

As Re-referred to the Senate Finance Committee

131st General Assembly

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S. B. No. 5

Senators Patton, Brown

**Cosponsors: Senators LaRose, Gentile, Bacon, Eklund, Lehner, Yuko, Cafaro,
Schiavoni, Manning**

A BILL

To amend sections 4123.01, 4123.026, and 4123.46 of
the Revised Code to make peace officers,
firefighters, and emergency medical workers
diagnosed with post-traumatic stress disorder
arising from employment without an accompanying
physical injury eligible for compensation and
benefits under Ohio's Workers' Compensation Law.

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

Section 1. That sections 4123.01, 4123.026, and 4123.46 of
the Revised Code be amended to read as follows:

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 18
or contract of hire, express or implied, oral or written, 19
including any elected official of the state, or of any county, 20
municipal corporation, or township, or members of boards of 21
education. 22

As used in division (A) (1) (a) of this section, the term 23
"employee" includes the following persons when responding to an 24
inherently dangerous situation that calls for an immediate 25
response on the part of the person, regardless of whether the 26
person is within the limits of the jurisdiction of the person's 27
regular employment or voluntary service when responding, on the 28
condition that the person responds to the situation as the 29
person otherwise would if the person were on duty in the 30
person's jurisdiction: 31

(i) Off-duty peace officers. ~~As used in division (A) (1) (a)~~ 32
~~(i) of this section, "peace officer" has the same meaning as in~~ 33
~~section 2935.01 of the Revised Code.~~ 34

(ii) Off-duty firefighters, ~~whether paid or volunteer, of~~ 35
~~a lawfully constituted fire department.~~ 36

(iii) Off-duty ~~first responders, emergency medical~~ 37
~~technicians basic, emergency medical technicians intermediate,~~ 38
~~or emergency medical technicians paramedic, whether paid or~~ 39
~~volunteer, emergency medical workers of an ambulance service~~ 40
~~organization or emergency medical service organization pursuant~~ 41
~~to Chapter 4765. of the Revised Code.~~ 42

(b) Every person in the service of any person, firm, or 43
private corporation, including any public service corporation, 44
that (i) employs one or more persons regularly in the same 45
business or in or about the same establishment under any 46

contract of hire, express or implied, oral or written, including 47
aliens and minors, household workers who earn one hundred sixty 48
dollars or more in cash in any calendar quarter from a single 49
household and casual workers who earn one hundred sixty dollars 50
or more in cash in any calendar quarter from a single employer, 51
or (ii) is bound by any such contract of hire or by any other 52
written contract, to pay into the state insurance fund the 53
premiums provided by this chapter. 54

(c) Every person who performs labor or provides services 55
pursuant to a construction contract, as defined in section 56
4123.79 of the Revised Code, if at least ten of the following 57
criteria apply: 58

(i) The person is required to comply with instructions 59
from the other contracting party regarding the manner or method 60
of performing services; 61

(ii) The person is required by the other contracting party 62
to have particular training; 63

(iii) The person's services are integrated into the 64
regular functioning of the other contracting party; 65

(iv) The person is required to perform the work 66
personally; 67

(v) The person is hired, supervised, or paid by the other 68
contracting party; 69

(vi) A continuing relationship exists between the person 70
and the other contracting party that contemplates continuing or 71
recurring work even if the work is not full time; 72

(vii) The person's hours of work are established by the 73
other contracting party; 74

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| (viii) The person is required to devote full time to the business of the other contracting party; | 75 76 |
| (ix) The person is required to perform the work on the premises of the other contracting party; | 77 78 |
| (x) The person is required to follow the order of work set by the other contracting party; | 79 80 |
| (xi) The person is required to make oral or written reports of progress to the other contracting party; | 81 82 |
| (xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly; | 83 84 |
| (xiii) The person's expenses are paid for by the other contracting party; | 85 86 |
| (xiv) The person's tools and materials are furnished by the other contracting party; | 87 88 |
| (xv) The person is provided with the facilities used to perform services; | 89 90 |
| (xvi) The person does not realize a profit or suffer a loss as a result of the services provided; | 91 92 |
| (xvii) The person is not performing services for a number of employers at the same time; | 93 94 |
| (xviii) The person does not make the same services available to the general public; | 95 96 |
| (xix) The other contracting party has a right to discharge the person; | 97 98 |
| (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. | 99 100 101 |

