

AN ACT

To amend sections 2913.48, 4121.121, 4121.32, 4121.34, 4121.35, 4121.36, 4121.38, 4121.44, 4121.47, 4121.61, 4121.67, 4123.01, 4123.032, 4123.033, 4123.07, 4123.25, 4123.27, 4123.28, 4123.34, 4123.343, 4123.35, 4123.352, 4123.411, 4123.412, 4123.413, 4123.414, 4123.416, 4123.419, 4123.511, 4123.512, 4123.52, 4123.54, 4123.541, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, 4123.61, 4123.62, 4123.64, 4123.65, 4123.651, 4123.66, 4123.68, 4123.70, 4123.80, 4123.82, 4123.84, 4123.85, 4123.90, 4123.93, 4127.03, 4127.06, and 4141.31 and to enact sections 4121.444, 4121.445, 4123.061, 4123.15, and 4123.531 of the Revised Code to make various changes in the structure, payment, and determination of benefits, to reduce the number of weeks an employee can receive nonworking wage loss, to permit an employer to have an employee excepted from the Workers' Compensation Laws for religious reasons, to change the duration of the continuing jurisdiction of the Industrial Commission generally to five years with specified exceptions for certain occupational diseases or prosthetic device cases, to require hearing officers to report suspected fraudulent activity, to limit recovery for aggravation of a preexisting condition, to change the definition of occupational disease, to permit certain nonattorneys to represent parties in hearings before the Industrial Commission, to create the presumption concerning alcohol or a controlled substance as the cause of an employee's injury, to except buildings and land used

for agricultural production from safety rules that apply to workshops and factories, to provide criminal penalties for employers who intentionally misclassify their employees for workers' compensation purposes, to prohibit kickbacks from health care providers under the Workers' Compensation Law, to prohibit health care providers from receiving payments for false claims under the Workers' Compensation Law, to provide that records kept by the Division of Safety and Hygiene are confidential, to specify that records produced by an attorney in connection with a workers' compensation claim are the property of the claimant, and to make other changes in the Workers' Compensation Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2913.48, 4121.121, 4121.32, 4121.34, 4121.35, 4121.36, 4121.38, 4121.44, 4121.47, 4121.61, 4121.67, 4123.01, 4123.032, 4123.033, 4123.07, 4123.25, 4123.27, 4123.28, 4123.34, 4123.343, 4123.35, 4123.352, 4123.411, 4123.412, 4123.413, 4123.414, 4123.416, 4123.419, 4123.511, 4123.512, 4123.52, 4123.54, 4123.541, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, 4123.61, 4123.62, 4123.64, 4123.65, 4123.651, 4123.66, 4123.68, 4123.70, 4123.80, 4123.82, 4123.84, 4123.85, 4123.90, 4123.93, 4127.03, 4127.06, and 4141.31 be amended and sections 4121.444, 4121.445, 4123.061, 4123.15, and 4123.531 of the Revised Code be enacted to read as follows:

Sec. 2913.48. (A) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Receive workers' compensation benefits to which the person is not entitled;

(2) Make or present or cause to be made or presented a false or misleading statement with the purpose to secure payment for goods or services rendered under Chapter 4121., 4123., 4127., or 4131. of the Revised Code or to secure workers' compensation benefits;

(3) Alter, falsify, destroy, conceal, or remove any record or document that is necessary to fully establish the validity of any claim filed with, or

necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from, the bureau of workers' compensation, or a self-insuring employer under Chapter 4121., 4123., 4127., or 4131. of the Revised Code;

(4) Enter into an agreement or conspiracy to defraud the bureau or a self-insuring employer by making or presenting or causing to be made or presented a false claim for workers' compensation benefits;

(5) Make or present or cause to be made OR PRESENTED a false or misleading statement or other misrepresentation concerning manual codes, classification of employees, payroll, or number of personnel, when information of that nature is necessary to determine the actual workers' compensation premium or assessment owed to the bureau by an employer;

(6) Solicit, offer, or receive any remuneration IN CASH or in kind, including, but not limited to, a kickback or rebate, in connection with a referral for the FURNISHING of goods or services for which reimbursement may be made pursuant to Chapter 4121., 4123., 4127., or 4131. of the Revised Code. Division (A)(6) of this section does not apply to any contract to provide services under the bureau's health care partnership program or a qualified health plan entered into between a managed care organization and an organization formed pursuant to division (A)(4) of section 4123.29 Of the Revised Code.

(7) Alter, forge, or create a workers' compensation certificate to falsely show current or correct workers' compensation coverage;

(8) Fail to secure or maintain workers' compensation coverage as required by Chapter 4123. Of the Revised Code.

(B) Whoever violates this section is guilty of workers' compensation fraud. Except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the value of the premiums and assessments unpaid pursuant to actions described in division (A)(5), (7), or (8) of this section, or of goods, services, property, or money stolen is five hundred dollars or more and is less than five thousand dollars, a violation of this section is a felony of the fifth degree. If the value of the premiums and assessments unpaid pursuant to actions described in division (A)(5), (7), or (8) of this section, or of goods, services, property, or money stolen is five thousand dollars or more and is less than one hundred thousand dollars, a violation of this section is a felony of the fourth degree. If the value of the premiums and assessments unpaid pursuant to actions described in division (A)(5), (7), or (8) of this section, or of goods, services, property, or money stolen is one hundred thousand dollars or more, a violation of this section is a felony of the third degree.

(C) Upon application of the governmental body that conducted the investigation and prosecution of a violation of this section, the court shall order the person who is convicted of the violation to pay the governmental body its costs of investigating and prosecuting the case. These costs are in addition to any other costs or penalty provided in the Revised Code or any other section of law.

(D) The remedies and penalties provided in this section are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this section.

(E) As used in this section:

(1) "False" means wholly or partially untrue or deceptive.

(2) "Goods" includes, but is not limited to, medical supplies, appliances, rehabilitative equipment, and any other apparatus or furnishing provided or used in the care, treatment, or rehabilitation of a claimant for workers' compensation benefits.

(3) "Services" includes, but is not limited to, any service provided by any health care provider to a claimant for workers' compensation benefits and any and all services provided by the bureau as part of workers' compensation insurance coverage.

(4) "Claim" means any attempt to cause the bureau, an independent third party with whom the administrator or an employer contracts under section 4121.44 of the Revised Code, or a self-insuring employer to make payment or reimbursement for workers' compensation benefits.

(5) "Employment" means participating in any trade, occupation, business, service, or profession for substantial gainful remuneration.

(6) "Employer," "employee," and "self-insuring employer" have the same meanings as in section 4123.01 of the Revised Code.

(7) "Remuneration" includes, but is not limited to, wages, commissions, rebates, and any other reward or consideration.

(8) "Statement" includes, but is not limited to, any oral, written, electronic, electronic impulse, or magnetic communication notice, letter, memorandum, receipt for payment, invoice, account, financial statement, OR bill for services; a diagnosis, prognosis, prescription, hospital, medical, or dental chart or other record; and a computer generated document.

(9) "Records" means any medical, professional, financial, or business record relating to the treatment or care of any person, to goods or services provided to any person, or to rates paid for goods or services provided to any person, or any record that the administrator of workers' compensation requires pursuant to rule.

(10) "Workers' compensation benefits" means any compensation or benefits payable under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

Sec. 4121.121. (A) There is hereby created the bureau of workers' compensation, which shall be administered by the administrator of workers' compensation. A person appointed to the position of administrator shall possess significant management experience in effectively managing an organization or organizations of substantial size and complexity. Before September 1, 1998, the governor shall appoint the administrator as provided in section 121.03 of the Revised Code, and the administrator shall serve at the pleasure of the governor. The governor shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and ~~Chapter~~ Chapters 4123., 4127., and 4131. of the Revised Code. The governor shall not appoint to the position of administrator any person who has, or whose spouse has, given a contribution to the campaign committee of the governor in an amount greater than one thousand dollars during the two-year period immediately preceding the date of the appointment of the administrator. After August 31, 1998, the workers' compensation oversight commission shall appoint the administrator as provided in division (F)(9) of section 4121.12 of the Revised Code, and the administrator shall serve at the pleasure of the oversight commission. The oversight commission shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

The administrator shall hold no other public office and shall devote full time to the duties of administrator. Before entering upon the duties of the office, the administrator shall take an oath of office as required by sections 3.22 and 3.23 of the Revised Code, and shall file in the office of the secretary of state, a bond signed by the administrator and by surety approved by the governor, for the sum of fifty thousand dollars payable to the state, conditioned upon the faithful performance of the administrator's duties.

(B) The administrator is responsible for the management of the bureau of workers' compensation and for the discharge of all administrative duties imposed upon the administrator in this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, and in the discharge thereof shall do all of the following:

(1) Establish the overall administrative policy of the bureau for the purposes of this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, and perform all acts and exercise all authorities and powers,

discretionary and otherwise that are required of or vested in the bureau or any of its employees in this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, except the acts and the exercise of authority and power that is required of and vested in the oversight commission or the industrial commission pursuant to those chapters. The treasurer of state shall honor all warrants signed by the administrator, or by one or more of the administrator's employees, authorized by the administrator in writing, or bearing the facsimile signature of the administrator or such employee under sections 4123.42 and 4123.44 of the Revised Code.

(2) Employ, direct, and supervise all employees required in connection with the performance of the duties assigned to the bureau by this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, and may establish job classification plans and compensation for all employees of the bureau provided that this grant of authority shall not be construed as affecting any employee for whom the state employment relations board has established an appropriate bargaining unit under section 4117.06 of the Revised Code. All positions of employment in the bureau are in the classified civil service except those employees the administrator may appoint to serve at the administrator's pleasure in the unclassified civil service pursuant to section 124.11 of the Revised Code. The administrator shall fix the salaries of employees the administrator appoints to serve at the administrator's pleasure, including the chief operating officer, staff physicians, and other senior management personnel of the bureau.

(3) Reorganize the work of the bureau, its sections, departments, and offices to the extent necessary to achieve the most efficient performance of its functions and to that end may establish, change, or abolish positions and assign and reassign duties and responsibilities of every employee of the bureau. All persons employed by the commission in positions that, after November 3, 1989, are supervised and directed by the administrator under this section are transferred to the bureau in their respective classifications but subject to reassignment and reclassification of position and compensation as the administrator determines to be in the interest of efficient administration. The civil service status of any person employed by the commission is not affected by this section. Personnel employed by the bureau or the commission who are subject to Chapter 4117. of the Revised Code shall retain all of their rights and benefits conferred pursuant to that chapter as it presently exists or is hereafter amended and nothing in this chapter or Chapter 4123. of the Revised Code shall be construed as eliminating or interfering with Chapter 4117. of the Revised Code or the rights and benefits conferred under that chapter to public employees or to

any bargaining unit.

(4) Provide offices, equipment, supplies, and other facilities for the bureau. The administrator also shall provide suitable office space in the service offices for the district hearing officers, the staff hearing officers, and commission employees as requested by the commission.

(5) Prepare and submit to the oversight commission information the administrator considers pertinent or the oversight commission requires, together with the administrator's recommendations, in the form of administrative rules, for the advice and consent of the oversight commission, for classifications of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating. The administrator shall obtain, prepare, and submit any other information the oversight commission requires for the prompt and efficient discharge of its duties.

(6) Keep the accounts required by division (A) of section 4123.34 of the Revised Code and all other accounts and records necessary to the collection, administration, and distribution of the workers' compensation funds and shall obtain the statistical and other information required by section 4123.19 of the Revised Code.

(7) Exercise the investment powers vested in the administrator by section 4123.44 of the Revised Code in accordance with the investment objectives, policies, and criteria established by the oversight commission pursuant to section 4121.12 of the Revised Code. The administrator shall not engage in any prohibited investment activity specified by the oversight commission pursuant to division (F)(6) of section 4121.12 of the Revised Code. All business shall be transacted, all funds invested, all warrants for money drawn and payments made, and all cash and securities and other property held, in the name of the bureau, or in the name of its nominee, provided that nominees are authorized by the administrator solely for the purpose of facilitating the transfer of securities, and restricted to the administrator and designated employees.

(8) Make contracts for and supervise the construction of any project or improvement or the construction or repair of buildings under the control of the bureau.

(9) Purchase supplies, materials, equipment, and services; make contracts for, operate, and superintend the telephone, other telecommunication, and computer services for the use of the bureau; and make contracts in connection with office reproduction, forms management, printing, and other services.

(10) Separately from the budget the industrial commission submits, prepare and submit to the director of budget and management a budget for each biennium. The budget submitted shall include estimates of the costs and necessary expenditures of the bureau in the discharge of any duty imposed by law as well as the costs of furnishing office space to the district hearing officers, staff hearing officers, and commission employees under division (D) of this section.

(11) As promptly as possible in the course of efficient administration, decentralize and relocate such of the personnel and activities of the bureau as is appropriate to the end that the receipt, investigation, determination, and payment of claims may be undertaken at or near the place of injury or the residence of the claimant and for that purpose establish regional offices, in such places as the administrator considers proper, capable of discharging as many of the functions of the bureau as is practicable so as to promote prompt and efficient administration in the processing of claims. All active and inactive lost-time claims files shall be held at the service office responsible for the claim. A claimant, at the claimant's request, shall be provided with information by telephone as to the location of the file pertaining to claim. The administrator shall ensure that all service office employees report directly to the director for their service office.

(12) Provide a written binder on new coverage where the administrator considers it to be in the best interest of the risk. The administrator, or any other person authorized by the administrator, shall grant the binder upon submission of a request for coverage by the employer. A binder is effective for a period of thirty days from date of issuance and is nonrenewable. Payroll reports and premium charges shall coincide with the effective date of the binder.

(13) Set standards for the reasonable and maximum handling time of claims payment functions, ensure, by rules, the impartial and prompt treatment of all claims and employer risk accounts, and establish a secure, accurate method of time stamping all incoming mail and documents hand delivered to bureau employees.

(14) Ensure that all employees of the bureau follow the orders and rules of the commission as such orders and rules relate to the commission's overall adjudicatory policy-making and management duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

(15) Manage and operate a data processing system with a common data base for the use of both the bureau and the commission and, in consultation with the commission, using electronic data processing equipment, shall develop a claims tracking system that is sufficient to monitor the status of a

claim at any time and that lists appeals that have been filed and orders or determinations that have been issued pursuant to section 4123.511 or 4123.512 of the Revised Code, including the dates of such filings and issuances.

(16) Establish and maintain a medical section within the bureau. The medical section shall do all of the following:

(a) Assist the administrator in establishing standard medical fees, approving medical procedures, and determining eligibility and reasonableness of the compensation payments for medical, hospital, and nursing services, and in establishing guidelines for payment policies which recognize usual, customary, and reasonable methods of payment for covered services;

(b) Provide a resource to respond to questions from claims examiners for employees of the bureau;

(c) Audit fee bill payments;

(d) Implement a program to utilize, to the maximum extent possible, electronic data processing equipment for storage of information to facilitate authorizations of compensation payments for medical, hospital, drug, and nursing services;

(e) Perform other duties assigned to it by the administrator.

(17) Appoint, as the administrator determines necessary, panels to review and advise the administrator on disputes arising over a determination that a health care service or supply provided to a claimant is not covered under this chapter or Chapter 4123. of the Revised Code or is medically unnecessary. If an individual health care provider is involved in the dispute, the panel shall consist of individuals licensed pursuant to the same section of the Revised Code as such health care provider.

(18) Pursuant to section 4123.65 of the Revised Code, approve applications for the final settlement of claims for compensation or benefits under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code as the administrator determines appropriate, except in regard to the applications of self-insuring employers and their employees;

(19) Comply with section 3517.13 of the Revised Code, and except in regard to contracts entered into pursuant to the authority contained in section 4121.44 of the Revised Code, comply with the competitive bidding procedures set forth in the Revised Code for all contracts into which the administrator enters provided that those contracts fall within the type of contracts and dollar amounts specified in the Revised Code for competitive bidding and further provided that those contracts are not otherwise specifically exempt from the competitive bidding procedures contained in

the Revised Code.

(20) Adopt, with the advice and consent of the oversight commission, rules for the operation of the bureau. No rule adopted by the administrator shall be construed as barring the participation of a person who is not admitted to the practice of law as a representative of a party for the purposes of any matter arising under this chapter and Chapters 4123., 4127., and 4131. Of the Revised Code, provided that the representative of the party complies with rules of the administrator.

(21) Prepare and submit to the oversight commission information the administrator considers pertinent or the oversight commission requires, together with the administrator's recommendations, in the form of administrative rules, for the advice and consent of the oversight commission, for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code.

(C) The administrator, with the advice and consent of the senate, shall appoint a chief operating officer who has significant experience in the field of workers' compensation insurance or other similar insurance industry experience if the administrator does not possess such experience. The chief operating officer shall not commence the chief operating officer's duties until after the senate consents to the chief operating officer's appointment. The chief operating officer shall serve in the unclassified civil service of the state.

Sec. 4121.32. (A) The rules covering operating procedure and criteria for decision-making that the administrator of workers' compensation and the industrial commission are required to adopt pursuant to section 4121.31 of the Revised Code shall be supplemented with operating manuals setting forth the procedural steps in detail for performing each of the assigned tasks of each section of the bureau of workers' compensation and commission. The administrator and commission jointly shall adopt such manuals. No employee may deviate from manual procedures without authorization of the section chief.

(B) Manuals shall set forth the procedure for the assignment and transfer of claims within sections and be designed to provide performance objectives and may require employees to record sufficient data to reasonably measure the efficiency of functions in all sections. The bureau's division of research and statistics shall perform periodic cost-effectiveness analyses which shall be made available to the general assembly, the governor, and to the public during normal working hours.

(C) The bureau and commission jointly shall develop, adopt, and use a

policy manual setting forth the guidelines and bases for decision-making for any decision which is the responsibility of the bureau, district hearing officers, staff hearing officers, or the commission. Guidelines shall be set forth in the policy manual by the bureau and commission to the extent of their respective jurisdictions for deciding at least the following specific matters:

- (1) Reasonable ambulance services;
- (2) Relationship of drugs to injury;
- (3) Awarding lump-sum advances for creditors;
- (4) Awarding lump-sum advances for attorney's fees;
- (5) Placing a claimant, including a claimant whose employer is a self-insuring employer, into rehabilitation;
- (6) Transferring costs of a claim from employer costs to the statutory surplus fund pursuant to section 4123.343 of the Revised Code;
- (7) Utilization of physician specialist reports;
- (8) Determining the percentage of permanent partial ~~disability~~, temporary impairment in accordance with the most recent edition of the American medical association's guides to the evaluation of permanent impairment;
- (9) Determining the percentage of temporary partial disability, temporary total disability, violations of specific safety requirements, an award under division (B) of section 4123.57 of the Revised Code, and permanent total ~~disability~~ impairment.

(D) The bureau shall establish, adopt, and implement policy guidelines and bases for decisions involving reimbursement issues including, but not limited to, the adjustment of invoices, the reduction of payments for future services when an internal audit concludes that a health care provider was overpaid or improperly paid for past services, reimbursement fees, or other adjustments to payments. These policy guidelines and bases for decisions, and any changes to the guidelines and bases, shall be set forth in a reimbursement manual and provider bulletins.

Neither the policy guidelines nor the bases set forth in the reimbursement manual or provider bulletins referred to in this division is a rule as defined in section 119.01 of the Revised Code.

(E) With respect to any determination of disability or impairment under Chapter 4123. of the Revised Code, when the physician makes a determination based upon statements or information furnished by the claimant or upon subjective evidence, ~~he~~ the physician shall clearly indicate this fact in ~~his~~ the physician's report.

(F) The administrator shall publish the manuals and make copies of all

manuals available to interested parties at cost.

Sec. 4121.34. (A) The industrial commission shall appoint a sufficient number of district hearing officers for the purpose of hearing the matters listed in division (B) of this section. District hearing officers are in the classified civil service of the state, are full-time employees of the commission, and shall be persons admitted to the practice of law in this state. District hearing officers shall not engage in any other activity that interferes with their full-time employment by the commission during normal working hours.

(B) District hearing officers shall have original jurisdiction on all of the following matters:

(1) Determinations under section 4123.57 of the Revised Code;

(2) All appeals from a decision of the administrator of workers' compensation under division (B) of section 4123.511 of the Revised Code;

(3) All other contested claims matters under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, except those matters over which staff hearing officers have original jurisdiction.

(C) The administrator of workers' compensation shall make available to each district hearing officer the facilities and assistance of bureau employees and furnish all information necessary to the performance of the district hearing officer's duties.

(D) A district hearing officer shall report to the inspection division of the bureau of workers' compensation suspected fraudulent activity pertaining to the operation of the workers' compensation system and its several insurance funds as evidenced during any hearing in which the hearing officer is present or as evidenced by any material submitted for use in a hearing. A district hearing officer shall be held harmless for submitting a report under this division. The inspection division shall maintain in confidence the identity of any hearing officer who submits a report under this division.

Sec. 4121.35. (A) The industrial commission shall appoint staff hearing officers to consider and decide all matters specified in division (B) of this section. All staff hearing officers are full-time employees of the commission and shall be admitted to the practice of law in this state. Staff hearing officers shall not engage in any other activity that interferes with their full-time employment by the commission during normal working hours.

(B) Except as provided in division (D) of this section, staff hearing officers have original jurisdiction to hear and decide the following matters:

(1) Applications for permanent; total ~~disability~~ impairment awards pursuant to section 4123.58 of the Revised Code;

(2) Appeals from an order of a district hearing officer issued under division (C) of section 4123.511 of the Revised Code;

(3) Applications for additional awards for violation of a specific safety rule of the administrator of workers' compensation pursuant to Section 35 of Article II of the Ohio Constitution;

~~(4) Applications for reconsideration pursuant to division (A) of section 4123.57 of the Revised Code. Decisions of the staff hearing officers on reconsideration pursuant to division (A) of section 4123.57 of the Revised Code are final.~~

~~(5) Reviews of settlement agreements pursuant to section 4123.65 of the Revised Code. Decisions of the staff hearing officer under that section are final and not appealable to the commission or to court under section 4123.511 or 4123.512 of the Revised Code.~~

(C) The decision of a staff hearing officer under division (D) of section 4123.511 of the Revised Code is the decision of the commission for the purposes of section 4123.512 of the Revised Code unless the commission hears an appeal under division (E) of section 4123.511 of the Revised Code.

(D) Staff hearing officers shall hold hearings on all matters referred to them for hearing. Hearing procedures shall conform to the rules the commission adopts pursuant to section 4121.36 of the Revised Code.

(E) A staff hearing officer shall report to the inspection division of the bureau of workers' compensation suspected fraudulent activity pertaining to the operation of the workers' compensation system and its several insurance funds as evidenced during any hearing in which the hearing officer is present or as evidenced by any material submitted for use in a hearing. A staff hearing officer shall be held harmless for submitting a report under this division. The inspection division shall maintain in confidence the identity of any hearing officer who submits a report under this division.

Sec. 4121.36. (A) The industrial commission shall adopt rules as to the conduct of all hearings before the commission and its staff and district hearing officers and the rendering of a decision and shall focus such rules on managing, directing, and otherwise ensuring a fair, equitable, and uniform hearing process. These rules shall provide for at least the following steps and procedures:

(1) Adequate notice to all parties and their representatives to ensure that no hearing is conducted unless all parties have the opportunity to be present and to present evidence and arguments in support of their positions or in rebuttal to the evidence or arguments of other parties;

(2) A public hearing;

(3) Written decisions;

(4) Impartial assignment of staff and district hearing officers and assignment of appeals from a decision of the administrator of workers' compensation to a district hearing officer located at the commission service office that is the closest in geographic proximity to the claimant's residence;

(5) Publication of a docket;

(6) The securing of the attendance or testimony of witnesses;

(7) Prehearing rules, including rules relative to discovery, the taking of depositions, and exchange of information relevant to a claim prior to the conduct of a hearing;

(8) The issuance of orders by the district or staff hearing officer who renders the decision.

