

**As Passed by the House**

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**Sub. H. B. No. 380**

**Representatives Seitz, Householder**

**Cosponsors: Representatives Schaffer, Henne, Retherford, Vitale, Thompson, Becker, Merrin, Antani, Lang, Keller, Hood, Riedel, Brenner, Butler, Dean, Ginter, Green, Greenspan, Hagan, McColley, Patton, Perales, Roegner, Romanchuk, Stein, Wiggam, Zeltwanger**

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**A BILL**

To amend sections 2743.02, 2744.02, 4123.01, 1  
4123.51, and 4123.59 and to enact sections 2  
2307.82 and 4123.513 of the Revised Code to 3  
prohibit illegal and unauthorized aliens from 4  
receiving compensation and certain benefits 5  
under Ohio's 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, 7  
4123.51, and 4123.59 be amended and sections 2307.82 and 8  
4123.513 of the 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 brought by or 15  
on behalf of an illegal alien or an unauthorized alien for 16

damages suffered by reason of personal injury sustained or 17  
occupational disease contracted by the illegal alien or 18  
unauthorized alien in the course of employment caused by the 19  
wrongful act or omission or neglect of the employer. Except as 20  
provided in division (C) of this section, an illegal alien or 21  
unauthorized alien assumes the risk of incurring such injury or 22  
contracting an occupational disease, and that assumption is a 23  
complete bar to a recovery of damages for such injury or 24  
occupational disease. 25

(C) A court in this state that could otherwise exercise 26  
jurisdiction over a claim described in division (B) of this 27  
section but for the prohibition described in that division has 28  
jurisdiction over such a claim if the person bringing the claim 29  
establishes, by clear and convincing evidence, that the employer 30  
hired the illegal alien or unauthorized alien knowing that the 31  
illegal alien or unauthorized alien was not authorized to work 32  
under section 101(a) of the "Immigration Reform and Control Act 33  
of 1986," 100 Stat. 3360, 8 U.S.C. 1324a. There is a rebuttable 34  
presumption that an employer did not hire a person knowing the 35  
person was an illegal alien or unauthorized alien if the 36  
employer has complied with the requirements of section 101(a) of 37  
the "Immigration Reform and Control Act of 1986," 100 Stat. 38  
3360, 8 U.S.C. 1324a. 39

Nothing in this section shall be construed to prevent an 40  
illegal alien or an unauthorized alien from bringing a claim 41  
against an employer in a court of competent jurisdiction for an 42  
intentional tort allegedly committed by the employer against the 43  
illegal alien or unauthorized alien. 44

**Sec. 2743.02.** (A) (1) The state hereby waives its immunity 45  
from liability, except as provided for the office of the state 46

fire marshal in division (G) (1) of section 9.60 and division (B) 47  
of section 3737.221 of the Revised Code, except as provided in 48  
division (I) of this section, and subject to division (H) of 49  
this section, and consents to be sued, and have its liability 50  
determined, in the court of claims created in this chapter in 51  
accordance with the same rules of law applicable to suits 52  
between private parties, except that the determination of 53  
liability is subject to the limitations set forth in this 54  
chapter and, in the case of state universities or colleges, in 55  
section 3345.40 of the Revised Code, and except as provided in 56  
division (A) (2) or (3) of this section. To the extent that the 57  
state has previously consented to be sued, this chapter has no 58  
applicability. 59

Except in the case of a civil action filed by the state, 60  
filing a civil action in the court of claims results in a 61  
complete waiver of any cause of action, based on the same act or 62  
omission, that the filing party has against any officer or 63  
employee, as defined in section 109.36 of the Revised Code. The 64  
waiver shall be void if the court determines that the act or 65  
omission was manifestly outside the scope of the officer's or 66  
employee's office or employment or that the officer or employee 67  
acted with malicious purpose, in bad faith, or in a wanton or 68  
reckless manner. 69

(2) If a claimant proves in the court of claims that an 70  
officer or employee, as defined in section 109.36 of the Revised 71  
Code, would have personal liability for the officer's or 72  
employee's acts or omissions but for the fact that the officer 73  
or employee has personal immunity under section 9.86 of the 74  
Revised Code, the state shall be held liable in the court of 75  
claims in any action that is timely filed pursuant to section 76  
2743.16 of the Revised Code and that is based upon the acts or 77

omissions.	78
(3) (a) Except as provided in division (A) (3) (b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.	79 80 81 82 83 84
(b) The state immunity provided in division (A) (3) (a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:	85 86 87 88 89 90
(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;	91 92 93
(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;	94 95
(iii) Some form of direct contact between the state's agents and the injured party;	96 97
(iv) The injured party's justifiable reliance on the state's affirmative undertaking.	98 99
(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political subdivisions and consents for them to be sued, and to have their liability determined, in the court of common pleas, in accordance with the same rules of law applicable to suits between private parties, subject to the limitations set forth in this chapter. This division is also applicable to hospitals	100 101 102 103 104 105 106

owned or operated by political subdivisions that have been 107  
determined by the supreme court to be subject to suit prior to 108  
July 28, 1975. 109

