80, as passed by the House, would make a peace officer, firefighter, or emergency medical worker diagnosed with PTSD eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the person suffers an accompanying physical injury.<sup>xlv</sup> Expanding workers' compensation eligibility to all first responders diagnosed with PTSD, regardless of whether the person suffers an accompanying physical injury, would bring Ohio law in line with criteria described in the fifth edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5), which includes "witnessing of trauma to others" as a type of exposure to trauma.<sup>xlvi</sup> One literature review found that first responders who encounter traumatic events on the job, including rescue workers, emergency personnel, firefighters and police officers, are four to five times more likely than the general population to experience PTSD.<sup>xlvii</sup>

Mental health issues, including PTSD, are associated with increased risk of on-the-job injury and may make people less likely to return to work after an injury or illness.<sup>xlviii</sup> PTSD and anxiety disorders are also associated with "an increased risk of costly chronic medical conditions such as hypertension, coronary heart disease, and metabolic syndromes" that are likely to result in direct and indirect costs to employers.<sup>xlix</sup> A 2017 meta-analysis found associations between PTSD and coronary heart disease, stroke and Type 2 diabetes.<sup>i</sup> In 2016, those conditions respectively were the first, fourth and seventh<sup>ii</sup> leading causes of death in Ohio.<sup>iii</sup>

One meta-analysis found strong evidence that "psychotherapy interventions are beneficial for helping" people recover from work-related PTSD and return to work.<sup>liii</sup> Workers' compensation insurance coverage could encourage more people to seek treatment: One meta-analysis found "lack of insurance coverage [for mental health care] usually translates into lack of treatment services, which has radiating costs," including "debilitating impairment."<sup>liiv</sup>

## BILL COMPONENT 3

### **Creates a test to determine whether an individual is an "employee" or an "independent contractor" for the purpose of Workers' Compensation, Unemployment Compensation, and the Income Tax Law. Prohibits and penalizes employers for misclassifying an employee.**

The U.S Bureau of Labor Statistics identifies four categories of alternative or nonstandard

employment arrangements including “independent contractors.”<sup>lv</sup> Misclassifying employees as “independent contractors” enables employers to avoid paying these workers health and other benefits or including them in their workers’ compensation coverage.<sup>lvii</sup> Unlike employees, independent contractors are not entitled to employer benefits including workers’ compensation coverage.

Studies of work-related injuries found higher physical and mental injury rates among workers with nonstandard arrangements, exacerbated by inadequate safety training and the lack of paid sick leave.<sup>lviii</sup> Employers misclassifying employees as independent contractors bear less responsibility for the health and safety of their workers, which can lead to unnecessary fatalities and serious injuries.<sup>lix</sup>

This amendment, if enacted, would adopt the IRS three-part general rule for determining whether a worker is an employee or an independent contractor.<sup>lx</sup> This test is based on the relationship between payer/payee and the extent to which the payer has behavioral and financial control, and penalizes employers for misclassifying employees. Of the most common tests for classification of workers, the IRS test is the least restrictive for employers—fewer independent contractors would have to be reclassified as employees than if the Department of Labor or the “ABC” test were employed.<sup>lxi</sup> Regardless, adoption of the test and penalties for noncompliance will likely discourage misclassification.

By encouraging more employers to properly classify their workforce as employees, this bill would extend workers’ compensation protections to a larger share of workers, improving their health and safety outcomes.<sup>lxii</sup> This could also mitigate financial stress of health care costs, lost wages or limited work abilities on employees suffering workplace injuries. As previously mentioned, financial stress has been linked to increased rates of anxiety, depression, dysthymia, and suicide as well as stress-related physical issues such as heart disease, hypertension and diabetes.<sup>lxiii</sup>

Once correctly classifying workers as employees, employers would then be required to pay into the workers’ compensation system, as well as other mandated insurance programs and payroll taxes, thereby increasing local, state and federal government revenues.<sup>lxiv</sup>

## BILL COMPONENT 4

**Changes the workers’ compensation claim form to include three questions for workers related to the immigration status of the worker and/or their family. If answered untruthfully the worker will be denied benefits and subject to criminal prosecution for fraud.**

Employers hire undocumented immigrant workers, and immigrants in general, for some of the most dangerous jobs, such as warehousing, construction, and agriculture.<sup>lxv</sup> Despite hazards faced by these workers, employers of immigrants and undocumented workers frequently fail to provide adequate safety training or safety equipment.<sup>lxvi</sup> As a result, immigrant workers “face abnormally high rates of workplace injuries and fatalities.”<sup>lxvii</sup>

