

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 380**

**Representatives Seitz, Householder**

**Cosponsors: Representatives Schaffer, Henne, Retherford, Vitale, Thompson,  
Becker, Merrin, Antani, Lang, Keller, Hood, Riedel**

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**A BILL**

To amend sections 2743.02, 2744.02, 4123.01, and 1  
4123.511 and to enact sections 2307.82 and 2  
4123.513 of the Revised Code to prohibit illegal 3  
and unauthorized aliens from receiving 4  
compensation and certain benefits under Ohio's 5  
Workers' Compensation Law. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2743.02, 2744.02, 4123.01, and 7  
4123.511 be amended and sections 2307.82 and 4123.513 of the 8  
Revised Code be enacted to read as follows: 9

**Sec. 2307.82.** (A) As used in this section, "employer," 10  
"illegal alien," "occupational disease," and "unauthorized 11  
alien" have the same meanings as in section 4123.01 of the 12  
Revised Code. 13

(B) Except as provided in division (C) of this section, no 14  
court in this state has jurisdiction over a claim for damages 15  
suffered by an illegal alien or an unauthorized alien by reason 16  
of personal injury sustained or occupational disease contracted 17

by the illegal alien or unauthorized alien in the course of 18  
employment caused by the wrongful act or omission or neglect of 19  
the employer. Except as provided in division (C) of this 20  
section, an illegal alien or unauthorized alien assumes the risk 21  
of incurring such injury or contracting an occupational disease, 22  
and that assumption is a complete bar to a recovery of damages 23  
for such injury or occupational disease. 24

(C) A court in this state has jurisdiction over a claim 25  
brought by an illegal alien or unauthorized alien against an 26  
employer for damages suffered by reason of personal injury 27  
sustained or occupational disease contracted in the course of 28  
employment caused by the wrongful act or omission or neglect of 29  
the employer if the employer employed the illegal alien or 30  
unauthorized alien knowing that the illegal alien or 31  
unauthorized alien was not authorized to work under section 32  
101(a) of the "Immigration Reform and Control Act of 1986," 100 33  
Stat. 3360, 8 U.S.C. 1324a. 34

Nothing in this section shall be construed to prevent an 35  
illegal alien or an unauthorized alien from bringing a claim 36  
against an employer in a court of competent jurisdiction for an 37  
intentional tort allegedly committed by the employer against the 38  
illegal alien or unauthorized alien. 39

**Sec. 2743.02.** (A) (1) The state hereby waives its immunity 40  
from liability, except as provided for the office of the state 41  
fire marshal in division (G) (1) of section 9.60 and division (B) 42  
of section 3737.221 of the Revised Code, except as provided in 43  
division (I) of this section, and subject to division (H) of 44  
this section, and consents to be sued, and have its liability 45  
determined, in the court of claims created in this chapter in 46  
accordance with the same rules of law applicable to suits 47

between private parties, except that the determination of 48  
liability is subject to the limitations set forth in this 49  
chapter and, in the case of state universities or colleges, in 50  
section 3345.40 of the Revised Code, and except as provided in 51  
division (A) (2) or (3) of this section. To the extent that the 52  
state has previously consented to be sued, this chapter has no 53  
applicability. 54

Except in the case of a civil action filed by the state, 55  
filing a civil action in the court of claims results in a 56  
complete waiver of any cause of action, based on the same act or 57  
omission, that the filing party has against any officer or 58  
employee, as defined in section 109.36 of the Revised Code. The 59  
waiver shall be void if the court determines that the act or 60  
omission was manifestly outside the scope of the officer's or 61  
employee's office or employment or that the officer or employee 62  
acted with malicious purpose, in bad faith, or in a wanton or 63  
reckless manner. 64

(2) If a claimant proves in the court of claims that an 65  
officer or employee, as defined in section 109.36 of the Revised 66  
Code, would have personal liability for the officer's or 67  
employee's acts or omissions but for the fact that the officer 68  
or employee has personal immunity under section 9.86 of the 69  
Revised Code, the state shall be held liable in the court of 70  
claims in any action that is timely filed pursuant to section 71  
2743.16 of the Revised Code and that is based upon the acts or 72  
omissions. 73

(3) (a) Except as provided in division (A) (3) (b) of this 74  
section, the state is immune from liability in any civil action 75  
or proceeding involving the performance or nonperformance of a 76  
public duty, including the performance or nonperformance of a 77

public duty that is owed by the state in relation to any action 78  
of an individual who is committed to the custody of the state. 79

(b) The state immunity provided in division (A) (3) (a) of 80  
this section does not apply to any action of the state under 81  
circumstances in which a special relationship can be established 82  
between the state and an injured party. A special relationship 83  
under this division is demonstrated if all of the following 84  
elements exist: 85

(i) An assumption by the state, by means of promises or 86  
actions, of an affirmative duty to act on behalf of the party 87  
who was allegedly injured; 88

(ii) Knowledge on the part of the state's agents that 89  
inaction of the state could lead to harm; 90

(iii) Some form of direct contact between the state's 91  
agents and the injured party; 92

(iv) The injured party's justifiable reliance on the 93  
state's affirmative undertaking. 94

(B) The state hereby waives the immunity from liability of 95  
all hospitals owned or operated by one or more political 96  
subdivisions and consents for them to be sued, and to have their 97  
liability determined, in the court of common pleas, in 98  
accordance with the same rules of law applicable to suits 99  
between private parties, subject to the limitations set forth in 100  
this chapter. This division is also applicable to hospitals 101  
owned or operated by political subdivisions that have been 102  
determined by the supreme court to be subject to suit prior to 103  
July 28, 1975. 104