(C) Any hospital, as defined in section 2305.113 of the 110  
Revised Code, may purchase liability insurance covering its 111  
operations and activities and its agents, employees, nurses, 112  
interns, residents, staff, and members of the governing board 113  
and committees, and, whether or not such insurance is purchased, 114  
may, to the extent that its governing board considers 115  
appropriate, indemnify or agree to indemnify and hold harmless 116  
any such person against expense, including attorney's fees, 117  
damage, loss, or other liability arising out of, or claimed to 118  
have arisen out of, the death, disease, or injury of any person 119  
as a result of the negligence, malpractice, or other action or 120  
inaction of the indemnified person while acting within the scope 121  
of the indemnified person's duties or engaged in activities at 122  
the request or direction, or for the benefit, of the hospital. 123  
Any hospital electing to indemnify those persons, or to agree to 124  
so indemnify, shall reserve any funds that are necessary, in the 125  
exercise of sound and prudent actuarial judgment, to cover the 126  
potential expense, fees, damage, loss, or other liability. The 127  
superintendent of insurance may recommend, or, if the hospital 128  
requests the superintendent to do so, the superintendent shall 129  
recommend, a specific amount for any period that, in the 130  
superintendent's opinion, represents such a judgment. This 131  
authority is in addition to any authorization otherwise provided 132  
or permitted by law. 133

(D) Recoveries against the state shall be reduced by the 134  
aggregate of insurance proceeds, disability award, or other 135  
collateral recovery received by the claimant. This division does 136  
not apply to civil actions in the court of claims against a 137

state university or college under the circumstances described in 138  
section 3345.40 of the Revised Code. The collateral benefits 139  
provisions of division (B) (2) of that section apply under those 140  
circumstances. 141

(E) The only defendant in original actions in the court of 142  
claims is the state. The state may file a third-party complaint 143  
or counterclaim in any civil action, except a civil action for 144  
ten thousand dollars or less, that is filed in the court of 145  
claims. 146

(F) A civil action against an officer or employee, as 147  
defined in section 109.36 of the Revised Code, that alleges that 148  
the officer's or employee's conduct was manifestly outside the 149  
scope of the officer's or employee's employment or official 150  
responsibilities, or that the officer or employee acted with 151  
malicious purpose, in bad faith, or in a wanton or reckless 152  
manner shall first be filed against the state in the court of 153  
claims that has exclusive, original jurisdiction to determine, 154  
initially, whether the officer or employee is entitled to 155  
personal immunity under section 9.86 of the Revised Code and 156  
whether the courts of common pleas have jurisdiction over the 157  
civil action. The officer or employee may participate in the 158  
immunity determination proceeding before the court of claims to 159  
determine whether the officer or employee is entitled to 160  
personal immunity under section 9.86 of the Revised Code. 161

The filing of a claim against an officer or employee under 162  
this division tolls the running of the applicable statute of 163  
limitations until the court of claims determines whether the 164  
officer or employee is entitled to personal immunity under 165  
section 9.86 of the Revised Code. 166

(G) If a claim lies against an officer or employee who is 167

a member of the Ohio national guard, and the officer or employee 168  
was, at the time of the act or omission complained of, subject 169  
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 170  
2671, et seq., the Federal Tort Claims Act is the exclusive 171  
remedy of the claimant and the state has no liability under this 172  
section. 173

(H) If an inmate of a state correctional institution has a 174  
claim against the state for the loss of or damage to property 175  
and the amount claimed does not exceed three hundred dollars, 176  
before commencing an action against the state in the court of 177  
claims, the inmate shall file a claim for the loss or damage 178  
under the rules adopted by the director of rehabilitation and 179  
correction pursuant to this division. The inmate shall file the 180  
claim within the time allowed for commencement of a civil action 181  
under section 2743.16 of the Revised Code. If the state admits 182  
or compromises the claim, the director shall make payment from a 183  
fund designated by the director for that purpose. If the state 184  
denies the claim or does not compromise the claim at least sixty 185  
days prior to expiration of the time allowed for commencement of 186  
a civil action based upon the loss or damage under section 187  
2743.16 of the Revised Code, the inmate may commence an action 188  
in the court of claims under this chapter to recover damages for 189  
the loss or damage. 190

The director of rehabilitation and correction shall adopt 191  
rules pursuant to Chapter 119. of the Revised Code to implement 192  
this division. 193

(I) The state is not liable in any civil action brought by 194  
or on behalf of an illegal alien or an unauthorized alien for 195  
damages suffered by reason of personal injury sustained or 196  
occupational disease contracted in the course of employment 197

caused by the wrongful act or omission or neglect of the state 198  
acting as an employer unless the person bringing the action 199  
establishes, by clear and convincing evidence, that the state 200  
hired that illegal alien or unauthorized alien knowing that the 201  
illegal alien or unauthorized alien was not authorized to work 202  
under section 101(a) of the "Immigration Reform and Control Act 203  
of 1986," 100 Stat. 3360, 8 U.S.C. 1324a. There is a rebuttable 204  
presumption that the state did not hire a person knowing the 205  
person was an illegal alien or unauthorized alien if the state 206  
has complied with the requirements of section 101(a) of the 207  
"Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 208  
U.S.C. 1324a. 209

