

H.B. 308  
As Introduced

\_\_\_\_\_ moved to amend as follows:

Delete lines 64 through 374 1

After line 374, insert: 2

**"Sec. 4123.01.** As used in this chapter: 3

(A)(1) "Employee" means: 4

(a) Every person in the service of the state, or of any 5  
county, municipal corporation, township, or school district 6  
therein, including regular members of lawfully constituted police 7  
and fire departments of municipal corporations and townships, 8  
whether paid or volunteer, and wherever serving within the state 9  
or on temporary assignment outside thereof, and executive officers 10  
of boards of education, under any appointment or contract of hire, 11  
express or implied, oral or written, including any elected 12  
official of the state, or of any county, municipal corporation, or 13  
township, or members of boards of education. 14

As used in division (A)(1)(a) of this section, the term 15  
"employee" includes the following persons when responding to an 16  
inherently dangerous situation that calls for an immediate 17  
response on the part of the person, regardless of whether the 18  
person is within the limits of the jurisdiction of the person's 19  
regular employment or voluntary service when responding, on the 20

condition that the person responds to the situation as the person 21  
 otherwise would if the person were on duty in the person's 22  
 jurisdiction: 23

(i) ~~Off-duty peace officers. As used in division (A)(1)(a)(i) 24  
 of this section, "peace officer" has the same meaning as in 25  
 section 2935.01 of the Revised Code.; 26~~

(ii) ~~Off-duty firefighters, whether paid or volunteer, of a 27  
 lawfully constituted fire department.; 28~~

(iii) ~~Off-duty first responders, emergency medical 29  
 technicians basic, emergency medical technicians intermediate, or 30  
 emergency medical technicians paramedic, whether paid or 31  
 volunteer, emergency medical workers of an ambulance service 32  
 organization or emergency medical service organization pursuant to 33  
 Chapter 4765. of the Revised Code. 34~~

(b) Every person in the service of any person, firm, or 35  
 private corporation, including any public service corporation, 36  
 that (i) employs one or more persons regularly in the same 37  
 business or in or about the same establishment under any contract 38  
 of hire, express or implied, oral or written, including aliens and 39  
 minors, household workers who earn one hundred sixty dollars or 40  
 more in cash in any calendar quarter from a single household and 41  
 casual workers who earn one hundred sixty dollars or more in cash 42  
 in any calendar quarter from a single employer, or (ii) is bound 43  
 by any such contract of hire or by any other written contract, to 44  
 pay into the state insurance fund the premiums provided by this 45  
 chapter. 46

(c) Every person who performs labor or provides services 47  
 pursuant to a construction contract, as defined in section 4123.79 48  
 of the Revised Code, if at least ten of the following criteria 49  
 apply: 50

(i) The person is required to comply with instructions from the other contracting party regarding the manner or method of performing services;	51 52 53
(ii) The person is required by the other contracting party to have particular training;	54 55
(iii) The person's services are integrated into the regular functioning of the other contracting party;	56 57
(iv) The person is required to perform the work personally;	58
(v) The person is hired, supervised, or paid by the other contracting party;	59 60
(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;	61 62 63
(vii) The person's hours of work are established by the other contracting party;	64 65
(viii) The person is required to devote full time to the business of the other contracting party;	66 67
(ix) The person is required to perform the work on the premises of the other contracting party;	68 69
(x) The person is required to follow the order of work set by the other contracting party;	70 71
(xi) The person is required to make oral or written reports of progress to the other contracting party;	72 73
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	74 75
(xiii) The person's expenses are paid for by the other contracting party;	76 77

(xiv) The person's tools and materials are furnished by the other contracting party; 78  
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(xv) The person is provided with the facilities used to perform services; 80  
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(xvi) The person does not realize a profit or suffer a loss as a result of the services provided; 82  
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(xvii) The person is not performing services for a number of employers at the same time; 84  
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(xviii) The person does not make the same services available to the general public; 86  
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(xix) The other contracting party has a right to discharge the person; 88  
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(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement. 90  
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Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or who is a self-insuring employer and who has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer. 93  
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(d) Every person who operates a vehicle or vessel in the 106

performance of services for or on behalf of a motor carrier 107  
transporting property, unless all of the following factors apply 108  
to the person: 109

(i) The person owns the vehicle or vessel that is used in 110  
performing the services for or on behalf of the carrier, or the 111  
person leases the vehicle or vessel under a bona fide lease 112  
agreement that is not a temporary replacement lease agreement. For 113  
purposes of this division, a bona fide lease agreement does not 114  
include an agreement between the person and the motor carrier 115  
transporting property for which, or on whose behalf, the person 116  
provides services. 117

(ii) The person is responsible for supplying the necessary 118  
personal services to operate the vehicle or vessel used to provide 119  
the service. 120

(iii) The compensation paid to the person is based on factors 121  
related to work performed, including on a mileage-based rate or a 122  
percentage of any schedule of rates, and not solely on the basis 123  
of the hours or time expended. 124

(iv) The person substantially controls the means and manner 125  
of performing the services, in conformance with regulatory 126  
requirements and specifications of the shipper. 127

(v) The person enters into a written contract with the 128  
carrier for whom the person is performing the services that 129  
describes the relationship between the person and the carrier to 130  
be that of an independent contractor and not that of an employee. 131

(vi) The person is responsible for substantially all of the 132  
principal operating costs of the vehicle or vessel and equipment 133  
used to provide the services, including maintenance, fuel, 134  
repairs, supplies, vehicle or vessel insurance, and personal 135

expenses, except that the person may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lump sum fees.