(C) Any hospital, as defined in section 2305.113 of the 105  
Revised Code, may purchase liability insurance covering its 106

operations and activities and its agents, employees, nurses, 107  
interns, residents, staff, and members of the governing board 108  
and committees, and, whether or not such insurance is purchased, 109  
may, to the extent that its governing board considers 110  
appropriate, indemnify or agree to indemnify and hold harmless 111  
any such person against expense, including attorney's fees, 112  
damage, loss, or other liability arising out of, or claimed to 113  
have arisen out of, the death, disease, or injury of any person 114  
as a result of the negligence, malpractice, or other action or 115  
inaction of the indemnified person while acting within the scope 116  
of the indemnified person's duties or engaged in activities at 117  
the request or direction, or for the benefit, of the hospital. 118  
Any hospital electing to indemnify those persons, or to agree to 119  
so indemnify, shall reserve any funds that are necessary, in the 120  
exercise of sound and prudent actuarial judgment, to cover the 121  
potential expense, fees, damage, loss, or other liability. The 122  
superintendent of insurance may recommend, or, if the hospital 123  
requests the superintendent to do so, the superintendent shall 124  
recommend, a specific amount for any period that, in the 125  
superintendent's opinion, represents such a judgment. This 126  
authority is in addition to any authorization otherwise provided 127  
or permitted by law. 128

(D) Recoveries against the state shall be reduced by the 129  
aggregate of insurance proceeds, disability award, or other 130  
collateral recovery received by the claimant. This division does 131  
not apply to civil actions in the court of claims against a 132  
state university or college under the circumstances described in 133  
section 3345.40 of the Revised Code. The collateral benefits 134  
provisions of division (B) (2) of that section apply under those 135  
circumstances. 136

(E) The only defendant in original actions in the court of 137

claims is the state. The state may file a third-party complaint 138  
or counterclaim in any civil action, except a civil action for 139  
ten thousand dollars or less, that is filed in the court of 140  
claims. 141

(F) A civil action against an officer or employee, as 142  
defined in section 109.36 of the Revised Code, that alleges that 143  
the officer's or employee's conduct was manifestly outside the 144  
scope of the officer's or employee's employment or official 145  
responsibilities, or that the officer or employee acted with 146  
malicious purpose, in bad faith, or in a wanton or reckless 147  
manner shall first be filed against the state in the court of 148  
claims that has exclusive, original jurisdiction to determine, 149  
initially, whether the officer or employee is entitled to 150  
personal immunity under section 9.86 of the Revised Code and 151  
whether the courts of common pleas have jurisdiction over the 152  
civil action. The officer or employee may participate in the 153  
immunity determination proceeding before the court of claims to 154  
determine whether the officer or employee is entitled to 155  
personal immunity under section 9.86 of the Revised Code. 156

The filing of a claim against an officer or employee under 157  
this division tolls the running of the applicable statute of 158  
limitations until the court of claims determines whether the 159  
officer or employee is entitled to personal immunity under 160  
section 9.86 of the Revised Code. 161

(G) If a claim lies against an officer or employee who is 162  
a member of the Ohio national guard, and the officer or employee 163  
was, at the time of the act or omission complained of, subject 164  
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 165  
2671, et seq., the Federal Tort Claims Act is the exclusive 166  
remedy of the claimant and the state has no liability under this 167

section. 168

(H) If an inmate of a state correctional institution has a 169  
claim against the state for the loss of or damage to property 170  
and the amount claimed does not exceed three hundred dollars, 171  
before commencing an action against the state in the court of 172  
claims, the inmate shall file a claim for the loss or damage 173  
under the rules adopted by the director of rehabilitation and 174  
correction pursuant to this division. The inmate shall file the 175  
claim within the time allowed for commencement of a civil action 176  
under section 2743.16 of the Revised Code. If the state admits 177  
or compromises the claim, the director shall make payment from a 178  
fund designated by the director for that purpose. If the state 179  
denies the claim or does not compromise the claim at least sixty 180  
days prior to expiration of the time allowed for commencement of 181  
a civil action based upon the loss or damage under section 182  
2743.16 of the Revised Code, the inmate may commence an action 183  
in the court of claims under this chapter to recover damages for 184  
the loss or damage. 185

The director of rehabilitation and correction shall adopt 186  
rules pursuant to Chapter 119. of the Revised Code to implement 187  
this division. 188

(I) The state is not liable in any civil action brought by 189  
or on behalf of an illegal alien or an unauthorized alien for 190  
damages suffered by reason of personal injury sustained or 191  
occupational disease contracted in the course of employment 192  
caused by the wrongful act or omission or neglect of the state 193  
acting as an employer unless the state employed that illegal 194  
alien or unauthorized alien knowing that the illegal alien or 195  
unauthorized alien was not authorized to work under section 196  
101(a) of the "Immigration Reform and Control Act of 1986," 100 197

Stat. 3360, 8 U.S.C. 1324a. 198

As used in this division, "illegal alien," "occupational disease," and "unauthorized alien" have the same meanings as in section 4123.01 of the Revised Code. 199  
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**Sec. 2744.02.** (A) (1) For the purposes of this chapter, the 202  
functions of political subdivisions are hereby classified as 203  
governmental functions and proprietary functions. Except as 204  
provided in division (B) of this section, a political 205  
subdivision is not liable in damages in a civil action for 206  
injury, death, or loss to person or property allegedly caused by 207  
any act or omission of the political subdivision or an employee 208  
of the political subdivision in connection with a governmental 209  
or proprietary function. A political subdivision is not liable 210  
in any civil action brought by or on behalf of an illegal alien 211  
or an unauthorized alien for damages suffered by reason of 212  
personal injury sustained or occupational disease contracted in 213  
the course of employment caused by the wrongful act or omission 214  
or neglect of the political subdivision acting as an employer 215  
unless the political subdivision employed that illegal alien or 216  
unauthorized alien knowing that the illegal alien or 217  
unauthorized alien was not authorized to work under section 218  
101(a) of the "Immigration Reform and Control Act of 1986," 100 219  
Stat. 3360, 8 U.S.C. 1324a. 220