As used in this division, "illegal alien," "occupational 210  
disease," and "unauthorized alien" have the same meanings as in 211  
section 4123.01 of the Revised Code. 212

**Sec. 2744.02.** (A) (1) For the purposes of this chapter, the 213  
functions of political subdivisions are hereby classified as 214  
governmental functions and proprietary functions. Except as 215  
provided in division (B) of this section, a political 216  
subdivision is not liable in damages in a civil action for 217  
injury, death, or loss to person or property allegedly caused by 218  
any act or omission of the political subdivision or an employee 219  
of the political subdivision in connection with a governmental 220  
or proprietary function. A political subdivision is not liable 221  
in any civil action brought by or on behalf of an illegal alien 222  
or an unauthorized alien for damages suffered by reason of 223  
personal injury sustained or occupational disease contracted in 224  
the course of employment caused by the wrongful act or omission 225  
or neglect of the political subdivision acting as an employer 226  
unless the person bringing the action establishes, by clear and 227  
convincing evidence, that the political subdivision hired that 228



illegal alien or unauthorized alien knowing that the illegal 229  
alien or unauthorized alien was not authorized to work under 230  
section 101(a) of the "Immigration Reform and Control Act of 231  
1986," 100 Stat. 3360, 8 U.S.C. 1324a. There is a rebuttable 232  
presumption that a political subdivision did not hire a person 233  
knowing the person was an illegal alien or unauthorized alien if 234  
the political subdivision has complied with the requirements of 235  
section 101(a) of the "Immigration Reform and Control Act of 236  
1986," 100 Stat. 3360, 8 U.S.C. 1324a. 237

As used in this division, "illegal alien," "occupational 238  
disease," and "unauthorized alien" have the same meanings as in 239  
section 4123.01 of the Revised Code. 240

(2) The defenses and immunities conferred under this 241  
chapter apply in connection with all governmental and 242  
proprietary functions performed by a political subdivision and 243  
its employees, whether performed on behalf of that political 244  
subdivision or on behalf of another political subdivision. 245

(3) Subject to statutory limitations upon their monetary 246  
jurisdiction, the courts of common pleas, the municipal courts, 247  
and the county courts have jurisdiction to hear and determine 248  
civil actions governed by or brought pursuant to this chapter. 249

(B) Subject to sections 2744.03 and 2744.05 of the Revised 250  
Code, a political subdivision is liable in damages in a civil 251  
action for injury, death, or loss to person or property 252  
allegedly caused by an act or omission of the political 253  
subdivision or of any of its employees in connection with a 254  
governmental or proprietary function, as follows: 255

(1) Except as otherwise provided in this division, 256  
political subdivisions are liable for injury, death, or loss to 257

person or property caused by the negligent operation of any 258  
motor vehicle by their employees when the employees are engaged 259  
within the scope of their employment and authority. The 260  
following are full defenses to that liability: 261

(a) A member of a municipal corporation police department 262  
or any other police agency was operating a motor vehicle while 263  
responding to an emergency call and the operation of the vehicle 264  
did not constitute willful or wanton misconduct; 265

(b) A member of a municipal corporation fire department or 266  
any other firefighting agency was operating a motor vehicle 267  
while engaged in duty at a fire, proceeding toward a place where 268  
a fire is in progress or is believed to be in progress, or 269  
answering any other emergency alarm and the operation of the 270  
vehicle did not constitute willful or wanton misconduct; 271

(c) A member of an emergency medical service owned or 272  
operated by a political subdivision was operating a motor 273  
vehicle while responding to or completing a call for emergency 274  
medical care or treatment, the member was holding a valid 275  
commercial driver's license issued pursuant to Chapter 4506. or 276  
a driver's license issued pursuant to Chapter 4507. of the 277  
Revised Code, the operation of the vehicle did not constitute 278  
willful or wanton misconduct, and the operation complies with 279  
the precautions of section 4511.03 of the Revised Code. 280

(2) Except as otherwise provided in sections 3314.07 and 281  
3746.24 of the Revised Code, political subdivisions are liable 282  
for injury, death, or loss to person or property caused by the 283  
negligent performance of acts by their employees with respect to 284  
proprietary functions of the political subdivisions. 285

(3) Except as otherwise provided in section 3746.24 of the 286

Revised Code, political subdivisions are liable for injury, 287  
death, or loss to person or property caused by their negligent 288  
failure to keep public roads in repair and other negligent 289  
failure to remove obstructions from public roads, except that it 290  
is a full defense to that liability, when a bridge within a 291  
municipal corporation is involved, that the municipal 292  
corporation does not have the responsibility for maintaining or 293  
inspecting the bridge. 294

(4) Except as otherwise provided in section 3746.24 of the 295  
Revised Code, political subdivisions are liable for injury, 296  
death, or loss to person or property that is caused by the 297  
negligence of their employees and that occurs within or on the 298  
grounds of, and is due to physical defects within or on the 299  
grounds of, buildings that are used in connection with the 300  
performance of a governmental function, including, but not 301  
limited to, office buildings and courthouses, but not including 302  
jails, places of juvenile detention, workhouses, or any other 303  
detention facility, as defined in section 2921.01 of the Revised 304  
Code. 305

