

As Recommended to the Senate Finance Committee

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Sub. S. B. No. 5

Senators Patton, Brown

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

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 where <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 or where ;	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