Nothing in division (A) of this section shall be construed as barring the participation of a person who is not admitted to the practice of law as a representative of a party for the purposes of any matter arising under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code, provided that the representative of the party complies with rules of the commission. No person other than an attorney who is admitted to the practice of law may render advice or services in the preparation or presentation of a claim arising under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code if a fee for the advice or services is to be received from or charged against the person having the claim.

(B) Every decision by a staff or district hearing officer or the commission shall be in writing and contain all of the following elements:

(1) A concise statement of the order or award;

(2) A notation as to notice provided and as to appearance of parties;

(3) Signatures of each ~~commissioner~~ commission member or appropriate hearing officer on the original copy of the decision only, verifying the commissioner's or hearing officer's vote;

(4) Description of the part of the body and nature of the disability recognized in the claim.

(C) The commission shall adopt rules that require the regular rotation of district hearing officers with respect to the types of matters under consideration and that ensure that no district or staff hearing officer or the commission hears a claim unless all interested and affected parties have the opportunity to be present and to present evidence and arguments in support of their positions or in rebuttal to the evidence or arguments of other parties.

(D) All matters which, at the request of one of the parties or on the initiative of the administrator and any ~~commissioner~~ commission member, are to be expedited, shall require at least forty-eight hours' notice, a public hearing, and a statement in any order of the circumstances that justified such

expeditious hearings.

(E) All meetings of the commission and district and staff hearing officers shall be public with adequate notice, including if necessary, to the claimant, the employer, their representatives, and the administrator. Confidentiality of medical evidence presented at a hearing does not constitute a sufficient ground to relieve the requirement of a public hearing, but the presentation of privileged or confidential evidence shall not create any greater right of public inspection of evidence than presently exists.

(F) The commission shall compile all of its original memorandums, orders, and decisions in a journal and make the journal available to the public with sufficient indexing to allow orderly review of documents. The journal shall indicate the vote of each ~~commissioner~~ commission member.

(G)(1) All original orders, rules, and memoranda, and decisions of the commission shall contain the signatures of two of the three ~~commissioners~~ commission members and state whether adopted at a meeting of the commission or by circulation to individual ~~commissioners~~ commission members. Any facsimile or secretarial signature, initials of ~~commissioners~~ commission members, and delegated employees, and any printed record of the "yes" and "no" vote of a commission member or of a hearing officer on such original is invalid.

(2) Written copies of final decisions of district or staff hearing officers or the commission that are mailed to the administrator, employee, employer, and their respective representatives need not contain the signatures of the hearing officer or commission members if the hearing officer or commission members have complied with divisions (B)(3) and (G)(1) of this section.

(H) The commission shall do both of the following:

(1) Appoint an individual as a hearing officer trainer who is in the unclassified civil service of the state and who serves at the pleasure of the commission. The trainer shall be an attorney registered to practice law in this state and have experience in training or education, and the ability to furnish the necessary training for district and staff hearing officers.

The hearing officer trainer shall develop and periodically update a training manual and such other training materials and courses as will adequately prepare district and staff hearing officers for their duties under this chapter and Chapter 4123. of the Revised Code. All district and staff hearing officers shall undergo the training courses developed by the hearing officer trainer, the cost of which the commission shall pay. The commission shall make the hearing officer manual and all revisions thereto available to the public at cost.

The commission shall have the final right of approval over all training

manuals, courses, and other materials the hearing officer trainer develops and updates.

(2) Appoint a hearing administrator, who shall be in the classified civil service of the state, for each bureau service office, and sufficient support personnel for each hearing administrator, which support personnel shall be under the direct supervision of the hearing administrator. The hearing administrator shall do all of the following:

(a) Assist the commission in ensuring that district hearing officers comply with the time limitations for the holding of hearings and issuance of orders under section 4123.511 of the Revised Code. For that purpose, each hearing administrator shall prepare a monthly report identifying the status of all claims in its office and identifying specifically the claims which have not been decided within the time limits set forth in section 4123.511 of the Revised Code. The commission shall submit an annual report of all such reports to the standing committees of the house of representatives and of the state to which matters concerning workers' compensation are normally referred.

(b) Provide information to requesting parties or their representatives on the status of their claim;

(c) Issue compliance letters, upon a finding of good cause and without a formal hearing in all of the following areas:

(i) Divisions (B) and (C) of section 4123.651 of the Revised Code;

(ii) Requests for the taking of depositions of bureau and commission physicians;

(iii) The issuance of subpoenas;

(iv) The granting or denying of requests for continuances;

(v) Matters involving section 4123.522 of the Revised Code;

(vi) Requests for conducting telephone pre-hearing conferences;

(vii) Any other matter that will cause a free exchange of information prior to the formal hearing.

(d) Ensure that claim files are reviewed by the district hearing officer prior to the hearing to ensure that there is sufficient information to proceed to a hearing;

(e) Ensure that for occupational disease claims under section 4123.68 of the Revised Code that require a medical examination the medical examination is conducted prior to the hearing;

(f) Take the necessary steps to prepare a claim to proceed to a hearing where the parties agree and advise the hearing administrator that the claim is not ready for a hearing.

(I) The commission shall permit any person direct access to information

contained in electronic data processing equipment regarding the status of a claim in the hearing process. The information shall indicate the number of days that the claim has been in process, the number of days the claim has been in its current location, and the number of days in the current point of the process within that location.

(J)(1) The ~~industrial~~ commission may establish an alternative dispute resolution process for workers' compensation claims that are within the commission's jurisdiction under Chapters 4121., 4123., 4127., and 4131. of the Revised Code when the commission determines that such a process is necessary. Notwithstanding sections 4121.34 and 4121.35 of the Revised Code, the commission may enter into personal service contracts with individuals who are qualified because of their education and experience to act as facilitators in the commission's alternative dispute resolution process.

(2) The parties' use of the alternative dispute resolution process is voluntary, and requires the agreement of all necessary parties. The use of the alternative dispute resolution process does not alter the rights or obligations of the parties, nor does it delay the timelines set forth in section 4123.511 of the Revised Code.

(3) The commission shall prepare monthly reports and submit those reports to the governor, the president of the senate, and the speaker of the house of representatives describing all of the following:

(a) The names of each facilitator employed under a personal service contract;

(b) The hourly amount of money and the total amount of money paid to each facilitator;

(c) The number of disputed issues resolved during that month by each facilitator;

(d) The number of decisions of each facilitator that were appealed by a party;

(e) A certification by the commission that the alternative dispute resolution process did not delay any hearing timelines as set forth in section 4123.511 of the Revised Code for any disputed issue.

(4) The commission may adopt rules in accordance with Chapter 119. of the Revised Code for the administration of any alternative dispute resolution process that the commission establishes.

Sec. 4121.38. (A) The industrial commission shall do all of the following:

(1) Implement a program of impairment evaluation training for its staff physicians;

(2) Issue a manual of commission policy as to impairment evaluation so

as to increase consistency of medical reports, including, but not limited to, a policy requiring the use of the most recent edition of the American medical association's guides to the evaluation of permanent impairment for the evaluation of permanent partial impairment claims. This manual shall be available to the public at cost but shall be provided free to all physicians who treat claimants or to whom claimants are referred for evaluation. The commission shall take steps to ensure that the manual receives the widest possible distribution to physicians.

(3) Develop a method of peer review of medical reports prepared by the commission referral doctors;

(4) Issue a policy manual as to the basis upon which referrals to other than commission specialists will be made;

(5) Designate two hearing examiners and two medical staff members who shall be specially trained in medical-legal analysis. The specialists shall write evaluations of medical-legal problems upon assignment by other hearing examiners or the commission. The director of administrative services upon commission advice shall assign such employees to a salary schedule commensurate with expertise required of them.

(6) Require that prior to any examination, a physician to whom a claimant is referred for examination receives all necessary medical information in the claim file about the claimant and a complete statement as to the purpose of the examination.

(B) The commission may establish a medical section within the commission to perform the duties assigned to the commission under this section.

Sec. 4121.44. (A) The administrator of workers' compensation shall oversee the implementation of the Ohio workers' compensation qualified health plan system as established under section 4121.442 of the Revised Code.

(B) The administrator shall direct the implementation of the health partnership program administered by the bureau as set forth in section 4121.441 of the Revised Code. To implement the health partnership program, the bureau:

(1) Shall certify one or more external vendors to provide medical management and cost containment services in the health partnership program for a period of two years beginning on the date of certification, consistent with the standards established under this section; and

(2) May recertify external vendors for an additional period of two years upon the expiration of the certification set forth in division (B)(1) of this section; ~~and~~

~~(3) May integrate the certified vendors with bureau staff and existing bureau services for purposes of operation and training to allow the bureau to assume operation of the health partnership program at the conclusion of the certification periods set forth in division (B)(1) or (2) of this section.~~

(C) Any vendor selected shall demonstrate all of the following:

(1) Arrangements and reimbursement agreements with a substantial number of the medical, professional and pharmacy providers currently being utilized by claimants.

(2) Ability to accept a common format of medical bill data in an electronic fashion from any provider who wishes to submit medical bill data in that form.

(3) A computer system able to handle the volume of medical bills and willingness to customize that system to the bureau's needs and to be operated by the vendor's staff, bureau staff, or some combination of both staffs.

(4) A prescription drug system where pharmacies on a statewide basis have access to the eligibility and pricing, at a discounted rate, of all prescription drugs.

(5) A tracking system to record all telephone calls from claimants and providers regarding the status of submitted medical bills so as to be able to track each inquiry.

(6) Data processing capacity to absorb all of the bureau's medical bill processing or at least that part of the processing which the bureau arranges to delegate.

(7) Capacity to store, retrieve, array, simulate, and model in a relational mode all of the detailed medical bill data so that analysis can be performed in a variety of ways and so that the bureau and its governing authority can make informed decisions.

(8) Wide variety of software programs which translate medical terminology into standard codes, and which reveal if a provider is manipulating the procedures codes, commonly called "unbundling."

(9) Necessary professional staff to conduct, at a minimum, authorizations for treatment, medical necessity, utilization review, concurrent review, post-utilization review, and have the attendant computer system which supports such activity and measures the outcomes and the savings.

(10) Management experience and flexibility to be able to react quickly to the needs of the bureau in the case of required change in federal or state requirements.

(D) The administrator may limit freedom of choice of health care

ider or supplier by requiring, beginning with the period set forth in division (B)(1) or (2) of this section, that claimants shall pay an appropriate out-of-plan co-pay for selecting a medical provider not within the health partnership program as provided for in this section.

~~(E) The administrator, six months prior to the expiration of the bureau's certification or recertification of the vendor or vendors as set forth in division (B)(1) or (2) of this section, may certify and provide evidence to the governor, the speaker of the house of representatives, and the president of the senate that the existing bureau staff is able to match or exceed the performance and outcomes of the external vendor or vendors and that the bureau should be permitted to internally administer the health partnership program upon the expiration of the certification or recertification as set forth in division (B)(1) or (2) of this section.~~

(F) The administrator shall establish and operate a bureau of workers' compensation health care data program. The administrator may contract with the Ohio health care data center for such purposes. The administrator shall develop reporting requirements from all employees, employers and medical providers, medical vendors, and plans that participate in the workers' compensation system. The administrator shall do all of the following:

(1) Utilize the collected data to measure and perform comparison analyses of costs, quality, appropriateness of medical care, and effectiveness of medical care delivered by all components of the workers' compensation system.

(2) Compile data to support activities of the selected vendor or vendors and to measure the outcomes and savings of the health partnership program.

(3) Publish and report compiled data to the governor, the speaker of the house of representatives, and the president of the senate on the first day of each January and July, the measures of outcomes and savings of the health partnership program and the qualified health plan system. The administrator shall protect the confidentiality of all proprietary pricing data.

~~(G)~~(F) Any rehabilitation facility the bureau operates is eligible for inclusion in the Ohio workers' compensation qualified health plan system or the health partnership program under the same terms as other providers within health care plans or the program.

~~(H)~~(G) In areas outside the state or within the state where no qualified health plan or an inadequate number of providers within the health partnership program exist, the administrator shall permit employees to use a nonplan or nonprogram health care provider and shall pay the provider for the services or supplies provided to or on behalf of an employee for an

injury or occupational disease that is compensable under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code on a fee schedule the administrator adopts.

~~(H)~~(H) No certified health care provider shall charge, assess, or otherwise attempt to collect from an employee, employer, a managed care organization, or the bureau any amount for covered services or supplies that is in excess of the allowed amount paid by a managed care organization, the bureau, or a qualified health plan.

~~(I)~~(I) The administrator shall permit any employer or group of employers who agree to abide by the rules adopted under this section and sections 4121.441 and 4121.442 of the Revised Code to provide services or supplies to or on behalf of an employee for an injury or occupational disease that is compensable under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code through qualified health plans of the Ohio workers' compensation qualified health plan system pursuant to section 4121.442 of the Revised Code or through the health partnership program pursuant to section 4121.441 of the Revised Code. No amount paid under the qualified health plan system pursuant to section 4121.442 of the Revised Code by an employer who is a state fund employer shall be charged to the employer's experience or otherwise be used in merit-rating or determining the risk of that employer for the purpose of the payment of premiums under this chapter, and if the employer is a self-insuring employer, the employer shall not include that amount in the paid compensation the employer reports under section 4123.35 of the Revised Code.

Sec. 4121.444. (A) No health care provider, managed care organization, or owner of a health care provider or managed care organization shall obtain or attempt to obtain payments by deception under Chapter 4121., 4123., 4127., or 4131. Of the Revised Code to which the health care provider, managed care organization, or owner is not entitled under rules of the bureau of workers' compensation adopted pursuant to sections 4121.441 and 4121.442 of the Revised Code.

(B) Any health care provider, managed care organization, or owner that violates division (A) of this section is liable, in addition to any other PENALTIES provided by law, for all of the following penalties:

(1) Payment of interest on the amount of the excess payments at the maximum interest rate allowable for real estate mortgages UNDER section 1343.01 Of the Revised Code. The interest shall be calculated from the date the payment was made to the owner, health care provider, or managed care organization through the date upon which repayment is made to the bureau or the self-insuring employer.

(2) Payment of an amount equal to three times the amount of any excess payments;

(3) UPON PROOF OF A SPECIFIC INTENT OF THE HEALTH CARE PROVIDER, MANAGED CARE ORGANIZATION, OR OWNER TO DEFRAUD, payment of a sum of not less than five thousand dollars and not more than ten thousand dollars for each act of deception;

(4) All reasonable and necessary expenses that THE court determines have been incurred by the bureau or the self-insuring employer IN THE enforcement of this section.

All moneys collected by the bureau pursuant to this section shall be deposited into the state insurance fund created in section 4123.30 of the Revised Code. All moneys collected by a self-insuring employer pursuant to this section shall be awarded to the self-insuring employer.

(C)(1) In addition to the monetary penalties provided in division (B) of this SECTION and except as provided in division (C)(3) of this section, the ADMINISTRATOR may TERMINATE, for a period not to exceed five years from the date of conviction, plea of guilty, or judgment entry, any agreement between the bureau and a health care provider or managed care organization or its owner and cease REIMBURSEMENT to that provider, organization, or owner for services rendered if any of the following apply:

(a) The health care provider, managed care organization, or its owner, or an officer, authorized AGENT, associate, manager, or employee of a provider or ORGANIZATION is convicted of or pleads guilty to a violation of sections 2913.48 or 2923.31 to 2923.36 Of the Revised Code.

(b) There exists an entry of judgment against the health care provider, managed care organization, or its owner, or an officer, authorized AGENT, associate, manager, or employee of a provider or ORGANIZATION AND PROOF OF THE SPECIFIC INTENT OF THE HEALTH CARE PROVIDER, MANAGED CARE ORGANIZATION, OR OWNER TO DEFRAUD, in a civil action brought pursuant to this section.

(c) THERE EXISTS AN ENTRY OF JUDGMENT AGAINST THE HEALTH CARE PROVIDER, MANAGED CARE ORGANIZATION, OR ITS OWNER, OR AN OFFICER, AUTHORIZED AGENT, ASSOCIATE, MANAGER, OR EMPLOYEE OF A PROVIDER OR ORGANIZATION IN A CIVIL ACTION BROUGHT PURSUANT TO sections 2923.31 to 2923.36 Of the Revised Code.

(2) No health care provider or managed care organization that has had its agreement with and reimbursement from the bureau terminated by the administrator pursuant to division (C)(1) of this section, or an owner, officer, authorized agent, associate, manager, or employee of that health

care provider or managed care organization shall do any of the following:

(a) Directly provide services to any other bureau provider or have an ownership interest in a provider of services that furnishes services to any other bureau provider;

(b) Arrange for, render, or order services for claimants during the period that the agreement of the health care provider, managed care organization, or its owner is terminated as described in division (C)(1) of this section;

(c) Receive reimbursement in the form of direct payments from the bureau or indirect payments of bureau funds in the form of salaries, shared fees, contracts, kickbacks, or rebates from or through any participating provider.

(3) The administrator shall not terminate the agreement or reimbursement if the health care PROVIDER, MANAGED care organization, or owner demonstrates that the provider, organization, or owner did not directly or indirectly sanction the action of the authorized agent, associate, manager, or employee that resulted in the CONVICTION, plea of guilty, or entry of judgment as described in division (C)(1) of this section.

(4) Nothing in division (C) of this section prohibits an owner, officer, authorized agent, associate, manager, or EMPLOYEE of a health care provider or managed care ORGANIZATION from entering into an agreement with the bureau if the provider, organization, owner, officer, authorized agent, associate, manager, or employee DEMONSTRATEs absence of knowledge of the action of the health care provider or managed care organization with which that individual or organization was formerly associated that resulted in a conviction, plea of guilty, or entry of judgment as described in division (C)(1) of this section.

(D) The attorney general may bring an action on behalf of the state and a self-insuring employer may bring an action on its own behalf to enforce this section in any court of competent jurisdiction. the attorney general may settle or compromise any action brought under this section with the approval of the administrator.

Notwithstanding any other law providing a shorter period of limitations, the attorney general or a self-insuring employer may bring an action to enforce this section at any time within six years after the conduct in violation of this section terminates.

(E) The availability of remedies under this section and sections 2913.48 and 2923.31 to 2923.36 Of the Revised Code for recovering BENEFITS paid on behalf of claimants for medical assistance does not limit the authority of the bureau or a self-insuring employer to recover excess

payments made to an owner, health care provider, or managed care organization under state and federal law.

(F) As used in this section:

(1) "Deception" means acting with actual knowledge of, in deliberate ignorance of, or reckless disregard of the truth or falsity of, any representation or information in order to deceive another or cause another to be deceived by means of any of the following:

(a) A false or misleading representation;

(b) The withholding of information;

(c) The preventing of another from acquiring information;

(d) Any other CONDUCT, act, or OMISSION that creates, confirms, or perpetuates a false impression as to a fact, the law, the value of something, or a person's state of mind.

EXCEPT AS PROVIDED IN DIVISION (B)(3) OF THIS SECTION, for purposes of this section proof of specific intent to defraud is not required in order to show that an owner, health care provider, or managed care organization is engaging in or has engaged in deception.

(2) "Owner" means any person having at least a five per cent ownership interest in a health care provider or managed care organization.

Sec. 4121.445. Each health care provider and managed care organization shall make at least one copy of an employee's medical records and the report of the employee's treating or consulting physician available to the employee or the employee's representative upon request at a charge not to exceed fifteen cents per printed page.

Sec. 4121.47. (A) No employer shall violate a specific safety rule adopted by the administrator of workers' compensation pursuant to section 4121.13 of the Revised Code or an act of the general assembly to protect the lives, health, and safety of employees pursuant to Section 35 of Article II, Ohio Constitution. Chapter 4167. of the Revised Code and rules and standards adopted ~~thereunder~~ under that chapter are not the rules or enactment referred to in this division and shall not be considered as such for purposes of this section. For purposes of this section, a specific safety rule of the administrator that refers to or is interpreted as applying to workshops and factories shall not apply to buildings or structures used for agricultural production, or to any of the fixtures, machinery, equipment, tools, or devices utilized in those buildings or structures.

As used in this division, "agricultural production" means operations upon farm premises, including the planting, cultivating, producing, growing, harvesting, drying, and storing of agricultural or horticultural commodities and preparation for market of those commodities on farm premises, the

raising of livestock, for food products, or racing purposes, and poultry on farm premises, and any work performed incident to or in connection with those farm operations. "Agricultural production" does not include the commercial processing, packing, drying, storing, or canning of those commodities for market, or commercial timber harvesting by an independent contractor.

(B) If a staff hearing officer, in the course of ~~his~~ the hearing officer's determination of a claim for an additional award under Section 35 of Article II, Ohio Constitution, finds the employer guilty of violating division (A) of this section, ~~he shall~~ the hearing officer, in addition to any award paid to the claimant, shall issue an order to the employer to correct the violation within the period of time ~~he fixes~~ fixed by the hearing officer. For any violation occurring within twenty-four months of the last violation, the ~~staff~~ hearing officer shall assess against the employer a civil penalty in an amount ~~he~~ the hearing officer determines up to a maximum of fifty thousand dollars for each violation. In fixing the exact penalty, the ~~staff~~ hearing officer shall base ~~his~~ the decision upon the size of the employer as measured by the number of employees, assets, and earnings of the employer.

(C) An employer dissatisfied with the imposition of a civil penalty pursuant to division (B) of this section may appeal the ~~staff~~ hearing officer's decision, if the commission refuses to hear the appeal under division (E) of section 4123.511 of the Revised Code, or a decision of the commission, if the commission hears the appeal under that division, to a court of common pleas pursuant to the Rules of Civil Procedure. An appeal operates to stay the payment of the fine pending the appeal.

(D) The administrator shall deposit all penalties collected pursuant to this section in the occupational safety loan program fund established pursuant to section 4121.48 of the Revised Code.

(E) Investigative reports of violations of specific safety rules shall be available to the employer that is the subject of an investigation and a claimant that is injured because of an alleged violation that is the subject of that investigation.

Sec. 4121.61. (A) The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, shall adopt rules, including rules described in division (B) of this section, take measures, and make expenditures as ~~it~~ the administrator deems necessary to aid claimants who have sustained compensable injuries or incurred compensable occupational diseases pursuant to Chapter 4123., 4127., or 4131. of the Revised Code to return to work or to assist in lessening or removing any resulting handicap.

(B) The administrator shall adopt rules under this section establishing criteria governing determinations regarding the provision of rehabilitation services, counseling, or training to employees of both state fund and self-insuring employers. The industrial commission shall establish rules regarding a hearing procedure to govern disputes between a claimant and a self-insuring employer regarding the provision of rehabilitation services, counseling, or training.

Sec. 4121.67. The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, shall adopt rules:

(A) For the encouragement of reemployment of claimants who have successfully completed prescribed rehabilitation programs by payment from the surplus fund established by section 4123.34 of the Revised Code to employers who employ or reemploy the claimants. The period or periods of payments shall not exceed six months in the aggregate, unless the administrator or ~~his~~ the administrator's designee determines that the claimant will be benefited by an extension of payments.