Every person in the service of any independent contractor 102
or subcontractor who has failed to pay into the state insurance 103
fund the amount of premium determined and fixed by the 104
administrator of workers' compensation for the person's 105
employment or occupation or if a self-insuring employer has 106
failed to pay compensation and benefits directly to the 107
employer's injured and to the dependents of the employer's 108
killed employees as required by section 4123.35 of the Revised 109
Code, shall be considered as the employee of the person who has 110
entered into a contract, whether written or verbal, with such 111
independent contractor unless such employees or their legal 112
representatives or beneficiaries elect, after injury or death, 113
to regard such independent contractor as the employer. 114

(2) "Employee" does not mean: 115

(a) A duly ordained, commissioned, or licensed minister or 116
assistant or associate minister of a church in the exercise of 117
ministry; 118

(b) Any officer of a family farm corporation; 119

(c) An individual incorporated as a corporation; or 120

(d) An individual who otherwise is an employee of an 121
employer but who signs the waiver and affidavit specified in 122
section 4123.15 of the Revised Code on the condition that the 123
administrator has granted a waiver and exception to the 124
individual's employer under section 4123.15 of the Revised Code. 125

Any employer may elect to include as an "employee" within 126
this chapter, any person excluded from the definition of 127
"employee" pursuant to division (A)(2) of this section. If an 128
employer is a partnership, sole proprietorship, individual 129
incorporated as a corporation, or family farm corporation, such 130

employer may elect to include as an "employee" within this 131
chapter, any member of such partnership, the owner of the sole 132
proprietorship, the individual incorporated as a corporation, or 133
the officers of the family farm corporation. In the event of an 134
election, the employer shall serve upon the bureau of workers' 135
compensation written notice naming the persons to be covered, 136
include such employee's remuneration for premium purposes in all 137
future payroll reports, and no person excluded from the 138
definition of "employee" pursuant to division (A) (2) of this 139
section, proprietor, individual incorporated as a corporation, 140
or partner shall be deemed an employee within this division 141
until the employer has served such notice. 142

For informational purposes only, the bureau shall 143
prescribe such language as it considers appropriate, on such of 144
its forms as it considers appropriate, to advise employers of 145
their right to elect to include as an "employee" within this 146
chapter a sole proprietor, any member of a partnership, an 147
individual incorporated as a corporation, the officers of a 148
family farm corporation, or a person excluded from the 149
definition of "employee" under division (A) (2) of this section, 150
that they should check any health and disability insurance 151
policy, or other form of health and disability plan or contract, 152
presently covering them, or the purchase of which they may be 153
considering, to determine whether such policy, plan, or contract 154
excludes benefits for illness or injury that they might have 155
elected to have covered by workers' compensation. 156

(B) "Employer" means: 157

(1) The state, including state hospitals, each county, 158
municipal corporation, township, school district, and hospital 159
owned by a political subdivision or subdivisions other than the 160

state; 161

(2) Every person, firm, professional employer 162
organization, and private corporation, including any public 163
service corporation, that (a) has in service one or more 164
employees or shared employees regularly in the same business or 165
in or about the same establishment under any contract of hire, 166
express or implied, oral or written, or (b) is bound by any such 167
contract of hire or by any other written contract, to pay into 168
the insurance fund the premiums provided by this chapter. 169

All such employers are subject to this chapter. Any member 170
of a firm or association, who regularly performs manual labor in 171
or about a mine, factory, or other establishment, including a 172
household establishment, shall be considered an employee in 173
determining whether such person, firm, or private corporation, 174
or public service corporation, has in its service, one or more 175
employees and the employer shall report the income derived from 176
such labor to the bureau as part of the payroll of such 177
employer, and such member shall thereupon be entitled to all the 178
benefits of an employee. 179

(C) "Injury" includes any injury, whether caused by 180
external accidental means or accidental in character and result, 181
received in the course of, and arising out of, the injured 182
employee's employment. "Injury" does not include: 183

(1) Psychiatric conditions except ~~where~~ as follows: 184

(a) Where the claimant's psychiatric conditions have 185
arisen from an injury or occupational disease sustained by that 186
claimant ~~or where~~; 187

