

As Introduced

**136th General Assembly
Regular Session
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S. B. No. 241

Senator Patton

To amend section 4123.512 of the Revised Code to	1
impose a fine against an employer who appeals	2
specified awards of workers' compensation	3
related to cancer incurred while performing	4
official duties as a firefighter if the employer	5
loses the appeal.	6

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

Section 1. That section 4123.512 of the Revised Code be	7
amended to read as follows:	8

Sec. 4123.512. (A) The claimant or the employer may appeal	9
an order of the industrial commission made under division (E) of	10
section 4123.511 of the Revised Code in any injury or	11
occupational disease case, other than a decision as to the	12
extent of disability to the court of common pleas of the county	13
in which the injury was inflicted or in which the contract of	14
employment was made if the injury occurred outside the state, or	15
in which the contract of employment was made if the exposure	16
occurred outside the state. If no common pleas court has	17
jurisdiction for the purposes of an appeal by the use of the	18
jurisdictional requirements described in this division, the	19
appellant may use the venue provisions in the Rules of Civil	20
Procedure to vest jurisdiction in a court. If the claim is for	21

an occupational disease, the appeal shall be to the court of 22
common pleas of the county in which the exposure which caused 23
the disease occurred. Like appeal may be taken from an order of 24
a staff hearing officer made under division (D) of section 25
4123.511 of the Revised Code from which the commission has 26
refused to hear an appeal. Except as otherwise provided in this 27
division, the appellant shall file the notice of appeal with a 28
court of common pleas within sixty days after the date of the 29
receipt of the order appealed from or the date of receipt of the 30
order of the commission refusing to hear an appeal of a staff 31
hearing officer's decision under division (D) of section 32
4123.511 of the Revised Code. Either the claimant or the 33
employer may file a notice of an intent to settle the claim 34
within thirty days after the date of the receipt of the order 35
appealed from or of the order of the commission refusing to hear 36
an appeal of a staff hearing officer's decision. The claimant or 37
employer shall file notice of intent to settle with the 38
administrator of workers' compensation, and the notice shall be 39
served on the opposing party and the party's representative. The 40
filing of the notice of intent to settle extends the time to 41
file an appeal to one hundred fifty days, unless the opposing 42
party files an objection to the notice of intent to settle 43
within fourteen days after the date of the receipt of the notice 44
of intent to settle. The party shall file the objection with the 45
administrator, and the objection shall be served on the party 46
that filed the notice of intent to settle and the party's 47
representative. The filing of the notice of the appeal with the 48
court is the only act required to perfect the appeal. 49

If an action has been commenced in a court of a county 50
other than a court of a county having jurisdiction over the 51
action, the court, upon notice by any party or upon its own 52

motion, shall transfer the action to a court of a county having 53
jurisdiction. 54

Notwithstanding anything to the contrary in this section, 55
if the commission determines under section 4123.522 of the 56
Revised Code that an employee, employer, or their respective 57
representatives have not received written notice of an order or 58
decision which is appealable to a court under this section and 59
which grants relief pursuant to section 4123.522 of the Revised 60
Code, the party granted the relief has sixty days from receipt 61
of the order under section 4123.522 of the Revised Code to file 62
a notice of appeal under this section. 63

(B) The notice of appeal shall state the names of the 64
administrator of workers' compensation, the claimant, and the 65
employer; the number of the claim; the date of the order 66
appealed from; and the fact that the appellant appeals 67
therefrom. 68

The administrator, the claimant, and the employer shall be 69
parties to the appeal and the court, upon the application of the 70
commission, shall make the commission a party. The party filing 71
the appeal shall serve a copy of the notice of appeal on the 72
administrator at the central office of the bureau of workers' 73
compensation in Columbus. The administrator shall notify the 74
employer that if the employer fails to become an active party to 75
the appeal, then the administrator may act on behalf of the 76
employer and the results of the appeal could have an adverse 77
effect upon the employer's premium rates or may result in a 78
recovery from the employer if the employer is determined to be a 79
noncomplying employer under section 4123.75 of the Revised Code. 80