(B) Requiring payment, in the same manner as living maintenance payments are made pursuant to section 4121.63 of the Revised Code, to the claimant who completes a rehabilitation training program and returns to employment, but who suffers a wage loss compared to the wage the claimant was receiving at the time of injury. Payments per week shall be sixty-six and two-thirds per cent of the difference, if any, between the claimant's weekly wage at the time of injury and the weekly wage received while employed, up to a maximum payment per week equal to the statewide average weekly wage. The payments may continue for up to a maximum of two hundred weeks but shall be reduced by the corresponding number of weeks in which the claimant receives payments pursuant to division ~~(B)~~(C) of section 4123.56 of the Revised Code.

(C) Providing incentives for employers to reemploy their employees who have successfully completed prescribed rehabilitation programs. These incentives may include, but are not limited to, alternative rating plans and premium reduction plans.

Sec. 4123.01. As used in this chapter:

(A)(1) "Employee" means:

(a) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and

executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education;

(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;

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

(viii) The person is required to devote full time to the business of the other contracting party;

(ix) The person is required to perform the work on the premises of the other contracting party;

(x) The person is required to follow the order of work set by the other contracting party;

(xi) The person is required to make oral or written reports of progress to the other contracting party;

(xii) The person is paid for services on a regular basis such as hourly,

weekly, or monthly;

(xiii) The person's expenses are paid for by the other contracting party;

(xiv) The person's tools and materials are furnished by the other contracting party;

(xv) The person is provided with the facilities used to perform services;

(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;

(xvii) The person is not performing services for a number of employers at the same time;

(xviii) The person does not make the same services available to the general public;

(xix) The other contracting party has a right to discharge the person;

(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.

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

(2) "Employee" does not mean:

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

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

(c) An individual who signs the waiver and affidavit provided for in section 4123.15 Of the Revised Code, provided that the administrator has granted a waiver and exception to the individual's employer under that section.

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) of this section. If an employer is a partnership, sole proprietorship, 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, or the officers of the

family farm corporation. In the event of an election, the employer shall serve upon the bureau of workers' compensation written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no person excluded from the definition of "employee" pursuant to division (A)(2) of this section, proprietor, or partner shall be deemed an employee within this division until the employer has served such notice.

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

(B) "Employer" means:

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

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

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

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

(1) Psychiatric conditions except where the conditions have arisen from an injury ~~or occupational disease~~;

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

(3) Injury, impairment, 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;

(4) A condition, impairment, or disease process that pre-existed an injury unless that pre-existing condition or impairment is substantially worsened or that disease process is substantially accelerated by an injury as documented by objective clinical findings and test results, and subjective complaints without these findings and results are insufficient to establish a compensable injury as described in division (C)(4) of this section;

(5) Injury, impairment, or disability resulting from cumulative or repetitive trauma.

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

(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 the degree of kinship stipulated in this division.

(F) "Occupational disease" means a disease ~~contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general, including a disease or~~ condition that results from a cumulative or repetitive trauma, that is contracted in the course of employment, that results in damage or harm to the physical structure of the body, and that is due to causes and conditions that are characteristic of or peculiar to a particular industrial process, trade, or occupation. "Occupational disease" does not include any of the following:

(1) A disease or condition to which the general public is exposed outside of employment absent a showing, by a preponderance of the evidence, that the disease or condition is characteristic of or peculiar to a particular industrial process, trade, or occupation;

(2) A disease or condition that would have arisen without the occupational exposure;

(3) A disease or condition that results from aggravation of a pre-existing disease, condition, or disease process;

(4) A disease or condition caused primarily by the natural deterioration of the tissue, organs, or other parts of the body;

(5) Psychiatric conditions, except where the conditions have arisen from an occupational disease.

(G) "Self-insuring employer" means any of the following categories of employers if granted the privilege of paying compensation and benefits directly under section 4123.35 of the Revised Code:

(1) Any employer mentioned in division (B)(2) of this section;

(2) A board of county hospital trustees;

(3) A publicly owned utility.

Sec. 4123.032. Every emergency management worker ~~shall~~, with respect to the performance of ~~his~~ the worker's duties as ~~such an~~ emergency management worker, shall be in the employment of the state or political subdivision for purposes of sections 4123.01 to 4123.94 of the Revised Code, and every emergency management worker or, in case of death, ~~his~~ the emergency management worker's dependents shall be entitled to the benefits payable on account of total disability or impairment, loss of member, or death as accorded by such sections to employees covered by ~~its~~ their provisions. No payment for such disability or impairment, loss of member, or death shall be made unless a claim is filed within one year of the date of the accidental injury causing the total disability or impairment, loss of member, or death. If an injury claim is filed within ~~the said~~ that one-year period and the claimant subsequently dies, ~~his~~ the emergency management worker's dependents shall file any death claim based on such injury within six months after the death or be forever barred.

Sec. 4123.033. Any emergency management worker who suffers an accidental injury while performing emergency management duties, as defined herein, shall be compensated for any total disability, impairment, or loss of member and ~~his~~ the worker's dependents shall be compensated for any death resulting from such an injury on the same basis as provided for workers, employees, and their dependents under sections 4123.01 to 4123.94 of the Revised Code.

This section shall not apply in the case of any person who is otherwise entitled, under sections 4123.01 to 4123.94 of the Revised Code, to receive workers' compensation benefits for such accidental injury or death.

Sec. 4123.061. Any records, files, pleadings, or documents generated by a claimant's attorney with respect to a client in a workers' compensation claim are the property of that client. upon the client's request, the attorney shall convey to the client copies of all records, files, pleadings, and documents relating to the client's workers' compensation claim no later than fifteen days after the client's request.

Sec. 4123.07. The administrator of the bureau of workers' compensation shall prepare and furnish blank forms of application for benefits or compensation from the state insurance fund, reports of injury, disability, impairment, or occupational disease, notices to employers and employees, proofs of injury, disease, disability, impairment, or death, proofs of medical attendance and hospital and nursing care, and proofs of employment and wage earnings, and other necessary blanks, and shall provide in ~~his~~ the administrator's rules for their preparation and distribution so that they may be readily available and so prepared that the furnishing of information required of any person with respect to any aspect of a claim shall not be delayed by a requirement that information with respect to another aspect of such claim shall be furnished on the form by the same or another person. Insured employers shall keep on hand a sufficient supply of such blanks.

Sec. 4123.15. (A) An employer who is a member of a recognized religious sect or division of a recognized religious sect and who is an adherent of established tenets or teachings of that sect or division by reason of which the employer is conscientiously opposed to acceptance of the benefits of any public or private insurance that makes payments in the event of death, disability, impairment, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the "Social Security Act," 42 U.S.C.A. 301, et seq., may apply to the administrator of workers' compensation to be excepted from payment of premiums and other charges assessed under this chapter and Chapter 4121. of the Revised Code with respect to, or if the employer is a self-insuring employer, from payment of direct compensation and benefits to and assessments required by this chapter and Chapter 4121. of the Revised Code on account of, an individual who meets the requirements of this section. The application shall be on forms provided by the bureau of workers' compensation, which forms may be those used by or similar to those used by the internal revenue service for the purpose of granting an exemption from the payment of social security taxes

under 26 U.S.C.A. 1402(g) of the Internal Revenue Code, and shall include a written waiver, signed by the individual to be excepted, of all the benefits and compensation provided for in this chapter and Chapter 4121. of the Revised Code.

The application also shall include affidavits signed by the employer and that individual that the employer and the individual are members of a recognized religious sect or division of a recognized religious sect and are adherents of established tenets or teachings of that sect or division by reason of which the employer and the individual are conscientiously opposed to acceptance of the benefits of any public or private insurance that makes payments in the event of death, disability, impairment, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the "Social Security Act," 42 U.S.C.A. 301, et seq. If the individual is a minor, the guardian of the minor shall complete the waiver and affidavit required by this division.

(B) The administrator shall grant the waiver and exception to the employer for a particular individual if the administrator finds that the employer and the individual are members of a sect or division having the established tenets or teachings described in division (A) of this section, that it is the practice, and has been for a substantial number of years, for members of that sect or division of that sect to make provision for their dependent members which in the administrator's judgment is reasonable in view of their general level of hiring, and that that sect or division of that sect has been in existence at all times since December 31, 1950.

(C) A waiver and exception under division (B) of this section is effective on the date the administrator grants the waiver and exception. An employer who complies with this chapter and the employer's employees, with respect to an individual for whom the administrator grants the waiver and exception, are entitled, as to that individual and as to all injuries and occupational diseases of that individual that occurred prior to the effective date of the waiver and exception, to the protections of sections 4123.74 and 4123.741 of the Revised Code. On and after the effective date of the waiver and exception, the employer is not liable for the payment of any premiums or other charges assessed under this chapter or Chapter 4121. of the Revised Code, or if the individual is a self-insuring employer, the employer is not liable for the payment of any compensation or benefits directly or other charges assessed under this chapter or Chapter 4121. of the Revised Code, in regard to that individual, is considered a complying employer under those chapters, and the employer and the employer's employees are entitled to the

protections of sections 4123.74 and 4123.741 of the Revised Code, as to that individual, and as to injuries and occupational diseases of that individual that occur on and after the effective date of the waiver and exception.

(D) A waiver and exception granted in regard to a specific individual is valid for all future years unless the administrator determines that the employer, individual, or sect or division ceases to meet the requirements of this section. If the administrator makes this determination, the employer is liable for the payment of premiums and other charges assessed under this chapter and Chapter 4121. of the Revised Code, or if the individual is a self-insuring employer, the employer is liable for the payment of compensation and benefits directly and other charges assessed under those chapters, in regard to that individual for all injuries and occupational diseases of that individual that occur on and after the date of the administrator's determination and the individual is entitled to all of the benefits and compensation provided in those chapters for an injury or occupational disease that occurs on or after the date of the administrator's determination.

Sec. 4123.25. (A) No employer shall knowingly misrepresent to the bureau of workers' compensation the amount or classification of payroll upon which the premium under this chapter is based. Whoever violates this division shall be liable to the state ~~in~~ for up to ten times the amount of the difference ~~in~~ between the premium paid and the amount the employer should have paid. The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, shall adopt rules in accordance with Chapter 119. of the Revised Code for the assessment of a fine or penalty against an employer for a violation of this division. The liability to the state under this division ~~shall~~ may be enforced in a civil action in the name of the state, and all sums collected under this division shall be paid into the state insurance fund.

(B) No self-insuring employer shall misrepresent the amount of paid compensation paid by such employer for purposes of the assessments provided under this chapter and Chapter 4121. of the Revised Code as required by section 4123.35 of the Revised Code. Whoever violates this division is liable to the state in an amount assessed by the ~~self-insuring employers evaluation board~~ administrator pursuant to division ~~(C)~~ (B) of section 4123.352 of the Revised Code or up to ten times the amount of the difference between the assessment paid and the amount of the assessment that should have been paid ~~along with any other penalty as determined by the board.~~ The liability to the state under this division may be enforced in a civil action in the name of the state and all sums collected under this

division shall be paid into the self-insurance assessment fund created pursuant to division (J) of section 4123.35 of the Revised Code.

Sec. 4123.27. Information contained in the annual statement provided for in section 4123.26 of the Revised Code, and such other information as may be furnished to the bureau of workers' compensation by employers in pursuance of that section, is or as the bureau develops or creates, and records kept by the division of safety and hygiene pertaining to workplace injuries and illnesses or occupational safety and health conditions in specific workplaces, including, but not limited to, industrial hygiene reports, ergonomic survey reports, team approach reports, safety consultant reports, accident investigation reports, loss control analysis reports, and illness and injury data pertaining to specific workplaces, are for the exclusive use and information of the bureau in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the bureau is a party to the action or proceeding; but the information contained in the statement may be tabulated and published by the bureau in statistical form for the use and information of other state departments and the public. No person in the employ of the bureau, except those who are authorized by the administrator of workers' compensation, shall divulge any information secured by ~~him~~ the person while in the employ of the bureau in respect to the transactions, property, claim files, records, or papers of the bureau or in respect to the business or mechanical, chemical, or other industrial process of any company, firm, corporation, person, association, partnership, or public utility to any person other than the administrator or to the superior of such employee of the bureau.

Notwithstanding the restrictions imposed by this section, the governor, select or standing committees of the general assembly, the auditor of state, the attorney general, or their designees, pursuant to the authority granted in this chapter and Chapter 4121. of the Revised Code, may examine any records, claim files, or papers in possession of the industrial commission or the bureau. They also are bound by the privilege that attaches to these papers.

The administrator shall report to the director of human services or to the county director of human services the name, address, and social security number or other identification number of any person receiving workers' compensation whose name or social security number or other identification number is the same as that of a person required by a court or child support enforcement agency to provide support payments to a recipient of public assistance, and whose name is submitted to the administrator by the director under section 5101.36 of the Revised Code. The administrator also shall

inform the director of the amount of workers' compensation paid to the person during such period as the director specifies.

Within fourteen days after receiving from the director of human services a list of the names and social security numbers of recipients of public assistance pursuant to section 5101.181 of the Revised Code, the administrator shall inform the auditor of state of the name, current or most recent address, and social security number of each person receiving workers' compensation pursuant to this chapter whose name and social security number are the same as that of a person whose name or social security number was submitted by the director. The administrator also shall inform the auditor of state of the amount of workers' compensation paid to the person during such period as the director specifies.

The bureau and its employees, except for purposes of furnishing the auditor of state with information required by this section, shall preserve the confidentiality of recipients of public assistance in compliance with division (A) of section 5101.181 of the Revised Code.

For the purposes of this section, "public assistance" means medical assistance provided through the medical assistance program established under section 5111.01 of the Revised Code, aid to dependent children provided under Chapter 5107. of the Revised Code, or disability assistance provided under Chapter 5115. of the Revised Code.

Sec. 4123.28. Every employer in this state shall keep a record of all injuries and occupational diseases, fatal or otherwise, received or contracted by ~~his~~ the employer's employees in the course of their employment and resulting in seven days or more of total disability or impairment. Within a week after acquiring knowledge of an injury or death therefrom, and in the event of occupational disease or death therefrom, within one week after acquiring knowledge of or diagnosis of or death from an occupational disease or of a report to the employer of the occupational disease or death, a report thereof shall be made in writing to the bureau of workers' compensation upon blanks to be procured from the bureau for that purpose. The report shall state the name and nature of the business of the employer, the location of ~~his~~ the employer's establishment or place of work, the name, address, nature and duration of occupation of the injured, disabled, impaired, or deceased employee and the time, the nature, and the cause of injury, occupational disease, or death, and such other information as is required by the bureau.

The employer shall give a copy of each report to the employee it concerns or ~~his~~ the employee's surviving dependents.

No employer shall refuse or neglect to make any report required by this

section.

Each day that an employer fails to file a report required by this section constitutes an additional day within the time period given to a claimant by the applicable statute of limitations for the filing of a claim based on the injury or occupational disease, provided that a failure to file a report shall not extend the applicable statute of limitations for more than two additional years.

Sec. 4123.34. The administrator of workers' compensation, in the exercise of the powers and discretion conferred upon ~~him~~ the administrator in section 4123.29 of the Revised Code, shall fix and maintain, with the advice and consent of the workers' compensation oversight commission, for each class of occupation or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that ~~he~~ the administrator authorizes to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees. In establishing rates, the administrator shall take into account the necessity of ensuring sufficient money is set aside in the premium payment security fund to cover any defaults in premium obligations. The administrator shall observe all of the following requirements in fixing the rates of premium for the risks of occupations or industries:

(A) ~~He~~ The administrator shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries, occupational disease, and death of employees thereof, and also keep an account of the money received from each individual employer and the amount of losses incurred against the state insurance fund on account of injuries, occupational disease, and death of the employees of the employer.

(B) Ten per cent of the money paid into the state insurance fund shall be set aside for the creation of a surplus until the surplus amounts to the sum of one hundred thousand dollars, after which time, whenever necessary in the judgment of the administrator to guarantee a solvent state insurance fund, a sum not exceeding five per cent of all the money paid into the state insurance fund shall be credited to the surplus fund. A revision of basic rates shall be made annually on the first day of July.

Notwithstanding any provision of the law to the contrary, one hundred eighty days after the effective date on which self-insuring employers first may elect under division (D) of section 4121.66 of the Revised Code to directly pay for rehabilitation expenses, the administrator shall calculate the

deficit, if any, in the portion of surplus fund that is used for reimbursement to self-insuring employers for all expenses other than handicapped reimbursement under section 4123.343 of the Revised Code. Without regard to whether a self-insuring employer makes the election under division (D) of section 4121.66 of the Revised Code, the administrator shall assess all self-insuring employers the amount ~~he~~ the administrator determines necessary to reduce the deficit over a period not to exceed five years from ~~the effective date of this amendment~~ October 20, 1993. After the initial assessment, the administrator, from time to time, may determine whether the surplus fund has such a deficit and may assess all self-insuring employers who participated in the portion of the surplus fund during the accrual of the deficit and who during that time period have not made the election under division (D) of section 4121.66 of the Revised Code the amount ~~he~~ the administrator determines necessary to reduce the deficit.

Revisions of basic rates shall be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the administrator in the administration of this chapter, as shown by the accounts kept as provided in this section, excluding the experience of employers that are no longer active if the administrator determines that the inclusion of those employers would have a significant negative impact on the remainder of the employers in a particular manual classification; and the administrator shall adopt rules, with the advice and consent of the oversight commission, governing rate revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

(C) The administrator may apply that form of rating system which ~~he~~ the administrator finds is best calculated to merit rate or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident and occupational disease experience, and may encourage and stimulate accident prevention. The administrator shall develop fixed and equitable rules controlling the rating system, which rules shall conserve to each risk the basic principles of workers' compensation insurance.

(D) The administrator, from the money paid into the state insurance fund, shall set aside into an account of the state insurance fund titled a premium payment security fund sufficient money to pay for any premiums due from an employer and uncollected that are in excess of the employer's premium security deposit.

The fund shall be in the custody of the treasurer of state. All investment earnings of the fund shall be deposited in the fund. Disbursements from the

fund shall be made by the bureau of workers' compensation upon order of the administrator to the state insurance fund. The use of the moneys held by the premium payment security fund is restricted to reimbursement to the state insurance fund of premiums due and uncollected in excess of an employer's premium security deposit. The moneys constituting the premium payment security fund shall be maintained without regard to or reliance upon any other fund. This section does not prevent the deposit or investment of the premium payment security fund with any other fund created by this chapter, but the premium payment security fund is separate and distinct for every other purpose and a strict accounting thereof shall be maintained.

(E) The administrator may grant discounts on premium rates for employers who meet either of the following requirements:

(1) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee or similar organization or make periodic safety inspections of the workplace.

(2) Successfully complete a loss prevention program prescribed by the superintendent of the division of safety and hygiene and conducted by the division or by any other person approved by the superintendent.

(F)(1) In determining the premium rates for the construction industry the administrator shall calculate the employers' premiums based upon the actual remuneration construction industry employees receive from construction industry employers, provided that the amount of remuneration the administrator uses in calculating the premiums shall not exceed an average weekly wage equal to one hundred fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code.

(2) Division (F)(1) of this section shall not be construed as affecting the manner in which benefits to a claimant are awarded under this chapter.

(3) As used in division (F) of this section, "construction industry" includes any activity performed in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of any building, structure, highway, or bridge.

Sec. 4123.343. This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section, "handicapped employee" means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if

the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

- (1) Epilepsy;
- (2) Diabetes;
- (3) Cardiac disease;
- (4) Arthritis;
- (5) Amputated foot, leg, arm, or hand;
- (6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally;
- (7) Residual disability or impairment from poliomyelitis;
- (8) Cerebral palsy;
- (9) Multiple sclerosis;
- (10) Parkinson's disease;
- (11) Cerebral vascular accident;
- (12) Tuberculosis;
- (13) Silicosis;
- (14) Psycho-neurotic disability or impairment following treatment in a recognized medical or mental institution;
- (15) Hemophilia;
- (16) Chronic osteomyelitis;
- (17) Ankylosis of joints;
- (18) Hyper insulinism;
- (19) Muscular dystrophies;
- (20) Arterio-sclerosis;
- (21) Thrombo-phlebitis;
- (22) Varicose veins;
- (23) Cardiovascular, pulmonary, or respiratory diseases of a fire fighter or police officer employed by a municipal corporation or township as a regular member of a lawfully constituted police department or fire department;
- (24) Coal miners' pneumoconiosis, commonly referred to as "black lung disease";
- (25) Disability or impairment with respect to which an individual has completed a rehabilitation program conducted pursuant to sections 4121.61 to 4121.69 of the Revised Code.

(B) Under the circumstances set forth in this section all or such portion as the administrator determines of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the

accident or occupational disease experience of the employer. If the employer is a self-insuring employer, the proportion of such costs whether charged to the statutory surplus fund in whole or in part shall be by way of direct payment to such employee or ~~his~~ the employee's dependents or by way of reimbursement to the self-insuring employer as the circumstances indicate. The provisions of this section apply only in cases of death, temporary total disability, ~~whether temporary or permanent total impairment~~, and all ~~disabilities~~ impairments compensated under division (B) of section 4123.57 of the Revised Code. The administrator shall adopt rules specifying the grounds upon which charges to the statutory surplus fund are to be made. The rules shall prohibit as a grounds any agreement between employer and claimant as to the merits of a claim and the amount of the charge.

(C) Any employer who advises the bureau of workers' compensation prior to the occurrence of an injury or occupational disease that it has in its employ a handicapped employee is entitled, in the event the person is injured, to a determination under this section. Any employer who fails to notify the bureau but applies for a determination under this section is entitled to a determination if the bureau finds that there was good cause for the failure to give notice of the employment of the handicapped employee. The bureau annually shall require employers to file an inventory of current handicapped employees.

An employer shall file an application for a determination with the bureau or commission in the same manner as other claims. An application only may be made in cases ~~where in which~~ a handicapped employee or ~~his~~ the handicapped employee's dependents claim or ~~is~~ are receiving an award of compensation as a result of an injury occurring or AN occupational disease ~~occurring or contracted~~ first diagnosed by a licensed physician on or after the date on which division (A) of this section first included the handicap of such employee.

(D) The circumstances under and the manner in which an apportionment under this section shall be made are as follows:

(1) Whenever a handicapped employee is injured, impaired, or disabled or dies as the result of an injury or occupational disease sustained in the course of and arising out of ~~his~~ the employee's employment in this state and the administrator awards compensation therefor and when it appears to the satisfaction of the administrator that the injury or occupational disease or the death resulting therefrom would not have occurred but for the pre-existing physical or mental impairment of the handicapped employee, all compensation and benefits payable on account of the disability, impairment, or death shall be paid from the surplus fund.

(2) Whenever a handicapped employee is injured, impaired, or disabled or dies as a result of an injury or occupational disease and the administrator finds that the injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting impairment, disability, or death was caused at least in part through aggravation of the employee's pre-existing ~~disability~~ impairment, the administrator shall determine in a manner that is equitable ~~and~~, reasonable, and based upon medical evidence the amount of disability, impairment, or proportion of the cost of the death award that is attributable to the employee's pre-existing ~~disability~~ impairment and the amount found shall be charged to the statutory surplus fund.

(E) The benefits and provisions of this section apply only to employers who have complied with this chapter either through insurance with the state fund or as a self-insuring employer.

(F) No employer ~~shall~~ in any year shall receive credit under this section in an amount greater than the premium ~~he~~ the employer paid if a state fund employer or greater than ~~his~~ the employer's assessments if a self-insuring employer.

