As Introduced

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Representatives Kelly, Patton
Cosponsors: Representatives Boyd, Rogers, Galonski, Hambley, Leland, Brent, Russo, Ingram, Howse, Smith, K., Boggs, Brown, Sobecki, Lightbody, Denson, O'Brien, Weinstein

A BILL

To amend section 4123.68 of the Revised Code to
make COVID-19 contracted by an employee of a
retail food establishment or food processing
establishment an occupational disease under the
Workers' Compensation Law under certain
circumstances and to declare an emergency.

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

Section 1. That section 4123.68 of the Revised Code be
amended to read as follows:

Sec. 4123.68. Every employee who is disabled because of
the contraction of an occupational disease or the dependent of
an employee whose death is caused by an occupational disease, is
entitled to the compensation provided by sections 4123.55 to
4123.59 and 4123.66 of the Revised Code subject to the
modifications relating to occupational diseases contained in
this chapter. An order of the administrator issued under this
section is appealable pursuant to sections 4123.511 and 4123.512
of the Revised Code.
The following diseases are occupational diseases and compensable as such when contracted by an employee in the course of the employment in which such employee was engaged and due to the nature of any process described in this section. A disease which meets the definition of an occupational disease is compensable pursuant to this chapter though it is not specifically listed in this section.

SCHEDULE

Description of disease or injury and description of process:

(A) Anthrax: Handling of wool, hair, bristles, hides, and skins.

(B) Glanders: Care of any equine animal suffering from glanders; handling carcass of such animal.

(C) Lead poisoning: Any industrial process involving the use of lead or its preparations or compounds.

(D) Mercury poisoning: Any industrial process involving the use of mercury or its preparations or compounds.

(E) Phosphorous poisoning: Any industrial process involving the use of phosphorous or its preparations or compounds.

(F) Arsenic poisoning: Any industrial process involving the use of arsenic or its preparations or compounds.

(G) Poisoning by benzol or by nitro-derivatives and amido-derivatives of benzol (dinitro-benzol, anilin, and others): Any industrial process involving the use of benzol or nitro-derivatives or amido-derivatives of benzol or its preparations or compounds.
(H) Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products: Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.

(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.

(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.

(K) Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, or vapors: Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases, or vapors.

(L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds: Handling or industrial use of carbon, pitch, or tarry compounds.

(M) Compressed air illness: Any industrial process carried on in compressed air.

(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.

(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.

(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of
manganese dioxide dust.

(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.

(R) Tenosynovitis and prepatellar bursitis: Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

(S) Chrome ulceration of the skin or nasal passages: Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.

(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.

(U) Sulphur dioxide poisoning: Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.

(V) Berylliosis: Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

This chapter does not entitle an employee or the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from berylliosis unless the employee has been subjected to injurious exposure to beryllium dust or fumes in the employee's employment in this state preceding the employee's disablement and only in the event of such disability or death resulting within eight...
years after the last injurious exposure; provided that such
eight-year limitation does not apply to disability or death from
exposure occurring after January 1, 1976. In the event of death
following continuous total disability commencing within eight
years after the last injurious exposure, the requirement of
death within eight years after the last injurious exposure does
not apply.

Before awarding compensation for partial or total
disability or death due to berylliosis, the administrator of
workers' compensation shall refer the claim to a qualified
medical specialist for examination and recommendation with
regard to the diagnosis, the extent of the disability, the
nature of the disability, whether permanent or temporary, the
cause of death, and other medical questions connected with the
claim. An employee shall submit to such examinations, including
clinical and x-ray examinations, as the administrator requires.
In the event that an employee refuses to submit to examinations,
including clinical and x-ray examinations, after notice from the
administrator, or in the event that a claimant for compensation
for death due to berylliosis fails to produce necessary consents
and permits, after notice from the administrator, so that such
autopsy examination and tests may be performed, then all rights
for compensation are forfeited. The reasonable compensation of
such specialist and the expenses of examinations and tests shall
be paid, if the claim is allowed, as part of the expenses of the
claim, otherwise they shall be paid from the surplus fund.