As used in this division, "illegal alien," "occupational disease," and "unauthorized alien" have the same meanings as in section 4123.01 of the Revised Code. 221  
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(2) The defenses and immunities conferred under this 224  
chapter apply in connection with all governmental and 225  
proprietary functions performed by a political subdivision and 226  
its employees, whether performed on behalf of that political 227



subdivision or on behalf of another political subdivision.	228
(3) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.	229 230 231 232
(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:	233 234 235 236 237 238
(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:	239 240 241 242 243 244
(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;	245 246 247 248
(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;	249 250 251 252 253 254
(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor	255 256

vehicle while responding to or completing a call for emergency 257  
medical care or treatment, the member was holding a valid 258  
commercial driver's license issued pursuant to Chapter 4506. or 259  
a driver's license issued pursuant to Chapter 4507. of the 260  
Revised Code, the operation of the vehicle did not constitute 261  
willful or wanton misconduct, and the operation complies with 262  
the precautions of section 4511.03 of the Revised Code. 263

(2) Except as otherwise provided in sections 3314.07 and 264  
3746.24 of the Revised Code, political subdivisions are liable 265  
for injury, death, or loss to person or property caused by the 266  
negligent performance of acts by their employees with respect to 267  
proprietary functions of the political subdivisions. 268

(3) Except as otherwise provided in section 3746.24 of the 269  
Revised Code, political subdivisions are liable for injury, 270  
death, or loss to person or property caused by their negligent 271  
failure to keep public roads in repair and other negligent 272  
failure to remove obstructions from public roads, except that it 273  
is a full defense to that liability, when a bridge within a 274  
municipal corporation is involved, that the municipal 275  
corporation does not have the responsibility for maintaining or 276  
inspecting the bridge. 277

(4) Except as otherwise provided in section 3746.24 of the 278  
Revised Code, political subdivisions are liable for injury, 279  
death, or loss to person or property that is caused by the 280  
negligence of their employees and that occurs within or on the 281  
grounds of, and is due to physical defects within or on the 282  
grounds of, buildings that are used in connection with the 283  
performance of a governmental function, including, but not 284  
limited to, office buildings and courthouses, but not including 285  
jails, places of juvenile detention, workhouses, or any other 286

detention facility, as defined in section 2921.01 of the Revised Code. 287  
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(5) In addition to the circumstances described in 289  
divisions (B) (1) to (4) of this section, a political subdivision 290  
is liable for injury, death, or loss to person or property when 291  
civil liability is expressly imposed upon the political 292  
subdivision by a section of the Revised Code, including, but not 293  
limited to, sections 2743.02 and 5591.37 of the Revised Code. 294  
Civil liability shall not be construed to exist under another 295  
section of the Revised Code merely because that section imposes 296  
a responsibility or mandatory duty upon a political subdivision, 297  
because that section provides for a criminal penalty, because of 298  
a general authorization in that section that a political 299  
subdivision may sue and be sued, or because that section uses 300  
the term "shall" in a provision pertaining to a political 301  
subdivision. 302

(C) An order that denies a political subdivision or an 303  
employee of a political subdivision the benefit of an alleged 304  
immunity from liability as provided in this chapter or any other 305  
provision of the law is a final order. 306

**Sec. 4123.01.** As used in this chapter: 307

(A) (1) "Employee" means: 308

(a) Every person in the service of the state, or of any 309  
county, municipal corporation, township, or school district 310  
therein, including regular members of lawfully constituted 311  
police and fire departments of municipal corporations and 312  
townships, whether paid or volunteer, and wherever serving 313  
within the state or on temporary assignment outside thereof, and 314  
executive officers of boards of education, under any appointment 315

or contract of hire, express or implied, oral or written, 316  
including any elected official of the state, or of any county, 317  
municipal corporation, or township, or members of boards of 318  
education. 319

As used in division (A) (1) (a) of this section, the term 320  
"employee" includes the following persons when responding to an 321  
inherently dangerous situation that calls for an immediate 322  
response on the part of the person, regardless of whether the 323  
person is within the limits of the jurisdiction of the person's 324  
regular employment or voluntary service when responding, on the 325  
condition that the person responds to the situation as the 326  
person otherwise would if the person were on duty in the 327  
person's jurisdiction: 328

(i) Off-duty peace officers. As used in division (A) (1) (a) 329  
(i) of this section, "peace officer" has the same meaning as in 330  
section 2935.01 of the Revised Code. 331

(ii) Off-duty firefighters, whether paid or volunteer, of 332  
a lawfully constituted fire department. 333

(iii) Off-duty first responders, emergency medical 334  
technicians-basic, emergency medical technicians-intermediate, 335  
or emergency medical technicians-paramedic, whether paid or 336  
volunteer, of an ambulance service organization or emergency 337  
medical service organization pursuant to Chapter 4765. of the 338  
Revised Code. 339

(b) Every person in the service of any person, firm, or 340  
private corporation, including any public service corporation, 341  
that (i) employs one or more persons regularly in the same 342  
business or in or about the same establishment under any 343  
contract of hire, express or implied, oral or written, including 344

~~aliens and authorized to work by the United States department of~~ 345  
~~homeland security or its successors;~~ minors; household workers 346  
who earn one hundred sixty dollars or more in cash in any 347  
calendar quarter from a single household; and casual workers who 348  
earn one hundred sixty dollars or more in cash in any calendar 349  
quarter from a single employer; or (ii) is bound by any such 350  
contract of hire or by any other written contract, to pay into 351  
the state insurance fund the premiums provided by this chapter. 352

(c) Every person who performs labor or provides services 353  
pursuant to a construction contract, as defined in section 354  
4123.79 of the Revised Code, if at least ten of the following 355  
criteria apply: 356

(i) The person is required to comply with instructions 357  
from the other contracting party regarding the manner or method 358  
of performing services; 359

(ii) The person is required by the other contracting party 360  
to have particular training; 361