(b) Where the claimant's psychiatric conditions have 188
arisen from sexual conduct in which the claimant was forced by 189

threat of physical harm to engage or participate; 190

(c) Where the claimant is a peace officer, firefighter, or 191
emergency medical worker and is diagnosed with post-traumatic 192
stress disorder that has been received in the course of, and has 193
arisen out of, the claimant's employment as a peace officer, 194
firefighter, or emergency medical worker. 195

(2) Injury or disability caused primarily by the natural 196
deterioration of tissue, an organ, or part of the body; 197

(3) Injury or disability incurred in voluntary 198
participation in an employer-sponsored recreation or fitness 199
activity if the employee signs a waiver of the employee's right 200
to compensation or benefits under this chapter prior to engaging 201
in the recreation or fitness activity; 202

(4) A condition that pre-existed an injury unless that 203
pre-existing condition is substantially aggravated by the 204
injury. Such a substantial aggravation must be documented by 205
objective diagnostic findings, objective clinical findings, or 206
objective test results. Subjective complaints may be evidence of 207
such a substantial aggravation. However, subjective complaints 208
without objective diagnostic findings, objective clinical 209
findings, or objective test results are insufficient to 210
substantiate a substantial aggravation. 211

(D) "Child" includes a posthumous child and a child 212
legally adopted prior to the injury. 213

(E) "Family farm corporation" means a corporation founded 214
for the purpose of farming agricultural land in which the 215
majority of the voting stock is held by and the majority of the 216
stockholders are persons or the spouse of persons related to 217
each other within the fourth degree of kinship, according to the 218

rules of the civil law, and at least one of the related persons 219
is residing on or actively operating the farm, and none of whose 220
stockholders are a corporation. A family farm corporation does 221
not cease to qualify under this division where, by reason of any 222
devise, bequest, or the operation of the laws of descent or 223
distribution, the ownership of shares of voting stock is 224
transferred to another person, as long as that person is within 225
the degree of kinship stipulated in this division. 226

(F) "Occupational disease" means a disease contracted in 227
the course of employment, which by its causes and the 228
characteristics of its manifestation or the condition of the 229
employment results in a hazard which distinguishes the 230
employment in character from employment generally, and the 231
employment creates a risk of contracting the disease in greater 232
degree and in a different manner from the public in general. 233

(G) "Self-insuring employer" means an employer who is 234
granted the privilege of paying compensation and benefits 235
directly under section 4123.35 of the Revised Code, including a 236
board of county commissioners for the sole purpose of 237
constructing a sports facility as defined in section 307.696 of 238
the Revised Code, provided that the electors of the county in 239
which the sports facility is to be built have approved 240
construction of a sports facility by ballot election no later 241
than November 6, 1997. 242

(H) "Private employer" means an employer as defined in 243
division (B) (2) of this section. 244

(I) "Professional employer organization" has the same 245
meaning as in section 4125.01 of the Revised Code. 246

(J) "Public employer" means an employer as defined in 247

division (B) (1) of this section. 248

(K) "Sexual conduct" means vaginal intercourse between a 249
male and female; anal intercourse, fellatio, and cunnilingus 250
between persons regardless of gender; and, without privilege to 251
do so, the insertion, however slight, of any part of the body or 252
any instrument, apparatus, or other object into the vaginal or 253
anal cavity of another. Penetration, however slight, is 254
sufficient to complete vaginal or anal intercourse. 255

(L) "Other-states' insurer" means an insurance company 256
that is authorized to provide workers' compensation insurance 257
coverage in any of the states that permit employers to obtain 258
insurance for workers' compensation claims through insurance 259
companies. 260

(M) "Other-states' coverage" means both of the following: 261

(1) Insurance coverage secured by an eligible employer for 262
workers' compensation claims of employees who are in employment 263
relationships localized in a state other than this state or 264
those employees' dependents; 265

(2) Insurance coverage secured by an eligible employer for 266
workers' compensation claims that arise in a state other than 267
this state where an employer elects to obtain coverage through 268
either the administrator or an other-states' insurer. 269

(N) "Limited other-states coverage" means insurance 270
coverage provided by the administrator to an eligible employer 271
for workers' compensation claims of employees who are in an 272
employment relationship localized in this state but are 273
temporarily working in a state other than this state, or those 274
employees' dependents. 275

(O) "Peace officer" has the same meaning as in section 276

2935.01 of the Revised Code. 277

(P) "Firefighter" means a firefighter, whether paid or 278
volunteer, of a lawfully constituted fire department. 279