(G) Self-insuring employers ~~may~~, for all claims made after January 1, 1987, for compensation and benefits under this section, may pay the compensation and benefits directly to the employee or the employee's dependents. If such an employer chooses to pay compensation and benefits directly, ~~he~~ the employer shall receive no money or credit from the surplus fund for the payment under this section, nor shall ~~he~~ the employer be required to pay any amounts into the surplus fund that otherwise would be assessed for handicapped reimbursements for claims made after January 1, 1987. ~~Where~~ If a self-insuring employer elects to pay for compensation and benefits pursuant to this section, ~~he~~ the employer shall assume responsibility for compensation and benefits arising out of claims made prior to January 1, 1987, and shall not be required to pay any amounts into the surplus fund and may not receive any money or credit from that fund on account of this section. The election made under this division is irrevocable.

(H) An order issued by the administrator pursuant to this section is appealable under section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Sec. 4123.35. (A) Except as provided in this section, every employer mentioned in division (B)(2) of section 4123.01 of the Revised Code, and every publicly owned utility shall pay semiannually in the months of January and July into the state insurance fund the amount of annual premium the administrator of workers' compensation fixes for the

employment or occupation of the employer, the amount of which premium to be paid by each employer to be determined by the classifications, rules, and rates made and published by the administrator. The employer shall pay semiannually a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator, and a receipt or certificate certifying that payment has been made shall be mailed immediately to the employer by the bureau of workers' compensation. The receipt or certificate is prima facie evidence of the payment of the premium.

The bureau of workers' compensation shall verify with the secretary of state the existence of all corporations and organizations making application for workers' compensation coverage and shall require every such application to include the employer's federal identification number.

An employer as defined in division (B)(2) of section 4123.01 of the Revised Code who has contracted with a subcontractor is liable for the unpaid premium due from any subcontractor with respect to that part of the payroll of the subcontractor that is for work performed pursuant to the contract with the employer.

Division (A) of section 4123.35 of the Revised Code providing for the payment of premiums semiannually does not apply to any employer who was a subscriber to the state insurance fund prior to January 1, 1914, or who may first become a subscriber to the fund in any month other than January or July. Instead, the semiannual premiums shall be paid by those employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them.

The administrator shall adopt rules to permit employers to make periodic payments of the semiannual premium due under this division. The rules shall include provisions for the assessment of interest charges, where appropriate, and for the assessment of penalties when an employer fails to make timely premium payments. An employer who timely pays the amounts due under this division is entitled to all of the benefits and protections of this chapter. Upon receipt of payment, the bureau immediately shall mail a receipt or certificate to the employer certifying that payment has been made, which receipt is prima-facie evidence of payment. Workers' compensation coverage under this chapter continues uninterrupted upon timely receipt of payment under this division.

Every employer mentioned in division (B)(1) of section 4123.01 of the Revised Code, except boards of county hospital trustees that are self-insuring employers under this section, shall comply with sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in regard to the

contribution of moneys to the public insurance fund.

(B) Provided, that employers mentioned in division (B)(2) of section 4123.01 of the Revised Code, boards of county hospital trustees, and publicly owned utilities who will abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge employers, boards of county hospital trustees, or publicly owned utilities who apply for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application. All employers granted such status shall demonstrate sufficient financial and administrative ability to assure that all obligations under this section are promptly met. The administrator shall deny the privilege where the employer is unable to demonstrate the employer's ability to promptly meet all the obligations imposed on the employer by this section. The administrator shall consider, but is not limited to, the following factors, where applicable, in determining the employer's ability to meet all of the obligations imposed on the employer by this section:

(1) The employer employs a minimum of five hundred employees in this state;

(2) The employer has operated in this state for a minimum of two years, provided that an employer who has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in this state that has operated for at least two years in this state, also shall qualify;

(3) Where the employer previously contributed to the state insurance fund or is a successor employer as defined by bureau rules, the amount of the buy-out, as defined by bureau rules;

(4) The sufficiency of the employer's assets located in this state to insure the employer's solvency in paying compensation directly;

(5) The financial records, documents, and data, certified by a certified

public accountant, necessary to provide the employer's full financial disclosure. The records, documents, and data include, but are not limited to, balance sheets and profit and loss history for the current year and previous four years.

(6) The employer's organizational plan for the administration of the workers' compensation law;

(7) The employer's proposed plan to inform employees of the change from a state fund insurer to a self-insuring employer, the procedures the employer will follow as a self-insuring employer, and the employees' rights to compensation and benefits; and

(8) The employer has either an account in a financial institution in this state, or if the employer maintains an account with a financial institution outside this state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the employer clearly indicates that payment will be honored by a financial institution in this state.

The administrator may waive the requirements of divisions (B)(1) and (2) of this section and the requirement of division (B)(5) of this section that the financial records, documents, and data be certified by a certified public accountant. The administrator shall adopt rules establishing the criteria that an employer shall meet in order for the administrator to waive the requirement of division (B)(5) of this section. Such rules may require additional security of that employer pursuant to division (E) of section 4123.351 of the Revised Code. The administrator shall not grant the status of self-insuring employer to any public employer, other than publicly owned utilities and boards of county hospital trustees.

(C) The administrator shall require a surety bond from all self-insuring employers, issued pursuant to section 4123.351 of the Revised Code, that is sufficient to compel, or secure to injured employees, or to the dependents of employees killed, the payment of compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to the fund, except when an employee of the employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of the members as the result of any injury sustained in the course of and arising out of the employee's employment, the compensation to be paid by the self-insuring employer is limited to the disability or impairment suffered in the subsequent injury, additional compensation, if any, to be paid by the bureau out of the surplus created by section 4123.34 of the Revised Code.

(D) In addition to the requirements of this section, the administrator shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify a finding of fact by the administrator as to granting the status of a self-insuring employer, which rules shall be general in their application, one of which rules shall provide that all self-insuring employers shall pay into the state insurance fund such amounts as are required to be credited to the surplus fund in division (B) of section 4123.34 of the Revised Code.

Employers shall secure directly from the bureau central offices application forms upon which the bureau shall stamp a designating number. Prior to submission of an application, an employer shall make available to the bureau, and the bureau shall review, the information described in divisions (B)(1) to (8) of this section. An employer shall file the completed application forms with an application fee, which shall cover the costs of processing the application, as established by the administrator, by rule, with the bureau at least ninety days prior to the effective date of the employer's new status as a self-insuring employer. The application form is not deemed complete until all the required information is attached thereto. The bureau shall only accept applications that contain the required information.

(E) The bureau shall review completed applications within a reasonable time. If the bureau determines to grant an employer the status as a self-insuring employer, the bureau shall issue a statement, containing its findings of fact, that is prepared by the bureau and signed by the administrator. If the bureau determines not to grant the status as a self-insuring employer, the bureau shall notify the employer of the determination and require the employer to continue to pay its full premium into the state insurance fund. The administrator also shall adopt rules establishing a minimum level of performance as a criterion for granting and maintaining the status as a self-insuring employer and fixing time limits beyond which failure of the self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim.

(F) The administrator shall adopt rules setting forth procedures for auditing the program of self-insuring employers. The bureau shall conduct the audit upon a random basis or whenever the bureau has grounds for believing that an employer is not in full compliance with bureau rules or this chapter.

The administrator shall monitor the programs conducted by self-insuring employers, to ensure compliance with bureau requirements and for that purpose, shall develop and issue to self-insuring employers

standardized forms for use by the employer in all aspects of the employers' direct compensation program and for reporting of information to the bureau.

The bureau shall receive and transmit to the employer all complaints concerning any self-insuring employer. In the case of a complaint against a self-insuring employer, the administrator shall handle the complaint through the self-insurance division of the bureau. The bureau shall maintain a file by employer of all complaints received that relate to the employer. The bureau shall evaluate each complaint and take appropriate action.

The administrator shall adopt as a rule a prohibition against any self-insuring employer from harassing, dismissing, or otherwise disciplining any employee making a complaint, which rule shall provide for a financial penalty to be levied by the administrator payable by the offending employer.

(G) For the purpose of making determinations as to whether to grant status as a self-insuring employer, the administrator may subscribe to and pay for a credit reporting service that offers financial and other business information about individual employers. The costs in connection with the bureau's subscription or individual reports from the service about an applicant may be included in the application fee charged employers under this section.

(H) The administrator, notwithstanding other provisions of this chapter, may permit a self-insuring employer to resume payment of premiums to the state insurance fund with appropriate credit modifications to the employer's basic premium rate as such rate is determined pursuant to section 4123.29 of the Revised Code.

(I) On the first day of July of each year, the administrator shall calculate separately each self-insuring employer's assessments for the safety and hygiene fund, administrative costs pursuant to section 4123.342 of the Revised Code, and for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is not used for handicapped reimbursement, on the basis of the paid compensation attributable to the individual self-insuring employer according to the following calculation:

(1) The total assessment against all self-insuring employers as a class for each fund and for the administrative costs for the year that the assessment is being made, as determined by the administrator, divided by the total amount of paid compensation for the previous calendar year attributable to all amenable self-insuring employers;

(2) Multiply the quotient in division (I)(1) of this section by the total amount of paid compensation for the previous calendar year that is attributable to the individual self-insuring employer for whom the assessment is being determined. Each self-insuring employer shall pay the

assessment that results from this calculation, unless the assessment resulting from this calculation falls below a minimum assessment, which minimum assessment the administrator shall determine on the first day of July of each year with the advice and consent of the workers' compensation oversight commission, in which event, the self-insuring employer shall pay the minimum assessment.

In determining the total amount due for the total assessment against all self-insuring employers as a class for each fund and the administrative assessment, the administrator shall reduce proportionately the total for each fund and assessment by the amount of money in the self-insurance assessment fund as of the date of the computation of the assessment.

The administrator shall calculate the assessment for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is used for handicapped reimbursement in the same manner as set forth in divisions (I)(1) and (2) of this section except that the administrator shall calculate the total assessment for this portion of the surplus fund only on the basis of those self-insuring employers that retain participation in the handicapped reimbursement program and the individual self-insuring employer's proportion of paid compensation shall be calculated only for those self-insuring employers who retain participation in the handicapped reimbursement program. The administrator, as the administrator determines appropriate, may determine the total assessment for the handicapped portion of the surplus fund in accordance with sound actuarial principles.

The administrator shall calculate the assessment for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that under division (D) of section 4121.66 of the Revised Code is used for rehabilitation costs in the same manner as set forth in divisions (I)(1) and (2) of this section, except that the administrator shall calculate the total assessment for this portion of the surplus fund only on the basis of those self-insuring employers who have not made the election to make payments directly under division (D) of section 4121.66 of the Revised Code and an individual self-insuring employer's proportion of paid compensation only for those self-insuring employers who have not made that election.

An employer who no longer is a self-insuring employer in this state or who no longer is operating in this state, shall continue to pay assessments for administrative costs and for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is not used for handicapped reimbursement, based upon paid compensation attributable to claims that occurred while the employer was a self-insuring employer within this state.

(J) There is hereby created in the state treasury the self-insurance assessment fund. All investment earnings of the fund shall be deposited in the fund. The administrator shall use the money in the self-insurance assessment fund only for administrative costs as specified in section 4123.341 of the Revised Code.

(K) Every self-insuring employer shall certify, in affidavit form subject to the penalty for perjury, to the bureau the amount of the self-insuring employer's paid compensation for the previous calendar year. In reporting paid compensation paid for the previous year, a self-insuring employer shall exclude from the total amount of paid compensation any reimbursement the employer receives in the previous calendar year from the surplus fund pursuant to section 4123.512 of the Revised Code for any paid compensation. The self-insuring employer also shall exclude from the paid compensation reported any amount recovered under section 4123.93 of the Revised Code and any amount that is determined not to have been payable to or on behalf of a claimant in any final administrative or judicial proceeding. The self-insuring employer shall exclude such amounts from the paid compensation reported in the reporting period subsequent to the date the determination is made. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, establishing the date by which self-insuring employers must submit such information and the amount of the assessments provided for in division (I) of this section for employers who have been granted self-insuring status within the last calendar year.

The administrator shall include any assessment that remains unpaid for previous assessment periods in the calculation and collection of any assessments due under this division or division (I) of this section.

(L) As used in this section, "paid compensation" means all amounts paid by a self-insuring employer for living maintenance benefits, all amounts for compensation paid pursuant to sections 4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and 4123.64 of the Revised Code, all amounts paid as wages in lieu of such compensation, all amounts paid in lieu of such compensation under a nonoccupational accident and sickness program fully funded by the self-insuring employer, and all amounts paid by a self-insuring employer for a violation of a specific safety standard pursuant to Section 35 of Article II, Ohio Constitution and section 4121.47 of the Revised Code.

(M) Should any section of this chapter or Chapter 4121. of the Revised Code providing for self-insuring employers' assessments based upon compensation paid be declared unconstitutional by a final decision of any

court, then that section of the Revised Code declared unconstitutional shall revert back to the section in existence prior to November 3, 1989, providing for assessments based upon payroll.

(N) The administrator may grant a self-insuring employer the privilege to self-insure a construction project entered into by the self-insuring employer that is scheduled for completion within six years after the date the project begins, and the total cost of which is estimated to exceed one hundred million dollars. The administrator may waive such cost and time criteria and grant a self-insuring employer the privilege to self-insure a construction project regardless of the time needed to complete the construction project and provided that the cost of the construction project is estimated to exceed fifty million dollars. A self-insuring employer who desires to self-insure a construction project shall submit to the administrator an application listing the dates the construction project is scheduled to begin and end, the estimated cost of the construction project, the contractors and subcontractors whose employees are to be self-insured by the self-insuring employer, the provisions of a safety program that is specifically designed for the construction project, and a statement as to whether a collective bargaining agreement governing the rights, duties, and obligations of each of the parties to the agreement with respect to the construction project exists between the self-insuring employer and a labor organization.

A self-insuring employer may apply to self-insure the employees of either of the following:

(1) All contractors and subcontractors who perform labor or work or provide materials for the construction project;

(2) All contractors and, at the administrator's discretion, a substantial number of all the subcontractors who perform labor or work or provide materials for the construction project.

Upon approval of the application, the administrator shall mail a certificate granting the privilege to self-insure the construction project to the self-insuring employer. The certificate shall contain the name of the self-insuring employer and the name, address, and telephone number of the self-insuring employer's representatives who are responsible for administering workers' compensation claims for the construction project. The self-insuring employer shall post the certificate in a conspicuous place at the site of the construction project.

The administrator shall maintain a record of the contractors and subcontractors whose employees are covered under the certificate issued to the self-insured employer. A self-insuring employer immediately shall notify the administrator when any contractor or subcontractor is added or

eliminated from inclusion under the certificate.

Upon approval of the application, the self-insuring employer is responsible for the administration and payment of all claims under this chapter and Chapter 4121. of the Revised Code for the employees of the contractor and subcontractors covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the construction project, or who contract an occupational disease in the course of employment on the construction project. For purposes of this chapter and Chapter 4121. of the Revised Code, a claim that is administered and paid in accordance with this division is considered a claim against the self-insuring employer listed in the certificate. A contractor or subcontractor included under the certificate shall report to the self-insuring employer listed in the certificate, all claims that arise under this chapter and Chapter 4121. of the Revised Code in connection with the construction project for which the certificate is issued.

A self-insuring employer who complies with this division is entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the employees of the contractors and subcontractors covered under a certificate issued under this division for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those employees' employment on that construction project, as if the employees were employees of the self-insuring employer, provided that the self-insuring employer also complies with this section. No employee of the contractors and subcontractors covered under a certificate issued under this division shall be considered the employee of the self-insuring employer listed in that certificate for any purposes other than this chapter and Chapter 4121. of the Revised Code. Nothing in this division gives a self-insuring employer authority to control the means, manner, or method of employment of the employees of the contractors and subcontractors covered under a certificate issued under this division.

The contractors and subcontractors included under a certificate issued under this division are entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the contractor's or subcontractor's employees who are employed on the construction project which is the subject of the certificate, for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those employees' employment on that construction project.

The contractors and subcontractors included under a certificate issued under this division shall identify in their payroll records the employees who are considered the employees of the self-insuring employer listed in that

rtificate for purposes of this chapter and Chapter 4121. of the Revised Code, and the amount that those employees earned for employment on the construction project that is the subject of that certificate. Notwithstanding any provision to the contrary under this chapter and Chapter 4121. of the Revised Code, the administrator shall exclude the payroll that is reported for employees who are considered the employees of the self-insuring employer listed in that certificate, and that the employees earned for employment on the construction project that is the subject of that certificate, when determining those contractors' or subcontractors' premiums or assessments required under this chapter and Chapter 4121. of the Revised Code. A self-insuring employer issued a certificate under this division shall include in the amount of paid compensation it reports pursuant to division (K) of this section, the amount of paid compensation the self-insuring employer paid pursuant to this division for the previous calendar year.

Nothing in this division shall be construed as altering the rights of employees under this chapter and Chapter 4121. of the Revised Code as those rights existed prior to ~~the effective date of this amendment~~ September 17, 1996. Nothing in this division shall be construed as altering the rights devolved under sections 2305.31 and 4123.82 of the Revised Code as those rights existed prior to ~~the effective date of this amendment~~ September 17, 1996.

As used in this division, "privilege to self-insure a construction project" means privilege to pay individually compensation, and to furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees.

(O) A self-insuring employer whose application is granted under division (N) of this section shall designate a safety professional to be responsible for the administration and enforcement of the safety program that is specifically designed for the construction project that is the subject of the application.

A self-insuring employer whose application is granted under division (N) of this section shall employ an ombudsperson for the construction project that is the subject of the application. The ombudsperson shall have experience in workers' compensation or the construction industry, or both. The ombudsperson shall perform all of the following duties:

- (1) Communicate with and provide information to employees who are injured in the course of, or whose injury arises out of employment on the construction project, or who contract an occupational disease in the course of employment on the construction project;
- (2) Investigate the status of a claim upon the request of an employee to

do so;

(3) Provide information to claimants, third party administrators, employers, and other persons to assist those persons in protecting their rights under this chapter and Chapter 4121. of the Revised Code.

A self-insuring employer whose application is granted under division (N) of this section shall post the name of the safety professional and the ombudsperson and instructions for contacting the safety professional and the ombudsperson in a conspicuous place at the site of the construction project.

(P) The administrator may consider all of the following when deciding whether to grant a self-insuring employer the privilege to self-insure a construction project as provided under division (N) of this section:

(1) Whether the self-insuring employer has an organizational plan for the administration of the workers' compensation law;

(2) Whether the safety program that is specifically designed for the construction project provides for the safety of employees employed on the construction project, is applicable to all contractors and subcontractors who perform labor or work or provide materials for the construction project, and has a component, a safety training program that complies with standards adopted pursuant to the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing management and employee involvement;

(3) Whether granting the privilege to self-insure the construction project will reduce the costs of the construction project;

(4) Whether the self-insuring employer has employed an ombudsperson as required under division (O) of this section;

(5) Whether the self-insuring employer has sufficient surety to secure the payment of claims for which the self-insuring employer would be responsible pursuant to the granting of the privilege to self-insure a construction project under division (N) of this section.

Sec. 4123.352. (A) There is hereby created the self-insuring employers evaluation board consisting of three members. The member of the industrial commission representing the public shall be a member of the self-insuring employers evaluation board and shall serve, ex officio, as ~~chairman~~ chairperson. The governor shall appoint the remaining two members with the advice and consent of the senate. One member shall be a member of the Ohio self-insurance association and one member shall be a representative of labor. Not more than two of the three members of the board may be of the same political party.

Of the two members originally appointed by the governor pursuant to this section, one shall serve an initial term of two years and one an initial

term of four years. Thereafter, terms of office of the two members are for four years, each term ending on the same date as the original date of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which ~~his~~ the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of ~~his~~ the member's term until ~~his~~ a successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A vacancy in an unexpired term shall be filled in the same manner as the original appointment. The governor may remove any member pursuant to section 3.05 of the Revised Code.

The board member who also is a member of the commission shall receive no additional compensation but shall be reimbursed for actual and necessary expenses in the performance of ~~his~~ the member's duties as a member of the board. The two remaining members of the board shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code and actual and necessary expenses incurred in the performance of their duties.

For administrative purposes, the board is a part of the bureau of workers' compensation, and the bureau shall furnish the board with necessary office space, staff, and supplies. The board shall meet as required by the administrator of workers' compensation.

(B) In addition to the grounds listed in section 4123.35 of the Revised Code pertaining to criteria for being granted the status as a self-insuring employer, the grounds upon which the administrator may assess a fine or penalty against, or revoke or refuse to renew the self-insuring status ~~includes~~ of a self-insuring employer include failure to comply with any rules or orders of the administrator or to pay contributions to the self-insuring employers' guaranty fund established by section 4123.351 of the Revised Code, continued failure to file medical reports bearing upon the injury of the claimant, and failure to pay compensation or benefits in accordance with law in a timely manner. A deficiency in any of the grounds listed in this division is sufficient to justify the administrator's assessment of a fine or penalty against a self-insuring employer, or the revocation or refusal to renew the employer's status as a self-insuring employer. The administrator, or the administrator's designee, shall hold a hearing, after notice to the self-insuring employer of the hearing, before assessing a fine or penalty against a self-insuring employer or revoking or refusing to renew an employer's status as a self-insuring employer. The administrator need not assess a fine or penalty against a self-insuring employer, or revoke or refuse to renew an employer's status as a self-insuring employer ~~if adequate~~

~~corrective action is taken by the employer pursuant to division (C) of this section. The administrator, with the advice and consent of the workers' compensation oversight commission, shall adopt rules in accordance with Chapter 119. of the Revised Code for the assessment of a fine or penalty under this section against a self-insuring employer. All sums collected under this division shall be paid into the self-insurance assessment fund created pursuant to division (J) of section 4123.35 of the Revised Code.~~

~~(C) The administrator shall refer to the board all complaints or allegations of misconduct against a self-insuring employer or questions as to whether a self-insuring employer continues to meet minimum standards. The board shall investigate and may order the employer to take corrective action in accordance with the schedule the board fixes. The board's determination in this regard need not be made by formal hearing but shall be issued in written form and contain the signature of at least two board members. If the board determines, after A self-insuring employer may appeal the administrator's assessment of a fine or penalty against a self-insuring employer, or the revocation of or refusal to renew the self-insuring status of a self-insuring employer under this section, within thirty days after receipt of notice of the fine, penalty, revocation, or renewal refusal, to the self-insuring employers evaluation board. The filing of an appeal shall stay the administrator's order. After a hearing conducted pursuant to Chapter 119. of the Revised Code and the rules of the bureau, that the employer has failed to correct the deficiencies within the time fixed by the board or is otherwise in violation of this chapter, the board shall recommend to the administrator revocation of an employer's status as a self-insuring employer or such other penalty which may include, but is not limited to, probation, or a civil penalty not to exceed ten thousand dollars for each failure. A board recommendation to revoke an employer's status as a self-insuring employer shall be by unanimous vote. A recommendation for any other penalty shall be by majority vote. Where the board makes recommendations to the administrator for disciplining a self-insuring employer, the administrator promptly and fully shall implement the recommendations affirm or vacate the assessment of a fine or penalty against a self-insuring employer by majority vote of the board. if the administrator decides to revoke or refuse to renew the employer's status as a self-insuring employer, the board's decision to affirm the administrator's decision shall be by unanimous vote.~~

Sec. 4123.411. (A) For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the administrator of workers' compensation, with the advice and consent of the workers' compensation oversight

commission, shall levy an assessment against all employers at a rate, of at least five but not to exceed ten cents per one hundred dollars of payroll, such rate to be determined annually for each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount the administrator estimates to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

(1) Private fund employers, except self-insuring employers--in January and July of each year upon gross payrolls of the preceding six months;

(2) Counties and taxing district employers therein, except county hospitals that are self-insuring employers--in January of each year upon gross payrolls of the preceding twelve months;

(3) The state as an employer--in January, April, July, and October of each year upon gross payrolls of the preceding three months.