(iii) The person's services are integrated into the 362  
regular functioning of the other contracting party; 363

(iv) The person is required to perform the work 364  
personally; 365

(v) The person is hired, supervised, or paid by the other 366  
contracting party; 367

(vi) A continuing relationship exists between the person 368  
and the other contracting party that contemplates continuing or 369  
recurring work even if the work is not full time; 370

(vii) The person's hours of work are established by the 371  
other contracting party; 372

(viii) The person is required to devote full time to the business of the other contracting party;	373 374
(ix) The person is required to perform the work on the premises of the other contracting party;	375 376
(x) The person is required to follow the order of work set by the other contracting party;	377 378
(xi) The person is required to make oral or written reports of progress to the other contracting party;	379 380
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	381 382
(xiii) The person's expenses are paid for by the other contracting party;	383 384
(xiv) The person's tools and materials are furnished by the other contracting party;	385 386
(xv) The person is provided with the facilities used to perform services;	387 388
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	389 390
(xvii) The person is not performing services for a number of employers at the same time;	391 392
(xviii) The person does not make the same services available to the general public;	393 394
(xix) The other contracting party has a right to discharge the person;	395 396
(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.	397 398 399

Every person in the service of any independent contractor 400  
or subcontractor who has failed to pay into the state insurance 401  
fund the amount of premium determined and fixed by the 402  
administrator of workers' compensation for the person's 403  
employment or occupation or if a self-insuring employer has 404  
failed to pay compensation and benefits directly to the 405  
employer's injured and to the dependents of the employer's 406  
killed employees as required by section 4123.35 of the Revised 407  
Code, shall be considered as the employee of the person who has 408  
entered into a contract, whether written or verbal, with such 409  
independent contractor unless such employees or their legal 410  
representatives or beneficiaries elect, after injury or death, 411  
to regard such independent contractor as the employer. 412

(2) "Employee" does not mean any of the following: 413

(a) A duly ordained, commissioned, or licensed minister or 414  
assistant or associate minister of a church in the exercise of 415  
ministry; 416

(b) Any officer of a family farm corporation; 417

(c) An individual incorporated as a corporation; 418

(d) An officer of a nonprofit corporation, as defined in 419  
section 1702.01 of the Revised Code, who volunteers the person's 420  
services as ~~a~~an officer; 421

(e) An individual who otherwise is an employee of an 422  
employer but who signs the waiver and affidavit specified in 423  
section 4123.15 of the Revised Code on the condition that the 424  
administrator has granted a waiver and exception to the 425  
individual's employer under section 4123.15 of the Revised Code; 426

(f) An illegal alien or an unauthorized alien. 427

Any employer may elect to include as an "employee" within 428  
this chapter, any person excluded from the definition of 429  
"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 430  
this section in accordance with rules adopted by the 431  
administrator, with the advice and consent of the bureau of 432  
workers' compensation board of directors. If an employer is a 433  
partnership, sole proprietorship, individual incorporated as a 434  
corporation, or family farm corporation, such employer may elect 435  
to include as an "employee" within this chapter, any member of 436  
such partnership, the owner of the sole proprietorship, the 437  
individual incorporated as a corporation, or the officers of the 438  
family farm corporation. Nothing in this section shall prohibit 439  
a partner, sole proprietor, or any person excluded from the 440  
definition of "employee" pursuant to division (A) (2) (a), (b), 441  
(c), or (e) of this section from electing to be included as an 442  
"employee" under this chapter in accordance with rules adopted 443  
by the administrator, with the advice and consent of the board. 444

In the event of an election, the employer or person 445  
electing coverage shall serve upon the bureau of workers' 446  
compensation written notice naming the person to be covered and 447  
include the person's remuneration for premium purposes in all 448  
future payroll reports. No partner, sole proprietor, or person 449  
excluded from the definition of "employee" pursuant to division 450  
(A) (2) (a), (b), (c), or (e) of this section, shall receive 451  
benefits or compensation under this chapter until the bureau 452  
receives written notice of the election permitted by this 453  
section. 454

For informational purposes only, the bureau shall 455  
prescribe such language as it considers appropriate, on such of 456  
its forms as it considers appropriate, to advise employers of 457  
their right to elect to include as an "employee" within this 458



chapter a sole proprietor, any member of a partnership, or a 459  
person excluded from the definition of "employee" under division 460  
(A) (2) (a), (b), (c), or (e) of this section, that they should 461  
check any health and disability insurance policy, or other form 462  
of health and disability plan or contract, presently covering 463  
them, or the purchase of which they may be considering, to 464  
determine whether such policy, plan, or contract excludes 465  
benefits for illness or injury that they might have elected to 466  
have covered by workers' compensation. 467

(B) "Employer" means: 468

(1) The state, including state hospitals, each county, 469  
municipal corporation, township, school district, and hospital 470  
owned by a political subdivision or subdivisions other than the 471  
state; 472

(2) Every person, firm, professional employer 473  
organization, and private corporation, including any public 474  
service corporation, that (a) has in service one or more 475  
employees or shared employees regularly in the same business or 476  
in or about the same establishment under any contract of hire, 477  
express or implied, oral or written, or (b) is bound by any such 478  
contract of hire or by any other written contract, to pay into 479  
the insurance fund the premiums provided by this chapter. 480

All such employers are subject to this chapter. Any member 481  
of a firm or association, who regularly performs manual labor in 482  
or about a mine, factory, or other establishment, including a 483  
household establishment, shall be considered an employee in 484  
determining whether such person, firm, or private corporation, 485  
or public service corporation, has in its service, one or more 486  
employees and the employer shall report the income derived from 487  
such labor to the bureau as part of the payroll of such 488

employer, and such member shall thereupon be entitled to all the 489  
benefits of an employee. 490

(C) "Injury" includes any injury, whether caused by 491  
external accidental means or accidental in character and result, 492  
received in the course of, and arising out of, the injured 493  
employee's employment. "Injury" does not include: 494

