

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 118**

**Senators LaRose, Brown**

**Cosponsors: Senators Bacon, Eklund, Skindell, Thomas, Yuko, Schiavoni**

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**A BILL**

To amend sections 4123.01, 4123.026, and 4123.46 1  
and to enact sections 145.364, 742.391, 2  
3309.402, 4123.87, and 5505.182 of the Revised 3  
Code to make peace officers, firefighters, and 4  
emergency medical workers diagnosed with post- 5  
traumatic stress disorder arising from 6  
employment without an accompanying physical 7  
injury eligible for compensation and benefits 8  
under Ohio's Workers' Compensation Law for up to 9  
one year and to prohibit such a person from 10  
receiving a disability benefit from a state 11  
retirement system for post-traumatic stress 12  
disorder arising from employment without an 13  
accompanying physical injury during the time 14  
period the person receives compensation and 15  
benefits under the Workers' Compensation Law for 16  
the disorder. 17

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

**Section 1.** That sections 4123.01, 4123.026, and 4123.46 be 18  
amended and sections 145.364, 742.391, 3309.402, 4123.87, and 19

5505.182 of the Revised Code be enacted to read as follows: 20

Sec. 145.364. Upon determining that a member's post- 21  
traumatic stress disorder, without an accompanying physical 22  
injury, qualifies that member for a disability benefit under 23  
section 145.36 or 145.361 of the Revised Code, the public 24  
employees retirement board, notwithstanding the exceptions to 25  
public inspection in division (A)(2) of section 145.27 of the 26  
Revised Code or the privileges contained in division (B) of that 27  
section, shall notify the administrator of workers' compensation 28  
of all of the following: 29

(A) The name of the member; 30

(B) That the member's post-traumatic stress disorder, 31  
without an accompanying physical injury, qualifies that member 32  
for a disability benefit under section 145.36 or 145.361 of the 33  
Revised Code; 34

(C) The effective date of the member's disability benefit; 35

(D) The date that payments for the member's disability 36  
benefit commence. 37

Sec. 742.391. Upon determining that a member's post- 38  
traumatic stress disorder, without an accompanying physical 39  
injury, qualifies that member for a disability benefit under 40  
section 742.38 or 742.39 of the Revised Code, the board of 41  
trustees of the Ohio police and fire pension fund, 42  
notwithstanding the exceptions to public inspection in division 43  
(B) of section 742.41 of the Revised Code or the privileges 44  
contained in division (C) of that section, shall notify the 45  
administrator of workers' compensation of all of the following: 46

(A) The name of the member; 47

(B) That the member's post-traumatic stress disorder, 48  
without an accompanying physical injury, qualifies that member 49  
for a disability benefit under section 742.38 or 742.39 of the 50  
Revised Code; 51

(C) The effective date of the member's disability benefit; 52

(D) The date that payments for the member's disability 53  
benefit commence. 54

**Sec. 3309.402.** Upon determining that a member's post- 55  
traumatic stress disorder, without an accompanying physical 56  
injury, qualifies that member for a disability benefit under 57  
section 3309.35, 3309.40, or 3309.401 of the Revised Code, the 58  
school employees retirement board, notwithstanding the 59  
exceptions to public inspection in division (A)(2) of section 60  
3309.22 of the Revised Code or the privileges contained in 61  
division (B) of that section, shall notify the administrator of 62  
workers' compensation of all of the following: 63

(A) The name of the member; 64

(B) That the member's post-traumatic stress disorder, 65  
without an accompanying physical injury, qualifies that member 66  
for a disability benefit under section 3309.35, 3309.40, or 67  
3309.401 of the Revised Code; 68

(C) The effective date of the member's disability benefit; 69

(D) The date that payments for the member's disability 70  
benefit commence. 71

**Sec. 4123.01.** As used in this chapter: 72

(A) (1) "Employee" means: 73

(a) Every person in the service of the state, or of any 74

county, municipal corporation, township, or school district 75  
therein, including regular members of lawfully constituted 76  
police and fire departments of municipal corporations and 77  
townships, whether paid or volunteer, and wherever serving 78  
within the state or on temporary assignment outside thereof, and 79  
executive officers of boards of education, under any appointment 80  
or contract of hire, express or implied, oral or written, 81  
including any elected official of the state, or of any county, 82  
municipal corporation, or township, or members of boards of 83  
education. 84