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules the administrator adopts.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall establish by rule classifications of employers within divisions (A)(1) to (3) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

(B) For all injuries and disabilities occurring on or after January 1, 1987, and for all injuries, impairments, and disabilities arising on or after the effective date of this amendment, the administrator, for the purposes of carrying out sections 4123.412 to 4123.418 of the Revised Code, shall levy an assessment against all employers at a rate per one hundred dollars of payroll, such rate to be determined annually for each classification of employer in each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount the administrator estimates to be necessary to carry out such sections for the period for which the assessment is levied.

Amounts assessed in accordance with this division shall be billed at the same time premiums are billed and credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall determine the rates for each class in the same manner as ~~he~~ the

administrator fixes the rates for premiums pursuant to section 4123.29 of the Revised Code.

(C) For a self-insuring employer, the bureau of workers' compensation shall pay to employees who are participants regardless of the date of injury, any amounts due to the participants under section 4123.414 of the Revised Code and shall bill the self-insuring employer, semiannually, for all amounts paid to a participant.

Sec. 4123.412. For the relief of persons who are permanently and totally ~~disabled~~ impaired as the result of injury or disease sustained in the course of their employment and who are receiving workers' compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to the Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code, there is hereby created a separate fund to be known as the disabled workers' relief fund, which fund shall consist of the sums that are from time to time appropriated by the general assembly and made available to the order of the bureau of workers' compensation to carry out the objects and purposes of sections 4123.412 to 4123.418 of the Revised Code. The fund shall be in the custody of the treasurer of the state. Disbursements from the fund shall be made by the bureau to those persons entitled to participate therein and in amounts to each participant as is provided in section 4123.414 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

Sec. 4123.413. To be eligible to participate in ~~said the disabled workers' relief~~ fund, a participant must be permanently and totally ~~disabled~~ impaired and be receiving workers' compensation payments, the total of which, when combined with disability benefits received pursuant to ~~The the~~ Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code.

Sec. 4123.414. Each person determined eligible, pursuant to section 4123.413 of the Revised Code, to participate in the disabled workers' relief fund is entitled to receive payments, without application, from the fund of a monthly amount equal to the lesser of the difference between three hundred forty-two dollars, adjusted annually pursuant to division (B) of section 4123.62 of the Revised Code, and:

~~(1)(A)~~ (A) The amount ~~he the person~~ is receiving per month as the disability monthly benefits award pursuant to The Social Security Act; or

~~(2)(B)~~ (B) The amount ~~he the person~~ is receiving monthly under the workers' compensation laws for permanent and total ~~disability~~ impairment.

In determining such difference, a participant shall be considered as receiving the amount of such participant's compensation which shall have been commuted under the provisions of section 4123.64 of the Revised Code. Such payments shall be made monthly during the period in which such participant is permanently and totally ~~disabled~~ impaired.

Sec. 4123.416. The administrator of workers' compensation shall promptly require of each ~~employer who has elected to pay compensation direct under the provisions of section 4123.35 of the Revised Code~~ self-insuring employer a verified list of the names and addresses of all persons to whom the employer is paying workers' compensation on account of permanent and total ~~disability~~ impairment and the evidence respecting such persons as the administrator reasonably deems necessary to determine the eligibility of any such person to participate in the disabled workers' relief fund. The superintendent of insurance shall promptly require of each insurance company which is organized or licensed to do business in this state and which has at any time written workers' compensation insurance in this state a like verified list and like evidence respecting persons to whom the insurance companies are paying workers' compensation under the Ohio workers' compensation laws and contracts of insurance in respect thereof; and the superintendent of insurance shall promptly transmit all such lists and evidence to the bureau of workers' compensation. Any person claiming the right to participate in the fund may file ~~his~~ an application therefor with the bureau and shall be accorded a hearing thereon.

Sec. 4123.419. The assessment rate established pursuant to section 4123.411 of the Revised Code, subject to the limits set forth in that section, shall be adequate to provide the amounts estimated as necessary by the administrator of workers' compensation to carry out the provisions of sections 4123.412 to 4123.418 of the Revised Code, and in addition to provide moneys to reimburse the general revenue fund for moneys appropriated by Section 2 of H.B. No. 1131 of the 103rd general assembly or by the 104th and succeeding general assemblies for disabled or impaired workers' relief. When the additional moneys are available in whole or part for the purpose of making the reimbursement, the director of budget and management shall certify the amount to the bureau of workers' compensation which shall thereupon cause the moneys to be paid to the general revenue fund from the disabled workers' relief fund except that any amounts due because of the state's obligation as an employer pursuant to section 4123.411 of the Revised Code and not paid to the disabled workers' relief fund shall be deducted from any such reimbursement.

Sec. 4123.511. (A) Within seven days after receipt of any claim under

this chapter, the bureau of workers' compensation shall notify the claimant and the employer of the claimant of the receipt of the claim and of the facts alleged therein. If the bureau receives from a person other than the claimant written or telecommunicated information indicating that an injury has occurred or an occupational disease has occurred or been contracted which that may be compensable under this chapter has been diagnosed by a licensed physician, the bureau shall notify the employee and the employer of the information. If the information is provided by any method of telecommunication, the person providing the information shall provide written verification of the information to the bureau according to division (E) of section 4123.84 of the Revised Code. The receipt of the information in writing, or if by a method of telecommunications, the written verification, and the notice by the bureau shall be considered an application for compensation under section 4123.84 or 4123.85 of the Revised Code provided that the conditions of division (E) of section 4123.84 of the Revised Code apply to information provided by a method of telecommunication. Upon receipt of a claim, the bureau shall advise the claimant of the claim number assigned and the claimant's right to representation in the processing of a claim or to elect no representation. If the bureau determines that a claim is determined to be a compensable lost time claim, the bureau shall notify the claimant and the employer of the availability of rehabilitation services. No bureau or industrial commission employee shall directly or indirectly convey any information in derogation of this right. This section shall in no way abrogate the bureau's responsibility to aid and assist a claimant in the filing of a claim and to advise the claimant of the claimant's rights under the law.

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

The bureau shall investigate the facts concerning an injury or occupational disease and ascertain such facts in whatever manner is most appropriate and may obtain statements of the employee, employer, attending physician, and witnesses in whatever manner is most appropriate.

(B)(1) Except as provided in division (B)(2) of this section, in claims other than those in which the employer is a self-insuring employer, if the administrator determines under division (A) of this section that a claimant is or is not entitled to an award of compensation or benefits, the administrator shall issue an order, ~~no sooner than twenty-one days but~~ no later than twenty-eight days after the sending of the notice under division (A) of this section, granting or denying the payment of the compensation or benefits, or

both as is appropriate to the claimant. Notwithstanding the time limitation specified in this division for the issuance of an order, if a medical examination of the claimant is required by statute, the administrator promptly shall schedule the claimant for that examination and shall issue an order no later than twenty-eight days after receipt of the report of the examination. The administrator shall notify the claimant and the employer of the claimant and their respective representatives in writing of the nature of the order and the amounts of compensation and benefit payments involved. The employer or claimant may appeal the order pursuant to division (C) of this section within fourteen days after the date of the receipt of the order. The employer and claimant may waive, in writing, their rights to an appeal under this division.

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

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

(C) If an employer or claimant timely appeals the order of the administrator issued under division (B) of this section or in the case of other contested claims other than state fund claims, the commission shall refer the claim to an appropriate district hearing officer according to rules the commission adopts under section 4121.36 of the Revised Code. The district hearing officer shall notify the parties and their respective representatives of the time and place of the hearing.

The district hearing officer shall hold a hearing on a disputed issue or claim within forty-five days after the filing of the appeal under this division and issue a decision within seven days after holding the hearing. The district hearing officer shall notify the parties and their respective representatives in writing of the order. Any party may appeal an order issued under this

division pursuant to division (D) of this section within fourteen days after receipt of the order under this division.

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

(E) Upon the filing of a timely appeal of the order of the staff hearing officer issued under division (D) of this section, the commission or a designated staff hearing officer, on behalf of the commission, shall determine whether the commission will hear the appeal. If the commission or the designated staff hearing officer decides to hear the appeal, the commission or the designated staff hearing officer shall notify the parties and their respective representatives in writing of the time and place of the hearing. The commission shall hold the hearing within forty-five days after the filing of the notice of appeal and, within seven days after the conclusion of the hearing, the commission shall issue its order affirming, modifying, or reversing the order issued under division (D) of this section. The commission shall notify the parties and their respective representatives in writing of the order. If the commission or the designated staff hearing officer determines not to hear the appeal, within fourteen days after the filing of the notice of appeal, the commission or the designated staff hearing officer shall issue an order to that effect and notify the parties and their respective representatives in writing of that order.

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

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

(G) All of the following apply to the proceedings under divisions (C),

(D), and (E) of this section:

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

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

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

(H) Except as provided in division (J) of this section, payments of compensation to a claimant or on behalf of a claimant as a result of any order issued under this chapter shall commence upon the earlier of the following:

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

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

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

(4) ~~The Twenty-one days after the~~ date of receipt by the employer of an order of a district hearing officer, a staff hearing officer, or the industrial commission issued under division (C), (D), or (E) of this section.

(I) No medical benefits payable under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code are payable until the earlier of the following:

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

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

(J) Upon the final administrative or judicial determination, if a claimant is found to have received compensation to which the claimant was not entitled, the claimant's employer, if a self-insuring employer, or the bureau, shall withhold from any amount to which the claimant becomes entitled

pursuant to any claim, past, present, or future, under Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the amount to which the claimant was not entitled pursuant to the following criteria:

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

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

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

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

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

(L) Except as provided in section 4123.522 of the Revised Code, no appeal is timely filed under this section unless the appeal is filed with the time limits set forth in this section.

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

Sec. 4123.512. (A) The claimant or the employer may appeal an order of the industrial commission made under division (E) of section 4123.511 of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability or impairment, or percentage of impairment determined pursuant to division (A) of section 4123.57 Of the Revised Code, to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, or in which the contract of employment was made if the exposure occurred outside the state. If no common pleas court has jurisdiction for the purposes of an appeal by the use of the jurisdictional requirements described in this division, the appellant may use the venue provisions in the Rules of Civil Procedure to vest jurisdiction in a court. If the claim is for an occupational disease the appeal shall be to the court of common pleas of the county in which the exposure which caused

the disease occurred. Like appeal may be taken from an order of a staff hearing officer made under division (D) of section 4123.511 of the Revised Code from which the commission has refused to hear an appeal. The appellant shall file the notice of appeal with a court of common pleas within sixty days after the date of the receipt of the order appealed from or the date of receipt of the order of the commission refusing to hear an appeal of a staff hearing officer's decision under division (D) of section 4123.511 of the Revised Code. The filing of the notice of the appeal with the court is the only act required to perfect the appeal.

If an action has been commenced in a court of a county other than a court of a county having jurisdiction over the action, the court, upon notice by any party or upon its own motion, shall transfer the action to a court of a county having jurisdiction.

Notwithstanding anything to the contrary in this section, if the commission determines under section 4123.522 of the Revised Code that an employee, employer, or their respective representatives have not received written notice of an order or decision which is appealable to a court under this section and which grants relief pursuant to section 4123.522 of the Revised Code, the party granted the relief has sixty days from receipt of the order under section 4123.522 of the Revised Code to file a notice of appeal under this section.

(B) The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom.

The administrator, the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The administrator shall notify the employer that, if ~~he~~ the employer fails to become an active party to the appeal, ~~then~~ the administrator may act on behalf of the employer and the results of the appeal could have an adverse effect upon the employer's premium rates.

(C) The attorney general or one or more of ~~his~~ the attorney general's assistants or special counsel designated by ~~him~~ the attorney general shall represent the administrator and the commission. ~~In the event~~ If the attorney general or ~~his~~ the attorney general's designated assistants or special counsel are absent, the administrator or the commission shall select one or more of the attorneys in the employ of the administrator or the commission as ~~his~~ the administrator's attorney or ~~its~~ the commission's attorney in the appeal. Any attorney so employed shall continue ~~his~~ the representation during the entire period of the appeal and in all hearings thereof except where the continued representation becomes impractical.

(D) Upon receipt of notice of appeal the clerk of courts shall provide notice to all parties who are appellees and to the commission.

The claimant ~~shall~~, within thirty days after the filing of the notice of appeal, shall file a petition containing a statement of facts in ordinary and concise language showing a cause of action to participate or to continue to participate in the fund and setting forth the basis for the jurisdiction of the court over the action. Further pleadings shall be had in accordance with the Rules of Civil Procedure, provided that service of summons on such petition shall not be required. The clerk of the court ~~shall~~, upon receipt thereof, shall transmit by certified mail a copy thereof to each party named in the notice of appeal other than the claimant. Any party may file with the clerk prior to the trial of the action a deposition of any physician taken in accordance with the provisions of the Revised Code, which deposition may be read in the trial of the action even though the physician is a resident of or subject to service in the county in which the trial is had. The bureau of workers' compensation shall pay the cost of the deposition filed in court and of copies of the deposition for each party from the surplus fund and charge the costs thereof against the unsuccessful party if the claimant's right to participate or continue to participate is finally sustained or established in the appeal. In the event the deposition is taken and filed, the physician whose deposition is taken is not required to respond to any subpoena issued in the trial of the action. The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of the action.

(E) The court shall certify its decision to the commission and the certificate shall be entered in the records of the court. Appeals from the judgment are governed by the law applicable to the appeal of civil actions.

(F) The cost of any legal proceedings authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge, based upon the effort expended, in the event the claimant's right to participate or to continue to participate in the fund is established upon the final determination of an appeal, shall be taxed against the employer or the commission if the commission or the administrator rather than the employer contested the right of the claimant to participate in the fund. The attorney's fee shall not exceed twenty-five hundred dollars.

(G) If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate in the fund, the commission and the administrator shall thereafter proceed in the matter of the claim as if the judgment were the decision of the commission, subject to the power of

modification provided by section 4123.52 of the Revised Code.

(H) An appeal from an order issued under division (E) of section 4123.511 of the Revised Code or any action filed in court in a case in which an award of compensation has been made shall not stay the payment of compensation under the award or payment of compensation for subsequent periods of total disability or impairment during the pendency of the appeal. If, in a final administrative or judicial action, it is determined that payments of compensation or benefits, or both, made to or on behalf of a claimant should not have been made, the amount thereof shall be charged to the surplus fund under division (B) of section 4123.34 of the Revised Code. In the event the employer is a state risk, the amount shall not be charged to the employer's experience. In the event the employer is a self-insuring employer, the self-insuring employer shall deduct the amount from the paid compensation he reports to the administrator under division (K) of section 4123.35 of the Revised Code. All actions and proceedings under this section which are the subject of an appeal to the court of common pleas or the court of appeals shall be preferred over all other civil actions except election causes, irrespective of position on the calendar.

This section applies to all decisions of the commission or the administrator on November 2, 1959, and all claims filed thereafter are governed by sections 4123.511 and 4123.512 of the Revised Code.

Any action pending in common pleas court or any other court on January 1, 1986, under this section is governed by former sections 4123.514, 4123.515, 4123.516, and 4123.519 and section 4123.522 of the Revised Code.

Sec. 4123.52. ~~The (A)(1) Except as otherwise provided in this section, the jurisdiction of the industrial commission and the authority of the administrator of workers' compensation over each case is continuing, and the commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified. No Except as provided in divisions (A), (B), and (C) of this section, the commission shall make no modification or, change nor any, finding, or award in any claim with respect of any claim shall be made with respect to disability, compensation, dependency, or medical benefits, after six five years from the date of injury in the absence of the payment of medical benefits under this chapter, in which event the modification, change, finding, or award shall be made within six years after the payment of medical benefits, or in the absence of payment of compensation under section 4123.57, 4123.58, or division (A) or (B) of section 4123.56 of the Revised Code or wages in lieu of compensation in a manner so as to satisfy~~

~~the requirements of section 4123.84 of the Revised Code, in which event the modification, change, finding, or award shall be made within ten years from the date of the last payment of compensation or from the date of death, nor unless written notice of claim for the specific part or parts of the body injured or disabled has been given as provided in section 4123.84 or 4123.85 of the Revised Code, and the commission shall not make any modification, change, finding, or award which shall award compensation for a back period in excess of two years prior to the date of filing application therefor or the date of first diagnosis of an occupational disease, unless compensation under section 4123.56 of the Revised Code, wages in lieu of that compensation in a manner that satisfies the requirements of section 4123.84 of the Revised Code, compensation under division (B) of section 4123.57 or section 4123.58 or 4123.59 of the Revised Code, or medical benefits have been paid, in which event, in cases in which compensation or wages in lieu of that compensation has been paid under section 4123.56 Of the Revised Code, or in cases in which compensation has been paid under division (B) of section 4123.57 or section 4123.58 or 4123.59 of the Revised Code, the commission may only make a modification, change, finding, or award in a claim with respect to compensation, dependency, or medical benefits within five years after the date of the last payment of compensation under section 4123.56, wages in lieu of that compensation, or compensation under division (B) of section 4123.57 or section 4123.58 or 4123.59 of the Revised Code.~~

(2) The commission may make a modification, change, finding, or award in any claim with respect to medical benefits within five years after the date of the last treatment for which medical benefits have been paid or ordered to be paid.

(B) In all cases for a claim involving an occupational disease described in divisions (A) through (AA) of section 4123.68 Of the Revised Code or other occupational disease that results from exposure to fibrosis-producing or toxic dusts, fumes, mists, vapors, gases, or liquids, or other toxic materials, or a combination of those, the jurisdiction of the commission and the authority of the administrator over each case is continuing pursuant to division (A) of this section, except that the jurisdiction to make a modification, change, finding, or award in the claim with respect to compensation, dependency, or medical benefits may extend beyond the time limitations contained in that division, up to a maximum of six months after the date an employee first becomes totally disabled as a result of the occupational disease that is the subject of the employee's claim, and thereafter, the time limitations contained in division (A) of this section apply

to that case.

(C)(1) In all cases for a claim described in division (C)(2) of this section, the jurisdiction of the commission and the authority of the administrator over each case is continuing, except that the commission may make a modification, change, finding, or award in that claim only with respect to medical benefits and compensation under division (A) of section 4123.56 Of the Revised Code, subject to the limitation described in division (C)(3) of this section.

(2) This division applies only to a claim involving an employee to whom either of the following applies:

(a) The employee has a prosthetic device that was provided under an allowed claim under this chapter or Chapter 4121., 4127., or 4131. Of the Revised Code and the employee's physician determines that the prosthetic device needs to be replaced or repaired;

(b) The employee's physician determines that an employee will require a prosthetic device, or the replacement or repair of an existing prosthetic device as a direct result of an allowed condition in a claim under this chapter or Chapter 4121., 4127., or 4131. Of the Revised Code, regardless of when that claim was allowed.

(3) Compensation under division (A) of section 4123.56 Of the Revised Code allowed under this division shall be for a period not to exceed nine months after the date of the provision, implanting, affixing, repair, or replacement of the prosthetic device provided pursuant to this division.

(4) The administrator shall adopt rules establishing a procedure to ensure that an employee's physician makes the determination described in division (C)(2)(b) of this section in a timely manner and that the determination is recorded and filed in the employee's claim file in a timely manner.

(5) FOR PURPOSES OF DIVISION (C) OF THIS SECTION, "PROSTHETIC DEVICE" MEANS AN INTERNAL OR EXTERNAL ARTIFICIAL PART PROVIDED TO AN EMPLOYEE THAT SUBSTITUTES FOR A MISSING OR RECONSTRUCTED LIMB OR JOINT OF THE EMPLOYEE.

(D) Unless written notice has been given as provided in section 4123.84 or 4123.85 of the Revised Code, the commission shall make no modification, change, finding, or award that awards compensation for a back period in excess of two years prior to the date of filing an application for that compensation. This section does not affect the right of a claimant to compensation accruing subsequent to the filing of any such application; ~~provided if~~ the application is filed within the time limit provided in this

section.

(E) This section does not deprive the commission of its continuing jurisdiction to determine the questions raised by any application for modification of award which has been filed with the commission after June 1, 1932, and prior to the expiration of the applicable period but in respect to which no award has been granted or denied during the applicable period.

(F) The commission ~~may~~, by general rules, may provide for the destruction of files of cases in which no further action may be taken.

The commission and administrator of workers' compensation each ~~may~~, by general rules, may provide for the retention and destruction of all other records in their possession or under their control pursuant to section 121.211 and sections 149.34 to 149.36 of the Revised Code. The bureau of workers' compensation may purchase or rent required equipment for the document retention media, as determined necessary to preserve the records. Photographs, microphotographs, microfilm, films, or other direct document retention media, when properly identified, have the same effect as the original record and may be offered in like manner and may be received as evidence in any court where the original record could have been introduced.

(G) As used in division (A) of this section, "medical benefits" means payments to, or on behalf of, an employee for a hospital bill, medical bill for a licensed physician or hospital, an orthopedic or prosthetic device, or a prescription medication.

Sec. 4123.531. The administrator of workers' compensation or the industrial commission may require any employee claiming the right to receive compensation to submit to a vocational rehabilitation evaluation. If the person who conducts the EVALUATION recommends a vocational rehabilitation plan for the employee, the EMPLOYEE shall comply with the rehabilitation plan.

If an employee refuses to submit to any vocational rehabilitation evaluation scheduled pursuant to this section or obstructs the evaluation, the employee's right to have the employee's claim for compensation considered, if the claim is pending before the bureau or commission, or to receive any payment for compensation that has been granted, is suspended during the period of the refusal or obstruction, and no compensation subsequently shall be awarded for any period of suspension.

Sec. 4123.54. Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not:

(A) Purposely self-inflicted; or

(B) Caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, is entitled to receive, either directly from ~~his~~ the employee's self-insuring employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, the compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital services and medicines, and the amount of funeral expenses in case of death, as are provided by this chapter.

AN EMPLOYER MAY REQUEST AN EMPLOYEE WHO SUSTAINS AN INJURY TO SUBMIT TO A CHEMICAL TEST OR A TEST OF THE EMPLOYEE'S BLOOD, BREATH, OR URINE IF THE EMPLOYER HAS REASON TO BELIEVE THAT THE EMPLOYEE'S INJURY WAS THE RESULT OF BEING INTOXICATED OR UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE NOT PRESCRIBED FOR USE IN THE EMPLOYEE'S SYSTEM BY THE EMPLOYEE'S PHYSICIAN. IF THE EMPLOYEE SUBMITS TO THAT TEST, THE EMPLOYER SHALL PAY FOR THE COST OF THE TEST. For the purpose of this division, if the employee, through a chemical test or a test of the employee's blood, breath, or urine administered within a reasonable time after the occurrence of the employee's injury, is determined to have an alcohol content equal to or in excess of that specified in section 4511.19 Of the Revised Code or have a controlled substance not prescribed for use in the employee's system by the employee's physician, it is a rebuttable presumption that the employee was intoxicated or under the influence of the controlled substance and that the intoxication or being under the influence is the proximate cause of the injury. An employee's refusal to submit to, or release or execute a release of the results of, a chemical test or a test of the employee's blood, breath, or urine is admissible as evidence of the employee's intoxication or being under the influence of a controlled substance not prescribed for the employee's use in the employee's system by the employee's physician at any hearing pursuant to section 4123.511 Of the Revised Code to determine the allowance of the employee's claim and on any appeal to court pursuant to section 4123.512 Of the Revised Code.