Although immigrant workers are injured at high rates, nationally, they are less likely to file for workers’ compensation or report their injury to employers.<sup>lxviii</sup> According to one study on immigrant Latinx<sup>lxix</sup> workers across the country, a majority of Latinx workers suffering workplace injuries do not file claims for workers’ compensation.<sup>lxx</sup> These workers may fear that filing claims will lead to employer retribution such as job loss or demotion.<sup>lxxi</sup> Undocumented workers also fear deportation and detention.<sup>lxxii</sup> Cultural and linguistic barriers, as well as lack of familiarity with the health care system, also make immigrant and undocumented workers less likely to apply for benefits.<sup>lxxiii</sup>

This provision may further disincentivize undocumented workers from filing injury claims against their employers. This would shift the economic burden of workplace injuries to undocumented workers from employers to workers, their families, and the public health care system.<sup>lxxiv</sup> Undocumented workers are more likely to be uninsured than citizens, making them reluctant to get medical care until it is an emergency and then seeking more expensive emergency room care they cannot afford.<sup>lxxv</sup> The costs of a workplace injury—including hospital bills and earnings losses—can lead to financial stress, which is linked to increased rates of anxiety, depression, dysthymia, and suicide, as well as physical health problems such as heart disease, hypertension and diabetes.<sup>lxxvi</sup> Some of the medical costs from hospitals will go uncompensated, at which point the hospital will seek taxpayer subsidies and or increase prices of medical care for everyone.

This amendment could also incentivize some employers in dangerous industries to hire



undocumented workers to reduce workers' compensation premiums, since these workers will be even less likely to file claims. It could also further reduce employer motivation to install safety measures. A review of the research found that "for unauthorized workers, immigration status can be a potent source of potential abuse and exploitation by supervisors that may, in fact, contribute to more accidents."<sup>lxxvii</sup> This abuse and exploitation not only affects undocumented immigrants but entire workplace environments, ultimately reducing workplace safety for all employees.

## RESEARCH METHODOLOGY

Once the bill was selected, the research team hypothesized the bill's likely impacts, including health outcomes. The bill components were mapped into steps on a pathway of impacts. Research questions and a list of keywords to search were developed. We reached consensus on the final conceptual model, research questions, contextual background questions, keywords, and keyword combinations. External subject matter experts reviewed a draft of the note. A copy of the conceptual model is available upon request.

Our six research questions related to the bill components examined:

1. To what extent do workers' compensation benefits affect injured workers' use of medical services? How does this affect workers' health?
2. To what extent do workers' compensation payments alleviate financial strain from inability to work? How does this affect health?
3. To what extent do the potential costs of workers' compensation premium increases incentivize employers to take actions that improve workplace safety?
4. To what extent does access to health care affect PTSD in first responders?
5. What are the benefits to employers for misclassifying workers? How does it affect employees?
6. What is the impact of deterring undocumented workers from filing claims?

We then conducted an expedited literature review<sup>lxxviii</sup> using a systematic approach to minimize bias and answer each of the identified research questions. We limited the search to systematic reviews and meta-analyses of studies first, since they provide analyses of multiple studies or address multiple research questions. If no appropriate systematic reviews or meta-analyses were found for a specific question, we searched for nonsystematic research reviews, original articles, and research reports from U.S. agencies and nonpartisan organizations. The search was limited to electronically available sources published between January 2014 and January 2019. However, research cited by these sources were also explored, some of which may have been outside these dates.

We searched PubMed and EBSCO databases along with the following leading journals to explore each research question: The American Journal of Public Health, Social Science and Medicine, Health Affairs. For all searches, the team used the following key terms: Workers' compensation, injury recovery, return to work, access to health care, post-traumatic stress disorder, PTSD, first responders, workplace injuries, undocumented workers, worker misclassification, financial stress, independent contractor, contingent workers, undocumented, insurance, health outcomes, workplace safety, treatment delay, financial burden.

We also searched the websites of subject matter experts including National Employment Law Project, the Occupation Safety & Health Administration at the Department of Labor, The National Institute for Occupational and Safety and Health Center for Workers' Compensation Studies, the Ohio Legislative Service Commission, and the Ohio Bureau of Workers' Compensation.

After following the above protocol, the team screened titles, and excluded 80 that did not meet inclusion criteria. They reviewed the remaining 224 abstracts,<sup>lxxix</sup> and identified

22 articles for full-text review, excluding 202 abstracts that did not meet inclusion criteria. Four of those articles failed to meet inclusion criteria; the remaining 18 were included in the health note. In addition, the team identified four peer-reviewed articles through the original articles and identified one resource with relevant research outside of the peer-reviewed literature. A final sample of 20 resources was used to create the health note. In addition, the team used seven references to provide contextual information.

