

**As Recommended to the Senate Finance Committee**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. S. B. No. 5**

**Senators Patton, Brown**

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

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**A BILL**

To amend sections 4123.01, 4123.026, and 4123.46 of 1  
the Revised Code to make peace officers, 2  
firefighters, and emergency medical workers 3  
diagnosed with post-traumatic stress disorder 4  
arising from employment without an accompanying 5  
physical injury eligible for compensation and 6  
benefits under Ohio's Workers' Compensation Law. 7

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

**Section 1.** That sections 4123.01, 4123.026, and 4123.46 of 8  
the Revised Code be amended to read as follows: 9

**Sec. 4123.01.** As used in this chapter: 10

(A) (1) "Employee" means: 11

(a) Every person in the service of the state, or of any 12  
county, municipal corporation, township, or school district 13  
therein, including regular members of lawfully constituted 14  
police and fire departments of municipal corporations and 15  
townships, whether paid or volunteer, and wherever serving 16  
within the state or on temporary assignment outside thereof, and 17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The person is required to devote full time to the business of the other contracting party;	75 76
(ix) The person is required to perform the work on the premises of the other contracting party;	77 78
(x) The person is required to follow the order of work set by the other contracting party;	79 80
(xi) The person is required to make oral or written reports of progress to the other contracting party;	81 82
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	83 84
(xiii) The person's expenses are paid for by the other contracting party;	85 86
(xiv) The person's tools and materials are furnished by the other contracting party;	87 88
(xv) The person is provided with the facilities used to perform services;	89 90
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	91 92
(xvii) The person is not performing services for a number of employers at the same time;	93 94
(xviii) The person does not make the same services available to the general public;	95 96
(xix) The other contracting party has a right to discharge the person;	97 98
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	99 100 101

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

(2) "Employee" does not mean any of the following: 115

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

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

(c) An individual incorporated as a corporation; 120

(d) An officer of a nonprofit corporation, as defined in 121  
section 1702.01 of the Revised Code, who volunteers the person's 122  
services as ~~a~~an officer; 123

(e) An individual who otherwise is an employee of an 124  
employer but who signs the waiver and affidavit specified in 125  
section 4123.15 of the Revised Code on the condition that the 126  
administrator has granted a waiver and exception to the 127  
individual's employer under section 4123.15 of the Revised Code. 128

Any employer may elect to include as an "employee" within 129  
this chapter, any person excluded from the definition of 130

"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 131  
this section in accordance with rules adopted by the 132  
administrator, with the advice and consent of the bureau of 133  
workers' compensation board of directors. If an employer is a 134  
partnership, sole proprietorship, individual incorporated as a 135  
corporation, or family farm corporation, such employer may elect 136  
to include as an "employee" within this chapter, any member of 137  
such partnership, the owner of the sole proprietorship, the 138  
individual incorporated as a corporation, or the officers of the 139  
family farm corporation. Nothing in this section shall prohibit 140  
a partner, sole proprietor, or any person excluded from the 141  
definition of "employee" pursuant to division (A) (2) (a), (b), 142  
(c), or (e) of this section from electing to be included as an 143  
"employee" under this chapter in accordance with rules adopted 144  
by the administrator, with the advice and consent of the board. 145

In the event of an election, the employer or person 146  
electing coverage shall serve upon the bureau of workers' 147  
compensation written notice naming the person to be covered and 148  
include the person's remuneration for premium purposes in all 149  
future payroll reports. No partner, sole proprietor, or person 150  
excluded from the definition of "employee" pursuant to division 151  
(A) (2) (a), (b), (c), or (e) of this section, shall receive 152  
benefits or compensation under this chapter until the bureau 153  
receives written notice of the election permitted by this 154  
section. 155

For informational purposes only, the bureau shall 156  
prescribe such language as it considers appropriate, on such of 157  
its forms as it considers appropriate, to advise employers of 158  
their right to elect to include as an "employee" within this 159  
chapter a sole proprietor, any member of a partnership, or a 160  
person excluded from the definition of "employee" under division 161