If an injury described in division (C)(4) of section 4123.01 of the Revised Code occurs, compensation and medical benefits are payable only for the impairment or disability that results from the substantial worsening of the pre-existing condition or impairment or the substantial acceleration of

the disease process. No compensation or benefits are payable because of the pre-existing condition, impairment, or disease process once that condition, impairment, or disease process has returned to a level that would have existed without the injury.

Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and ~~his~~ the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of ~~his~~ the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and ~~his~~ the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of ~~his~~ the employee's employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or ~~his~~ the employee's dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or ~~his~~ the employee's dependents by the bureau.

If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the employee and ~~his~~ the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state and the rights of the employee and ~~his~~ the employee's dependents under the laws of the other state are the exclusive

remedy against the employer on account of the injury, disease, or death.

Compensation or benefits are not payable to a claimant during the period of confinement of the claimant in any state or federal correctional institution whether in this or any other state for conviction of violation of any state or federal criminal law.

Sec. 4123.541. ~~In the event that~~ If any person who is entitled to receive benefits for temporary total disability or permanent total impairment, loss of member, or death through the application of section 4123.033 of the Revised Code, receives, in connection with the injury giving rise to such entitlement, benefits under an act of congress or federal program providing benefits for civil defense workers and their survivors, the benefits payable hereunder, shall be reduced in proportion to the benefits received under such other act or program.

Sec. 4123.55. No compensation shall be allowed for the first week after an injury is received or occupational disease ~~contracted~~ is first diagnosed and no compensation shall be allowed for the first week of total disability or impairment, whenever it may occur, unless and until the employee is totally ~~disable~~ disabled or impaired for a continuous period of two weeks or more, in which event compensation for the first week of total disability or impairment, whenever it has occurred, shall be paid, in addition to any other weekly benefits which are due, immediately following the second week of total disability or impairment. There shall be no waiting period in connection with the disbursements provided by section 4123.66 of the Revised Code.

Sec. 4123.56. (A) Except as provided in division ~~(D)~~(E) of this section, in the case of temporary disability, an employee shall receive sixty-six and two-thirds per cent of ~~his~~ the employee's average weekly wage so long as such disability is total, not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, and not less than a minimum amount of compensation which is equal to thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code unless the employee's wage is less than thirty-three and one-third per cent of the minimum statewide average weekly wage, in which event ~~he~~ the employee shall receive compensation equal to ~~his~~ the employee's full wages; provided that for the first twelve weeks of total disability the employee shall receive seventy-two per cent of ~~his~~ the employee's full weekly wage, but not to exceed a maximum amount of weekly compensation which is equal to the lesser of the statewide average weekly wage as defined in division (C) of

section 4123.62 of the Revised Code or one hundred per cent of the employee's net take home weekly wage. ~~In the case of a self-insuring employer, payments~~

As used in this division, "net take home weekly wage" means the amount obtained by dividing an employee's total remuneration, as defined in section 4141.01 of the Revised Code, paid to or earned by the employee during the first four of the last five completed calendar quarters which immediately precede the first day of the employee's entitlement to benefits under this division, by the number of weeks during which the employee was paid or earned remuneration during those four quarters, less the amount of local, state, and federal income taxes deducted for each such week.

(B)(1) If the payment of compensation for temporary disability is commenced voluntarily by a self-insuring EMPLOYER, payments of compensation shall be continued at the discretion of the self-insuring employer. When a self-insuring employer makes its first payment of compensation to an employee under this division, the self-insuring employer shall notify the employee, in writing, of all of the following:

(a) That the self-insuring employer voluntarily has commenced the payments;

(b) That the self-insuring employer may terminate the payments at any time;

(c) That the employee has a right to a hearing on the employee's claim;

(d) If the employee's claim that is the subject of the payments commenced under this division is determined to be valid, that any compensation to which the employee is or becomes entitled under this section for that claim shall be offset by the payments the employee receives from the self-insuring employer under this division.

A self-insuring employer either shall certify or contest the claim for which it voluntarily is making payments under this division within seventy-five days after the self-insuring employer makes the first payment of compensation to an employee under this division. a claim is deemed contested if the self-insuring employer fails either to certify or contest the claim within seventy-five days after making the first payment of compensation under this division to an employee.

(2) Payment of compensation for all claims for temporary disability other than those described in division (B)(1) of this section, shall be for a duration based upon the medical reports of the attending physician. If the employer disputes the attending physician's report, payments may be terminated only upon application and hearing by a district hearing officer pursuant to division (C) of section 4123.511 of the Revised Code. Payments

shall continue pending the determination of the matter, however, payment shall not be made for the period when any employee has returned to work, when an employee's treating physician has made a written statement that the employee is capable of returning to ~~his~~ the employee's former position of employment, when work within the physical capabilities of the employee is made available by the employer or another employer, or when the employee has reached the maximum medical improvement. ~~Where~~ If the employee is capable of work activity, but ~~his~~ the employee's employer is unable to offer ~~him~~ the employee any employment, the employee shall register with the bureau of employment services, which shall assist the employee in finding suitable employment. ~~The~~

(3) The termination of temporary total disability, whether by order or otherwise, does not preclude the commencement of temporary total disability at another point in time if the employee again becomes temporarily totally disabled.

(4) If a district hearing officer, staff hearing officer, or the industrial commission determines, based upon the evidence, that an employee was not entitled pursuant to this chapter or Chapter 4121., 4127., or 4131. Of the Revised Code to receive temporary total disability compensation prior to the date of the hearing in which that determination is made, the hearing officer or the commission shall declare an overpayment effective from the date the employee was not entitled to receive that compensation. If the employer pays premiums to the state insurance fund, the amount of the overpayment shall not be charged to the employer's experience. If the employer is a self-insuring employer, the self-insuring employer shall deduct the amount of the overpayment from the paid compensation it reports to the administrator under division (K) of section 4123.35 Of the Revised Code. The self-insuring employer or the bureau, as appropriate, shall withhold the amount of the overpayment from any amount to which the employee becomes entitled under any claim past, present, or future under Chapter 4121., 4123., 4127., or 4131. Of the Revised Code pursuant to division (J) of section 4123.511 Of the Revised Code.

(5) After two hundred weeks of temporary total disability benefits, the bureau medical section shall schedule the ~~claimant~~ employee for an examination for an evaluation to determine whether or not the temporary disability has become permanent. A self-insuring employer shall notify the bureau of workers' compensation immediately after payment of two hundred weeks of temporary total disability and request that the bureau of workers' compensation schedule the ~~claimant~~ employee for such an examination.

(6) When the employee is awarded compensation for temporary total

disability for a period for which ~~he~~ the employee has received benefits under Chapter 4141. of the Revised Code, the bureau of workers' compensation shall pay an amount equal to the amount received from the award to the bureau of employment services and the administrator of the bureau of employment services shall credit the amount to the accounts of the employers to whose accounts the payment of benefits was charged or is chargeable to the extent it was charged or is chargeable.

(7) If any compensation under this section has been paid for the same period or periods for which temporary nonoccupational accident and sickness insurance is or has been paid pursuant to an insurance policy or program to which the employer has made the entire contribution or payment for providing insurance or under a nonoccupational accident and sickness program fully funded by the employer, compensation paid under this section for the period or periods shall be paid only to the extent by which the payment or payments exceeds the amount of the nonoccupational insurance or program paid or payable. Offset of the compensation shall be made only upon the prior order of the bureau of workers' compensation or industrial commission or agreement of the claimant.

~~As used in this division, "net take home weekly wage" means the amount obtained by dividing an employee's total remuneration, as defined in section 4141.01 of the Revised Code, paid to or earned by the employee during the first four of the last five completed calendar quarters which immediately precede the first day of the employee's entitlement to benefits under this division, by the number of weeks during which the employee was paid or earned remuneration during those four quarters, less the amount of local, state, and federal income taxes deducted for each such week.~~

~~(B) Where (C)(1) If~~ an employee in a claim allowed under this chapter suffers a wage loss as a direct result of returning to employment other than ~~his~~ the employee's former position of employment ~~or as a result of being unable to find employment consistent with~~ due to a limitation in the claimant's physical capabilities caused solely by the allowed condition or conditions in the employee's claim, ~~he~~ the employee shall receive compensation at sixty-six and two-thirds per cent of ~~his~~ the difference between the employee's average weekly wage loss at the time of the injury or date of disease and the employee's present earnings not to exceed the statewide average weekly wage ~~for a period not to exceed two hundred weeks.~~ The payments may continue for up to a maximum of two hundred weeks, but the payments shall be reduced by the corresponding number of weeks in which the employee receives payments pursuant to division (B) of section 4121.67 Of the Revised Code.

(2) If an employee in a claim allowed under this chapter suffers a wage loss as a direct result of being unable to find employment consistent with the employee's physical capabilities resulting from the employee's injury or occupational disease, the employee shall receive compensation at sixty-six and two-thirds per cent of the difference between the employee's average weekly wage at the time of the injury or date of disease and the employee's present earnings, not to exceed the statewide average weekly wage. the payments may continue for up to a maximum of twenty-six weeks; however, an employee in a claim allowed under this chapter may receive compensation under division (C)(2) of this section for up to a maximum of fifty-two weeks if, at any time during the period in which the employee is receiving compensation under division (C)(2) of this section, the BENEFIT period for unemployment is in extension pursuant to section 4141.301 of the Revised Code. Neither the filing of a request for nor the receipt of compensation pursuant to division (C)(2) of this section shall affect an employee's application for compensation provided under section 4123.58 of the Revised Code.

(3) The number of weeks of wage loss payable to an employee under divisions (C)(1) and (2) of this section shall not exceed two hundred weeks in the aggregate.

(4) As used in this division, "date of disease" means the date an occupational disease is first diagnosed by a licensed physician, or for an occupational disease described in divisions (A) through (AA) of section 4123.68 of the Revised Code, or other occupational disease that results from exposure to fibrosis-producing or toxic dusts, fumes, mists, vapors, gases, or liquids, or other toxic materials, or a combination of those, the date that the employee first misses work as a result of the occupational disease.

~~(C)(D)~~ (D) In the event an employee of a professional sports franchise domiciled in this state is disabled or impaired as the result of an injury or occupational disease, the total amount of payments made under a contract of hire or collective bargaining agreement to the employee during a period of disability or impairment is deemed an advanced payment of compensation payable under sections 4123.56 to 4123.58 of the Revised Code. The employer shall be reimbursed the total amount of the advanced payments out of any award of compensation made pursuant to sections 4123.56 to 4123.58 of the Revised Code.

~~(D)(E)~~ (E) If an employee receives temporary total disability benefits pursuant to division (A) of this section and social security retirement benefits pursuant to the "Social Security Act," the weekly benefit amount under division (A) of this section shall not exceed sixty-six and two-thirds

per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code.

(F) the commencement of the payment of compensation under division (B) of this section shall not constitute a recognition by a self-insuring employer of a claim or of a condition in the claim as compensable, but shall do no more than satisfy the requirements of section 4123.84 of the Revised Code.

~~Sec. 4123.57. Partial disability compensation shall be paid as follows.~~

(A)(1) Except as provided in division (A)(2) of this section, not earlier than forty weeks after the date of termination of the latest period of payments under section 4123.56 of the Revised Code, or not earlier than forty weeks after the date of the injury or ~~contraction~~ the date of first diagnosis of an occupational disease by a licensed physician in the absence of payments under section 4123.56 of the Revised Code, ~~the an~~ employee may file an application with the bureau of workers' compensation for the determination of the percentage of ~~his the employee's~~ permanent partial disability impairment resulting from ~~the an~~ injury or occupational disease.

(2) An employee may file the application specified in division (A)(1) of this section without waiting forty weeks when either of the following occurs:

(a) The receipt of payments under division (A) of section 4123.56 of the Revised Code is terminated by a hearing officer because the employee has reached maximum medical improvement.

(b) The receipt of benefits under division (A) of section 4123.56 Of the Revised Code is terminated because the employee's attending physician certifies that the employee has reached maximum medical improvement.

(3) Whenever ~~the an~~ application is filed under division (A)(1) or (2) of this section, the bureau shall send a copy of the application to the employee's employer or the employer's representative and, ~~except when the option provided in division (A)(7) of this section is chosen,~~ shall schedule the employee for a medical examination by the bureau medical section. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives. ~~Thereafter, the administrator of workers' compensation shall review the employee's claim file and make a tentative order as the evidence before him at the time of the making of the order warrants. If the administrator determines that there is a conflict of evidence, he shall send the application, along with the claimant's file, to the district hearing officer who shall set the application for a hearing~~ The report of the medical examination shall contain a statement of the examiner's finding on the employee's percentage of permanent partial

impairment resulting from allowed conditions in the claim under the most recent EDITION of the American medical association's guides to the evaluation of permanent impairment. After receiving the report of the medical examination, the ADMINISTRATOR of workers' compensation shall make a TENTATIVE ORDER finding that the employee's percentage of permanent partial impairment is the same percentage shown by the report of the medical examination, unless the administrator determines that the report clearly is erroneous. If the administrator determines that the report clearly is erroneous, the administrator shall disregard the report, schedule the employee for another examination by the bureau medical section, and issue a tentative order that finds that the employee's percentage of permanent partial impairment is the same percentage shown by the second medical examination report.

(4) The administrator shall notify the employee, the employer, and their representatives, in writing, of the tentative order and of the parties' right to request a hearing. Unless the employee, the employer, or their representative notifies the administrator, in writing, of an objection to the tentative order within twenty days after receipt of the notice thereof, the tentative order shall go into effect and the employee shall receive the compensation provided in the order. In no event shall there be a reconsideration of a tentative order issued under this division. Within fourteen days after receipt of the tentative order, the employee, the employer, or their representatives, may file with the bureau an objection to the tentative order. The opposing party must be served by the filing party with a copy of the objection to the tentative order not later than the day of filing. Proper mailing of the objection to the tentative order to the opposing party constitutes service. If an objection to the tentative order is not filed by a party by the deadline established by division (A)(4) of this section, the order becomes final.

(5) If the employee, the employer, or their representatives timely notify the administrator of an objection to the tentative order, either party, within fourteen days after the date of filing or of receipt of an objection, whichever is later, may request another examination by the bureau medical section. the party requesting that examination shall pay The cost of that examination. Upon that request, the bureau shall schedule the employee for another medical examination by the bureau medical section. All provisions of division (A)(3) of this section applicable to the first medical examination apply to a subsequent medical examination requested pursuant to division (A)(5) of this section. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives.

Upon the filing of an objection to the tentative order or upon the completion of the medical examination requested pursuant to division (A)(5) of this section, whichever is later, the matter shall be referred to a district hearing officer who shall set the application for hearing with written notices to all interested persons. Upon referral to a district hearing officer, the employer may obtain a medical examination of the employee, pursuant to rules of the industrial commission. At the hearing, the district hearing officer first shall make a finding as to whether any of the following has occurred:

(a) The bureau medical section based its REPORT, at least in part, on conditions not ALLOWED in the claim;

(b) The bureau medical section failed to consider all of the allowed conditions in the claim;

(c) The bureau medical section's examiner was prejudiced against the employer or the employee;

(d) THE BUREAU MEDICAL SECTION FAILED TO PROPERLY APPLY THE MOST RECENT EDITION OF THE AMERICAN MEDICAL ASSOCIATION'S GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT IN DETERMINING THE EMPLOYEE'S PERCENTAGE OF PERMANENT IMPAIRMENT;

(e) The tentative order provides for the payment of compensation under a circumstance in which that compensation is barred by this section or any other PROVISION of law.

~~(A) The district hearing officer, upon the application, shall determine the percentage of the employee's permanent disability, except as is subject to division (B) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of his average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage, for the number of weeks which equals the percentage of two hundred weeks. Except on application for reconsideration, review, or modification, which is filed within ten days after the date of receipt of the decision of the district hearing officer, in no instance shall the former award be modified unless it is found from medical or clinical findings that the condition of the claimant resulting from the injury has so progressed as to have increased the percentage of permanent partial disability. A staff hearing officer shall hear an application for reconsideration filed and his decision is final. An~~ If the district hearing

officer finds one of the SITUATIONS described in division (A)(5)(a), (b), (c) or (d) of this section, the district hearing officer shall issue an order rejecting the report of the medical examination and REQUIRING the bureau medical section to perform a new medical examination. All PROVISIONS of this division applicable to the first MEDICAL EXAMINATION and the determination of the percentage of permanent partial impairment apply to any SUBSEQUENT medical examination that is ordered under this division. If the district hearing officer finds the situation DESCRIBED in DIVISION (A)(5)(e) of this section, the DISTRICT hearing officer shall issue an order denying the application. If the district hearing officer finds none of the situations described in division (A)(5)(a), (b), (c), (d), or (e) of this section, the district hearing officer shall issue an order finding that the employee's percentage of permanent partial impairment is the same percentage shown by either the first or any subsequent bureau medical examination report.

(6) An employee may file an application for a subsequent determination of the percentage of his the employee's permanent disability impairment. No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted unless supported by substantial evidence of new and changed circumstances developing since the time of the last determination. If such an application is filed under division (A)(6) of this section, the bureau shall send a copy of the application to the employer or the employer's representative. No sooner than sixty days from the date of the mailing of the application to the employer or the employer's representative, the administrator shall review the application. The administrator may require a medical examination or medical review of the employee. The administrator shall issue a tentative order based upon the evidence before him, provided that if he requires a medical examination or medical review, the administrator shall not issue the tentative order until the completion of the examination or review.

The employer may obtain a medical examination of the employee and may submit medical evidence at any stage of the process up to a hearing before the district hearing officer, pursuant to rules of the commission. The administrator shall notify the employee, the employer, and their representatives, in writing, of the nature and amount of any tentative order issued on an application requesting a subsequent determination of the percentage of an employee's permanent disability. An employee, employer, or their representatives may object to the tentative order within twenty days after the receipt of the notice thereof. If no timely objection is made, the tentative order shall go into effect. In no event shall there be a reconsideration of a tentative order issued under this division. If an

~~objection is timely made, the application for a subsequent determination shall be referred to a district hearing officer who shall set the application for a hearing with written notice to all interested persons. No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted for review by the district hearing officer unless supported by substantial evidence of new and changed circumstances developing since the time of the hearing on the original or last determination.~~

~~No award shall be made under this division based upon a percentage of disability which, when taken with all other percentages of permanent disability, exceeds one hundred per cent. If the percentage of the permanent disability of the employee equals or exceeds ninety per cent, compensation for permanent partial disability shall be paid for two hundred weeks. treat the application as though it was an original application for the determination of the percentage of permanent partial impairment. In no instance shall the former award be modified unless it is found from medical or clinical findings that the condition of the employee resulting from the injury or occupational disease has so progressed as to have increased the percentage of permanent partial impairment. all provisions of this division applicable to an ORIGINAL application apply to an application for subsequent determination. the decision of a district hearing officer on an employee's application filed under division (A)(1), (2), and (6) of this section is final.~~

~~(7) Notwithstanding divisions (A)(3) through (6) of this section, the determination of an employee's percentage of permanent partial impairment shall be made in accordance with division (A)(7) of this section, upon the written agreement by an employee and employer to utilize the alternative method of determination provided in division (A)(7) of this section. Within seven days after receipt of the written agreement, the administrator shall assign a physician from the impairment evaluation panel within the bureau medical section to conduct a medical examination of the employee and send written notice to the employee and employer of that assignment. The employee and employer each shall select a physician from the impairment evaluation panel who shall serve as consultants to the assigned physician if the employee or employer objects to the assigned physician's determination.~~

~~Within twenty-one days after assignment, the assigned physician shall conduct a medical examination of the employee and provide to the administrator a report of the medical examination stating the employee's percentage of permanent partial impairment resulting from the allowed conditions in the claim under the most recent edition of the American medical association's guides to the evaluation of permanent impairment.~~

immediately upon receipt of the report, the administrator shall send a copy of the report to the employee and employer.

within twenty-one days after receipt of the report, an employee or employer may send written notice to the administrator objecting to the report. if a written notice of objection is not timely received, the assigned physician's determination of the percentage of permanent partial impairment of an employee is final, Notwithstanding section 4123.511 of the Revised Code. if a written notice of objection is timely received, the administrator shall provide a copy of the assigned physician's report to the consulting physicians selected by the employee and employer, within seven days after receipt of the objection.

Within twenty-one days after receipt of the report, both consulting physicians shall confer with the assigned physician and jointly, on the basis of the opinion of a majority of the physicians, issue a final report stating the employee's percentage of permanent partial impairment resulting from the allowed conditions in the claim under the most recent edition of the American medical association's guides to the evaluation of permanent impairment. Within fourteen days after receipt of the final report, the administrator shall send a copy of the final report to the employee and employer. Notwithstanding section 4123.511 of the Revised Code, the percentage of permanent partial impairment of an employee stated in the final report issued pursuant to division (A)(7) of this section is final.

(8) Compensation payable under this division (A) of this section accrues and is payable to the employee from the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or, for occupational diseases, the date of the diagnosis of the occupational disease. The employee shall receive sixty-six and two-THIRDS per cent of the employee's average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage for the number of weeks that equals the percentage of two hundred weeks. If the percentage of the permanent impairment of the employee equals or exceeds ninety per cent, compensation for permanent partial impairment shall be paid for two hundred weeks. No award shall be made under division (A) of this section based upon a percentage of impairment that, when taken with all other percentages of permanent impairment, exceeds one hundred per cent. Notwithstanding division (H) of section 4123.511 of the Revised Code, the bureau or a self-insuring employer shall pay a permanent partial impairment award within twenty-one days after the date on which an order fixing the

employee's percentage of permanent partial impairment becomes final.

As used in this division, "date of disease" means the date an occupational disease is first diagnosed by a licensed physician, or for an occupational disease described in divisions (A) through (AA) of section 4123.68 of the Revised Code or other occupational disease that results from exposure to fibrosis-producing or toxic dusts, fumes, mists, vapors, gases, or liquids, or other toxic materials, or a combination of those, the date that the employee first misses work as a result of the occupational disease.

(9) When an award under ~~this~~ division (A) of this section has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee, and if there are no children surviving, then to other dependents as the administrator determines.

(B) In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall continue during the periods provided in the following schedule:

For the loss of a thumb, sixty weeks.

For the loss of a first finger, commonly called index finger, thirty-five weeks.

For the loss of a second finger, thirty weeks.

For the loss of a third finger, twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one-third of the finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two-thirds of the finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries)

which makes any of the fingers, thumbs, or parts of either useless, the same number of weeks apply to the members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers by amputation or ankylosis and the nature of ~~his~~ the claimant's employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or ~~disability~~ impairment resulting from the loss of fingers, or loss of use of fingers, exceeds the normal handicap or ~~disability~~ impairment resulting from the loss of fingers, or loss of use of fingers, the administrator may take that fact into consideration and increase the award of compensation accordingly, but the award made shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

For the loss of one of the toes other than the great toe, ten weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two-thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one-half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the administrator shall make an award of compensation as ~~it~~ the administrator deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of five thousand dollars. For the purpose of making the award, it is not material whether the employee is gainfully employed in any occupation or trade at the time of the administrator's determination.

