

Sub. H.B. 80
As Passed by the Senate

_____ moved to amend as follows:

In line 1 of the title, after "sections" insert "4123.01, 1
4123.026,"; after "4123.038" insert ", 4123.46," 2

In line 154, after "sections" insert "4123.01, 4123.026,"; 3
after "4123.038" insert ", 4123.46," 4

After line 155, insert: 5

"**Sec. 4123.01.** As used in this chapter: 6

(A)(1) "Employee" means: 7

(a) Every person in the service of the state, or of any 8
county, municipal corporation, township, or school district 9
therein, including regular members of lawfully constituted police 10
and fire departments of municipal corporations and townships, 11
whether paid or volunteer, and wherever serving within the state 12
or on temporary assignment outside thereof, and executive officers 13
of boards of education, under any appointment or contract of hire, 14
express or implied, oral or written, including any elected 15
official of the state, or of any county, municipal corporation, or 16
township, or members of boards of education. 17

As used in division (A)(1)(a) of this section, the term 18
"employee" includes the following persons when responding to an 19
inherently dangerous situation that calls for an immediate 20

response on the part of the person, regardless of whether the
 person is within the limits of the jurisdiction of the person's
 regular employment or voluntary service when responding, on the
 condition that the person responds to the situation as the person
 otherwise would if the person were on duty in the person's
 jurisdiction:

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

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

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

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

(c) Every person who performs labor or provides services

pursuant to a construction contract, as defined in section 4123.79	51
of the Revised Code, if at least ten of the following criteria	52
apply:	53
(i) The person is required to comply with instructions from	54
the other contracting party regarding the manner or method of	55
performing services;	56
(ii) The person is required by the other contracting party to	57
have particular training;	58
(iii) The person's services are integrated into the regular	59
functioning of the other contracting party;	60
(iv) The person is required to perform the work personally;	61
(v) The person is hired, supervised, or paid by the other	62
contracting party;	63
(vi) A continuing relationship exists between the person and	64
the other contracting party that contemplates continuing or	65
recurring work even if the work is not full time;	66
(vii) The person's hours of work are established by the other	67
contracting party;	68
(viii) The person is required to devote full time to the	69
business of the other contracting party;	70
(ix) The person is required to perform the work on the	71
premises of the other contracting party;	72
(x) The person is required to follow the order of work set by	73
the other contracting party;	74
(xi) The person is required to make oral or written reports	75
of progress to the other contracting party;	76
(xii) The person is paid for services on a regular basis such	77

as hourly, weekly, or monthly;	78
(xiii) The person's expenses are paid for by the other contracting party;	79 80
(xiv) The person's tools and materials are furnished by the other contracting party;	81 82
(xv) The person is provided with the facilities used to perform services;	83 84
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	85 86
(xvii) The person is not performing services for a number of employers at the same time;	87 88
(xviii) The person does not make the same services available to the general public;	89 90
(xix) The other contracting party has a right to discharge the person;	91 92
(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.	93 94 95
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	96 97 98 99 100 101 102 103 104 105

employees or their legal representatives or beneficiaries elect, 106
after injury or death, to regard such independent contractor as 107
the employer. 108

(d) Every person who operates a vehicle or vessel in the 109
performance of services for or on behalf of a motor carrier 110
transporting property, unless all of the following factors apply 111
to the person: 112

(i) The person owns the vehicle or vessel that is used in 113
performing the services for or on behalf of the carrier, or the 114
person leases the vehicle or vessel under a bona fide lease 115
agreement that is not a temporary replacement lease agreement. For 116
purposes of this division, a bona fide lease agreement does not 117
include an agreement between the person and the motor carrier 118
transporting property for which, or on whose behalf, the person 119
provides services. 120

(ii) The person is responsible for supplying the necessary 121
personal services to operate the vehicle or vessel used to provide 122
the service. 123

(iii) The compensation paid to the person is based on factors 124
related to work performed, including on a mileage-based rate or a 125
percentage of any schedule of rates, and not solely on the basis 126
of the hours or time expended. 127