(1) Psychiatric conditions except where the claimant's 495  
psychiatric conditions have arisen from an injury or 496  
occupational disease sustained by that claimant or where the 497  
claimant's psychiatric conditions have arisen from sexual 498  
conduct in which the claimant was forced by threat of physical 499  
harm to engage or participate; 500

(2) Injury or disability caused primarily by the natural 501  
deterioration of tissue, an organ, or part of the body; 502

(3) Injury or disability incurred in voluntary 503  
participation in an employer-sponsored recreation or fitness 504  
activity if the employee signs a waiver of the employee's right 505  
to compensation or benefits under this chapter prior to engaging 506  
in the recreation or fitness activity; 507

(4) A condition that pre-existed an injury unless that 508  
pre-existing condition is substantially aggravated by the 509  
injury. Such a substantial aggravation must be documented by 510  
objective diagnostic findings, objective clinical findings, or 511  
objective test results. Subjective complaints may be evidence of 512  
such a substantial aggravation. However, subjective complaints 513  
without objective diagnostic findings, objective clinical 514  
findings, or objective test results are insufficient to 515  
substantiate a substantial aggravation. 516

(D) "Child" includes a posthumous child and a child 517

legally adopted prior to the injury. 518

(E) "Family farm corporation" means a corporation founded 519  
for the purpose of farming agricultural land in which the 520  
majority of the voting stock is held by and the majority of the 521  
stockholders are persons or the spouse of persons related to 522  
each other within the fourth degree of kinship, according to the 523  
rules of the civil law, and at least one of the related persons 524  
is residing on or actively operating the farm, and none of whose 525  
stockholders are a corporation. A family farm corporation does 526  
not cease to qualify under this division where, by reason of any 527  
devise, bequest, or the operation of the laws of descent or 528  
distribution, the ownership of shares of voting stock is 529  
transferred to another person, as long as that person is within 530  
the degree of kinship stipulated in this division. 531

(F) "Occupational disease" means a disease contracted in 532  
the course of employment, which by its causes and the 533  
characteristics of its manifestation or the condition of the 534  
employment results in a hazard which distinguishes the 535  
employment in character from employment generally, and the 536  
employment creates a risk of contracting the disease in greater 537  
degree and in a different manner from the public in general. 538

(G) "Self-insuring employer" means an employer who is 539  
granted the privilege of paying compensation and benefits 540  
directly under section 4123.35 of the Revised Code, including a 541  
board of county commissioners for the sole purpose of 542  
constructing a sports facility as defined in section 307.696 of 543  
the Revised Code, provided that the electors of the county in 544  
which the sports facility is to be built have approved 545  
construction of a sports facility by ballot election no later 546  
than November 6, 1997. 547

(H) "Private employer" means an employer as defined in	548
division (B)(2) of this section.	549
(I) "Professional employer organization" has the same	550
meaning as in section 4125.01 of the Revised Code.	551
(J) "Public employer" means an employer as defined in	552
division (B)(1) of this section.	553
(K) "Sexual conduct" means vaginal intercourse between a	554
male and female; anal intercourse, fellatio, and cunnilingus	555
between persons regardless of gender; and, without privilege to	556
do so, the insertion, however slight, of any part of the body or	557
any instrument, apparatus, or other object into the vaginal or	558
anal cavity of another. Penetration, however slight, is	559
sufficient to complete vaginal or anal intercourse.	560
(L) "Other-states' insurer" means an insurance company	561
that is authorized to provide workers' compensation insurance	562
coverage in any of the states that permit employers to obtain	563
insurance for workers' compensation claims through insurance	564
companies.	565
(M) "Other-states' coverage" means both of the following:	566
(1) Insurance coverage secured by an eligible employer for	567
workers' compensation claims of employees who are in employment	568
relationships localized in a state other than this state or	569
those employees' dependents;	570
(2) Insurance coverage secured by an eligible employer for	571
workers' compensation claims that arise in a state other than	572
this state where an employer elects to obtain coverage through	573
either the administrator or an other-states' insurer.	574
(N) "Limited other-states coverage" means insurance	575

coverage provided by the administrator to an eligible employer 576  
for workers' compensation claims of employees who are in an 577  
employment relationship localized in this state but are 578  
temporarily working in a state other than this state, or those 579  
employees' dependents. 580

(O) "Illegal alien" means an alien who is deportable if 581  
apprehended because of one of the following: 582

(1) The alien entered the United States illegally without 583  
the proper authorization and documents. 584

(2) The alien once entered the United States legally and 585  
has since violated the terms of the status under which the alien 586  
entered the United States, making that alien an "out of status" 587  
alien. 588

(3) The alien once entered the United States legally but 589  
has overstayed the time limits of the original legal status. 590

(P) "Unauthorized alien" means an alien who is not 591  
authorized to be employed as determined in accordance with 592  
section 101(a) of the "Immigration Reform and Control Act of 593  
1986," 100 Stat. 3360, 8 U.S.C. 1324a. 594

**Sec. 4123.511.** (A) Within seven days after receipt of any 595  
claim under this chapter, the bureau of workers' compensation 596  
shall notify the claimant and the employer of the claimant of 597  
the receipt of the claim and of the facts alleged therein. If 598  
the bureau receives from a person other than the claimant 599  
written or facsimile information or information communicated 600  
verbally over the telephone indicating that an injury or 601  
occupational disease has occurred or been contracted which may 602  
be compensable under this chapter, the bureau shall notify the 603  
employee and the employer of the information. If the information 604

is provided verbally over the telephone, the person providing 605  
the information shall provide written verification of the 606  
information to the bureau according to division (E) of section 607  
4123.84 of the Revised Code. The receipt of the information in 608  
writing or facsimile, or if initially by telephone, the 609  
subsequent written verification, and the notice by the bureau 610  
shall be considered an application for compensation under 611  
section 4123.84 or 4123.85 of the Revised Code, provided that 612  
the conditions of division (E) of section 4123.84 of the Revised 613  
Code apply to information provided verbally over the telephone. 614  
Upon receipt of a claim, the bureau shall advise the claimant of 615  
the claim number assigned and the claimant's right to 616  
representation in the processing of a claim or to elect no 617  
representation. ~~If~~ 618