When an award under this division has been made prior to the death of an employee all unpaid installments accrued or to accrue under the provisions of the award shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to ~~his~~ the employee's death, the administrator shall make an award in accordance with this division for the loss which shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

(C) Compensation for partial ~~disability~~ impairment under divisions (A) and (B) of this section is in addition to the compensation paid the employee pursuant to section 4123.56 of the Revised Code. A claimant may receive compensation under divisions (A) and (B) of this section. No employee may receive compensation under division (A) of this section or receive a medical examination provided for by this section during the time in which that employee is receiving compensation under section 4123.58 of the Revised Code in any claim or is receiving compensation under section 4123.56 of the Revised Code on the same claim in which the employee is seeking compensation under this section. The employee shall list on the application specified in divisions (A)(1) and (2) of this section the claim numbers of all other claims for which the employee is a claimant.

In all cases arising under division (B) of this section, if it is determined by any one of the following: (1) the amputee clinic at University hospital, Ohio state university; (2) the rehabilitation services commission; (3) an amputee clinic or prescribing physician approved by the administrator or ~~his~~ the administrator's designee, that an injured or ~~disabled~~ impaired employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether the appliance or its repair will be serviceable in the vocational

rehabilitation of the injured employee, and regardless of whether the employee has returned to or can ever again return to any gainful employment, the bureau shall pay the cost of the artificial appliance or its repair out of the surplus created by division (B) of section 4123.34 of the Revised Code.

In those cases where a rehabilitation services commission recommendation that an injured or ~~disabled~~ impaired employee is in need of an artificial appliance would conflict with their state plan, adopted pursuant to the "Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the administrator or ~~his~~ the administrator's designee or the bureau may obtain a recommendation from an amputee clinic or prescribing physician that they determine appropriate.

(D) If an employee ~~of a state fund employer~~ makes application for a finding and ~~the administrator finds that he has~~ is found to have contracted silicosis as defined in division (X), or coal miners' pneumoconiosis as defined in division (Y), or asbestosis as defined in division (AA) of section 4123.68 of the Revised Code, and it is found that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust, asbestos, or coal dust and if the employee, after the finding, has changed or shall change ~~his~~ the employee's occupation to an occupation in which the exposure to silica dust, asbestos, or coal dust is substantially decreased, ~~the administrator shall allow to the employee~~ shall receive an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of one hundred weeks immediately following the expiration of the period of thirty weeks ~~the administrator shall allow~~, the employee shall receive sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such employee is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the employee is employed in an occupation in which the exposure to silica dust, asbestos, or coal dust is not substantially less than the exposure in the occupation in which ~~he~~ the employee was formerly employed or for any period during which the employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis, asbestosis, or coal miners' pneumoconiosis. An award for change of occupation for a coal miner who has contracted coal miners'

osis may be granted under this division even though ~~he~~ the coal miner continues ~~his~~ employment with the same employer, so long as ~~his~~ the coal miner's employment subsequent to the change is such that ~~his~~ the coal miner's exposure to coal dust is substantially decreased and a change of occupation is certified by the claimant as permanent. ~~The administrator may accord to the employee medical~~ Medical and other benefits shall be paid to the employee in accordance with section 4123.66 of the Revised Code.

(E) If a ~~fire-fighter~~ firefighter or police officer makes application for a finding and the administrator finds that ~~he~~ the firefighter or police officer has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of the ~~fire-fighter's~~ firefighter's or police officer's occupation is medically advisable in order to decrease substantially further exposure to smoke, toxic gases, chemical fumes, and other toxic vapors, and if the ~~fire-fighter~~ firefighter, or police officer, after the finding, has changed or changes ~~his~~ occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the administrator shall allow to the ~~fire-fighter~~ firefighter or police officer an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of the period of thirty weeks the administrator shall allow the ~~fire-fighter~~ firefighter or police officer sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such ~~fire-fighter~~ firefighter or police officer is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the ~~fire-fighter~~ firefighter or police officer is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which ~~he~~ the firefighter or police officer was formerly employed or for any period during which the ~~fire-fighter~~ firefighter or police officer may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The administrator may accord to the ~~fire-fighter~~ firefighter or police officer medical and other benefits in accordance with section 4123.66 of the Revised Code.

(F) An order issued under division (B), (D), or (E) of this section is

appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Sec. 4123.58. (A) In cases of permanent total ~~disability~~ impairment, the employee shall receive an award to continue until ~~his~~ death in the amount of sixty-six and two-thirds per cent of ~~his~~ the employee's average weekly wage, but, except as otherwise provided in division (B) of this section, not more than a maximum amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, nor not less than a minimum amount of weekly compensation which is equal to fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, unless the employee's average weekly wage is less than fifty per cent of the statewide average weekly wage at the time of the injury, in which event ~~he~~ the employee shall receive compensation in an amount equal to ~~his~~ the employee's average weekly wage. Permanent total impairment means that the physical or mental limitations that directly result from the allowed conditions in the employee's claim or claims prevent the employee from engaging in sustained remunerative employment. A staff hearing officer may consider an employee's age in determining WHETHER the employee is prevented from engaging in sustained remunerative employment or from acquiring the capacity to engage in sustained remunerative employment through training, rehabilitation, education, or other similar efforts, subject to both of the following:

(1) An employee is not entitled to compensation for permanent total impairment when the employee's age is the primary reason that the employee is prevented from engaging in or from acquiring the capacity to engage in sustained remunerative employment;

(2) A staff hearing officer may determine whether an employee is entitled to compensation for permanent total impairment when the employee's age is a reason, but not the primary reason, that the employee is prevented from engaging in or from acquiring the capacity to engage in sustained remunerative employment.

(B) In the event the weekly workers' compensation amount when combined with disability benefits received pursuant to the Social Security Act is less than the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, then the maximum amount of weekly compensation shall be the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code. At any time that social security disability benefits terminate or are reduced, the workers' compensation award shall be recomputed to pay the maximum amount

permitted under this division.

(C) The loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, constitutes total and permanent ~~disability~~ impairment, to be compensated according to this section. Compensation payable under this section for permanent total ~~disability~~ impairment is in addition to benefits payable under division (B) of section 4123.57 of the Revised Code.

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

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

(B) If there are wholly dependent persons at the time of the death, the weekly payment is sixty-six and two-thirds per cent of the average weekly wage, but not to exceed a maximum aggregate amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, and not in any event less than a minimum amount of weekly compensation which is equal to fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, regardless of the average weekly wage; provided however, that if the death is due to injury received or occupational disease first diagnosed after January 1, 1976, the weekly payment is sixty-six and two-thirds per cent of the average weekly wage but not to exceed a maximum aggregate amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code; provided that when any claimant is receiving total disability or impairment compensation at the time of death the wholly dependent person is eligible for the maximum compensation provided for in this section. Where there is more than one person who is wholly dependent at the time of the death of the employee, the administrator of workers' compensation shall promptly apportion the weekly amount of compensation payable under this section among the dependent persons as provided in division (D) of this section.

(1) The payment as provided in this section shall continue from the date of death of an injured, impaired, or disabled employee until the death or remarriage of such dependent spouse. If the dependent spouse remarries, an amount equal to two years of compensation benefits at the weekly amount determined to be applicable to and being paid to the dependent spouse shall

be paid in a lump sum to such spouse and no further compensation shall be paid to such spouse.

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

(a) Reaches eighteen years of age;

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

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

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

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

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

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

It is presumed that there is sufficient dependency to entitle a surviving natural parent or surviving natural parents, share and share alike, with whom the decedent was living at the time of ~~his~~ death, to a total minimum award of ~~three at least five~~ thousand dollars.

The administrator may take into consideration any circumstances which, at the time of the death of the decedent, clearly indicate prospective dependency on the part of the claimant and potential support on the part of

the decedent. No person shall be considered a prospective dependent unless such person is a member of the family of the deceased employee and bears to ~~him~~ the decedent the relation of surviving spouse, lineal descendant, ancestor, ~~or~~ brother, or sister. The total award for any or all prospective dependency to all such claimants, except to a natural parent or natural parents of the deceased, shall not exceed ~~three~~ five thousand dollars to be apportioned among them as the administrator orders.

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

(E) An order issued by the administrator under this section is appealable pursuant to sections 4123.511 to 4123.512 of the Revised Code.

Sec. 4123.60. (A) Benefits in case of death shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as the administrator of workers' compensation determines. The administrator may apportion the benefits among the dependents in such manner as ~~he~~ the administrator deems just and equitable. Payment to a dependent subsequent in right may be made, if the administrator deems it proper, and operates to discharge all other claims therefor. The dependents or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the administrator.

In all cases of death where the dependents are a surviving spouse and one or more children, it is sufficient for the surviving spouse to apply to the administrator on behalf of the spouse and minor children. In cases where all the dependents are minors, a guardian or next friend of such minor dependents shall apply.

In all cases where an award had been made on account of temporary disability, ~~or~~ permanent partial impairment, or total disability or impairment, in which there remains an unpaid balance, representing payments accrued and due to the decedent at the time of ~~his~~ death, the administrator ~~may~~, after satisfactory proof has been made warranting such action, may award or pay any unpaid balance of such award to such of the dependents of the decedent, or for services rendered on account of the last illness or death of ~~such~~ that decedent, as the administrator determines in accordance with the circumstances in each ~~such~~ case. If the decedent would have been lawfully entitled to have applied for an award at the time of ~~his~~ death, the

nistrator ~~may~~, after satisfactory proof to warrant an award and payment, may award and pay an amount, not exceeding the compensation which the decedent might have received, but for ~~his~~ the decedent's death, for the period prior to the date of ~~his~~ death, to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the administrator determines in accordance with the circumstances in each such case, but such payments may be made only in cases in which application for compensation was made in the manner required by this chapter, during the lifetime of such injured, impaired, or disabled person, or within one year after the death of ~~such~~ that injured, impaired, or disabled person.

An order issued by the administrator under this ~~section~~ division is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

(B) The death of a claimant who is entitled to payment under a settlement agreed to and effective in accordance with section 4123.65 Of the Revised Code does not abate that settlement. Payment of that settlement shall be made to the dependents of the decedent or, if there are no dependents, to the claimant's estate.

Sec. 4123.61. The average weekly wage of an injured employee at the time of the injury ~~or at the time disability due to the occupational disease begins~~ is the basis upon which to compute benefits. For occupational disease claims, the average weekly wage at the date of disease is the basis upon which to compute benefits.

In cases of temporary total disability the compensation for the first twelve weeks for which compensation is payable shall be based on the full weekly wage of the claimant at the time of the injury or at the ~~time disability due to occupational~~ date of disease ~~begins~~; when a factory, mine, or other place of employment is working short time in order to divide work among the employees, the bureau of workers' compensation shall take that fact into consideration when determining the wage for the first twelve weeks of temporary total disability.

Compensation for all further temporary total disability shall be based as provided for permanent ~~disability~~ impairment claims.

In death, permanent total ~~disability~~ impairment claims, permanent partial ~~disability~~ impairment claims, and impairment of earnings claims, the claimant's or the decedent's average weekly wage for the year preceding the injury or AT the date ~~the disability due to the occupational~~ of disease ~~begins~~ is the weekly wage upon which compensation shall be based. In ascertaining the average weekly wage for the year previous to the injury; or the date ~~the~~

~~disability due to the occupational of~~ disease ~~begins~~, any period of unemployment due to sickness, industrial depression, strike, lockout, or other cause beyond the employee's control shall be eliminated.

In cases where there are special circumstances under which the average weekly wage cannot justly be determined by applying this section, the administrator of workers' compensation, in determining the average weekly wage in such cases, shall use such method as will enable ~~him~~ the administrator to do substantial justice to the claimants, provided that the administrator shall not adjust the average weekly wage for or compensation awarded to a claimant pursuant to this chapter for any period of time in which the claimant is enrolled as a full- or part-time student in a public or private college or university, including a technical college created pursuant to Chapter 3357. of the Revised Code or a community college as defined in section 3354.01 of the Revised Code.

A determination made by the administrator under this section is appealable pursuant to section 4123.511 Of the Revised Code, but it is not appealable to court under section 4123.512 Of the Revised Code.

As used in this section, "date of disease" means the date An occupational disease is first diagnosed by a licensed physician, or for an occupational disease described in divisions (A) through (AA) of section 4123.68 of the Revised Code or other occupational disease that results from exposure to fibrosis-producing or toxic dusts, fumes, mists, vapors, gases, or liquids, or other toxic materials, or a combination of those, the date that the claimant first misses work as a result of the occupational disease.

Sec. 4123.62. (A) If it is established that an injured, ~~impaired~~, or disabled employee was of such age and experience when injured, ~~impaired~~, or disabled as that under natural conditions ~~his~~ the employee's wages would be expected to increase, the administrator of workers' compensation may consider that fact in arriving at ~~his~~ the employee's average weekly wage, except that the administrator shall not adjust the average weekly wage or compensation awarded to an employee pursuant to this chapter for any period of time in which the employee is enrolled as a full- or part-time student in a public or private college or university, including a technical college created pursuant to Chapter 3357. Of the Revised Code or a community college as defined in section 3354.01 of the Revised Code.

(B) On each first day of January, the current maximum monthly benefit amounts provided in sections 4123.412, 4123.413, and 4123.414 of the Revised Code in injury cases shall be adjusted based on the United States department of labor's national consumer price index. The percentage increase in the cost of living using the index figure for the first day of

September of the preceding year and the first day of September of the year preceding that year shall be applied to the maximums in effect on the preceding thirty-first day of December to obtain the increase in the cost of living during that year.

In determining the increase in the maximum benefits for any year after 1972, the base shall be the national consumer price index on the first day of September of the preceding year. The increase in the index for the applicable twelve-month period shall be determined and shall be divided by the base used. The resulting percentage shall be applied to the existing maximums to arrive at the new maximums.

(C) Effective January 1, 1974, and each first day of January thereafter, the current maximum weekly benefit amounts provided in sections 4123.56, 4123.58, and 4123.59, and division (B) of section 4123.57 of the Revised Code shall be adjusted based on the increase or decrease in the statewide average weekly wage.

"Statewide average weekly wage" means the average weekly earnings of all workers in Ohio employment subject to Chapter 4141. of the Revised Code as determined as of the first day of September for the four full calendar quarters preceding the first day of July of each year, by the administrator of the bureau of employment services.

The statewide average weekly wage to be used for the determination of compensation for any employee who sustains an injury, ~~or death who dies,~~ or who contracts an occupational disease with a date of disease that arises during the subsequent calendar year beginning with the first day of January, shall be the statewide average weekly wage so determined as of the prior first day of September adjusted to the next higher even multiple of one dollar.

Any change in benefit amounts is effective with respect to injuries sustained, occupational diseases contracted, and deaths occurring during the calendar year for which adjustment is made.

In determining the change in the maximum benefits for any year after 1978, the base shall be the statewide average weekly wage on the first day of September of the preceding year.

As used in this division, "date of disease" means the date an occupational disease is first diagnosed by a licensed physician, or for an occupational disease described in divisions (A) through (AA) of section 4123.68 of the Revised Code, or other occupational disease that results from exposure to fibrosis-producing or toxic dusts, fumes, mists, vapors, gases, or liquids, or other toxic materials, or a combination of those, the date that the employee first misses work as a result of the occupational disease.

Sec. 4123.64. (A) The administrator of workers' compensation, under special circumstances, and when the same is deemed advisable for the purpose of rendering the injured, impaired, or disabled employee financial relief or for the purpose of furthering ~~his~~ the employee's rehabilitation, may commute payments of compensation or benefits to one or more lump-sum payments.

(B) The administrator shall adopt rules which set forth the policy for awarding lump sum payments. The rules shall:

(1) Enumerate the allowable purposes for payments and the conditions for making such awards;

(2) Enumerate the maximum reduction in compensation allowable;

(3) Enumerate the documentation necessary to award a lump-sum payment;

(4) Require that all checks include the claimant as a payee, except where the check is for the payment of attorney's fees in accordance with section 4123.06 of the Revised Code, in which case the attorney shall be named as the only payee on the check;

(5) Require a fully completed and current application including notary and seal; and

(6) Specify procedures to make a claimant aware of the reduction in amount of compensation which will occur.

(C) An order of the administrator issued under this section is appealable pursuant to section 4123.551 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Sec. 4123.65. (A) A state fund employer or the employee of such an employer may file an application with the administrator of workers' compensation for approval of a final settlement of a claim under this chapter. The application shall include the settlement agreement, and except as otherwise provided in this division, be signed by the claimant and employer, and clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable and that the parties agree to the terms of the settlement agreement provided that the. A claimant may file an application for an agreement without an employer's signature. If a claimant files an agreement without an employer's signature, and the employer still is doing business in this state, the administrator shall send written notice of the application to the employer immediately upon receipt of the application, and a second written notice within forty-five days after the first notice is sent, if the employer does not respond to the first notice. If the employer fails to respond to the notice within sixty days after receipt of the notice, or if the claim that is the subject of the agreement no longer remains in the accident

or occupational disease experience of the employer, the agreement need not contain the employer's signature. An agreement need not be signed by ~~the an~~ employer ~~if the employer~~ who is no longer doing business in ~~Ohio~~ this state. If a state fund employer or an employee of such an employer has not filed an application for a final settlement under this division, the administrator may file an application on behalf of the employer or the employee, provided that the administrator gives notice of the filing to the employer and the employee and to the representative of record of the employer and of the employee immediately upon the filing. An application filed by the administrator shall contain all of the information and signatures required of an employer or an employee who files an application under this division. Every self-insuring employer that enters into a final settlement agreement with an employee shall mail, within seven days of executing the agreement, a copy of the agreement to the administrator and the employee's representative. The administrator shall place the agreement into the claimant's file.

(B) Except as provided in divisions (C) and (D) of this section, a settlement agreed to under this section is binding upon all parties thereto and as to items, injuries, and occupational diseases to which the settlement applies.

(C) No settlement agreed to under division (A) of this section or agreed to by a self-insuring employer and the self-insuring employer's employee shall take effect until thirty days after the administrator approves the settlement for state fund employees and employers, or after the self-insuring employer and employee sign the final settlement agreement. During the thirty-day period, the employer, employee, or administrator, for state fund settlements, and the employer or employee, for self-insuring settlements, may withdraw consent to or may object to the settlement by an employer providing written notice to the employer's employee and the administrator or by an employee providing written notice to the employee's employer and the administrator, or by the administrator providing written notice to the state fund employer and employee.

(D) At the time of agreement to any final settlement agreement under division (A) of this section or agreement between a self-insuring employer and the self-insuring employer's employee, in cases in which one or more parties to the agreement are unrepresented, the administrator, for state fund settlements, and the self-insuring employer, for self-insuring settlements, immediately shall send a copy of the agreement to the industrial commission who shall assign the matter to a staff hearing officer. The staff hearing officer shall determine, within the time limitations specified in division (C) of this section, whether the settlement agreement is or is not a ~~gross~~

~~is a~~ ~~carriage of justice~~ clearly unfair. If the staff hearing officer determines within that time period that the settlement agreement is clearly unfair, the staff hearing officer shall issue an order disapproving the settlement agreement. If the staff hearing officer determines that the settlement agreement is not clearly unfair or fails to act within those time limits, the settlement agreement is approved.

(E) A settlement entered into under this section may pertain to one or more claims of a claimant, or one or more parts of a claim, or the compensation or benefits pertaining to either, or any combination thereof, provided that nothing in this section shall be interpreted to require a claimant to enter into a settlement agreement for every claim that has been filed with the bureau of workers' compensation by that claimant under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

(F) A settlement entered into under this section is not appealable under section 4123.511 or 4123.512 of the Revised Code.

(G) For purposes of determining whether a party is unrepresented as specified in division (D) of this section, a party is considered represented only if the party has the services of one of the following persons:

(1) An attorney admitted to the practice of law in this state;

(2) A duly authorized representative of an employee organization recognized by the employer for collective bargaining purposes;

(3) A person regularly engaged in the business of providing workers' compensation-related services to employers;

(4) An employee of the self-insuring employer whose job duties or responsibilities include participation in the administration of the self-insuring employer's workers' compensation program.

Sec. 4123.651. (A) The employer of a claimant who is injured, impaired, or disabled in the course of ~~his~~ the claimant's employment may require, without the approval of the administrator or the industrial commission, that the claimant be examined by a physician of the employer's choice one time upon any issue asserted by the employee or a physician of the employee's choice or which is to be considered by the commission. Any further requests for medical examinations shall be made to the commission which shall consider and rule on the request. The employer shall pay the cost of any examinations initiated by the employer.

(B) The bureau of workers' compensation shall prepare a form for the release of medical information, records, and reports relative to the issues necessary for the administration of a claim under this chapter. The claimant promptly shall provide a current signed release of the information, records, and reports when requested by the employer. The employer promptly shall

provide copies of all medical information, records, and reports to the bureau and to the claimant or ~~his~~ the claimant's representative upon request.

(C) If, without good cause, an employee refuses to submit to any examination scheduled under this section or refuses to release or execute a release for any medical information, record, or report that is required to be released under this section and involves an issue pertinent to the condition alleged in the claim, ~~his~~ the employee's right to have ~~his~~ the claim for compensation or benefits considered, if ~~his~~ the claim is pending before the administrator, the commission, or a district or staff hearing officer, or to receive any payment for compensation or benefits previously granted, is suspended during the period of refusal.

(D) No bureau or commission employee shall alter any medical report obtained from a health care provider the bureau or commission has selected or cause or request the health care provider to alter or change a report. The bureau and commission shall make any request for clarification of a health care provider's report in writing and shall provide a copy of the request to the affected parties and their representatives at the time of making the request.

Sec. 4123.66. (A)(1) In addition to the compensation provided for in this chapter, the administrator of workers' compensation shall disburse and pay from the state insurance fund the amounts for medical, nurse, and hospital services and medicine as ~~he~~ the administrator deems proper, and, in case death ensues from the injury or occupational disease, ~~he~~ the administrator shall disburse and pay from the fund reasonable funeral expenses in an amount ~~not to exceed thirty-two hundred equal to five thousand~~ dollars or the total cost of the funeral, whichever is less. The bureau of workers' compensation shall reimburse anyone, whether dependent, volunteer, or otherwise, who pays the funeral expenses of any employee whose death ensues from any injury or occupational disease as provided in this section. The administrator may adopt rules, with the advice and consent of the workers' compensation oversight commission, with respect to furnishing medical, nurse, and hospital service and medicine to injured, impaired, or disabled employees entitled thereto, and for the payment therefor. In case an injury or industrial accident that injures an employee also causes damage to the employee's eyeglasses, artificial teeth or other denture, or hearing aid, or in the event an injury or occupational disease makes it necessary or advisable to replace, repair, or adjust the same, the bureau shall disburse and pay a reasonable amount to repair or replace the same.

(2) If the administrator determines that it is in the employee's best

erest to receive health care in the employee's home, the administrator shall disburse and pay from the state insurance fund, or the employee's self-insuring employer, as appropriate, shall pay the amounts necessary for in-home health care, including the cost of services necessary on a continuous basis, up to and including twenty-four hours a day, provided that the estimated cost of that in-home health care does not exceed the estimated cost of receiving the necessary health care outside of the employee's home. A DETERMINATION MADE UNDER DIVISION (A)(2) OF THIS SECTION IS APPEALABLE PURSUANT TO SECTION 4123.511 OF THE REVISED CODE BUT IS NOT APPEALABLE TO COURT UNDER SECTION 4123.512 OF THE REVISED CODE.