(A) (2) (a), (b), (c), or (e) of this section, that they should 162  
check any health and disability insurance policy, or other form 163  
of health and disability plan or contract, presently covering 164  
them, or the purchase of which they may be considering, to 165  
determine whether such policy, plan, or contract excludes 166  
benefits for illness or injury that they might have elected to 167  
have covered by workers' compensation. 168

(B) "Employer" means: 169

(1) The state, including state hospitals, each county, 170  
municipal corporation, township, school district, and hospital 171  
owned by a political subdivision or subdivisions other than the 172  
state; 173

(2) Every person, firm, professional employer 174  
organization, and private corporation, including any public 175  
service corporation, that (a) has in service one or more 176  
employees or shared employees regularly in the same business or 177  
in or about the same establishment under any contract of hire, 178  
express or implied, oral or written, or (b) is bound by any such 179  
contract of hire or by any other written contract, to pay into 180  
the insurance fund the premiums provided by this chapter. 181

All such employers are subject to this chapter. Any member 182  
of a firm or association, who regularly performs manual labor in 183  
or about a mine, factory, or other establishment, including a 184  
household establishment, shall be considered an employee in 185  
determining whether such person, firm, or private corporation, 186  
or public service corporation, has in its service, one or more 187  
employees and the employer shall report the income derived from 188  
such labor to the bureau as part of the payroll of such 189  
employer, and such member shall thereupon be entitled to all the 190  
benefits of an employee. 191

(C) "Injury" includes any injury, whether caused by	192
external accidental means or accidental in character and result,	193
received in the course of, and arising out of, the injured	194
employee's employment. "Injury" does not include:	195
(1) Psychiatric conditions except <del>where</del> <u>as follows:</u>	196
(a) <u>Where</u> the claimant's psychiatric conditions have	197
arisen from an injury or occupational disease sustained by that	198
claimant <del>or where</del> ;	199
(b) <u>Where</u> the claimant's psychiatric conditions have	200
arisen from sexual conduct in which the claimant was forced by	201
threat of physical harm to engage or participate;	202
(c) <u>Where the claimant is a peace officer, firefighter, or</u>	203
<u>emergency medical worker and is diagnosed with post-traumatic</u>	204
<u>stress disorder that has been received in the course of, and has</u>	205
<u>arisen out of, the claimant's employment as a peace officer,</u>	206
<u>firefighter, or emergency medical worker.</u>	207
(2) Injury or disability caused primarily by the natural	208
deterioration of tissue, an organ, or part of the body;	209
(3) Injury or disability incurred in voluntary	210
participation in an employer-sponsored recreation or fitness	211
activity if the employee signs a waiver of the employee's right	212
to compensation or benefits under this chapter prior to engaging	213
in the recreation or fitness activity;	214
(4) A condition that pre-existed an injury unless that	215
pre-existing condition is substantially aggravated by the	216
injury. Such a substantial aggravation must be documented by	217
objective diagnostic findings, objective clinical findings, or	218
objective test results. Subjective complaints may be evidence of	219
such a substantial aggravation. However, subjective complaints	220



without objective diagnostic findings, objective clinical 221  
findings, or objective test results are insufficient to 222  
substantiate a substantial aggravation. 223

(D) "Child" includes a posthumous child and a child 224  
legally adopted prior to the injury. 225

(E) "Family farm corporation" means a corporation founded 226  
for the purpose of farming agricultural land in which the 227  
majority of the voting stock is held by and the majority of the 228  
stockholders are persons or the spouse of persons related to 229  
each other within the fourth degree of kinship, according to the 230  
rules of the civil law, and at least one of the related persons 231  
is residing on or actively operating the farm, and none of whose 232  
stockholders are a corporation. A family farm corporation does 233  
not cease to qualify under this division where, by reason of any 234  
devise, bequest, or the operation of the laws of descent or 235  
distribution, the ownership of shares of voting stock is 236  
transferred to another person, as long as that person is within 237  
the degree of kinship stipulated in this division. 238