(5) In addition to the circumstances described in 306  
divisions (B) (1) to (4) of this section, a political subdivision 307  
is liable for injury, death, or loss to person or property when 308  
civil liability is expressly imposed upon the political 309  
subdivision by a section of the Revised Code, including, but not 310  
limited to, sections 2743.02 and 5591.37 of the Revised Code. 311  
Civil liability shall not be construed to exist under another 312  
section of the Revised Code merely because that section imposes 313  
a responsibility or mandatory duty upon a political subdivision, 314  
because that section provides for a criminal penalty, because of 315  
a general authorization in that section that a political 316  
subdivision may sue and be sued, or because that section uses 317

the term "shall" in a provision pertaining to a political 318  
subdivision. 319

(C) An order that denies a political subdivision or an 320  
employee of a political subdivision the benefit of an alleged 321  
immunity from liability as provided in this chapter or any other 322  
provision of the law is a final order. 323

**Sec. 4123.01.** As used in this chapter: 324

(A) (1) "Employee" means: 325

(a) Every person in the service of the state, or of any 326  
county, municipal corporation, township, or school district 327  
therein, including regular members of lawfully constituted 328  
police and fire departments of municipal corporations and 329  
townships, whether paid or volunteer, and wherever serving 330  
within the state or on temporary assignment outside thereof, and 331  
executive officers of boards of education, under any appointment 332  
or contract of hire, express or implied, oral or written, 333  
including any elected official of the state, or of any county, 334  
municipal corporation, or township, or members of boards of 335  
education. 336

As used in division (A) (1) (a) of this section, the term 337  
"employee" includes the following persons when responding to an 338  
inherently dangerous situation that calls for an immediate 339  
response on the part of the person, regardless of whether the 340  
person is within the limits of the jurisdiction of the person's 341  
regular employment or voluntary service when responding, on the 342  
condition that the person responds to the situation as the 343  
person otherwise would if the person were on duty in the 344  
person's jurisdiction: 345

(i) Off-duty peace officers. As used in division (A) (1) (a) 346

(i) of this section, "peace officer" has the same meaning as in 347  
section 2935.01 of the Revised Code. 348

(ii) Off-duty firefighters, whether paid or volunteer, of 349  
a lawfully constituted fire department. 350

(iii) Off-duty first responders, emergency medical 351  
technicians-basic, emergency medical technicians-intermediate, 352  
or emergency medical technicians-paramedic, whether paid or 353  
volunteer, of an ambulance service organization or emergency 354  
medical service organization pursuant to Chapter 4765. of the 355  
Revised Code. 356

(b) Every person in the service of any person, firm, or 357  
private corporation, including any public service corporation, 358  
that (i) employs one or more persons regularly in the same 359  
business or in or about the same establishment under any 360  
contract of hire, express or implied, oral or written, including 361  
aliens and authorized to work by the United States department of 362  
homeland security or its successors; minors; household workers 363  
who earn one hundred sixty dollars or more in cash in any 364  
calendar quarter from a single household; and casual workers who 365  
earn one hundred sixty dollars or more in cash in any calendar 366  
quarter from a single employer; or (ii) is bound by any such 367  
contract of hire or by any other written contract, to pay into 368  
the state insurance fund the premiums provided by this chapter. 369

(c) Every person who performs labor or provides services 370  
pursuant to a construction contract, as defined in section 371  
4123.79 of the Revised Code, if at least ten of the following 372  
criteria apply: 373

(i) The person is required to comply with instructions 374  
from the other contracting party regarding the manner or method 375

of performing services;	376
(ii) The person is required by the other contracting party to have particular training;	377 378
(iii) The person's services are integrated into the regular functioning of the other contracting party;	379 380
(iv) The person is required to perform the work personally;	381 382
(v) The person is hired, supervised, or paid by the other contracting party;	383 384
(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;	385 386 387
(vii) The person's hours of work are established by the other contracting party;	388 389
(viii) The person is required to devote full time to the business of the other contracting party;	390 391
(ix) The person is required to perform the work on the premises of the other contracting party;	392 393
(x) The person is required to follow the order of work set by the other contracting party;	394 395
(xi) The person is required to make oral or written reports of progress to the other contracting party;	396 397
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	398 399
(xiii) The person's expenses are paid for by the other contracting party;	400 401

(xiv) The person's tools and materials are furnished by	402
the other contracting party;	403
(xv) The person is provided with the facilities used to	404
perform services;	405
(xvi) The person does not realize a profit or suffer a	406
loss as a result of the services provided;	407
(xvii) The person is not performing services for a number	408
of employers at the same time;	409
(xviii) The person does not make the same services	410
available to the general public;	411
(xix) The other contracting party has a right to discharge	412
the person;	413
(xx) The person has the right to end the relationship with	414
the other contracting party without incurring liability pursuant	415
to an employment contract or agreement.	416
Every person in the service of any independent contractor	417
or subcontractor who has failed to pay into the state insurance	418
fund the amount of premium determined and fixed by the	419
administrator of workers' compensation for the person's	420
employment or occupation or if a self-insuring employer has	421
failed to pay compensation and benefits directly to the	422
employer's injured and to the dependents of the employer's	423
killed employees as required by section 4123.35 of the Revised	424
Code, shall be considered as the employee of the person who has	425
entered into a contract, whether written or verbal, with such	426
independent contractor unless such employees or their legal	427
representatives or beneficiaries elect, after injury or death,	428
to regard such independent contractor as the employer.	429