(vii) The person is responsible for any economic loss or economic gain from the arrangement with the carrier.

(2) "Employee" does not mean any of the following:

(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;

(b) Any officer of a family farm corporation;

(c) An individual incorporated as a corporation;

(d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as an officer;

(e) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code;

(f)(i) A qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(ii) A qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period on critical infrastructure owned or used

by the employee's employer;

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(iii) As used in division (A)(2)(f) of this section,  
"critical infrastructure," "disaster response period," "disaster  
work," and "qualifying employee" have the same meanings as in  
section 5703.94 of the Revised Code.

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Any employer may elect to include as an "employee" within  
this chapter, any person excluded from the definition of  
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c),  
or (e) of this section in accordance with rules adopted by the  
administrator, with the advice and consent of the bureau of  
workers' compensation board of directors. If an employer is a  
partnership, sole proprietorship, individual incorporated as a  
corporation, or family farm corporation, such employer may elect  
to include as an "employee" within this chapter, any member of  
such partnership, the owner of the sole proprietorship, the  
individual incorporated as a corporation, or the officers of the  
family farm corporation. Nothing in this section shall prohibit a  
partner, sole proprietor, or any person excluded from the  
definition of "employee" pursuant to division (A)(2)(a), (b), (c),  
or (e) of this section from electing to be included as an  
"employee" under this chapter in accordance with rules adopted by  
the administrator, with the advice and consent of the board.

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In the event of an election, the employer or person electing  
coverage shall serve upon the bureau of workers' compensation  
written notice naming the person to be covered and include the  
person's remuneration for premium purposes in all future payroll  
reports. No partner, sole proprietor, or person excluded from the  
definition of "employee" pursuant to division (A)(1)(d) or  
(A)(2)(a), (b), (c), or (e) of this section, shall receive  
benefits or compensation under this chapter until the bureau

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receives written notice of the election permitted by this section. 194

For informational purposes only, the bureau shall prescribe 195  
such language as it considers appropriate, on such of its forms as 196  
it considers appropriate, to advise employers of their right to 197  
elect to include as an "employee" within this chapter a sole 198  
proprietor, any member of a partnership, or a person excluded from 199  
the definition of "employee" under division (A)(1)(d) or 200  
(A)(2)(a), (b), (c), or (e) of this section, that they should 201  
check any health and disability insurance policy, or other form of 202  
health and disability plan or contract, presently covering them, 203  
or the purchase of which they may be considering, to determine 204  
whether such policy, plan, or contract excludes benefits for 205  
illness or injury that they might have elected to have covered by 206  
workers' compensation. 207

(B)(1) "Employer" means: 208

(a) The state, including state hospitals, each county, 209  
municipal corporation, township, school district, and hospital 210  
owned by a political subdivision or subdivisions other than the 211  
state; 212

(b) Every person, firm, professional employer organization, 213  
and private corporation, including any public service corporation, 214  
that (i) has in service one or more employees or shared employees 215  
regularly in the same business or in or about the same 216  
establishment under any contract of hire, express or implied, oral 217  
or written, or (ii) is bound by any such contract of hire or by 218  
any other written contract, to pay into the insurance fund the 219  
premiums provided by this chapter. 220

All such employers are subject to this chapter. Any member of 221  
a firm or association, who regularly performs manual labor in or 222  
about a mine, factory, or other establishment, including a 223

household establishment, shall be considered an employee in 224  
determining whether such person, firm, or private corporation, or 225  
public service corporation, has in its service, one or more 226  
employees and the employer shall report the income derived from 227  
such labor to the bureau as part of the payroll of such employer, 228  
and such member shall thereupon be entitled to all the benefits of 229  
an employee. 230

(2) "Employer" does not include a franchisor with respect to 231  
the franchisor's relationship with a franchisee or an employee of 232  
a franchisee, unless the franchisor agrees to assume that role in 233  
writing or a court of competent jurisdiction determines that the 234  
franchisor exercises a type or degree of control over the 235  
franchisee or the franchisee's employees that is not customarily 236  
exercised by a franchisor for the purpose of protecting the 237  
franchisor's trademark, brand, or both. For purposes of this 238  
division, "franchisor" and "franchisee" have the same meanings as 239  
in 16 C.F.R. 436.1. 240

(C) "Injury" includes any injury, whether caused by external 241  
accidental means or accidental in character and result, received 242  
in the course of, and arising out of, the injured employee's 243  
employment. "Injury" does not include: 244

(1) Psychiatric conditions except ~~where~~ as follows: 245

(a) Where the claimant's psychiatric conditions have arisen 246  
from an injury or occupational disease sustained by that claimant 247  
~~or where;~~ 248