(C) The attorney general or one or more of the attorney 81
general's assistants or special counsel designated by the 82

attorney general shall represent the administrator and the 83
commission. In the event the attorney general or the attorney 84
general's designated assistants or special counsel are absent, 85
the administrator or the commission shall select one or more of 86
the attorneys in the employ of the administrator or the 87
commission as the administrator's attorney or the commission's 88
attorney in the appeal. Any attorney so employed shall continue 89
the representation during the entire period of the appeal and in 90
all hearings thereof except where the continued representation 91
becomes impractical. 92

(D) Upon receipt of notice of appeal, the clerk of courts 93
shall provide notice to all parties who are appellees and to the 94
commission. 95

The claimant shall, within thirty days after the filing of 96
the notice of appeal, file a petition containing a statement of 97
facts in ordinary and concise language showing a cause of action 98
to participate or to continue to participate in the fund and 99
setting forth the basis for the jurisdiction of the court over 100
the action. Further pleadings shall be had in accordance with 101
the Rules of Civil Procedure, provided that service of summons 102
on such petition shall not be required and provided that the 103
claimant may not dismiss the complaint without the employer's 104
consent if the employer is the party that filed the notice of 105
appeal to court pursuant to this section. The clerk of the court 106
shall, upon receipt thereof, transmit by certified mail a copy 107
thereof to each party named in the notice of appeal other than 108
the claimant. Any party may file with the clerk prior to the 109
trial of the action a deposition of any physician, certified 110
nurse-midwife, clinical nurse specialist, or certified nurse 111
practitioner taken in accordance with the provisions of the 112
Revised Code, which deposition may be read in the trial of the 113

action even though the physician or nurse is a resident of or 114
subject to service in the county in which the trial is had. The 115
bureau of workers' compensation shall pay the cost of the 116
deposition filed in court and of copies of the deposition for 117
each party from the surplus fund and charge the costs thereof 118
against the unsuccessful party if the claimant's right to 119
participate or continue to participate is finally sustained or 120
established in the appeal. In the event the deposition is taken 121
and filed, the physician or nurse whose deposition is taken is 122
not required to respond to any subpoena issued in the trial of 123
the action. The court, or the jury under the instructions of the 124
court, if a jury is demanded, shall determine the right of the 125
claimant to participate or to continue to participate in the 126
fund upon the evidence adduced at the hearing of the action. 127

(E) The court shall certify its decision to the commission 128
and the certificate shall be entered in the records of the 129
court. Appeals from the judgment are governed by the law 130
applicable to the appeal of civil actions. 131

~~(F)~~ (F) (1) The cost of any legal proceedings authorized by 132
this section, including an attorney's fee to the claimant's 133
attorney to be fixed by the trial judge, based upon the effort 134
expended, in the event the claimant's right to participate or to 135
continue to participate in the fund is established upon the 136
final determination of an appeal, shall be taxed against the 137
employer or the commission if the commission or the 138
administrator rather than the employer contested the right of 139
the claimant to participate in the fund. The attorney's fee 140
shall not exceed five thousand dollars. 141

(2) In addition to costs awarded under division (F) (1) of 142
this section, the trial judge shall assess a penalty of fifty 143

thousand dollars against an employer if both of the following 144
apply: 145

(a) The employer appealed an award for compensation or 146
benefits for cancer contracted by a firefighter in the course of 147
hazardous duty under division (X) of section 4123.68 of the 148
Revised Code. 149

(b) The claimant's award is upheld on the final 150
determination of appeal. 151

(3) The penalty assessed under division (F) (2) of this 152
section shall be paid to the claimant. 153

(G) If the finding of the court or the verdict of the jury 154
is in favor of the claimant's right to participate in the fund, 155
the commission and the administrator shall thereafter proceed in 156
the matter of the claim as if the judgment were the decision of 157
the commission, subject to the power of modification provided by 158
section 4123.52 of the Revised Code. 159