(2) "Employee" does not mean any of the following:	430
(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;	431 432 433
(b) Any officer of a family farm corporation;	434
(c) An individual incorporated as a corporation;	435
(d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as <del>a</del> <u>an</u> officer;	436 437 438
(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;	439 440 441 442 443
<u>(f) An illegal alien or an unauthorized alien.</u>	444
Any employer may elect to include as an "employee" within this chapter, any person excluded from the definition of "employee" pursuant to division (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),	445 446 447 448 449 450 451 452 453 454 455 456 457 458



(c), or (e) of this section from electing to be included as an 459  
"employee" under this chapter in accordance with rules adopted 460  
by the administrator, with the advice and consent of the board. 461

In the event of an election, the employer or person 462  
electing coverage shall serve upon the bureau of workers' 463  
compensation written notice naming the person to be covered and 464  
include the person's remuneration for premium purposes in all 465  
future payroll reports. No partner, sole proprietor, or person 466  
excluded from the definition of "employee" pursuant to division 467  
(A) (2) (a), (b), (c), or (e) of this section, shall receive 468  
benefits or compensation under this chapter until the bureau 469  
receives written notice of the election permitted by this 470  
section. 471

For informational purposes only, the bureau shall 472  
prescribe such language as it considers appropriate, on such of 473  
its forms as it considers appropriate, to advise employers of 474  
their right to elect to include as an "employee" within this 475  
chapter a sole proprietor, any member of a partnership, or a 476  
person excluded from the definition of "employee" under division 477  
(A) (2) (a), (b), (c), or (e) of this section, that they should 478  
check any health and disability insurance policy, or other form 479  
of health and disability plan or contract, presently covering 480  
them, or the purchase of which they may be considering, to 481  
determine whether such policy, plan, or contract excludes 482  
benefits for illness or injury that they might have elected to 483  
have covered by workers' compensation. 484

(B) "Employer" means: 485

(1) The state, including state hospitals, each county, 486  
municipal corporation, township, school district, and hospital 487  
owned by a political subdivision or subdivisions other than the 488

state; 489

(2) Every person, firm, professional employer 490  
organization, and private corporation, including any public 491  
service corporation, that (a) has in service one or more 492  
employees or shared employees regularly in the same business or 493  
in or about the same establishment under any contract of hire, 494  
express or implied, oral or written, or (b) is bound by any such 495  
contract of hire or by any other written contract, to pay into 496  
the insurance fund the premiums provided by this chapter. 497

All such employers are subject to this chapter. Any member 498  
of a firm or association, who regularly performs manual labor in 499  
or about a mine, factory, or other establishment, including a 500  
household establishment, shall be considered an employee in 501  
determining whether such person, firm, or private corporation, 502  
or public service corporation, has in its service, one or more 503  
employees and the employer shall report the income derived from 504  
such labor to the bureau as part of the payroll of such 505  
employer, and such member shall thereupon be entitled to all the 506  
benefits of an employee. 507

(C) "Injury" includes any injury, whether caused by 508  
external accidental means or accidental in character and result, 509  
received in the course of, and arising out of, the injured 510  
employee's employment. "Injury" does not include: 511

(1) Psychiatric conditions except where the claimant's 512  
psychiatric conditions have arisen from an injury or 513  
occupational disease sustained by that claimant or where the 514  
claimant's psychiatric conditions have arisen from sexual 515  
conduct in which the claimant was forced by threat of physical 516  
harm to engage or participate; 517

(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;	518 519
(3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity;	520 521 522 523 524
(4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.	525 526 527 528 529 530 531 532 533
(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.	534 535
(E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouse of persons related to each other within the fourth degree of kinship, according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of whose stockholders are a corporation. A family farm corporation does not cease to qualify under this division where, by reason of any devise, bequest, or the operation of the laws of descent or distribution, the ownership of shares of voting stock is transferred to another person, as long as that person is within	536 537 538 539 540 541 542 543 544 545 546 547

the degree of kinship stipulated in this division. 548

(F) "Occupational disease" means a disease contracted in 549  
the course of employment, which by its causes and the 550  
characteristics of its manifestation or the condition of the 551  
employment results in a hazard which distinguishes the 552  
employment in character from employment generally, and the 553  
employment creates a risk of contracting the disease in greater 554  
degree and in a different manner from the public in general. 555

(G) "Self-insuring employer" means an employer who is 556  
granted the privilege of paying compensation and benefits 557  
directly under section 4123.35 of the Revised Code, including a 558  
board of county commissioners for the sole purpose of 559  
constructing a sports facility as defined in section 307.696 of 560  
the Revised Code, provided that the electors of the county in 561  
which the sports facility is to be built have approved 562  
construction of a sports facility by ballot election no later 563  
than November 6, 1997. 564