(F) "Occupational disease" means a disease contracted in 239  
the course of employment, which by its causes and the 240  
characteristics of its manifestation or the condition of the 241  
employment results in a hazard which distinguishes the 242  
employment in character from employment generally, and the 243  
employment creates a risk of contracting the disease in greater 244  
degree and in a different manner from the public in general. 245

(G) "Self-insuring employer" means an employer who is 246  
granted the privilege of paying compensation and benefits 247  
directly under section 4123.35 of the Revised Code, including a 248  
board of county commissioners for the sole purpose of 249  
constructing a sports facility as defined in section 307.696 of 250

the Revised Code, provided that the electors of the county in 251  
which the sports facility is to be built have approved 252  
construction of a sports facility by ballot election no later 253  
than November 6, 1997. 254

(H) "Private employer" means an employer as defined in 255  
division (B) (2) of this section. 256

(I) "Professional employer organization" has the same 257  
meaning as in section 4125.01 of the Revised Code. 258

(J) "Public employer" means an employer as defined in 259  
division (B) (1) of this section. 260

(K) "Sexual conduct" means vaginal intercourse between a 261  
male and female; anal intercourse, fellatio, and cunnilingus 262  
between persons regardless of gender; and, without privilege to 263  
do so, the insertion, however slight, of any part of the body or 264  
any instrument, apparatus, or other object into the vaginal or 265  
anal cavity of another. Penetration, however slight, is 266  
sufficient to complete vaginal or anal intercourse. 267

(L) "Other-states' insurer" means an insurance company 268  
that is authorized to provide workers' compensation insurance 269  
coverage in any of the states that permit employers to obtain 270  
insurance for workers' compensation claims through insurance 271  
companies. 272

(M) "Other-states' coverage" means both of the following: 273

(1) Insurance coverage secured by an eligible employer for 274  
workers' compensation claims of employees who are in employment 275  
relationships localized in a state other than this state or 276  
those employees' dependents; 277

(2) Insurance coverage secured by an eligible employer for 278

workers' compensation claims that arise in a state other than 279  
this state where an employer elects to obtain coverage through 280  
either the administrator or an other-states' insurer. 281

(N) "Limited other-states coverage" means insurance 282  
coverage provided by the administrator to an eligible employer 283  
for workers' compensation claims of employees who are in an 284  
employment relationship localized in this state but are 285  
temporarily working in a state other than this state, or those 286  
employees' dependents. 287

(O) "Peace officer" has the same meaning as in section 288  
2935.01 of the Revised Code. 289

(P) "Firefighter" means a firefighter, whether paid or 290  
volunteer, of a lawfully constituted fire department. 291

(Q) "Emergency medical worker" means a first responder, 292  
emergency medical technician-basic, emergency medical 293  
technician-intermediate, or emergency medical technician- 294  
paramedic, certified under Chapter 4765. of the Revised Code, 295  
whether paid or volunteer. 296

**Sec. 4123.026.** ~~(A)~~The administrator of workers' 297  
compensation, or a self-insuring public employer for the peace 298  
officers, firefighters, and emergency medical workers employed 299  
by or volunteering for that self-insuring public employer, shall 300  
pay the costs of conducting post-exposure medical diagnostic 301  
services, consistent with the standards of medical care existing 302  
at the time of the exposure, to investigate whether an injury or 303  
occupational disease was sustained by a peace officer, 304  
firefighter, or emergency medical worker when coming into 305  
contact with the blood or other body fluid of another person in 306  
the course of and arising out of the peace officer's, 307

firefighter's, or emergency medical worker's employment, or when 308  
responding to an inherently dangerous situation in the manner 309  
described in, and in accordance with the conditions specified 310  
under, division (A) (1) (a) of section 4123.01 of the Revised 311  
Code, through any of the following means: 312