To be considered eligible for compensation or benefits 619  
paid under this chapter or Chapter 4121., 4127., or 4131. of the 620  
Revised Code other than medical benefits as described in section 621  
4123.66 of the Revised Code, the claimant shall submit to the 622  
administrator of workers' compensation a signed attestation that 623  
the claimant is an eligible "employee" as that term is defined 624  
in section 4123.01 of the Revised Code or, if the claimant is a 625  
dependent of an individual who died as a result of suffering an 626  
injury or contracting an occupational disease, that the 627  
individual who is the subject of the claim was such an employee. 628  
The administrator shall not pay compensation or benefits, other 629  
than medical benefits described in section 4123.66 of the 630  
Revised Code, unless the administrator receives the signed 631  
attestation. The administrator, if the administrator has reason 632  
to believe that a submitted attestation is not valid, may 633  
request the claimant to submit proof to the administrator that 634  
the attestation is valid. The administrator shall make the 635

request in writing and shall state in the request the type of 636  
proof necessary to determine validity and the date by which the 637  
claimant shall submit the proof. If a claimant fails to comply 638  
with the request, the administrator shall deny the claim for 639  
compensation or benefits other than medical benefits and the 640  
claimant is barred from refiling that claim for compensation or 641  
benefits. A denial of a claim for compensation or benefits for 642  
failing to comply with the written request may be appealed under 643  
this section and section 4123.512 of the Revised Code. In the 644  
event a claimant provides a signed attestation required under 645  
this division and it is later determined that the claimant is or 646  
the deceased individual who is the subject of the claim was an 647  
illegal or unauthorized alien, the claimant shall be subject to 648  
prosecution for a violation of section 2913.48 of the Revised 649  
Code. 650

If the bureau determines that a claim is determined to be 651  
a compensable lost-time claim, the bureau shall notify the 652  
claimant and the employer of the availability of rehabilitation 653  
services. No bureau or industrial commission employee shall 654  
directly or indirectly convey any information in derogation of 655  
this right. This section shall in no way abrogate the bureau's 656  
responsibility to aid and assist a claimant in the filing of a 657  
claim and to advise the claimant of the claimant's rights under 658  
the law. 659

The administrator ~~of workers' compensation~~ shall assign 660  
all claims and investigations to the bureau service office from 661  
which investigation and determination may be made most 662  
expeditiously. 663

The bureau shall investigate the facts concerning an 664  
injury or occupational disease and ascertain such facts in 665

whatever manner is most appropriate and may obtain statements of 666  
the employee, employer, attending physician, and witnesses in 667  
whatever manner is most appropriate. 668

The administrator, with the advice and consent of the 669  
bureau of workers' compensation board of directors, may adopt 670  
rules that identify specified medical conditions that have a 671  
historical record of being allowed whenever included in a claim. 672  
The administrator may grant immediate allowance of any medical 673  
condition identified in those rules upon the filing of a claim 674  
involving that medical condition and may make immediate payment 675  
of medical bills for any medical condition identified in those 676  
rules that is included in a claim. If an employer contests the 677  
allowance of a claim involving any medical condition identified 678  
in those rules, and the claim is disallowed, payment for the 679  
medical condition included in that claim shall be charged to and 680  
paid from the surplus fund account created under section 4123.34 681  
of the Revised Code. 682

(B) (1) Except as provided in division (B) (2) of this 683  
section, in claims other than those in which the employer is a 684  
self-insuring employer, if the administrator determines under 685  
division (A) of this section that a claimant is or is not 686  
entitled to an award of compensation or benefits, the 687  
administrator shall issue an order no later than twenty-eight 688  
days after the sending of the notice under division (A) of this 689  
section, granting or denying the payment of the compensation or 690  
benefits, or both as is appropriate to the claimant. 691  
Notwithstanding the time limitation specified in this division 692  
for the issuance of an order, if a medical examination of the 693  
claimant is required by statute, the administrator promptly 694  
shall schedule the claimant for that examination and shall issue 695  
an order no later than twenty-eight days after receipt of the 696



report of the examination. The administrator shall notify the claimant and the employer of the claimant and their respective representatives in writing of the nature of the order and the amounts of compensation and benefit payments involved. The employer or claimant may appeal the order pursuant to division (C) of this section within fourteen days after the date of the receipt of the order. The employer and claimant may waive, in writing, their rights to an appeal under this division.

(2) Notwithstanding the time limitation specified in division (B) (1) of this section for the issuance of an order, if the employer certifies a claim for payment of compensation or benefits, or both, to a claimant, and the administrator has completed the investigation of the claim, the payment of benefits or compensation, or both, as is appropriate, shall commence upon the later of the date of the certification or completion of the investigation and issuance of the order by the administrator, provided that the administrator shall issue the order no later than the time limitation specified in division (B) (1) of this section.

(3) If an appeal is made under division (B) (1) or (2) of this section, the administrator shall forward the claim file to the appropriate district hearing officer within seven days of the appeal. In contested claims other than state fund claims, the administrator shall forward the claim within seven days of the administrator's receipt of the claim to the industrial commission, which shall refer the claim to an appropriate district hearing officer for a hearing in accordance with division (C) of this section.