(iv) The person substantially controls the means and manner 128
of performing the services, in conformance with regulatory 129
requirements and specifications of the shipper. 130

(v) The person enters into a written contract with the 131
carrier for whom the person is performing the services that 132
describes the relationship between the person and the carrier to 133
be that of an independent contractor and not that of an employee. 134

(vi) The person is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the person may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.	135 136 137 138 139 140 141
(vii) The person is responsible for any economic loss or economic gain from the arrangement with the carrier.	142 143
(2) "Employee" does not mean any of the following:	144
(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;	145 146 147
(b) Any officer of a family farm corporation;	148
(c) An individual incorporated as a corporation;	149
(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;	150 151 152
(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;	153 154 155 156 157
(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;	158 159 160 161 162

(ii) A qualifying employee described in division (A)(14)(b) 163
of section 5703.94 of the Revised Code when the qualifying 164
employee is performing disaster work in this state during a 165
disaster response period on critical infrastructure owned or used 166
by the employee's employer; 167

(iii) As used in division (A)(2)(f) of this section, 168
"critical infrastructure," "disaster response period," "disaster 169
work," and "qualifying employee" have the same meanings as in 170
section 5703.94 of the Revised Code. 171

Any employer may elect to include as an "employee" within 172
this chapter, any person excluded from the definition of 173
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c), 174
or (e) of this section in accordance with rules adopted by the 175
administrator, with the advice and consent of the bureau of 176
workers' compensation board of directors. If an employer is a 177
partnership, sole proprietorship, individual incorporated as a 178
corporation, or family farm corporation, such employer may elect 179
to include as an "employee" within this chapter, any member of 180
such partnership, the owner of the sole proprietorship, the 181
individual incorporated as a corporation, or the officers of the 182
family farm corporation. Nothing in this section shall prohibit a 183
partner, sole proprietor, or any person excluded from the 184
definition of "employee" pursuant to division (A)(2)(a), (b), (c), 185
or (e) of this section from electing to be included as an 186
"employee" under this chapter in accordance with rules adopted by 187
the administrator, with the advice and consent of the board. 188

In the event of an election, the employer or person electing 189
coverage shall serve upon the bureau of workers' compensation 190
written notice naming the person to be covered and include the 191
person's remuneration for premium purposes in all future payroll 192

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
 receives written notice of the election permitted by this section.

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

(B)(1) "Employer" means:

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

(b) Every person, firm, professional employer organization,
 and private corporation, including any public service corporation,
 that (i) has in service one or more employees or shared employees
 regularly in the same business or in or about the same
 establishment under any contract of hire, express or implied, oral
 or written, or (ii) is bound by any such contract of hire or by
 any other written contract, to pay into the insurance fund the

premiums provided by this chapter.	223
All such employers are subject to this chapter. Any member of	224
a firm or association, who regularly performs manual labor in or	225
about a mine, factory, or other establishment, including a	226
household establishment, shall be considered an employee in	227
determining whether such person, firm, or private corporation, or	228
public service corporation, has in its service, one or more	229
employees and the employer shall report the income derived from	230
such labor to the bureau as part of the payroll of such employer,	231
and such member shall thereupon be entitled to all the benefits of	232
an employee.	233
(2) "Employer" does not include a franchisor with respect to	234
the franchisor's relationship with a franchisee or an employee of	235
a franchisee, unless the franchisor agrees to assume that role in	236
writing or a court of competent jurisdiction determines that the	237
franchisor exercises a type or degree of control over the	238
franchisee or the franchisee's employees that is not customarily	239
exercised by a franchisor for the purpose of protecting the	240
franchisor's trademark, brand, or both. For purposes of this	241
division, "franchisor" and "franchisee" have the same meanings as	242
in 16 C.F.R. 436.1.	243
(C) "Injury" includes any injury, whether caused by external	244
accidental means or accidental in character and result, received	245
in the course of, and arising out of, the injured employee's	246
employment. "Injury" does not include:	247
(1) Psychiatric conditions except where <u>as follows</u> :	248
(a) <u>Where</u> the claimant's psychiatric conditions have arisen	249
from an injury or occupational disease sustained by that claimant	250
or where ;	251

