

H. B. No. 81

As Introduced

_____ moved to amend as follows:

In line 1 of the title, after "4121.13" insert ", 4123.01, 4123.026" 1
In line 2 of the title, after "4123.44" insert ", 4123.46" 2
In line 3 of the title, after "5145.163" insert "; to enact section 3
4123.87;" 4
In line 4 of the title, after "sections" insert "126.65," 5
In line 12, after "4121.13" insert ", 4123.01, 4123.026" 6
In line 13, after "4123.44" insert ", 4123.46" 7
In line 14, after "5145.163" insert "be amended and section 8
4123.87"; delete "amended" and insert "enacted" 9
After line 645, insert: 10
"Sec. 4123.01. As used in this chapter: 11
(A) (1) "Employee" means: 12
(a) Every person in the service of the state, or of any 13
county, municipal corporation, township, or school district 14



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.

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

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

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

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

(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	72
recurring work even if the work is not full time;	73
(vii) The person's hours of work are established by the	74
other contracting party;	75
(viii) The person is required to devote full time to the	76
business of the other contracting party;	77
(ix) The person is required to perform the work on the	78
premises of the other contracting party;	79
(x) The person is required to follow the order of work set	80
by the other contracting party;	81
(xi) The person is required to make oral or written	82
reports of progress to the other contracting party;	83
(xii) The person is paid for services on a regular basis	84
such as hourly, weekly, or monthly;	85
(xiii) The person's expenses are paid for by the other	86
contracting party;	87
(xiv) The person's tools and materials are furnished by	88
the other contracting party;	89
(xv) The person is provided with the facilities used to	90
perform services;	91
(xvi) The person does not realize a profit or suffer a	92
loss as a result of the services provided;	93
(xvii) The person is not performing services for a number	94
of employers at the same time;	95
(xviii) The person does not make the same services	96
available to the general public;	97

(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 who is a self-insuring employer and who 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.

(d) Every person who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property, unless all of the following factors apply to the person:

(i) The person owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the person leases the vehicle or vessel under a bona fide lease agreement that is not a temporary replacement lease agreement. For purposes of this division, a bona fide lease agreement does not include an agreement between the person and the motor carrier transporting property for which, or on whose behalf, the person provides services.

(ii) The person is responsible for supplying the necessary	128
personal services to operate the vehicle or vessel used to	129
provide the service.	130
(iii) The compensation paid to the person is based on	131
factors related to work performed, including on a mileage-based	132
rate or a percentage of any schedule of rates, and not solely on	133
the basis of the hours or time expended.	134
(iv) The person substantially controls the means and	135
manner of performing the services, in conformance with	136
regulatory requirements and specifications of the shipper.	137
(v) The person enters into a written contract with the	138
carrier for whom the person is performing the services that	139
describes the relationship between the person and the carrier to	140
be that of an independent contractor and not that of an	141
employee.	142
(vi) The person is responsible for substantially all of	143
the principal operating costs of the vehicle or vessel and	144
equipment used to provide the services, including maintenance,	145
fuel, repairs, supplies, vehicle or vessel insurance, and	146
personal expenses, except that the person may be paid by the	147
carrier the carrier's fuel surcharge and incidental costs,	148
including tolls, permits, and lump sum fees.	149
(vii) The person is responsible for any economic loss or	150
economic gain from the arrangement with the carrier.	151
(2) "Employee" does not mean any of the following:	152
(a) A duly ordained, commissioned, or licensed minister or	153
assistant or associate minister of a church in the exercise of	154
ministry;	155

(b) Any officer of a family farm corporation;	156
(c) An individual incorporated as a corporation;	157
(d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as an officer;	158 159 160
(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;	161 162 163 164 165
(f) (i) A qualifying employee described in division (A) (14) (a) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;	166 167 168 169 170
(ii) A qualifying employee described in division (A) (14) (b) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period on critical infrastructure owned or used by the employee's employer;	171 172 173 174 175
(iii) As used in division (A) (2) (f) of this section, "critical infrastructure," "disaster response period," "disaster work," and "qualifying employee" have the same meanings as in section 5703.94 of the Revised Code.	176 177 178 179
Any employer may elect to include as an "employee" within this chapter, any person excluded from the definition of "employee" pursuant to division (A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section in accordance with rules adopted by	180 181 182 183

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

In the event of an election, the employer or person
electing coverage shall serve upon the bureau of workers'
compensation written notice naming the person to be covered and
include the person's remuneration for premium purposes in all
future payroll reports. No partner, sole proprietor, or person
excluded from the definition of "employee" pursuant to division
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, shall
receive benefits or compensation under this chapter until the
bureau receives written notice of the election permitted by this
section.