(C) If an employer or claimant timely appeals the order of the administrator issued under division (B) of this section or

in the case of other contested claims other than state fund 727  
claims, the commission shall refer the claim to an appropriate 728  
district hearing officer according to rules the commission 729  
adopts under section 4121.36 of the Revised Code. The district 730  
hearing officer shall notify the parties and their respective 731  
representatives of the time and place of the hearing. 732

The district hearing officer shall hold a hearing on a 733  
disputed issue or claim within forty-five days after the filing 734  
of the appeal under this division and issue a decision within 735  
seven days after holding the hearing. The district hearing 736  
officer shall notify the parties and their respective 737  
representatives in writing of the order. Any party may appeal an 738  
order issued under this division pursuant to division (D) of 739  
this section within fourteen days after receipt of the order 740  
under this division. 741

(D) Upon the timely filing of an appeal of the order of 742  
the district hearing officer issued under division (C) of this 743  
section, the commission shall refer the claim file to an 744  
appropriate staff hearing officer according to its rules adopted 745  
under section 4121.36 of the Revised Code. The staff hearing 746  
officer shall hold a hearing within forty-five days after the 747  
filing of an appeal under this division and issue a decision 748  
within seven days after holding the hearing under this division. 749  
The staff hearing officer shall notify the parties and their 750  
respective representatives in writing of the staff hearing 751  
officer's order. Any party may appeal an order issued under this 752  
division pursuant to division (E) of this section within 753  
fourteen days after receipt of the order under this division. 754

(E) Upon the filing of a timely appeal of the order of the 755  
staff hearing officer issued under division (D) of this section, 756

the commission or a designated staff hearing officer, on behalf 757  
of the commission, shall determine whether the commission will 758  
hear the appeal. If the commission or the designated staff 759  
hearing officer decides to hear the appeal, the commission or 760  
the designated staff hearing officer shall notify the parties 761  
and their respective representatives in writing of the time and 762  
place of the hearing. The commission shall hold the hearing 763  
within forty-five days after the filing of the notice of appeal 764  
and, within seven days after the conclusion of the hearing, the 765  
commission shall issue its order affirming, modifying, or 766  
reversing the order issued under division (D) of this section. 767  
The commission shall notify the parties and their respective 768  
representatives in writing of the order. If the commission or 769  
the designated staff hearing officer determines not to hear the 770  
appeal, within fourteen days after the expiration of the period 771  
in which an appeal of the order of the staff hearing officer may 772  
be filed as provided in division (D) of this section, the 773  
commission or the designated staff hearing officer shall issue 774  
an order to that effect and notify the parties and their 775  
respective representatives in writing of that order. 776

Except as otherwise provided in this chapter and Chapters 777  
4121., 4127., and 4131. of the Revised Code, any party may 778  
appeal an order issued under this division to the court pursuant 779  
to section 4123.512 of the Revised Code within sixty days after 780  
receipt of the order, subject to the limitations contained in 781  
that section. 782

(F) Every notice of an appeal from an order issued under 783  
divisions (B), (C), (D), and (E) of this section shall state the 784  
names of the claimant and employer, the number of the claim, the 785  
date of the decision appealed from, and the fact that the 786  
appellant appeals therefrom. 787

(G) All of the following apply to the proceedings under 788  
divisions (C), (D), and (E) of this section: 789

(1) The parties shall proceed promptly and without 790  
continuances except for good cause; 791

(2) The parties, in good faith, shall engage in the free 792  
exchange of information relevant to the claim prior to the 793  
conduct of a hearing according to the rules the commission 794  
adopts under section 4121.36 of the Revised Code; 795

(3) The administrator is a party and may appear and 796  
participate at all administrative proceedings on behalf of the 797  
state insurance fund. However, in cases in which the employer is 798  
represented, the administrator shall neither present arguments 799  
nor introduce testimony that is cumulative to that presented or 800  
introduced by the employer or the employer's representative. The 801  
administrator may file an appeal under this section on behalf of 802  
the state insurance fund; however, except in cases arising under 803  
section 4123.343 of the Revised Code, the administrator only may 804  
appeal questions of law or issues of fraud when the employer 805  
appears in person or by representative. 806

(H) Except as provided in section 4121.63 of the Revised 807  
Code and division (K) of this section, payments of compensation 808  
to a claimant or on behalf of a claimant as a result of any 809  
order issued under this chapter shall commence upon the earlier 810  
of the following: 811

(1) Fourteen days after the date the administrator issues 812  
an order under division (B) of this section, unless that order 813  
is appealed; 814

(2) The date when the employer has waived the right to 815  
appeal a decision issued under division (B) of this section; 816

(3) If no appeal of an order has been filed under this 817  
section or to a court under section 4123.512 of the Revised 818  
Code, the expiration of the time limitations for the filing of 819  
an appeal of an order; 820

(4) The date of receipt by the employer of an order of a 821  
district hearing officer, a staff hearing officer, or the 822  
industrial commission issued under division (C), (D), or (E) of 823  
this section. 824

(I) Except as otherwise provided in division (B) of 825  
section 4123.66 of the Revised Code, payments of medical 826  
benefits payable under this chapter or Chapter 4121., 4127., or 827  
4131. of the Revised Code shall commence upon the earlier of the 828  
following: 829

(1) The date of the issuance of the staff hearing 830  
officer's order under division (D) of this section; 831

(2) The date of the final administrative or judicial 832  
determination. 833

(J) The administrator shall charge the compensation 834  
payments made in accordance with division (H) of this section or 835  
medical benefits payments made in accordance with division (I) 836  
of this section to an employer's experience immediately after 837  
the employer has exhausted the employer's administrative appeals 838  
as provided in this section or has waived the employer's right 839  
to an administrative appeal under division (B) of this section, 840  
subject to the adjustment specified in division (H) of section 841  
4123.512 of the Revised Code. 842

(K) Upon the final administrative or judicial 843  
determination under this section or section 4123.512 of the 844  
Revised Code of an appeal of an order to pay compensation, if a 845

claimant is found to have received compensation pursuant to a 846  
prior order which is reversed upon subsequent appeal, the 847  
claimant's employer, if a self-insuring employer, or the bureau, 848  
shall withhold from any amount to which the claimant becomes 849  
entitled pursuant to any claim, past, present, or future, under 850  
Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the 851  
amount of previously paid compensation to the claimant which, 852  
due to reversal upon appeal, the claimant is not entitled, 853  
pursuant to the following criteria: 854