(W) Cardiovascular, pulmonary, or respiratory diseases
incurred by firefighters or police officers following exposure
to heat, smoke, toxic gases, chemical fumes and other toxic
substances: Any cardiovascular, pulmonary, or respiratory
disease of a firefighter or police officer caused or induced by
the cumulative effect of exposure to heat, the inhalation of 134
smoke, toxic gases, chemical fumes and other toxic substances in 135
the performance of the firefighter's or police officer's duty 136
constitutes a presumption, which may be refuted by affirmative 137
evidence, that such occurred in the course of and arising out of 138
the firefighter's or police officer's employment. For the 139
purpose of this section, "firefighter" means any regular member 140
of a lawfully constituted fire department of a municipal 141
corporation or township, whether paid or volunteer, and "police 142
officer" means any regular member of a lawfully constituted 143
police department of a municipal corporation, township or 144
county, whether paid or volunteer.

This chapter does not entitle a firefighter, or police 145
officer, or the firefighter's or police officer's dependents to 146
compensation, medical treatment, or payment of funeral expenses 147
for disability or death from a cardiovascular, pulmonary, or 148
respiratory disease, unless the firefighter or police officer 149
has been subject to injurious exposure to heat, smoke, toxic 150
gases, chemical fumes, and other toxic substances in the 151
firefighter's or police officer's employment in this state 152
preceding the firefighter's or police officer's disablement, 153
some portion of which has been after January 1, 1967, except as 154
provided in division (E) of section 4123.57 of the Revised Code. 155

Compensation on account of cardiovascular, pulmonary, or 156
respiratory diseases of firefighters and police officers is 157
payable only in the event of temporary total disability, 158
permanent total disability, or death, in accordance with section 159
4123.56, 4123.58, or 4123.59 of the Revised Code. Medical, 160
hospital, and nursing expenses are payable in accordance with 161
this chapter. Compensation, medical, hospital, and nursing 162
expenses are payable only in the event of such disability or 163

death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

This chapter does not entitle a firefighter or police officer, or the firefighter's or police officer's dependents, to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular, pulmonary, or respiratory disease in the event of failure or omission on the part of the firefighter or police officer truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the administrator shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A firefighter or police officer shall submit to such examinations, including clinical and x-ray examinations, as the administrator requires. In the event that a firefighter or police officer refuses to submit to examinations, including clinical and x-ray examinations, after notice from the administrator, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the administrator, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable
compensation of such specialists and the expenses of examination and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(X)(1) Cancer contracted by a firefighter: Cancer contracted by a firefighter who has been assigned to at least six years of hazardous duty as a firefighter constitutes a presumption that the cancer was contracted in the course of and arising out of the firefighter's employment if the firefighter was exposed to an agent classified by the international agency for research on cancer or its successor organization as a group 1 or 2A carcinogen.

(2) The presumption described in division (X)(1) of this section is rebuttable in any of the following situations:

(a) There is evidence that the firefighter's exposure, outside the scope of the firefighter's official duties, to cigarettes, tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged, was probably a significant factor in the cause or progression of the cancer.

(b) There is evidence that shows, by a preponderance of competent scientific evidence, that exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged.

(c) There is evidence that the firefighter was not exposed to an agent classified by the international agency for research on cancer as a group 1 or 2A carcinogen.

(d) There is evidence that the firefighter incurred the type of cancer alleged before becoming a member of the fire
department.

(e) The firefighter is seventy years of age or older.

(3) The presumption described in division (X)(1) of this section does not apply if it has been more than fifteen years since the firefighter was last assigned to hazardous duty as a firefighter.

(4) Compensation for cancer contracted by a firefighter in the course of hazardous duty under division (X) of this section is payable only in the event of temporary total disability, working wage loss, permanent total disability, or death, in accordance with division (A) or (B)(1) of section 4123.56 and sections 4123.58 and 4123.59 of the Revised Code.