~~(1) (A)~~ Splash or spatter in the eye or mouth, including 313  
when received in the course of conducting mouth-to-mouth 314  
resuscitation; 315

~~(2) (B)~~ A puncture in the skin; 316

~~(3) (C)~~ A cut in the skin or another opening in the skin 317  
such as an open sore, wound, lesion, abrasion, or ulcer. 318

~~(B) As used in this section:~~ 319

~~(1) "Peace officer" has the same meaning as in section~~ 320  
~~2935.01 of the Revised Code.~~ 321

~~(2) "Firefighter" means a firefighter, whether paid or~~ 322  
~~volunteer, of a lawfully constituted fire department.~~ 323

~~(3) "Emergency medical worker" means a first responder,~~ 324  
~~emergency medical technician basic, emergency medical~~ 325  
~~technician intermediate, or emergency medical technician~~ 326  
~~paramedic, certified under Chapter 4765. of the Revised Code,~~ 327  
~~whether paid or volunteer.~~ 328

**Sec. 4123.46.** (A) (1) Except as provided in division (A) (2) 329  
of this section, the bureau of workers' compensation shall 330  
disburse the state insurance fund to employees of employers who 331  
have paid into the fund the premiums applicable to the classes 332  
to which they belong when the employees have been injured in the 333  
course of their employment, wherever the injuries have occurred, 334  
and provided the injuries have not been purposely self- 335

inflicted, or to the dependents of the employees in case death 336  
has ensued. 337

(2) As long as injuries have not been purposely self- 338  
inflicted, the bureau shall disburse the surplus fund created 339  
under section 4123.34 of the Revised Code to off-duty peace 340  
officers, firefighters, and emergency medical ~~technicians, and~~ 341  
~~first responders, workers,~~ or to their dependents if death 342  
ensues, who are injured while responding to inherently dangerous 343  
situations that call for an immediate response on the part of 344  
the person, regardless of whether the person was within the 345  
limits of the person's jurisdiction when responding, on the 346  
condition that the person responds to the situation as the 347  
person otherwise would if the person were on duty in the 348  
person's jurisdiction. 349

~~As used in division (A) (2) of this section, "peace-~~ 350  
~~officer," "firefighter," "emergency medical technician," "first-~~ 351  
~~responder," and "jurisdiction" have the same meanings as in~~ 352  
~~section 4123.01 of the Revised Code.~~ 353

(B) All self-insuring employers, in compliance with this 354  
chapter, shall pay the compensation to injured employees, or to 355  
the dependents of employees who have been killed in the course 356  
of their employment, unless the injury or death of the employee 357  
was purposely self-inflicted, and shall furnish the medical, 358  
surgical, nurse, and hospital care and attention or funeral 359  
expenses as would have been paid and furnished by virtue of this 360  
chapter under a similar state of facts by the bureau out of the 361  
state insurance fund if the employer had paid the premium into 362  
the fund. 363

If any rule or regulation of a self-insuring employer 364  
provides for or authorizes the payment of greater compensation 365

or more complete or extended medical care, nursing, surgical, 366  
and hospital attention, or funeral expenses to the injured 367  
employees, or to the dependents of the employees as may be 368  
killed, the employer shall pay to the employees, or to the 369  
dependents of employees killed, the amount of compensation and 370  
furnish the medical care, nursing, surgical, and hospital 371  
attention or funeral expenses provided by the self-insuring 372  
employer's rules and regulations. 373

(C) Payment to injured employees, or to their dependents 374  
in case death has ensued, is in lieu of any and all rights of 375  
action against the employer of the injured or killed employees. 376

**Section 2.** That existing sections 4123.01, 4123.026, and 377  
4123.46 of the Revised Code are hereby repealed. 378