(B)(1) If an employer or a welfare plan has provided to or on behalf of an employee any benefits or compensation for an injury or occupational disease and that injury or occupational disease is determined compensable under this chapter, the employer or a welfare plan may request that the administrator reimburse the employer or welfare plan for the amount the employer or welfare plan paid to or on behalf of the employee in compensation or benefits. The administrator shall reimburse the employer or welfare plan for the compensation and benefits paid if, at the time the employer or welfare plan provides the benefits or compensation to or on behalf of employee, the injury or occupational disease had not been determined to be compensable under this chapter and if the employee was not receiving compensation or benefits under this chapter for that injury or occupational disease. The administrator shall reimburse the employer or welfare plan in the amount that the administrator would have paid to or on behalf of the employee under this chapter if the injury or occupational disease originally would have been determined compensable under this chapter. If the employer is a merit-rated employer, the administrator shall adjust the amount of premium next due from the employer according to the amount the administrator pays the employer. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, to implement this division.

(2) As used in this division, "welfare plan" has the same meaning as in division (1) of 29 U.S.C.A. 1002.

Sec. 4123.68. Every employee who is disabled or impaired 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 even 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 ~~his~~ the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability, impairment, or death from berylliosis unless the employee has been subjected to injurious exposure to beryllium dust or fumes in ~~his~~ the employee's employment in this state preceding ~~his~~ the employee's disablement or impairment and only in the event of such disability, impairment, or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability, impairment, or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability or impairment 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 impairment or death due to berylliosis, the administrator of workers'

ompensation shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of the disability or impairment, the nature of the disability or impairment, 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 ~~fire fighters~~ 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 fire fighter~~ firefighters or police ~~officer~~ officers caused or induced by the cumulative effect of exposure to heat, the inhalation of smoke, toxic gases, chemical fumes and other toxic substances in the performance of ~~his~~ their duty constitutes a presumption, which may be refuted by affirmative evidence, that such occurred in the course of and arising out of ~~his~~ their employment. For the purpose of this section, "~~fire fighter~~ firefighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

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

Compensation on account of cardiovascular, pulmonary, or respiratory

diseases of ~~fire fighters~~ firefighters and police officers is payable only in the event of temporary total disability, permanent total ~~disability~~ impairment, or death, in accordance with section 4123.56, 4123.58, or 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, impairment, or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability, impairment, or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability or impairment 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 ~~fire fighter~~ firefighter or police officer, or ~~his~~ the dependents of a firefighter or police officer, to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability, impairment, or death due to a cardiovascular, pulmonary, or respiratory disease in the event of failure or omission on the part of the ~~fire fighter~~ 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, impairment, 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 or impairment, the cause of death, and other medical questions connected with the claim. A ~~fire fighter~~ firefighter or police officer shall submit to such examinations, including clinical and x-ray examinations, as the administrator requires. In the event that a ~~fire fighter~~ 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) 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, by biopsy or by autopsy.

(Y) 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 ~~his~~ the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability, impairment, 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 ~~his~~ the employee's employment in this state preceding ~~his~~ the disablement or impairment, 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~~ impairment, 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, impairment, or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability, impairment, 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 or impairment 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 ~~his~~ the employee's dependents to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability, impairment, 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~~ When compensation is requested for disability, impairment, or death due to silicosis, asbestosis, or coal miners' pneumoconiosis, the administrator ~~shall refer~~ may determine whether there is sufficient likelihood that any of those diseases exists, causes disability or impairment, or caused death to warrant referring the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability or impairment, the cause of death, and

other medical questions connected with the claim. In no event shall compensation for disability, impairment, or death due to silicosis, asbestosis, or coal miners' pneumoconiosis be awarded without the claim being referred to a qualified medical specialist for that examination and recommendation. 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.

(Z) 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, impairment, or disability occurred within eight years after the last injurious exposure provided that such eight-year limitation does not apply to disability, impairment, or death from exposure occurring after January 1, 1976. In the event of death following continuous disability or impairment 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.

(AA) 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.

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.

Sec. 4123.70. No compensation shall be awarded on account of disability, impairment, or death from disease suffered by an employee who,

at the time of entering into the employment from which the disease is claimed to have resulted, willfully and falsely represented ~~himself~~ the employee as not having previously suffered from such disease. Compensation shall not be awarded on account of both injury and disease, except when the disability or impairment is caused by a disease and an injury, in which event the administrator of workers' compensation may apportion the payment of compensation provided for in sections 4123.56 to 4123.59 of the Revised Code between the funds as in ~~his~~ the administrator's judgment seems just and proper.

If an employee is suffering from both occupational disease and an injury, and the administrator can determine which is causing ~~his~~ the employee's disability or impairment, the administrator shall pay compensation therefor from the proper fund.

Compensation for loss sustained on account of occupational disease by an employee mentioned in division (A)(1) of section 4123.01 of the Revised Code, or the dependents of such employee, shall be paid from the fund provided for in sections 4123.38 to 4123.41 and 4123.48 of the Revised Code.

Compensation for loss sustained on account of a disease by an employee mentioned in division (A)(2) of section 4123.01 of the Revised Code, or the dependents of the employee, shall be paid from the occupational disease fund or by the employer of the employee, if the employer is a self-insuring employer.

Sec. 4123.80. No agreement by an employee to waive ~~his~~ the employee's rights to compensation under this chapter is valid, except that:

(A) An employee who is blind may waive the compensation that may become due ~~him~~ to the employee for injury, impairment, or disability in cases where the injury, impairment, or disability may be directly caused by or due to ~~his~~ that blindness. The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, may adopt and enforce rules governing the employment of such persons and the inspection of their places of employment.

(B) An employee may waive ~~his~~ the employee's rights to compensation or benefits as authorized pursuant to division (C)(3) of section 4123.01 or section 4123.15 of the Revised Code.

No agreement by an employee to pay any portion of the premium paid by ~~his~~ the employee's employer into the state insurance fund is valid.

Sec. 4123.82. (A) All contracts and agreements are void which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workers or their dependents for death, injury,

or occupational disease occasioned in the course of the workers' employment, or which provide that the insurer shall pay the compensation, or which indemnify the employer against damages when the injury, disease, or death arises from the failure to comply with any lawful requirement for the protection of the lives, health, and safety of employees, or when the same is occasioned by the willful act of the employer or any of ~~his~~ the employer's officers or agents, or by which it is agreed that the insurer shall pay any such damages. No license or authority to enter into any such agreements or issue any such policies of insurance shall be granted or issued by any public authority in this state. Any corporation organized or admitted under the laws of this state to transact liability insurance as defined in section 3929.01 of the Revised Code may by amendment of its articles of incorporation or by original articles of incorporation, provide therein for the authority and purpose to make insurance in states, territories, districts, and counties, other than the state of Ohio, and in the state of Ohio in respect of contracts permitted by division (B) of this section, indemnifying employers against loss or liability for payment of compensation to workers and employees and their dependents for death, injury, or occupational disease occasioned in the course of the employment and to insure and indemnify employers against loss, expense, and liability by risk of bodily injury or death by accident, disability, impairment, sickness, or disease suffered by workers and employees for which the employer may be liable or has assumed liability.

(B) Notwithstanding division (A) of this section:

(1) No contract because of that division is void which undertakes to indemnify a self-insuring employer against all or part of such employer's loss in excess of at least fifty thousand dollars from any one disaster or event arising out of the employer's liability under this chapter, but no insurance corporation ~~shall~~, directly or indirectly, SHALL represent an employer in the settlement, adjudication, determination, allowance, or payment of claims. The superintendent of insurance shall enforce this prohibition by such disciplinary orders directed against the offending insurance corporation as the superintendent of insurance deems appropriate in the circumstances and the administrator of workers' compensation shall enforce this prohibition by such disciplinary orders directed against the offending employer as the administrator deems appropriate in the circumstances, which orders may include revocation of the insurance corporation's right to enter into indemnity contracts and revocation of the employer's status as a self-insuring employer.

(2) The administrator may enter into a contract of indemnity with any

such employer upon such terms, payment of such premium, and for such amount and form of indemnity as the administrator determines and the administrator may procure reinsurance of the liability of the public and private funds under this chapter, or any part of the liability in respect of either or both of the funds, upon such terms and premiums or other payments from the fund or funds as the administrator deems prudent in the maintenance of a solvent fund or funds from year to year. When making the finding of fact which the administrator is required by section 4123.35 of the Revised Code to make with respect to the financial ability of an employer, no contract of indemnity, or the ability of the employer to procure such a contract, shall be considered as increasing the financial ability of the employer.

Sec. 4123.84. (A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:

(1) Written notice of the specific part or parts of the body claimed to have been injured has been made to the industrial commission or the bureau of workers' compensation;

(2) The employer, with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation for total disability or impairment;

(3) In the event the employer is a self-insuring employer, one of the following has occurred:

(a) Written notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau or the employer has furnished treatment by a licensed physician in the employ of an employer, provided, however, that the furnishing of such treatment shall not constitute a recognition of a claim as compensable, but shall do no more than satisfy the requirements of this section;

(b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, provided that the payment or furnishing of the compensation or benefits shall not constitute a recognition of a claim or any condition in a claim as compensable. That payment, that compensation, or those benefits shall do no more than satisfy the requirements of this section.

(4) Written notice of death has been given to the commission or bureau.

(B) The bureau shall provide printed notices quoting in full division (A) of this section, and every self-insuring employer shall post and maintain at all times one or more of the notices in conspicuous places in the workshop

or places of employment.

(C) The commission has continuing jurisdiction as set forth in section 4123.52 of the Revised Code over a claim which meets the requirement of this section, including jurisdiction to award compensation or benefits for loss or impairment of bodily functions developing in a part or parts of the body not specified pursuant to division (A)(1) of this section, if the commission finds that the loss or impairment of bodily functions was due to and a result of or a residual of the injury to one of the parts of the body set forth in the written notice filed pursuant to division (A)(1) of this section.

(D) Any claim pending before the administrator, the commission, or a court on December 11, 1967, in which the remedy is affected by this section is governed by this section.

(E) Notwithstanding the requirement that the notice required to be given to the bureau, commission, or employer under this section is to be in writing, the bureau may accept, assign a claim number, and process a notice provided by any method of telecommunication. Immediately upon receipt of the telecommunicated notice, the bureau shall send a written notice to the employer of the bureau's receipt of the telecommunicated notice. Within fifteen days after receipt of the notice, the employer ~~may~~ in writing either may verify or not verify the telecommunicated notice. If the bureau does not receive the written notification from the employer or receives a written notification verifying the telecommunicated notice within such time period, the claim is validly filed and such telecommunicated notice tolls the statute of limitations in regard to the claim filed and is considered to meet the requirements of written notice required by this section.

(F) As used in division (A)(3)(b) of this section, "benefits" means payments by a self-insuring employer to, or on behalf of, an employee for a hospital bill, a medical bill to a licensed physician or hospital, or an orthopedic or prosthetic device.

Sec. 4123.85. In all cases of occupational disease, or death resulting from occupational disease, claims for compensation or benefits are forever barred unless, within two years ~~after the disability due to the disease began, or within such longer period as does not exceed six months~~ after first diagnosis of the occupational disease by a licensed physician or within two years after death occurs, application is made to the industrial commission or the bureau of workers' compensation or to the employer if ~~he~~ the employer is a self-insuring employer.

Sec. 4123.90. ~~(A) The bureau administrator of workers' compensation, industrial commission workers' compensation hearing officers, or any other person or~~ (A) The bureau administrator of workers' compensation, industrial commission workers' compensation hearing officers, or any other person or body constituted by the statutes of this state, or any court of this

state, in awarding compensation to the dependents of employees, or others killed in ~~Ohio~~ this state, shall not make any discrimination against the ~~widows surviving spouses~~, children, or other dependents who reside in a foreign country. The ~~bureau administrator, commission hearing officer~~, or any other board, ~~person~~, or court, in determining the amount of compensation to be paid to the dependents of killed employees, shall pay to the alien dependents residing in foreign countries the same benefits as to those dependents residing in this state.

(B) No employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee filed a claim or instituted, pursued, or testified in any proceedings under ~~the workers' compensation act~~ this chapter or Chapter 4126., 4127., or 4131. Of the Revised Code for an injury or occupational disease which occurred in the course of and arising out of ~~his~~ employment with that employer. ~~Any such~~

An employee affected by a violation of this division may file an action in the court of common pleas ~~court~~ of the county of such employment in which the relief which may be granted shall be limited to reinstatement with back pay, if the action is based upon discharge, or an award for wages lost if based upon demotion, reassignment, or punitive action taken, offset by earnings subsequent to discharge, demotion, reassignment, or punitive action taken, and payments received pursuant to section 4123.56 and Chapter 4141. of the Revised Code plus reasonable attorney fees. The action ~~shall be~~ is forever barred unless filed within one hundred eighty days immediately following the discharge, demotion, reassignment, or punitive action taken, and no action may be instituted or maintained unless the employer has received written notice of a claimed violation of this paragraph within the ninety days immediately following the discharge, demotion, reassignment, or punitive action taken.

Sec. 4123.93. As used in sections 4123.93 and 4123.931 of the Revised Code:

(A) "Claimant" means a person who is eligible to receive compensation or medical benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code, including any dependent or person whose eligibility is the result of an injury to or occupational disease of another person.

(B) "Statutory subrogee" means the administrator of the bureau of workers' compensation, a self-insuring employer, or an employer that contracts for the direct payment of medical services pursuant to division ~~(D)~~ (I) of section 4121.44 of the Revised Code.

(C) "Subrogated amounts" include, but are not limited to, the following:

(1) Amounts recoverable from any third party, notwithstanding any

limitations by the third party concerning its responsibility to make payments in cases involving workers' compensation under Chapter 4121., 4123., 4127., or 4131. of the Revised Code;

(2) Amounts recoverable from a claimant's insurer in connection with underinsured or uninsured motorist coverage, notwithstanding any limitation contained in Chapter 3937. of the Revised Code;

(3) Amounts that a claimant would be entitled to recover from a political subdivision, notwithstanding any limitations contained in Chapter 2744. of the Revised Code.

(D) "Third party" means an individual, private insurer, public or private entity, or public or private program that is or may be liable to make payments to a person without regard to any statutory duty contained in this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

Sec. 4127.03. Every work-relief employee who sustains an injury and the dependents of such as are killed, in the course of and arising out of employment, ~~wheresoever such~~ wherever that injury or death occurs, except when such injury or death is caused by willful misconduct or intent to bring about such injury or death, or when the use of intoxicating liquors or drugs is the proximate cause of such injury or death, is entitled to receive out of the public work-relief employees' compensation fund, compensation, death benefits, medical, nurse, and hospital services, medicine, and funeral expenses, for loss sustained on account of such injury or death, as is provided for by Chapter 4123. of the Revised Code.

Except as provided in section 4127.06 of the Revised Code, no compensation shall be paid from the work-relief employees' compensation fund for or on account of any temporary disability or partial ~~disability~~ impairment; except that in the cases included in the schedule of loss of specific members or sight, set forth in section 4123.57 of the Revised Code, the disability or impairment is deemed to continue for the periods mentioned for each of such cases in that section. In cases where the injury results in the total or partial loss of use of any such member, the disability or impairment is deemed to continue for such proportion of the period fixed for the total loss of a member as the administrator of workers' compensation finds that the actual physical disability or impairment bears to the total loss of such members.

All compensation payable under this chapter shall be paid on the basis of computation provided for in this chapter.

Sec. 4127.06. During periods of temporary disability and partial ~~disability~~ impairment other than that resulting from loss of a member or sight or total or partial loss of use of a member, an injured work-relief

employee shall be paid directly out of the fund from which the employee was receiving relief, the amounts required to meet the budgetary needs of the employee and ~~his~~ the employee's dependents, and in the manner determined by the person or agency having control over or supervision of the fund.

When all of the funds for relief purposes which are available to any employer are exhausted, or when, disability or impairment as a result of the injury is continuous beyond a period of six months, the injured work-relief employee shall be compensated for temporary disability and partial ~~disability~~ impairment out of the public work-relief employees' compensation fund by the bureau of workers' compensation in the same manner and amount as is provided in sections 4127.01 to 4127.14 of the Revised Code for other disabilities and impairments.

Sec. 4141.31. (A) Benefits otherwise payable for any week shall be reduced by the amount of remuneration a claimant receives with respect to such week as follows:

(1) Remuneration in lieu of notice;

(2) Compensation for wage loss under division ~~(B)~~(C) of section 4123.56 of the Revised Code or temporary partial disability under the workers' compensation law of any state or under a similar law of the United States;

(3) Except as provided in section 4141.312 of the Revised Code, payments in the form of retirement, or pension allowances under a plan wholly financed by an employer which payments are paid either directly by the employer, or indirectly through a trust, annuity, insurance fund, or under an insurance contract whether payable upon retirement, termination, or separation from employment, provided that if the claimant has twenty-six weeks or more of employment with a subsequent employer or employers who are not paying him a pension or retirement allowance, then such pension or retirement payments shall not reduce the benefits payable for the week, and provided further that no benefits shall thereafter be charged to the account of the employer who is paying the pension, but instead such benefits shall be charged to the mutualized account except as provided in division (B)(1)(b) of section 4141.241 of the Revised Code if the claimant's separation from the employer was disqualifying under division (D)(2)(a) of section 4141.29 of the Revised Code.

(4) Remuneration in the form of separation or termination pay paid to an employee at the time of ~~his~~ the employee's separation from employment;

(5) Vacation pay or allowance payable under the terms of a labor-management contract or agreement, or other contract of hire, which

payments are allocated to designated weeks.

If payments under this division are paid with respect to a month then the amount of remuneration deemed to be received with respect to any week during such month shall be computed by multiplying such monthly amount by twelve and dividing the product by fifty-two. If there is no designation of the period with respect to which payments to an individual are made under this section then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following ~~his~~ the employee's separation or termination from the employment of the employer making the payment until such amount so paid is exhausted.

If benefits for any week, when reduced as provided in this division, result in an amount not a multiple of one dollar, such benefits shall be rounded to the next lower multiple of one dollar.

Any payment allocated by the employer or the administrator of the bureau of employment services to weeks under division (A)(1), (4), or (5) of this section shall be deemed to be remuneration for the purposes of establishing a qualifying week and a benefit year under divisions (O)(1) and (R) of section 4141.01 of the Revised Code.

(B) Benefits payable for any week shall not be reduced by the amount of remuneration a claimant receives with respect to such week in the form of drill or reserve pay received by a member of the Ohio national guard or the armed forces reserve for attendance at a regularly scheduled drill or meeting.

(C) No benefits shall be paid for any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, provided the disqualifications shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits. A law of the United States providing any payment of any type and in any amounts for periods of unemployment due to lack of work shall be considered an unemployment compensation law of the United States.

(D) Notwithstanding any other provision in this chapter, benefits otherwise payable shall not be reduced by payments that were made to an individual on or after August 1, 1991, pursuant to "The National Defense Authorization Act for Fiscal Years 1992 and 1993," Public Law 102-190, 105 Stat. 1394, 1396, 10 U.S.C.A. 1174a, 1175, in the form of voluntary separation incentive payments and special separation pay.

SECTION 2. That existing sections 2913.48, 4121.121, 4121.32, 4121.34, 4121.35, 4121.36, 4121.38, 4121.44, 4121.47, 4121.61, 4121.67, 4123.01, 4123.032, 4123.033, 4123.07, 4123.25, 4123.27, 4123.28, 4123.34, 4123.343, 4123.35, 4123.352, 4123.411, 4123.412, 4123.413, 4123.414, 4123.416, 4123.419, 4123.511, 4123.512, 4123.52, 4123.54, 4123.541, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, 4123.61, 4123.62, 4123.64, 4123.65, 4123.651, 4123.66, 4123.68, 4123.70, 4123.80, 4123.82, 4123.84, 4123.85, 4123.90, 4123.93, 4127.03, 4127.06, and 4141.31 of the Revised Code are hereby repealed.

SECTION 3. (A) Except as provided in division (B) of this section, the provisions of this act apply to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code arising on and after the effective date of this act.

(B) The following apply to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code pending on the effective date of this act:

(1) The provision in division (B)(1) of section 4123.56 of the Revised Code, as amended by this act, allowing an employer to voluntarily commence payment of compensation for temporary disability;

(2) The provision in division (C)(2) of section 4123.56 of the Revised Code, as amended by this act, allowing an employee to file an application for and receive wage loss compensation pursuant to that division without affecting the employee's application for permanent total impairment compensation;

(3) The provision in division (A) of section 4123.57, as amended by this act, allowing an employee to file an application for the determination of the percentage of the employee's permanent partial impairment after the employee has reached maximum medical improvement.

SECTION 4. The penalties provided for in divisions (B) and (C) of section 4121.444 of the Revised Code apply to any overpayment, billing, or falsification occurring on or after the effective date of this act.

SECTION 5. The amendments to the definition of "occupational disease" made by this act contained in division (F) of section 4123.01 of the Revised Code are not intended and shall not be construed as altering a firefighter's or

police officer's rights to compensation pursuant to division (W) of section 4123.68 of the Revised Code as those rights existed on the effective date of this act by virtue of statute, administrative rule, or judicial decision or a combination of statutes, rules, or decisions.

SECTION 6. The Administrator of Workers' Compensation shall study the incidence of occupational diseases in the health care professions, as the Administrator determines necessary, and the adequacy of Chapters 4121., 4123., 4127., and 4131. of the Revised Code in addressing occupational diseases that arise in those professions. The study shall specifically include latent occupational diseases. The Administrator shall report the results of the study to the Speaker of the House of Representatives and the President of the Senate no later than July 1, 1998.

SECTION 7. The Administrator of Workers' Compensation shall study the quality, thoroughness, and adequacy of the medical examinations conducted by the Bureau of Workers' Compensation's examining physicians who conduct examinations of employees for a determination of employees' percentage of permanent partial impairment. The study shall include an evaluation of the fees charged by those physicians. The Administrator shall report the results of the study to the Speaker of the House of Representatives and the President of the Senate no later than July 1, 1998.

SECTION 8. The Administrator of Workers' Compensation shall study the effect of allowing public employers that meet the criteria for being granted the status of self-insuring employers pursuant to section 4123.35 of the Revised Code to become self-insuring employers and of allowing public employers that employ less than five hundred employees but that otherwise meet all the criteria for being granted the status of self-insuring employers to form pools for the purpose of paying compensation and benefits under Chapters 4121., 4123., 4127., and 4131. of the Revised Code directly, either collectively as a group or by each employer individually. The Administrator shall report the results of the study to the Speaker of the House of Representatives and the President of the Senate no later than October 31, 1997.

SECTION 9. The Administrator of Workers' Compensation shall study vocational rehabilitation as it relates to assisting injured employees return to

work. As part of the study, the Administrator shall examine the relationship between the Bureau of Workers' Compensation, the Industrial Commission, managed care organizations certified under the Health Partnership Program or a Qualified Health Plan, self-insuring employers, and other state agencies assisting injured employees return to work. In addition, the Administrator shall review the current rules of the Bureau and Commission pertaining to vocational rehabilitation and, if necessary, shall recommend changes to these rules to better effectuate the purposes of vocational rehabilitation in returning injured employees to work. The Administrator shall report the results of the study to the Governor, the Speaker of the House of Representatives, the President of the Senate, the Chairperson of the House of Representatives Commerce and Labor Committee, and the Chairperson of the Senate Insurance, Commerce, and Labor Committee, within one year after the effective date of this act.

SECTION 10. Section 4123.54 of the Revised Code, as amended by this act, does not abridge, and shall not be construed as abridging, any rights of employers or employees under federal or state law with respect to drug testing in the workplace.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____