(H) "Private employer" means an employer as defined in 565  
division (B) (2) of this section. 566

(I) "Professional employer organization" has the same 567  
meaning as in section 4125.01 of the Revised Code. 568

(J) "Public employer" means an employer as defined in 569  
division (B) (1) of this section. 570

(K) "Sexual conduct" means vaginal intercourse between a 571  
male and female; anal intercourse, fellatio, and cunnilingus 572  
between persons regardless of gender; and, without privilege to 573  
do so, the insertion, however slight, of any part of the body or 574  
any instrument, apparatus, or other object into the vaginal or 575  
anal cavity of another. Penetration, however slight, is 576

sufficient to complete vaginal or anal intercourse. 577

(L) "Other-states' insurer" means an insurance company 578  
that is authorized to provide workers' compensation insurance 579  
coverage in any of the states that permit employers to obtain 580  
insurance for workers' compensation claims through insurance 581  
companies. 582

(M) "Other-states' coverage" means both of the following: 583

(1) Insurance coverage secured by an eligible employer for 584  
workers' compensation claims of employees who are in employment 585  
relationships localized in a state other than this state or 586  
those employees' dependents; 587

(2) Insurance coverage secured by an eligible employer for 588  
workers' compensation claims that arise in a state other than 589  
this state where an employer elects to obtain coverage through 590  
either the administrator or an other-states' insurer. 591

(N) "Limited other-states coverage" means insurance 592  
coverage provided by the administrator to an eligible employer 593  
for workers' compensation claims of employees who are in an 594  
employment relationship localized in this state but are 595  
temporarily working in a state other than this state, or those 596  
employees' dependents. 597

(O) "Illegal alien" means an alien who is deportable if 598  
apprehended because of one of the following: 599

(1) The alien entered the United States illegally without 600  
the proper authorization and documents. 601

(2) The alien once entered the United States legally and 602  
has since violated the terms of the status under which the alien 603  
entered the United States, making that alien an "out of status" 604

alien. 605

(3) The alien once entered the United States legally but 606  
has overstayed the time limits of the original legal status. 607

(P) "Unauthorized alien" means an alien who is not 608  
authorized to be employed as determined in accordance with 609  
section 101(a) of the "Immigration Reform and Control Act of 610  
1986," 100 Stat. 3360, 8 U.S.C. 1324a. 611

**Sec. 4123.51.** (A) The administrator of workers' 612  
compensation shall by published notices and other appropriate 613  
means endeavor to cause claims to be filed in the service office 614  
of the bureau of workers' compensation from which the 615  
investigation and determination of the claim may be made most 616  
expeditiously. A claim or appeal under this chapter or Chapter 617  
4121., 4127., or 4131. of the Revised Code may be filed with any 618  
office of the bureau of workers' compensation or the industrial 619  
commission, within the required statutory period, and is 620  
considered received for the purpose of processing the claims or 621  
appeals. 622

(B) The administrator, on the form an employee or an 623  
individual acting on behalf of the employee files with the 624  
administrator or a self-insuring employer to initiate a claim 625  
under this chapter or Chapter 4121., 4127., or 4131. of the 626  
Revised Code, shall include ~~a~~ all of the following: 627

(1) A statement that is substantially similar to the 628  
following statement in bold font and set apart from all other 629  
text in the form: 630

"By signing this form, I elect to only receive 631  
compensation, benefits, or both that are provided for in this 632  
claim under Ohio's workers' compensation laws. I understand and 633

I hereby waive and release my right to receive compensation and 634  
benefits under the workers' compensation laws of another state 635  
for the injury or occupational disease, or the death resulting 636  
from an injury or occupational disease, for which I am filing 637  
this claim. I have not received compensation and benefits under 638  
the workers' compensation laws of another state for this claim, 639  
and I will not file and have not filed a claim in another state 640  
for the injury or occupational disease or death resulting from 641  
an injury or occupational disease for which I am filing this 642  
claim." 643

(2) A place for the claimant to state whether the claimant 644  
is a citizen of the United States; 645

(3) A place for a claimant who is not a citizen of the 646  
United States to provide either of the following, as applicable: 647

(a) The claimant's alien registration number or other 648  
signifier that the claimant is authorized to work by the United 649  
States department of homeland security or its successor and the 650  
expiration date of the claimant's authorization to work; 651

(b) If the claimant is a dependent of an individual who 652  
died as a result of suffering an injury or contracting an 653  
occupational disease, the deceased individual's alien 654  
registration number or other signifier that the individual was 655  
authorized to work by the United States department of homeland 656  
security or its successor and the expiration date of the 657  
individual's authorization to work. 658

**Sec. 4123.513.** (A) As used in this section, "damages" 659  
means damages suffered by reason of personal injury sustained or 660  
occupational disease contracted in the course of employment 661  
caused by the wrongful act or omission or neglect of the 662

employer. 663

(B) To be considered eligible for compensation or benefits 664  
paid under this chapter or Chapter 4121., 4127., or 4131. of the 665  
Revised Code, other than medical benefits as described in 666  
section 4123.66 of the Revised Code, a claimant who is not a 667  
United States citizen shall provide the administrator of 668  
workers' compensation with one of the following, as applicable: 669