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, or a
person excluded from the definition of "employee" under division
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, that
they should check any health and disability insurance policy, or

other form of health and disability plan or contract, presently 215
covering them, or the purchase of which they may be considering, 216
to determine whether such policy, plan, or contract excludes 217
benefits for illness or injury that they might have elected to 218
have covered by workers' compensation. 219

(B) (1) "Employer" means: 220

(a) The state, including state hospitals, each county, 221
municipal corporation, township, school district, and hospital 222
owned by a political subdivision or subdivisions other than the 223
state; 224

(b) Every person, firm, professional employer 225
organization, alternate employer organization, and private 226
corporation, including any public service corporation, that (i) 227
has in service one or more employees or shared employees 228
regularly in the same business or in or about the same 229
establishment under any contract of hire, express or implied, 230
oral or written, or (ii) is bound by any such contract of hire 231
or by any other written contract, to pay into the insurance fund 232
the premiums provided by this chapter. 233

All such employers are subject to this chapter. Any member 234
of a firm or association, who regularly performs manual labor in 235
or about a mine, factory, or other establishment, including a 236
household establishment, shall be considered an employee in 237
determining whether such person, firm, or private corporation, 238
or public service corporation, has in its service, one or more 239
employees and the employer shall report the income derived from 240
such labor to the bureau as part of the payroll of such 241
employer, and such member shall thereupon be entitled to all the 242
benefits of an employee. 243

(2) "Employer" does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

(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~~ as follows:

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

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

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

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

(3) Injury or disability incurred in voluntary	272
participation in an employer-sponsored recreation or fitness	273
activity if the employee signs a waiver of the employee's right	274
to compensation or benefits under this chapter prior to engaging	275
in the recreation or fitness activity;	276
(4) Injury or disability sustained by an employee who	277
performs the employee's duties in a work area that is located	278
within the employee's home and that is separate and distinct	279
from the location of the employer, unless all of the following	280
apply:	281
(a) The employee's injury or disability arises out of the	282
employee's employment.	283
(b) The employee's injury or disability was caused by a	284
special hazard of the employee's employment activity.	285
(c) The employee's injury or disability is sustained in	286
the course of an activity undertaken by the employee for the	287
exclusive benefit of the employer.	288
(5) A condition that pre-existed an injury unless that	289
pre-existing condition is substantially aggravated by the	290
injury. Such a substantial aggravation must be documented by	291
objective diagnostic findings, objective clinical findings, or	292
objective test results. Subjective complaints may be evidence of	293
such a substantial aggravation. However, subjective complaints	294
without objective diagnostic findings, objective clinical	295
findings, or objective test results are insufficient to	296
substantiate a substantial aggravation.	297
(D) "Child" includes a posthumous child and a child	298
legally adopted prior to the injury.	299

(E) "Family farm corporation" means a corporation founded 300
for the purpose of farming agricultural land in which the 301
majority of the voting stock is held by and the majority of the 302
stockholders are persons or the spouse of persons related to 303
each other within the fourth degree of kinship, according to the 304
rules of the civil law, and at least one of the related persons 305
is residing on or actively operating the farm, and none of whose 306
stockholders are a corporation. A family farm corporation does 307
not cease to qualify under this division where, by reason of any 308
devise, bequest, or the operation of the laws of descent or 309
distribution, the ownership of shares of voting stock is 310
transferred to another person, as long as that person is within 311
the degree of kinship stipulated in this division. 312

(F) "Occupational disease" means a disease contracted in 313
the course of employment, which by its causes and the 314
characteristics of its manifestation or the condition of the 315
employment results in a hazard which distinguishes the 316
employment in character from employment generally, and the 317
employment creates a risk of contracting the disease in greater 318
degree and in a different manner from the public in general. 319