(b) Where the claimant's psychiatric conditions have arisen 249  
from sexual conduct in which the claimant was forced by threat of 250  
physical harm to engage or participate; 251

(c) Where the claimant is a peace officer, firefighter, or 252

emergency medical worker and is diagnosed with post-traumatic 253  
stress disorder that has been received in the course of, and has 254  
arisen out of, the claimant's employment as a peace officer, 255  
firefighter, or emergency medical worker. 256

(2) Injury or disability caused primarily by the natural 257  
deterioration of tissue, an organ, or part of the body; 258

(3) Injury or disability incurred in voluntary participation 259  
in an employer-sponsored recreation or fitness activity if the 260  
employee signs a waiver of the employee's right to compensation or 261  
benefits under this chapter prior to engaging in the recreation or 262  
fitness activity; 263

(4) A condition that pre-existed an injury unless that 264  
pre-existing condition is substantially aggravated by the injury. 265  
Such a substantial aggravation must be documented by objective 266  
diagnostic findings, objective clinical findings, or objective 267  
test results. Subjective complaints may be evidence of such a 268  
substantial aggravation. However, subjective complaints without 269  
objective diagnostic findings, objective clinical findings, or 270  
objective test results are insufficient to substantiate a 271  
substantial aggravation. 272

(D) "Child" includes a posthumous child and a child legally 273  
adopted prior to the injury. 274

(E) "Family farm corporation" means a corporation founded for 275  
the purpose of farming agricultural land in which the majority of 276  
the voting stock is held by and the majority of the stockholders 277  
are persons or the spouse of persons related to each other within 278  
the fourth degree of kinship, according to the rules of the civil 279  
law, and at least one of the related persons is residing on or 280  
actively operating the farm, and none of whose stockholders are a 281  
corporation. A family farm corporation does not cease to qualify 282

under this division where, by reason of any devise, bequest, or 283  
the operation of the laws of descent or distribution, the 284  
ownership of shares of voting stock is transferred to another 285  
person, as long as that person is within the degree of kinship 286  
stipulated in this division. 287

(F) "Occupational disease" means a disease contracted in the 288  
course of employment, which by its causes and the characteristics 289  
of its manifestation or the condition of the employment results in 290  
a hazard which distinguishes the employment in character from 291  
employment generally, and the employment creates a risk of 292  
contracting the disease in greater degree and in a different 293  
manner from the public in general. 294

(G) "Self-insuring employer" means an employer who is granted 295  
the privilege of paying compensation and benefits directly under 296  
section 4123.35 of the Revised Code, including a board of county 297  
commissioners for the sole purpose of constructing a sports 298  
facility as defined in section 307.696 of the Revised Code, 299  
provided that the electors of the county in which the sports 300  
facility is to be built have approved construction of a sports 301  
facility by ballot election no later than November 6, 1997. 302

(H) "Private employer" means an employer as defined in 303  
division (B)(1)(b) of this section. 304

(I) "Professional employer organization" has the same meaning 305  
as in section 4125.01 of the Revised Code. 306

(J) "Public employer" means an employer as defined in 307  
division (B)(1)(a) of this section. 308

(K) "Sexual conduct" means vaginal intercourse between a male 309  
and female; anal intercourse, fellatio, and cunnilingus between 310  
persons regardless of gender; and, without privilege to do so, the 311

insertion, however slight, of any part of the body or any  
 instrument, apparatus, or other object into the vaginal or anal  
 cavity of another. Penetration, however slight, is sufficient to  
 complete vaginal or anal intercourse.

(L) "Other-states' insurer" means an insurance company that  
 is authorized to provide workers' compensation insurance coverage  
 in any of the states that permit employers to obtain insurance for  
 workers' compensation claims through insurance companies.

(M) "Other-states' coverage" means both of the following:

(1) Insurance coverage secured by an eligible employer for  
 workers' compensation claims of employees who are in employment  
 relationships localized in a state other than this state or those  
 employees' dependents;

(2) Insurance coverage secured by an eligible employer for  
 workers' compensation claims that arise in a state other than this  
 state where an employer elects to obtain coverage through either  
 the administrator or an other-states' insurer.

(N) "Limited other-states coverage" means insurance coverage  
 provided by the administrator to an eligible employer for workers'  
 compensation claims of employees who are in an employment  
 relationship localized in this state but are temporarily working  
 in a state other than this state, or those employees' dependents.

(O) "Motor carrier" has the same meaning as in section  
 4923.01 of the Revised Code.

(P) "Peace officer" has the same meaning as in section  
 2935.01 of the Revised Code.

(Q) "Firefighter" means a firefighter, whether paid or  
 volunteer, of a lawfully constituted fire department.

(R) "Emergency medical worker" means a first responder, 340  
emergency medical technician-basic, emergency medical 341  
technician-intermediate, or emergency medical 342  
technician-paramedic, certified under Chapter 4765. of the Revised 343  
Code, whether paid or volunteer." 344

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS

**LSC technical** 345  
**R.C. 4123.01** 346  
 Updates a Revised Code section that has been amended since 347  
 the bill's introduction. 348