(1) No withholding for the first twelve weeks of temporary 855  
total disability compensation pursuant to section 4123.56 of the 856  
Revised Code shall be made; 857

(2) Forty per cent of all awards of compensation paid 858  
pursuant to sections 4123.56 and 4123.57 of the Revised Code, 859  
until the amount overpaid is refunded; 860

(3) Twenty-five per cent of any compensation paid pursuant 861  
to section 4123.58 of the Revised Code until the amount overpaid 862  
is refunded; 863

(4) If, pursuant to an appeal under section 4123.512 of 864  
the Revised Code, the court of appeals or the supreme court 865  
reverses the allowance of the claim, then no amount of any 866  
compensation will be withheld. 867

The administrator and self-insuring employers, as 868  
appropriate, are subject to the repayment schedule of this 869  
division only with respect to an order to pay compensation that 870  
was properly paid under a previous order, but which is 871  
subsequently reversed upon an administrative or judicial appeal. 872  
The administrator and self-insuring employers are not subject 873  
to, but may utilize, the repayment schedule of this division, or 874

any other lawful means, to collect payment of compensation made 875  
to a person who was not entitled to the compensation due to 876  
fraud as determined by the administrator or the industrial 877  
commission. 878

(L) If a staff hearing officer or the commission fails to 879  
issue a decision or the commission fails to refuse to hear an 880  
appeal within the time periods required by this section, 881  
payments to a claimant shall cease until the staff hearing 882  
officer or commission issues a decision or hears the appeal, 883  
unless the failure was due to the fault or neglect of the 884  
employer or the employer agrees that the payments should 885  
continue for a longer period of time. 886

(M) Except as otherwise provided in this section or 887  
section 4123.522 of the Revised Code, no appeal is timely filed 888  
under this section unless the appeal is filed with the time 889  
limits set forth in this section. 890

(N) No person who is not an employee of the bureau or 891  
commission or who is not by law given access to the contents of 892  
a claims file shall have a file in the person's possession. 893

(O) Upon application of a party who resides in an area in 894  
which an emergency or disaster is declared, the industrial 895  
commission and hearing officers of the commission may waive the 896  
time frame within which claims and appeals of claims set forth 897  
in this section must be filed upon a finding that the applicant 898  
was unable to comply with a filing deadline due to an emergency 899  
or a disaster. 900

As used in this division: 901

(1) "Emergency" means any occasion or instance for which 902  
the governor of Ohio or the president of the United States 903

publicly declares an emergency and orders state or federal 904  
assistance to save lives and protect property, the public health 905  
and safety, or to lessen or avert the threat of a catastrophe. 906

(2) "Disaster" means any natural catastrophe or fire, 907  
flood, or explosion, regardless of the cause, that causes damage 908  
of sufficient magnitude that the governor of Ohio or the 909  
president of the United States, through a public declaration, 910  
orders state or federal assistance to alleviate damage, loss, 911  
hardship, or suffering that results from the occurrence. 912

Sec. 4123.513. (A) Except as otherwise provided in 913  
divisions (B) and (C) of this section, if a claim is denied 914  
because the claimant is an unauthorized alien, or if the 915  
claimant is a dependent of an individual who died as a result of 916  
suffering an injury or contracting an occupational disease, that 917  
individual was an unauthorized alien, the claimant's employer or 918  
the individual's employer is not liable to that claimant for 919  
damages suffered by reason of personal injury sustained or 920  
occupational disease contracted in the course of employment 921  
caused by the wrongful act or omission or neglect of the 922  
employer. For such a claimant, filing a claim under Chapter 923  
4121., 4123., 4127., or 4131. of the Revised Code is the 924  
exclusive remedy against the employer on account of injury, 925  
disease, or death in the course of and arising out of the 926  
claimant's or deceased employee's employment. Notwithstanding 927  
section 4123.77 of the Revised Code and except as provided in 928  
division (B) of this section, an irrebuttable presumption exists 929  
that the individual assumed the risk of incurring an injury or 930  
contracting an occupational disease at the workplace, or dying 931  
as a result of such an injury or occupational disease, when 932  
performing services or providing labor for that employer. 933



(B) An employer is liable to a claimant whose claim is 934  
denied because the claimant is an unauthorized alien or the 935  
deceased individual who is the subject of the claim was an 936  
unauthorized alien for damages suffered by reason of personal 937  
injury sustained or occupational disease contracted in the 938  
course of employment caused by the wrongful act or omission or 939  
neglect of the employer if the claimant establishes, by clear 940  
and convincing evidence, that the employer employed the claimant 941  
or the deceased individual knowing that the claimant or deceased 942  
individual was not authorized to work under section 101(a) of 943  
the "Immigration Reform and Control Act of 1986," 100 Stat. 944  
3360, 8 U.S.C. 1324a, on the date the claimant or deceased 945  
individual suffered the injury or contracted the occupational 946  
disease. An employer may not assert any of the common law 947  
defenses listed in section 4123.77 of the Revised Code in an 948  
action brought against the employer pursuant to this section. 949

(C) Nothing in this section shall be construed to prevent 950  
a claimant whose claim is denied because the claimant is or the 951  
deceased individual who is the subject of the claim was an 952  
unauthorized alien from bringing a claim against an employer in 953  
a court of competent jurisdiction for an intentional tort 954  
allegedly committed by the employer against the claimant or 955  
deceased individual who was the subject of the claim. 956

**Section 2.** That existing sections 2743.02, 2744.02, 957  
4123.01, and 4123.511 of the Revised Code are hereby repealed. 958

**Section 3.** This act applies to claims arising on or after 959  
the effective date of this act. 960