(5) As used in division (X) of this section, "hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended.

(Y) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, biopsy or by autopsy.

(Z) Coal miners' pneumoconiosis: Coal miners' pneumoconiosis, commonly referred to as "black lung disease," resulting from working in the coal mine industry and due to exposure to the breathing of coal dust, and demonstrated by x-ray examination, biopsy, autopsy or other medical or clinical tests.

This chapter does not entitle an employee or the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, asbestosis, or coal miners' pneumoconiosis unless the employee has been subject to injurious exposure to silica dust.
(silicon dioxide), asbestos, or coal dust in the employee's employment in this state preceding the employee's disablement, some portion of which has been after October 12, 1945, except as provided in division (E) of section 4123.57 of the Revised Code.

Compensation on account of silicosis, asbestosis, or coal miners' pneumoconiosis are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with sections 4123.56, 4123.58, and 4123.59 of the Revised Code. Medical, hospital, and nursing expenses are payable in accordance with this chapter. Compensation, medical, hospital, and nursing expenses are payable only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability or death occurring after January 1, 1976, and further provided that such eight-year limitation does not apply to any asbestosis cases. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

This chapter does not entitle an employee or the employee's dependents to compensation, medical, hospital and nursing expenses, or payment of funeral expenses for disability or death due to silicosis, asbestosis, or coal miners' pneumoconiosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death due to silicosis, asbestosis, or coal miners' pneumoconiosis, the
administrator shall refer the claim to a qualified medical
specialist for examination and recommendation with regard to the
diagnosis, the extent of disability, the cause of death, and
other medical questions connected with the claim. An employee
shall submit to such examinations, including clinical and x-ray
examinations, as the administrator requires. In the event that
an employee refuses to submit to examinations, including
clinical and x-ray examinations, after notice from the
administrator, or in the event that a claimant for compensation
for death due to silicosis, asbestosis, or coal miners'
pneumoconiosis fails to produce necessary consents and permits,
after notice from the commission, so that such autopsy
examination and tests may be performed, then all rights for
compensation are forfeited. The reasonable compensation of such
specialist and the expenses of examinations and tests shall be
paid, if the claim is allowed, as a part of the expenses of the
claim, otherwise they shall be paid from the surplus fund.

(AA) Radiation illness: Any industrial process involving
the use of radioactive materials.

Claims for compensation and benefits due to radiation
illness are payable only in the event death or disability
occurred within eight years after the last injurious exposure
provided that such eight-year limitation does not apply to
disability or death from exposure occurring after January 1, 1976. In the event of death following continuous disability
which commenced within eight years of the last injurious
exposure the requirement of death within eight years after the
last injurious exposure does not apply.

(BB) Asbestosis: Asbestosis means a disease caused by
inhalation or ingestion of asbestos, demonstrated by x-ray
examination, biopsy, autopsy, or other objective medical or clinical tests.

(CC)(1) COVID-19: COVID-19 contracted by an employee described in division (CC)(2) of this section during the emergency declared by Executive Order 2020-01D, issued March 9, 2020, constitutes a presumption, which may be refuted by affirmative evidence, that COVID-19 was contracted in the course of and arising out of the employee's employment. This division applies only to claims arising during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020.

(2) Division (CC)(1) of this section applies to both of the following:

(a) An employee of a retail food establishment as defined in section 3717.01 of the Revised Code;

(b) An employee of a food processing establishment as defined in section 3715.021 of the Revised Code.

All conditions, restrictions, limitations, and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis or coal miners' pneumoconiosis apply to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposures to dust.

The refusal to produce the necessary consents and permits for autopsy examination and testing shall not result in forfeiture of compensation provided the administrator finds that such refusal was the result of bona fide religious convictions or teachings to which the claimant for compensation adhered prior to the death of the decedent.
Section 2. That existing section 4123.68 of the Revised Code is hereby repealed.

Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to address urgent needs of the state arising from a COVID-19 outbreak. Therefore, this act shall go into immediate effect.