(G) "Self-insuring employer" means an employer who is 320
granted the privilege of paying compensation and benefits 321
directly under section 4123.35 of the Revised Code, including a 322
board of county commissioners for the sole purpose of 323
constructing a sports facility as defined in section 307.696 of 324
the Revised Code, provided that the electors of the county in 325
which the sports facility is to be built have approved 326
construction of a sports facility by ballot election no later 327
than November 6, 1997. 328

(H) "Private employer" means an employer as defined in 329

division (B) (1) (b) of this section. 330

(I) "Professional employer organization" has the same 331
meaning as in section 4125.01 of the Revised Code. 332

(J) "Public employer" means an employer as defined in 333
division (B) (1) (a) of this section. 334

(K) "Sexual conduct" means vaginal intercourse between a 335
male and female; anal intercourse, fellatio, and cunnilingus 336
between persons regardless of gender; and, without privilege to 337
do so, the insertion, however slight, of any part of the body or 338
any instrument, apparatus, or other object into the vaginal or 339
anal cavity of another. Penetration, however slight, is 340
sufficient to complete vaginal or anal intercourse. 341

(L) "Other-states' insurer" means an insurance company 342
that is authorized to provide workers' compensation insurance 343
coverage in any of the states that permit employers to obtain 344
insurance for workers' compensation claims through insurance 345
companies. 346

(M) "Other-states' coverage" means both of the following: 347

(1) Insurance coverage secured by an eligible employer for 348
workers' compensation claims of employees who are in employment 349
relationships localized in a state other than this state or 350
those employees' dependents; 351

(2) Insurance coverage secured by an eligible employer for 352
workers' compensation claims that arise in a state other than 353
this state where an employer elects to obtain coverage through 354
either the administrator or an other-states' insurer. 355

(N) "Limited other-states coverage" means insurance 356
coverage provided by the administrator to an eligible employer 357

for workers' compensation claims of employees who are in an 358
employment relationship localized in this state but are 359
temporarily working in a state other than this state, or those 360
employees' dependents. 361

(O) "Motor carrier" has the same meaning as in section 362
4923.01 of the Revised Code. 363

(P) "Alternate employer organization" has the same meaning 364
as in section 4133.01 of the Revised Code. 365

(Q) "Peace officer" has the same meaning as in section 366
2935.01 of the Revised Code. 367

(R) "Firefighter" means a firefighter, whether paid or 368
volunteer, of a lawfully constituted fire department. 369

(S) "Emergency medical worker" means a first responder, 370
emergency medical technician-basic, emergency medical 371
technician-intermediate, or emergency medical technician- 372
paramedic, certified under Chapter 4765. of the Revised Code, 373
whether paid or volunteer. 374

Sec. 4123.026. (A) The administrator of workers' 375
compensation, a self-insuring public employer for the peace 376
officers, firefighters, and emergency medical workers employed 377
by or volunteering for that self-insuring public employer, or a 378
detention facility that is a self-insuring employer for the 379
facility's employees, including corrections officers, shall pay 380
the costs of conducting post-exposure medical diagnostic 381
services, consistent with the standards of medical care existing 382
at the time of the exposure, to investigate whether an injury or 383
occupational disease was sustained by a peace officer, 384
firefighter, emergency medical worker, or detention facility 385
employee, including a corrections officer, when coming into 386

contact with the blood or other body fluid of another person in 387
the course of and arising out of the peace officer's, 388
firefighter's, emergency medical worker's, or detention facility 389
employee's employment, or when responding to an inherently 390
dangerous situation in the manner described in, and in 391
accordance with the conditions specified under, division (A) (1) 392
(a) of section 4123.01 of the Revised Code, through any of the 393
following means: 394

(1) Splash or spatter in the eye or mouth, including when 395
received in the course of conducting mouth-to-mouth 396
resuscitation; 397

(2) A puncture in the skin; 398

(3) A cut in the skin or another opening in the skin such 399
as an open sore, wound, lesion, abrasion, or ulcer. 400

(B) The administrator, a self-insuring public employer, or 401
a detention facility that is a self-insuring employer shall pay 402
the costs of conducting post-exposure medical diagnostic 403
services to investigate whether an employee described in 404
division (A) of this section sustained an injury or occupational 405
disease if both of the following apply: 406

(1) In the course of employment the employee is exposed to 407
a drug or other chemical substance. 408

(2) The post-exposure medical diagnostic service is 409
consistent with the standards of medical care existing at the 410
time of exposure. 411

