

As Passed by the House

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 380

Representatives Seitz, Householder

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

A BILL

To amend sections 2743.02, 2744.02, 4123.01, 1
4123.51, and 4123.59 and to enact sections 2
2307.82 and 4123.513 of the Revised Code to 3
prohibit illegal and unauthorized aliens from 4
receiving compensation and certain benefits 5
under Ohio's Workers' Compensation Law. 6

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

Section 1. That sections 2743.02, 2744.02, 4123.01, 7
4123.51, and 4123.59 be amended and sections 2307.82 and 8
4123.513 of the Revised Code be enacted to read as follows: 9

Sec. 2307.82. (A) As used in this section, "employer," 10
"illegal alien," "occupational disease," and "unauthorized 11
alien" have the same meanings as in section 4123.01 of the 12
Revised Code. 13

(B) Except as provided in division (C) of this section, no 14
court in this state has jurisdiction over a claim brought by or 15
on behalf of an illegal alien or an unauthorized alien for 16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4123.01. As used in this chapter: 324

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

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

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

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

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

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

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

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

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

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

| | |
|---|-----|
| of performing services; | 376 |
| (ii) The person is required by the other contracting party | 377 |
| to have particular training; | 378 |
| (iii) The person's services are integrated into the | 379 |
| regular functioning of the other contracting party; | 380 |
| (iv) The person is required to perform the work | 381 |
| personally; | 382 |
| (v) The person is hired, supervised, or paid by the other | 383 |
| contracting party; | 384 |
| (vi) A continuing relationship exists between the person | 385 |
| and the other contracting party that contemplates continuing or | 386 |
| recurring work even if the work is not full time; | 387 |
| (vii) The person's hours of work are established by the | 388 |
| other contracting party; | 389 |
| (viii) The person is required to devote full time to the | 390 |
| business of the other contracting party; | 391 |
| (ix) The person is required to perform the work on the | 392 |
| premises of the other contracting party; | 393 |
| (x) The person is required to follow the order of work set | 394 |
| by the other contracting party; | 395 |
| (xi) The person is required to make oral or written | 396 |
| reports of progress to the other contracting party; | 397 |
| (xii) The person is paid for services on a regular basis | 398 |
| such as hourly, weekly, or monthly; | 399 |
| (xiii) The person's expenses are paid for by the other | 400 |
| contracting party; | 401 |

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

| | |
|--|--|
| (2) "Employee" does not mean any of the following: | 430 |
| (a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry; | 431 432 433 |
| (b) Any officer of a family farm corporation; | 434 |
| (c) An individual incorporated as a corporation; | 435 |
| (d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as a <u>an</u> officer; | 436 437 438 |
| (e) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code; | 439 440 441 442 443 |
| <u>(f) An illegal alien or an unauthorized alien.</u> | 444 |
| Any employer may elect to include as an "employee" within this chapter, any person excluded from the definition of "employee" pursuant to division (A) (2) (a), (b), (c), or (e) of this section in accordance with rules adopted by the administrator, with the advice and consent of the bureau of workers' compensation board of directors. If an employer is a partnership, sole proprietorship, individual incorporated as a corporation, or family farm corporation, such employer may elect to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship, the individual incorporated as a corporation, or the officers of the family farm corporation. Nothing in this section shall prohibit a partner, sole proprietor, or any person excluded from the definition of "employee" pursuant to division (A) (2) (a), (b), | 445 446 447 448 449 450 451 452 453 454 455 456 457 458 |

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

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

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

(B) "Employer" means: 485

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

state; 489

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

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

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

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

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

the degree of kinship stipulated in this division. 548

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

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

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

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

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

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

sufficient to complete vaginal or anal intercourse. 577

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

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

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

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

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

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

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

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

alien. 605

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

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

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

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

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

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

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

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

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

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

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

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

employer. 663

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

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

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

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

(a) The claimant is an unauthorized alien. 686

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

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

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

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

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

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

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

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

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

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

(a) Reaches eighteen years of age; 769

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

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

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

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

Revised Code. 783

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

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

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

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

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

The administrator may take into consideration any 811

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

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

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

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

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

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

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

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

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