As used in division (A)(1)(a) of this section, the term 85  
"employee" includes the following persons when responding to an 86  
inherently dangerous situation that calls for an immediate 87  
response on the part of the person, regardless of whether the 88  
person is within the limits of the jurisdiction of the person's 89  
regular employment or voluntary service when responding, on the 90  
condition that the person responds to the situation as the 91  
person otherwise would if the person were on duty in the 92  
person's jurisdiction: 93

(i) ~~Off-duty peace officers. As used in division (A)(1)(a)~~ 94  
~~(i) of this section, "peace officer" has the same meaning as in~~ 95  
~~section 2935.01 of the Revised Code.~~ 96

(ii) ~~Off-duty firefighters, whether paid or volunteer, of~~ 97  
~~a lawfully constituted fire department.~~ 98

(iii) ~~Off-duty first responders, emergency medical~~ 99  
~~technicians basic, emergency medical technicians intermediate,~~ 100  
~~or emergency medical technicians paramedic, whether paid or~~ 101  
~~volunteer, Emergency medical workers of an ambulance service~~ 102  
~~organization or emergency medical service organization pursuant~~ 103  
~~to Chapter 4765. of the Revised Code.~~ 104

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

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

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

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

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

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

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

(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;	134
(vii) The person's hours of work are established by the other contracting party;	135 136
(viii) The person is required to devote full time to the business of the other contracting party;	137 138
(ix) The person is required to perform the work on the premises of the other contracting party;	139 140
(x) The person is required to follow the order of work set by the other contracting party;	141 142
(xi) The person is required to make oral or written reports of progress to the other contracting party;	143 144
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	145 146
(xiii) The person's expenses are paid for by the other contracting party;	147 148
(xiv) The person's tools and materials are furnished by the other contracting party;	149 150
(xv) The person is provided with the facilities used to perform services;	151 152
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	153 154
(xvii) The person is not performing services for a number of employers at the same time;	155 156
(xviii) The person does not make the same services available to the general public;	157 158
(xix) The other contracting party has a right to discharge	159

the person;	160
(xx) The person has the right to end the relationship with	161
the other contracting party without incurring liability pursuant	162
to an employment contract or agreement.	163
Every person in the service of any independent contractor	164
or subcontractor who has failed to pay into the state insurance	165
fund the amount of premium determined and fixed by the	166
administrator of workers' compensation for the person's	167
employment or occupation or if a self-insuring employer has	168
failed to pay compensation and benefits directly to the	169
employer's injured and to the dependents of the employer's	170
killed employees as required by section 4123.35 of the Revised	171
Code, shall be considered as the employee of the person who has	172
entered into a contract, whether written or verbal, with such	173
independent contractor unless such employees or their legal	174
representatives or beneficiaries elect, after injury or death,	175
to regard such independent contractor as the employer.	176
(2) "Employee" does not mean any of the following:	177
(a) A duly ordained, commissioned, or licensed minister or	178
assistant or associate minister of a church in the exercise of	179
ministry;	180
(b) Any officer of a family farm corporation;	181
(c) An individual incorporated as a corporation;	182
(d) An officer of a nonprofit corporation, as defined in	183
section 1702.01 of the Revised Code, who volunteers the person's	184
services as <del>a</del> an officer;	185
(e) An individual who otherwise is an employee of an	186
employer but who signs the waiver and affidavit specified in	187

section 4123.15 of the Revised Code on the condition that the 188  
administrator has granted a waiver and exception to the 189  
individual's employer under section 4123.15 of the Revised Code. 190

Any employer may elect to include as an "employee" within 191  
this chapter, any person excluded from the definition of 192  
"employee" pursuant to division (A)(2)(a), (b), (c), or (e) of 193  
this section in accordance with rules adopted by the 194  
administrator, with the advice and consent of the bureau of 195  
workers' compensation board of directors. If an employer is a 196  
partnership, sole proprietorship, individual incorporated as a 197  
corporation, or family farm corporation, such employer may elect 198  
to include as an "employee" within this chapter, any member of 199  
such partnership, the owner of the sole proprietorship, the 200  
individual incorporated as a corporation, or the officers of the 201  
family farm corporation. Nothing in this section shall prohibit 202  
a partner, sole proprietor, or any person excluded from the 203  
definition of "employee" pursuant to division (A)(2)(a), (b), 204  
(c), or (e) of this section from electing to be included as an 205  
"employee" under this chapter in accordance with rules adopted 206  
by the administrator, with the advice and consent of the board. 207