(C) As used in this section: 412

(1) ~~"Peace officer" has the same meaning as in section~~ 413
~~2935.01 of the Revised Code.~~ 414

~~(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.~~ 415
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~~(3) "Emergency medical worker" means either of the following:~~ 417
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~~(a) 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;~~ 419
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~~(b) Any~~ has the same meaning as in section 4123.01 of the Revised Code and includes any of the following when staffing a rotorcraft or fixed wing air ambulance on behalf of a licensed air medical service organization in accordance with section 4766.17 of the Revised Code, including transporting a patient from an incident scene or medical facility into the air ambulance, or when transporting a patient from an air ambulance to the entrance of a hospital: 423
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~~(i)~~ (a) A physician who holds a current, valid license issued under Chapter 4731. of the Revised Code; 431
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~~(ii)~~ (b) A registered nurse who holds a current, valid license issued under Chapter 4723. of the Revised Code; 433
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~~(iii)~~ (c) Any other person holding a current, valid certificate or license to practice a health care profession in this state. 435
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~~(4)~~ (2) "Corrections officer" means a person employed by a detention facility as a corrections officer. 438
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~~(5)~~ (3) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under 440
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the laws of the United States or alleged or found to be a 443
delinquent child or unruly child in this state or another state 444
or under the laws of the United States." 445

After line 768, insert: 446

"Sec. 4123.46. (A) (1) Except as provided in division (A) 447
(2) of this section, the bureau of workers' compensation shall 448
disburse the state insurance fund to employees of employers who 449
have paid into the fund the premiums applicable to the classes 450
to which they belong when the employees have been injured in the 451
course of their employment, wherever the injuries have occurred, 452
and provided the injuries have not been purposely self- 453
inflicted, or to the dependents of the employees in case death 454
has ensued. 455

(2) As long as injuries have not been purposely self- 456
inflicted, the bureau shall disburse the surplus fund created 457
under section 4123.34 of the Revised Code to off-duty peace 458
officers, firefighters, and emergency medical ~~technicians, and~~ 459
~~first responders~~ workers, or to their dependents if death 460
ensues, who are injured while responding to inherently dangerous 461
situations that call for an immediate response on the part of 462
the person, regardless of whether the person was within the 463
limits of the person's jurisdiction when responding, on the 464
condition that the person responds to the situation as the 465
person otherwise would if the person were on duty in the 466
person's jurisdiction. 467

~~As used in division (A) (2) of this section, "peace~~ 468
~~officer," "firefighter," "emergency medical technician," "first~~ 469
~~responder," and "jurisdiction" have the same meanings as in~~ 470
~~section 4123.01 of the Revised Code.~~ 471

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

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

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

After line 1667, insert:

"Sec. 4123.87. Notwithstanding any provision in section 4123.52, 4123.54, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, or 4123.66 of the Revised Code to the contrary, in the case of disability due to an injury described in division (C)(1)(c) of section 4123.01 of the Revised Code, any entitlement of a claimant to compensation as a result of any order issued under

this chapter or Chapter 4121., 4127., or 4131. of the Revised 502
Code regarding that injury shall cease not later than one year 503
after the date those payments commence under division (H) of 504
section 4123.511 of the Revised Code." 505

In line 2231, after "4121.13" insert ", 4123.01, 4123.026"; after 506
"4123.44" insert ", 4123.46" 507

In line 2234, after "sections" insert "126.65," 508

The motion was _____ agreed to.

SYNOPSIS 509

Post-traumatic stress disorder without a physical injury 510

R.C. 126.65 (repealed), 4123.01, and 4123.87, with 511
conforming changes in R.C. 4123.026 and 4123.46 512

Makes a peace officer, firefighter, or emergency medical 513
worker diagnosed with post-traumatic stress disorder (PTSD) 514
eligible to receive compensation and benefits under the Workers' 515
Compensation Law for up to one year, regardless of whether the 516
person suffers an accompanying physical injury (currently, most 517
psychiatric conditions, including PTSD, are not compensable 518
under the Law without a physical injury). 519

Eliminates the State PTSD Fund, which is intended to 520
provide compensation and medical benefits to a public safety 521
officer disabled due to PTSD without an accompanying physical 522
injury (currently, no payments may be made from the fund). 523