(1) The claimant's alien registration number or other 670  
signifier that the claimant is authorized to work by the United 671  
States department of homeland security or its successor and the 672  
expiration date of the claimant's authorization to work; 673

(2) If the claimant is a dependent of an individual who 674  
died as a result of suffering an injury or contracting an 675  
occupational disease, the deceased individual's alien 676  
registration number or other signifier that the individual was 677  
authorized to work by the United States department of homeland 678  
security or its successor and the expiration date of the 679  
individual's authorization to work. 680

(C) (1) Except as otherwise provided in divisions (D) and 681  
(E) of this section, an employer is not liable to a claimant for 682  
damages if the claimant's claim for compensation or benefits 683  
under this chapter or Chapter 4121., 4127., or 4131. of the 684  
Revised Code is denied for either of the following reasons: 685

(a) The claimant is an unauthorized alien. 686

(b) The claimant is not a United States citizen and is a 687  
dependent of an unauthorized alien who died as a result of 688  
suffering an injury or contracting an occupational disease. 689

(2) For any claimant described in division (C) (1) of this 690  
section, filing a claim under Chapter 4121., 4123., 4127., or 691



4131. of the Revised Code is the exclusive remedy against the 692  
employer on account of injury, disease, or death in the course 693  
of and arising out of the claimant's or deceased individual's 694  
employment. Notwithstanding section 4123.77 of the Revised Code 695  
and except as provided in divisions (D) and (E) of this section, 696  
an irrebuttable presumption exists that the individual who is 697  
the subject of the claim assumed the risk of incurring an injury 698  
or contracting an occupational disease at the workplace, or 699  
dying as a result of such an injury or occupational disease, 700  
when performing services or providing labor for that employer. 701

(D) An employer is liable to a claimant described in 702  
division (C) (1) of this section for damages if the claimant 703  
establishes, by clear and convincing evidence, that the employer 704  
hired the claimant or the deceased individual knowing that the 705  
claimant or deceased individual was not authorized to work under 706  
section 101(a) of the "Immigration Reform and Control Act of 707  
1986," 100 Stat. 3360, 8 U.S.C. 1324a. There is a rebuttable 708  
presumption that an employer did not hire a person knowing the 709  
person was an illegal alien or unauthorized alien if the 710  
employer has complied with the requirements of section 101(a) of 711  
the "Immigration Reform and Control Act of 1986," 100 48 Stat. 712  
3360, 8 U.S.C. 1324a. An employer may not assert any of the 713  
common law defenses listed in section 4123.77 of the Revised 714  
Code in an action brought against the employer pursuant to this 715  
section. 716

(E) Nothing in this section shall be construed to prevent 717  
a claimant described in division (C) (1) of this section from 718  
bringing a claim against an employer in a court of competent 719  
jurisdiction for an intentional tort allegedly committed by the 720  
employer against the claimant or deceased individual who was the 721  
subject of the claim. 722

**Sec. 4123.59.** In case an injury to or an occupational 723  
disease contracted by an employee causes the employee's death, 724  
benefits shall be in the amount and to the persons following: 725

(A) If there are no dependents, the disbursements from the 726  
state insurance fund is limited to the expenses provided for in 727  
section 4123.66 of the Revised Code. 728

(B) If there are wholly dependent persons at the time of 729  
the death, the weekly payment is sixty-six and two-thirds per 730  
cent of the average weekly wage, but not to exceed a maximum 731  
aggregate amount of weekly compensation which is equal to sixty- 732  
six and two-thirds per cent of the statewide average weekly wage 733  
as defined in division (C) of section 4123.62 of the Revised 734  
Code, and not in any event less than a minimum amount of weekly 735  
compensation which is equal to fifty per cent of the statewide 736  
average weekly wage as defined in division (C) of section 737  
4123.62 of the Revised Code, regardless of the average weekly 738  
wage; provided however, that if the death is due to injury 739  
received or occupational disease first diagnosed after January 740  
1, 1976, the weekly payment is sixty-six and two-thirds per cent 741  
of the average weekly wage but not to exceed a maximum aggregate 742  
amount of weekly compensation which is equal to the statewide 743  
average weekly wage as defined in division (C) of section 744  
4123.62 of the Revised Code; provided that when any claimant is 745  
receiving total disability compensation at the time of death the 746  
wholly dependent person is eligible for the maximum compensation 747  
provided for in this section. Where there is more than one 748  
person who is wholly dependent at the time of the death of the 749  
employee, the administrator of workers' compensation shall 750  
promptly apportion the weekly amount of compensation payable 751  
under this section among the dependent persons as provided in 752  
division (D) of this section. 753

(1) The payment as provided in this section shall continue 754  
from the date of death of an injured or disabled employee until 755  
the death or remarriage of such dependent spouse. If the 756  
dependent spouse remarries, an amount equal to two years of 757  
compensation benefits at the weekly amount determined to be 758  
applicable to and being paid to the dependent spouse shall be 759  
paid in a lump sum to such spouse and no further compensation 760  
shall be paid to such spouse. 761