In the event of an election, the employer or person 208  
electing coverage shall serve upon the bureau of workers' 209  
compensation written notice naming the person to be covered and 210  
include the person's remuneration for premium purposes in all 211  
future payroll reports. No partner, sole proprietor, or person 212  
excluded from the definition of "employee" pursuant to division 213  
(A)(2)(a), (b), (c), or (e) of this section, shall receive 214  
benefits or compensation under this chapter until the bureau 215  
receives written notice of the election permitted by this 216  
section. 217



For informational purposes only, the bureau shall 218  
prescribe such language as it considers appropriate, on such of 219  
its forms as it considers appropriate, to advise employers of 220  
their right to elect to include as an "employee" within this 221  
chapter a sole proprietor, any member of a partnership, or a 222  
person excluded from the definition of "employee" under division 223  
(A) (2) (a), (b), (c), or (e) of this section, that they should 224  
check any health and disability insurance policy, or other form 225  
of health and disability plan or contract, presently covering 226  
them, or the purchase of which they may be considering, to 227  
determine whether such policy, plan, or contract excludes 228  
benefits for illness or injury that they might have elected to 229  
have covered by workers' compensation. 230

(B) "Employer" means: 231

(1) The state, including state hospitals, each county, 232  
municipal corporation, township, school district, and hospital 233  
owned by a political subdivision or subdivisions other than the 234  
state; 235

(2) Every person, firm, professional employer 236  
organization, and private corporation, including any public 237  
service corporation, that (a) has in service one or more 238  
employees or shared employees regularly in the same business or 239  
in or about the same establishment under any contract of hire, 240  
express or implied, oral or written, or (b) is bound by any such 241  
contract of hire or by any other written contract, to pay into 242  
the insurance fund the premiums provided by this chapter. 243

All such employers are subject to this chapter. Any member 244  
of a firm or association, who regularly performs manual labor in 245  
or about a mine, factory, or other establishment, including a 246  
household establishment, shall be considered an employee in 247

determining whether such person, firm, or private corporation, 248  
or public service corporation, has in its service, one or more 249  
employees and the employer shall report the income derived from 250  
such labor to the bureau as part of the payroll of such 251  
employer, and such member shall thereupon be entitled to all the 252  
benefits of an employee. 253

(C) "Injury" includes any injury, whether caused by 254  
external accidental means or accidental in character and result, 255  
received in the course of, and arising out of, the injured 256  
employee's employment. "Injury" does not include: 257

(1) Psychiatric conditions except ~~where~~ as follows: 258

(a) Where the claimant's psychiatric conditions have 259  
arisen from an injury or occupational disease sustained by that 260  
claimant ~~or where~~; 261

(b) Where the claimant's psychiatric conditions have 262  
arisen from sexual conduct in which the claimant was forced by 263  
threat of physical harm to engage or participate; 264

(c) Where the claimant is a peace officer, firefighter, or 265  
emergency medical worker and is diagnosed with post-traumatic 266  
stress disorder that has been received in the course of, and has 267  
arisen out of, the claimant's employment as a peace officer, 268  
firefighter, or emergency medical worker. 269

(2) Injury or disability caused primarily by the natural 270  
deterioration of tissue, an organ, or part of the body; 271

(3) Injury or disability incurred in voluntary 272  
participation in an employer-sponsored recreation or fitness 273  
activity if the employee signs a waiver of the employee's right 274  
to compensation or benefits under this chapter prior to engaging 275  
in the recreation or fitness activity; 276

(4) A condition that pre-existed an injury unless that 277  
pre-existing condition is substantially aggravated by the 278  
injury. Such a substantial aggravation must be documented by 279  
objective diagnostic findings, objective clinical findings, or 280  
objective test results. Subjective complaints may be evidence of 281  
such a substantial aggravation. However, subjective complaints 282  
without objective diagnostic findings, objective clinical 283  
findings, or objective test results are insufficient to 284  
substantiate a substantial aggravation. 285

(D) "Child" includes a posthumous child and a child 286  
legally adopted prior to the injury. 287

(E) "Family farm corporation" means a corporation founded 288  
for the purpose of farming agricultural land in which the 289  
majority of the voting stock is held by and the majority of the 290  
stockholders are persons or the spouse of persons related to 291  
each other within the fourth degree of kinship, according to the 292  
rules of the civil law, and at least one of the related persons 293  
is residing on or actively operating the farm, and none of whose 294  
stockholders are a corporation. A family farm corporation does 295  
not cease to qualify under this division where, by reason of any 296  
devise, bequest, or the operation of the laws of descent or 297  
distribution, the ownership of shares of voting stock is 298  
transferred to another person, as long as that person is within 299  
the degree of kinship stipulated in this division. 300