(b) Where the claimant's psychiatric conditions have arisen 252
from sexual conduct in which the claimant was forced by threat of 253
physical harm to engage or participate; 254

(c) Where the claimant is a peace officer, firefighter, or 255
emergency medical worker and is diagnosed with post-traumatic 256
stress disorder that has been received in the course of, and has 257
arisen out of, the claimant's employment as a peace officer, 258
firefighter, or emergency medical worker. 259

(2) Injury or disability caused primarily by the natural 260
deterioration of tissue, an organ, or part of the body; 261

(3) Injury or disability incurred in voluntary participation 262
in an employer-sponsored recreation or fitness activity if the 263
employee signs a waiver of the employee's right to compensation or 264
benefits under this chapter prior to engaging in the recreation or 265
fitness activity; 266

(4) A condition that pre-existed an injury unless that 267
pre-existing condition is substantially aggravated by the injury. 268
Such a substantial aggravation must be documented by objective 269
diagnostic findings, objective clinical findings, or objective 270
test results. Subjective complaints may be evidence of such a 271
substantial aggravation. However, subjective complaints without 272
objective diagnostic findings, objective clinical findings, or 273
objective test results are insufficient to substantiate a 274
substantial aggravation. 275

(D) "Child" includes a posthumous child and a child legally 276
adopted prior to the injury. 277

(E) "Family farm corporation" means a corporation founded for 278
the purpose of farming agricultural land in which the majority of 279
the voting stock is held by and the majority of the stockholders 280

are persons or the spouse of persons related to each other within 281
the fourth degree of kinship, according to the rules of the civil 282
law, and at least one of the related persons is residing on or 283
actively operating the farm, and none of whose stockholders are a 284
corporation. A family farm corporation does not cease to qualify 285
under this division where, by reason of any devise, bequest, or 286
the operation of the laws of descent or distribution, the 287
ownership of shares of voting stock is transferred to another 288
person, as long as that person is within the degree of kinship 289
stipulated in this division. 290

(F) "Occupational disease" means a disease contracted in the 291
course of employment, which by its causes and the characteristics 292
of its manifestation or the condition of the employment results in 293
a hazard which distinguishes the employment in character from 294
employment generally, and the employment creates a risk of 295
contracting the disease in greater degree and in a different 296
manner from the public in general. 297

(G) "Self-insuring employer" means an employer who is granted 298
the privilege of paying compensation and benefits directly under 299
section 4123.35 of the Revised Code, including a board of county 300
commissioners for the sole purpose of constructing a sports 301
facility as defined in section 307.696 of the Revised Code, 302
provided that the electors of the county in which the sports 303
facility is to be built have approved construction of a sports 304
facility by ballot election no later than November 6, 1997. 305

(H) "Private employer" means an employer as defined in 306
division (B)(1)(b) of this section. 307

(I) "Professional employer organization" has the same meaning 308
as in section 4125.01 of the Revised Code. 309

(J) "Public employer" means an employer as defined in 310

division (B)(1)(a) of this section.	311
(K) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of gender; and, without privilege to do so, the 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.	312 313 314 315 316 317 318
(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.	319 320 321 322
(M) "Other-states' coverage" means both of the following:	323
(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;	324 325 326 327
(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.	328 329 330 331
(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.	332 333 334 335 336
(O) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code.	337 338
<u>(P) "Peace officer" has the same meaning as in section</u>	339

<u>2935.01 of the Revised Code.</u>	340
<u>(O) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.</u>	341
	342
<u>(R) "Emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.</u>	343
	344
	345
	346
	347
Sec. 4123.026. (A) The administrator of workers' compensation, or a self-insuring public employer for the peace officers, firefighters, and emergency medical workers employed by or volunteering for that self-insuring public employer, shall pay the costs of conducting post-exposure medical diagnostic services, consistent with the standards of medical care existing at the time of the exposure, to investigate whether an injury or occupational disease was sustained by a peace officer, firefighter, or emergency medical worker when coming into contact with the blood or other body fluid of another person in the course of and arising out of the peace officer's, firefighter's, or emergency medical worker's employment, or when responding to an inherently dangerous situation in the manner described in, and in accordance with the conditions specified under, division (A)(1)(a) of section 4123.01 of the Revised Code, through any of the following means:	348
	349
	350
	351
	352
	353
	354
	355
	356
	357
	358
	359
	360
	361
	362
(1) <u>(A)</u> Splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;	363
	364
(2) <u>(B)</u> A puncture in the skin;	365
(3) <u>(C)</u> A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.	366
	367