(2) That portion of the payment provided in division (B) 762  
of this section applicable to wholly dependent persons other 763  
than a spouse shall continue from the date of death of an 764  
injured or disabled employee to a dependent as of the date of 765  
death, other than a spouse, at the weekly amount determined to 766  
be applicable and being paid to such dependent other than a 767  
spouse, until the dependent: 768

(a) Reaches eighteen years of age; 769

(b) If pursuing a full time educational program while 770  
enrolled in an accredited educational institution and program, 771  
reaches twenty-five years of age; 772

(c) If mentally or physically incapacitated from having 773  
any earnings, is no longer so incapacitated. 774

(3) (a) Payments under division (B) of this section to a 775  
dependent described in division (B) (2) (c) of this section shall 776  
not be terminated due to the dependent's employment in a 777  
sheltered workshop if the dependent does not receive income, 778  
compensation, or remuneration from that employment in excess of 779  
two thousand dollars in any calendar quarter. 780

(b) As used in division (B) (3) of this section, "sheltered 781  
workshop" has the same meaning as in section 4123.58 of the 782

Revised Code. 783

(C) If there are partly dependent persons at the time of 784  
the death the weekly payment is sixty-six and two-thirds per 785  
cent of the employee's average weekly wage, not to exceed sixty- 786  
six and two-thirds per cent of the statewide average weekly wage 787  
as defined in division (C) of section 4123.62 of the Revised 788  
Code, and shall continue for such time as the administrator in 789  
each case determines. 790

(D) The following persons are presumed to be wholly 791  
dependent for their support upon a deceased employee: 792

(1) A surviving spouse who was living with the employee at 793  
the time of death or a surviving spouse who was separated from 794  
the employee at the time of death because of the aggression of 795  
the employee; 796

(2) A child under the age of eighteen years, or twenty- 797  
five years if pursuing a full-time educational program while 798  
enrolled in an accredited educational institution and program, 799  
or over said age if physically or mentally incapacitated from 800  
earning, upon only the one parent who is contributing more than 801  
one-half of the support for such child and with whom the child 802  
is living at the time of the death of such parent, or for whose 803  
maintenance such parent was legally liable at the time of the 804  
parent's death. 805

It is presumed that there is sufficient dependency to 806  
entitle a surviving natural parent or surviving natural parents, 807  
share and share alike, with whom the decedent was living at the 808  
time of the decedent's death, to a total minimum award of three 809  
thousand dollars. 810

The administrator may take into consideration any 811

circumstances which, at the time of the death of the decedent, 812  
clearly indicate prospective dependency on the part of the 813  
claimant and potential support on the part of the decedent. No 814  
person shall be considered a prospective dependent unless such 815  
person is a member of the family of the deceased employee and 816  
bears to the deceased employee the relation of surviving spouse, 817  
lineal descendant, ancestor, or brother or sister. The total 818  
award for any or all prospective dependency to all such 819  
claimants, except to a natural parent or natural parents of the 820  
deceased, shall not exceed three thousand dollars to be 821  
apportioned among them as the administrator orders. 822

In all other cases, the question of dependency, in whole 823  
or in part, shall be determined in accordance with the facts in 824  
each particular case existing at the time of the injury 825  
resulting in the death of such employee, but no person shall be 826  
considered as dependent unless such person is a member of the 827  
family of the deceased employee, or bears to the deceased 828  
employee the relation of surviving spouse, lineal descendant, 829  
ancestor, or brother or sister. 830

(E) ~~An~~ (1) A United States citizen who is a dependent of 831  
an illegal or unauthorized alien may receive benefits under this 832  
section if both of the following apply: 833

(a) The illegal or unauthorized alien died as a result of 834  
an injury or occupational disease. 835

(b) The illegal or unauthorized alien would have been 836  
eligible to receive compensation or benefits under this chapter 837  
or Chapter 4121., 4127., or 4131. of the Revised Code, 838  
notwithstanding division (A)(2)(f) of section 4123.01 of the 839  
Revised Code excluding illegal and unauthorized aliens from the 840  
definition of employee under this chapter. 841

(2) If the decedent's employer pays premiums into the 842  
state insurance fund, the administrator shall charge the amount 843  
of benefits paid pursuant to division (E) (1) of this section to 844  
the employer's experience. If the decedent's employer is a self- 845  
insuring employer, the self-insuring employer shall include the 846  
amount of benefits the self-insuring employer pays pursuant to 847  
division (E) (1) of this section in the paid compensation the 848  
self-insuring employer reports to the administrator under 849  
division (L) of section 4123.35 of the Revised Code. 850

(F) Notwithstanding section 2307.82, division (I) of 851  
section 2743.02, and division (A) (1) of section 2744.02 of the 852  
Revised Code, an order issued by the administrator under this 853  
section is appealable pursuant to sections 4123.511 to 4123.512 854  
of the Revised Code. 855

**Section 2.** That existing sections 2743.02, 2744.02, 856  
4123.01, 4123.51, and 4123.59 of the Revised Code are hereby 857  
repealed. 858

**Section 3.** This act applies to claims arising on or after 859  
the effective date of this act. 860