Of the studies included, the strength of the evidence was qualitatively described and categorized as: not well researched, mixed evidence, a fair amount of evidence, strong evidence, or very strong evidence. The evidence categories were adapted from a similar approach from another state.<sup>lxxx</sup>

**Very strong evidence:** The literature review yielded robust evidence supporting a causal relationship with few if any contradictory findings. The evidence indicates that the scientific community largely accepts the existence of the relationship.

**Strong evidence:** The literature review yielded a large body of evidence on the association, but the body of evidence contained some contradictory findings or studies that did not incorporate the most robust study designs or execution or had a higher than average risk of bias; or some combination of those factors.

**A fair amount of evidence:** The literature review yielded several studies supporting the association, but a large body of evidence was not established; or the review yielded a large body of evidence but findings were inconsistent with only a slightly larger percent of the studies supporting the association; or the research did not incorporate the most robust study designs or execution or had a higher than average risk of bias.

**Mixed evidence:** The literature review yielded several studies with contradictory findings regarding the association.

**Not well researched:** The literature review yielded few if any studies or yielded studies that were poorly designed or executed or had high risk of bias.

## ACKNOWLEDGEMENTS

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## Endnotes

- i Am. Sub. House Bill 80, as passed by the Ohio House of Representatives, 133rd General Assembly, 2019. <http://bit.ly/AmSubHB80>
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- viii This health note is based on the bill as passed by the House of Representatives. <http://bit.ly/2ZvIJSw>.
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- x Szymendera, D., S. (2017). Workers' Compensation: Overview and Issues. Congressional Research Service.
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- xxv See note 8.
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- xxxii LBO Redbook, Ohio Legislative Service Commission, Bureau of Workers' Compensation Ohio Industrial Commission (Feb 2019) <https://www.lsc.ohio.gov/documents/budget/133/workerscomp/BWC-OIC-RB.pdf>. Ohio's Bureau of Workers' Compensation provides workers' compensation insurance to employers (except to companies with enough resources to qualify for self-insurance programs). The Industrial Commission handles appeals of disputed claims.
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- l Ibid.
- li Diabetes' ranking (7th) is based on combined mortality count for Type 1 and Type 2 diabetes. Only Type 2 diabetes is associated with PTSD. According to the Ohio Department of Health, it accounts for 90-95% of adult diabetes diagnoses nationwide.
- lii Ohio Department of Health, "Chronic Diseases & Conditions." Accessed June 18, 2019 <http://bit.ly/2FpeXXR>

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lxix Latinx refers to people with ancestors from Latin America and covers male (Latino), female (Latina) and other people.

lxx Gany et al. Urban occupational health (See note 38.)

lxxi Bonnar Prado, J., Mulay, R., P., Kasner, J., E., Bojes, K., H., Calvert, M., G. (2017). Acute Pesticide-Related Illness Among Farmworkers: Barriers to Reporting to Public Health Authorities. *Journal of Agromedicine* 22(4): 385-405. See also: Gany et al. Urban occupational health (See note 38.)

lxxii Derr, S., A. (2016). Mental Health Service Use Among Immigrants in the United States: A Systematic Review. *Psychiatric Services*. March; 67(3): 265-274. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5122453/>

lxxiii Ibid. See also Bonnar et al. Acute Pesticide-Related (See note 42), and Smith. Immigrant Workers and Workers’ Compensation. (See note 37.)

lxxiv When an uninsured person receives emergency medical care, the costs may be covered by Disproportionate Share Hospital payments made through state Medicaid programs.

lxxv The Henry J. Kaiser Family Foundation. (2019). Health Coverage of Immigrants. Available at: <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/> [Accessed 25 Jun. 2019].

lxxvi Mucci et al. The correlation between stress and economic crisis. (See note 9.)

lxxvii Smith. Immigrant Workers and Workers’ Compensation. (See note 37.)

lxxviii Expedited reviews streamline traditional literature review methods to synthesize evidence within a shortened timeframe. Prior research has demonstrated that conclusions of a rapid review versus a full systematic review did not vary greatly. See Cameron A. et al., “Rapid versus full systematic reviews: an inventory of current methods and practice in Health Technology Assessment,” (Australia: ASERNIP-S, 2007): 1-105, [https://www.surgeons.org/media/297941/rapidvsfull2007\\_systematicreview.pdf](https://www.surgeons.org/media/297941/rapidvsfull2007_systematicreview.pdf).

lxxix Many of the searches produced duplicate articles. The number of sources screened does not account for duplication across searches in different databases.

lxxx Washington State Board of Health, “Executive Summary: Health Impact Review of HB 2969,” <http://bit.ly/2WSO6t7>