(F) "Occupational disease" means a disease contracted in 301  
the course of employment, which by its causes and the 302  
characteristics of its manifestation or the condition of the 303  
employment results in a hazard which distinguishes the 304  
employment in character from employment generally, and the 305  
employment creates a risk of contracting the disease in greater 306

degree and in a different manner from the public in general. 307

(G) "Self-insuring employer" means an employer who is 308  
granted the privilege of paying compensation and benefits 309  
directly under section 4123.35 of the Revised Code, including a 310  
board of county commissioners for the sole purpose of 311  
constructing a sports facility as defined in section 307.696 of 312  
the Revised Code, provided that the electors of the county in 313  
which the sports facility is to be built have approved 314  
construction of a sports facility by ballot election no later 315  
than November 6, 1997. 316

(H) "Private employer" means an employer as defined in 317  
division (B) (2) of this section. 318

(I) "Professional employer organization" has the same 319  
meaning as in section 4125.01 of the Revised Code. 320

(J) "Public employer" means an employer as defined in 321  
division (B) (1) of this section. 322

(K) "Sexual conduct" means vaginal intercourse between a 323  
male and female; anal intercourse, fellatio, and cunnilingus 324  
between persons regardless of gender; and, without privilege to 325  
do so, the insertion, however slight, of any part of the body or 326  
any instrument, apparatus, or other object into the vaginal or 327  
anal cavity of another. Penetration, however slight, is 328  
sufficient to complete vaginal or anal intercourse. 329

(L) "Other-states' insurer" means an insurance company 330  
that is authorized to provide workers' compensation insurance 331  
coverage in any of the states that permit employers to obtain 332  
insurance for workers' compensation claims through insurance 333  
companies. 334

(M) "Other-states' coverage" means both of the following: 335

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

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

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

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

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

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

**Sec. 4123.026.** ~~(A)~~The administrator of workers' compensation, or a self-insuring public employer for the peace officers, firefighters, and emergency medical workers employed by or volunteering for that self-insuring public employer, shall pay the costs of conducting post-exposure medical diagnostic services, consistent with the standards of medical care existing

at the time of the exposure, to investigate whether an injury or 365  
occupational disease was sustained by a peace officer, 366  
firefighter, or emergency medical worker when coming into 367  
contact with the blood or other body fluid of another person in 368  
the course of and arising out of the peace officer's, 369  
firefighter's, or emergency medical worker's employment, or when 370  
responding to an inherently dangerous situation in the manner 371  
described in, and in accordance with the conditions specified 372  
under, division (A) (1) (a) of section 4123.01 of the Revised 373  
Code, through any of the following means: 374

~~(1) (A) Splash or spatter in the eye or mouth, including 375  
when received in the course of conducting mouth-to-mouth 376  
resuscitation; 377~~

~~(2) (B) A puncture in the skin; 378~~

~~(3) (C) A cut in the skin or another opening in the skin 379  
such as an open sore, wound, lesion, abrasion, or ulcer. 380~~

~~(B) As used in this section: 381~~

~~(1) "Peace officer" has the same meaning as in section 382  
2935.01 of the Revised Code. 383~~

~~(2) "Firefighter" means a firefighter, whether paid or 384  
volunteer, of a lawfully constituted fire department. 385~~

~~(3) "Emergency medical worker" means a first responder, 386  
emergency medical technician basic, emergency medical 387  
technician intermediate, or emergency medical technician 388  
paramedic, certified under Chapter 4765. of the Revised Code, 389  
whether paid or volunteer. 390~~

**Sec. 4123.46.** (A) (1) Except as provided in division (A) (2) 391  
of this section, the bureau of workers' compensation shall 392

disburse the state insurance fund to employees of employers who 393  
have paid into the fund the premiums applicable to the classes 394  
to which they belong when the employees have been injured in the 395  
course of their employment, wherever the injuries have occurred, 396  
and provided the injuries have not been purposely self- 397  
inflicted, or to the dependents of the employees in case death 398  
has ensued. 399

(2) As long as injuries have not been purposely self- 400  
inflicted, the bureau shall disburse the surplus fund created 401  
under section 4123.34 of the Revised Code to off-duty peace 402  
officers, firefighters, and emergency medical ~~technicians, and~~ 403  
~~first responders~~ workers, or to their dependents if death 404  
ensues, who are injured while responding to inherently dangerous 405  
situations that call for an immediate response on the part of 406  
the person, regardless of whether the person was within the 407  
limits of the person's jurisdiction when responding, on the 408  
condition that the person responds to the situation as the 409  
person otherwise would if the person were on duty in the 410  
person's jurisdiction. 411