(H) (1) An appeal from an order issued under division (E) 160
of section 4123.511 of the Revised Code or any action filed in 161
court in a case in which an award of compensation or medical 162
benefits has been made shall not stay the payment of 163
compensation or medical benefits under the award, or payment for 164
subsequent periods of total disability or medical benefits 165
during the pendency of the appeal. If, in a final administrative 166
or judicial action, it is determined that payments of 167
compensation or benefits, or both, made to or on behalf of a 168
claimant should not have been made, the amount thereof shall be 169
charged to the surplus fund account under division (B) of 170
section 4123.34 of the Revised Code. In the event the employer 171
is a state risk, the amount shall not be charged to the 172

employer's experience, and the administrator shall adjust the 173
employer's account accordingly. In the event the employer is a 174
self-insuring employer, the self-insuring employer shall deduct 175
the amount from the paid compensation the self-insuring employer 176
reports to the administrator under division (L) of section 177
4123.35 of the Revised Code. If an employer is a state risk and 178
has paid an assessment for a violation of a specific safety 179
requirement, and, in a final administrative or judicial action, 180
it is determined that the employer did not violate the specific 181
safety requirement, the administrator shall reimburse the 182
employer from the surplus fund account under division (B) of 183
section 4123.34 of the Revised Code for the amount of the 184
assessment the employer paid for the violation. 185

(2) (a) Notwithstanding a final determination that payments 186
of benefits made to or on behalf of a claimant should not have 187
been made, the administrator or self-insuring employer shall 188
award payment of medical or vocational rehabilitation services 189
submitted for payment after the date of the final determination 190
if all of the following apply: 191

(i) The services were approved and were rendered by the 192
provider in good faith prior to the date of the final 193
determination. 194

(ii) The services were payable under division (I) of 195
section 4123.511 of the Revised Code prior to the date of the 196
final determination. 197

(iii) The request for payment is submitted within the time 198
limit set forth in section 4123.52 of the Revised Code. 199

(b) Payments made under division (H) (1) of this section 200
shall be charged to the surplus fund account under division (B) 201

of section 4123.34 of the Revised Code. If the employer of the 202
employee who is the subject of a claim described in division (H) 203
(2) (a) of this section is a state fund employer, the payments 204
made under that division shall not be charged to the employer's 205
experience. If that employer is a self-insuring employer, the 206
self-insuring employer shall deduct the amount from the paid 207
compensation the self-insuring employer reports to the 208
administrator under division (L) of section 4123.35 of the 209
Revised Code. 210

(c) Division (H) (2) of this section shall apply only to a 211
claim under this chapter or Chapter 4121., 4127., or 4131. of 212
the Revised Code arising on or after July 29, 2011. 213

(3) A self-insuring employer may elect to pay compensation 214
and benefits under this section directly to an employee or an 215
employee's dependents by filing an application with the bureau 216
of workers' compensation not more than one hundred eighty days 217
and not less than ninety days before the first day of the 218
employer's next six-month coverage period. If the self-insuring 219
employer timely files the application, the application is 220
effective on the first day of the employer's next six-month 221
coverage period, provided that the administrator shall compute 222
the employer's assessment for the surplus fund account due with 223
respect to the period during which that application was filed 224
without regard to the filing of the application. On and after 225
the effective date of the employer's election, the self-insuring 226
employer shall pay directly to an employee or to an employee's 227
dependents compensation and benefits under this section 228
regardless of the date of the injury or occupational disease, 229
and the employer shall receive no money or credits from the 230
surplus fund account on account of those payments and shall not 231
be required to pay any amounts into the surplus fund account on 232

account of this section. The election made under this division 233
is irrevocable. 234

(I) All actions and proceedings under this section which 235
are the subject of an appeal to the court of common pleas or the 236
court of appeals shall be preferred over all other civil actions 237
except election causes, irrespective of position on the 238
calendar. 239

This section applies to all decisions of the commission or 240
the administrator on November 2, 1959, and all claims filed 241
thereafter are governed by sections 4123.511 and 4123.512 of the 242
Revised Code. 243

Any action pending in common pleas court or any other 244
court on January 1, 1986, under this section is governed by 245
former sections 4123.514, 4123.515, 4123.516, and 4123.519 and 246
section 4123.522 of the Revised Code. 247

Section 2. That existing section 4123.512 of the Revised 248
Code is hereby repealed. 249