(B) As used in this section:	368
(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	369 370
(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.	371 372
(3) "Emergency medical worker" means a first responder, emergency medical technician basic, emergency medical technician intermediate, or emergency medical technician paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer."	373 374 375 376 377
After line 180, insert:	378
" Sec. 4123.46. (A)(1) Except as provided in division (A)(2) of this section, the bureau of workers' compensation shall disburse the state insurance fund to employees of employers who have paid into the fund the premiums applicable to the classes to which they belong when the employees have been injured in the course of their employment, wherever the injuries have occurred, and provided the injuries have not been purposely self-inflicted, or to the dependents of the employees in case death has ensued.	379 380 381 382 383 384 385 386
(2) As long as injuries have not been purposely self-inflicted, the bureau shall disburse the surplus fund created under section 4123.34 of the Revised Code to off-duty peace officers, firefighters, <u>and</u> emergency medical technicians, and first responders <u>workers</u> , or to their dependents if death ensues, who are injured while responding to inherently dangerous situations that call for an immediate response on the part of the person, regardless of whether the person was within the limits of the person's jurisdiction when responding, on the condition that the person responds to the situation as the person otherwise would	387 388 389 390 391 392 393 394 395 396

if the person were on duty in the person's jurisdiction. 397

~~As used in division (A)(2) of this section, "peace officer," 398
 "firefighter," "emergency medical technician," "first responder," 399
 and "jurisdiction" have the same meanings as in section 4123.01 of 400
 the Revised Code. 401~~

(B) All self-insuring employers, in compliance with this 402
 chapter, shall pay the compensation to injured employees, or to 403
 the dependents of employees who have been killed in the course of 404
 their employment, unless the injury or death of the employee was 405
 purposely self-inflicted, and shall furnish the medical, surgical, 406
 nurse, and hospital care and attention or funeral expenses as 407
 would have been paid and furnished by virtue of this chapter under 408
 a similar state of facts by the bureau out of the state insurance 409
 fund if the employer had paid the premium into the fund. 410

If any rule or regulation of a self-insuring employer 411
 provides for or authorizes the payment of greater compensation or 412
 more complete or extended medical care, nursing, surgical, and 413
 hospital attention, or funeral expenses to the injured employees, 414
 or to the dependents of the employees as may be killed, the 415
 employer shall pay to the employees, or to the dependents of 416
 employees killed, the amount of compensation and furnish the 417
 medical care, nursing, surgical, and hospital attention or funeral 418
 expenses provided by the self-insuring employer's rules and 419
 regulations. 420

(C) Payment to injured employees, or to their dependents in 421
 case death has ensued, is in lieu of any and all rights of action 422
 against the employer of the injured or killed employees." 423

In line 226, after "sections" insert "4123.01, 4123.026, "; 424
 after "4123.038" insert ", 4123.46," 425

After line 227, insert: 426

"Section 8. Sections 4123.01, 4123.026, and 4123.46 of the	427
Revised Code, as amended by Section 6 of this act, apply to claims	428
arising on or after the effective date of this section."	429

The motion was _____ agreed to.

SYNOPSIS

Post-traumatic stress disorder	430
R.C. 4123.01, 4123.026, and 4123.46	431
Restores the House provision that makes a peace officer,	432
firefighter, or emergency medical worker who is diagnosed with	433
post-traumatic stress disorder eligible to receive compensation	434
and benefits under Ohio's Workers' Compensation Law, regardless of	435
whether the person suffers an accompanying physical injury.	436