~~As used in division (A) (2) of this section, "peace-~~ 412  
~~officer," "firefighter," "emergency medical technician," "first-~~ 413  
~~responder," and "jurisdiction" have the same meanings as in-~~ 414  
~~section 4123.01 of the Revised Code.~~ 415

(B) All self-insuring employers, in compliance with this 416  
chapter, shall pay the compensation to injured employees, or to 417  
the dependents of employees who have been killed in the course 418  
of their employment, unless the injury or death of the employee 419  
was purposely self-inflicted, and shall furnish the medical, 420  
surgical, nurse, and hospital care and attention or funeral 421  
expenses as would have been paid and furnished by virtue of this 422

chapter under a similar state of facts by the bureau out of the 423  
state insurance fund if the employer had paid the premium into 424  
the fund. 425

If any rule or regulation of a self-insuring employer 426  
provides for or authorizes the payment of greater compensation 427  
or more complete or extended medical care, nursing, surgical, 428  
and hospital attention, or funeral expenses to the injured 429  
employees, or to the dependents of the employees as may be 430  
killed, the employer shall pay to the employees, or to the 431  
dependents of employees killed, the amount of compensation and 432  
furnish the medical care, nursing, surgical, and hospital 433  
attention or funeral expenses provided by the self-insuring 434  
employer's rules and regulations. 435

(C) Payment to injured employees, or to their dependents 436  
in case death has ensued, is in lieu of any and all rights of 437  
action against the employer of the injured or killed employees. 438

Sec. 4123.87. (A) Notwithstanding any provision in section 439  
4123.52, 4123.54, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 440  
4123.60, or 4123.66 of the Revised Code to the contrary, in the 441  
case of disability due to an injury described in division (C) (1) 442  
(c) of section 4123.01 of the Revised Code: 443

(1) Any entitlement of a claimant to compensation as a 444  
result of any order issued under this chapter or Chapter 4121., 445  
4127., or 4131. of the Revised Code regarding that injury shall 446  
cease not later than one year after the date those payments 447  
commence under division (H) of section 4123.511 of the Revised 448  
Code. 449

(2) Any entitlement of a claimant to medical benefits 450  
under this chapter or Chapter 4121., 4127., or 4131. of the 451



Revised Code regarding that injury shall cease not later than 452  
one year after those payments commence under division (I) of 453  
section 4123.511 of the Revised Code. 454

(B) No claimant shall be entitled to compensation or 455  
benefits under this chapter for an injury described in division 456  
(C) (1) (c) of section 4123.01 of the Revised Code for any period 457  
of time during which the claimant received a disability benefit 458  
or disability retirement from the public employees retirement 459  
system, the Ohio police and fire pension fund, the school 460  
employees retirement system, or the state highway patrol 461  
retirement system. 462

(C) If a claimant receives an award of compensation or 463  
benefits under this chapter or Chapter 4121., 4127., or 4131. of 464  
the Revised Code for an injury described in division (C) (1) (c) 465  
of section 4123.01 of the Revised Code for the same time period 466  
for which the claimant received a disability benefit or 467  
disability retirement from the public employees retirement 468  
system, the Ohio police and fire pension fund, the school 469  
employees retirement system, or the state highway patrol 470  
retirement system, the administrator or any self-insuring 471  
employer, by any lawful means, may collect from the employee or 472  
the employee's dependents any of the following: 473

(1) The amount of compensation or benefits paid to the 474  
claimant by the administrator or a self-insuring employer 475  
pursuant to this chapter or Chapter 4121., 4127., or 4131. of 476  
the Revised Code for that time period; 477

(2) Any interest, attorney's fees, and costs the 478  
administrator or the self-insuring employer incurs in collecting 479  
that payment. 480

Sec. 5505.182. Upon determining that a member's post-  
traumatic stress disorder, without an accompanying physical  
injury, qualifies that member for disability retirement under  
section 5505.18 of the Revised Code, the state highway patrol  
retirement board, notwithstanding the exceptions to public  
inspection in division (C)(2) of section 5505.04 of the Revised  
Code or the privileges contained in division (D) of that  
section, shall notify the administrator of workers' compensation  
of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder,  
without an accompanying physical injury, qualifies that member  
for disability retirement under section 5505.18 of the Revised  
Code;

(C) The effective date of the member's disability  
retirement;

(D) The date that payments for the member's disability  
retirement commence.

**Section 2.** That existing sections 4123.01, 4123.026, and  
4123.46 of the Revised Code are hereby repealed.