(Q) "Emergency medical worker" means a first responder, 280
emergency medical technician-basic, emergency medical 281
technician-intermediate, or emergency medical technician- 282
paramedic, certified under Chapter 4765. of the Revised Code, 283
whether paid or volunteer. 284

Sec. 4123.026. ~~(A)~~—The administrator of workers' 285
compensation, or a self-insuring public employer for the peace 286
officers, firefighters, and emergency medical workers employed 287
by or volunteering for that self-insuring public employer, shall 288
pay the costs of conducting post-exposure medical diagnostic 289
services, consistent with the standards of medical care existing 290
at the time of the exposure, to investigate whether an injury or 291
occupational disease was sustained by a peace officer, 292
firefighter, or emergency medical worker when coming into 293
contact with the blood or other body fluid of another person in 294
the course of and arising out of the peace officer's, 295
firefighter's, or emergency medical worker's employment, or when 296
responding to an inherently dangerous situation in the manner 297
described in, and in accordance with the conditions specified 298
under, division (A) (1) (a) of section 4123.01 of the Revised 299
Code, through any of the following means: 300

~~(1)~~—(A) Splash or spatter in the eye or mouth, including 301
when received in the course of conducting mouth-to-mouth 302
resuscitation; 303

~~(2)~~—(B) A puncture in the skin; 304

~~(3)~~—(C) A cut in the skin or another opening in the skin 305

such as an open sore, wound, lesion, abrasion, or ulcer. 306

~~(B) As used in this section:~~ 307

~~(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.~~ 308
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~~(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.~~ 310
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~~(3) "Emergency medical worker" means a first responder, emergency medical technician basic, emergency medical technician intermediate, or emergency medical technician paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.~~ 312
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Sec. 4123.46. (A) (1) Except as provided in division (A) (2) 317
of this section, the bureau of workers' compensation shall 318
disburse the state insurance fund to employees of employers who 319
have paid into the fund the premiums applicable to the classes 320
to which they belong when the employees have been injured in the 321
course of their employment, wherever the injuries have occurred, 322
and provided the injuries have not been purposely self- 323
inflicted, or to the dependents of the employees in case death 324
has ensued. 325

(2) As long as injuries have not been purposely self- 326
inflicted, the bureau shall disburse the surplus fund created 327
under section 4123.34 of the Revised Code to off-duty peace 328
officers, firefighters, and emergency medical technicians, and 329
~~first responders~~ workers, or to their dependents if death 330
ensues, who are injured while responding to inherently dangerous 331
situations that call for an immediate response on the part of 332
the person, regardless of whether the person was within the 333
limits of the person's jurisdiction when responding, on the 334

condition that the person responds to the situation as the 335
person otherwise would if the person were on duty in the 336
person's jurisdiction. 337

~~As used in division (A) (2) of this section, "peace-~~ 338
~~officer," "firefighter," "emergency medical technician," "first-~~ 339
~~responder," and "jurisdiction" have the same meanings as in-~~ 340
~~section 4123.01 of the Revised Code.~~ 341

(B) All self-insuring employers, in compliance with this 342
chapter, shall pay the compensation to injured employees, or to 343
the dependents of employees who have been killed in the course 344
of their employment, unless the injury or death of the employee 345
was purposely self-inflicted, and shall furnish the medical, 346
surgical, nurse, and hospital care and attention or funeral 347
expenses as would have been paid and furnished by virtue of this 348
chapter under a similar state of facts by the bureau out of the 349
state insurance fund if the employer had paid the premium into 350
the fund. 351

If any rule or regulation of a self-insuring employer 352
provides for or authorizes the payment of greater compensation 353
or more complete or extended medical care, nursing, surgical, 354
and hospital attention, or funeral expenses to the injured 355
employees, or to the dependents of the employees as may be 356
killed, the employer shall pay to the employees, or to the 357
dependents of employees killed, the amount of compensation and 358
furnish the medical care, nursing, surgical, and hospital 359
attention or funeral expenses provided by the self-insuring 360
employer's rules and regulations. 361

(C) Payment to injured employees, or to their dependents 362
in case death has ensued, is in lieu of any and all rights of 363
action against the employer of the injured or killed employees. 364

Section 2. That existing sections 4123.01, 4123.026, and 365
4123.46 of the Revised Code are hereby repealed. 366