

AN ACT

To amend sections 4121.12, 4123.01, and 4123.46 of the Revised Code to provide workers' compensation coverage for off-duty peace officers, firefighters, and emergency medical technicians who are injured or killed while responding to an emergency situation, to require that payment for those claims be paid from the Workers' Compensation Surplus Fund rather than the State Insurance Fund, and to require the Workers' Compensation Oversight Commission to meet a minimum of nine times annually.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4121.12, 4123.01, and 4123.46 of the Revised Code be amended to read as follows:

Sec. 4121.12. (A) There is hereby created the workers' compensation oversight commission consisting of nine members, of which members the governor shall appoint five with the advice and consent of the senate. Of the five members the governor appoints, two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employees, at least one of whom is representative of employees who are members of an employee organization; two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employers, one of whom represents self-insuring employers and one of whom has experience as an employer in compliance with section 4123.35 of the Revised Code other than a self-insuring employer, and one of those two representatives also shall represent employers whose employees are not members of an employee organization; and one shall represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers. The governor

shall select the chairperson of the commission who shall serve as chairperson at the pleasure of the governor. No more than three members appointed by the governor shall belong to or be affiliated with the same political party.

Each of these five members shall have at least three years' experience in the field of insurance, finance, workers' compensation, law, accounting, actuarial, personnel, investments, or data processing, or in the management of an organization whose size is commensurate with that of the bureau of workers' compensation. At least one of these five members shall be an attorney licensed under Chapter 4705. of the Revised Code to practice law in this state.

(B) Of the initial appointments made to the commission, the governor shall appoint one member who represents employees to a term ending one year after September 1, 1995, one member who represents employers to a term ending two years after ~~the effective date of this section~~ SEPTEMBER 1, 1995, the member who represents the public to a term ending three years after September 1, 1995, one member who represents employees to a term ending four years after September 1, 1995, and one member who represents employers to a term ending five years after September 1, 1995. Thereafter, terms of office shall be for five years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of ~~his~~ THE MEMBER'S appointment until the end of the term for which the member was appointed.

The governor shall not appoint any person to more than two full terms of office on the commission. This restriction does not prevent the governor from appointing a person to fill a vacancy caused by the death, resignation, or removal of a commission member and also appointing that person twice to full terms on the commission, or from appointing a person previously appointed to fill less than a full term twice to full terms on the commission. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until a successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(C) In making appointments to the commission, the governor shall select the members from the list of names submitted by the workers' compensation oversight commission nominating committee pursuant to this division. Within fourteen days after the governor calls the initial meeting of the nominating committee pursuant to division (C) of section 4121.123 of

the Revised Code, the nominating committee shall submit to the governor, for the initial appointments, a list containing four separate names for each of the members on the commission. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list.

For the appointment of the member who is representative of employees who are members of an employee organization, both for initial appointments and for the filling of vacancies, the list of four names submitted by the nominating committee shall be comprised of four individuals who are members of the executive committee of the largest statewide labor federation.

Thereafter, within sixty days after a vacancy occurring as a result of the expiration of a term and within thirty days after other vacancies occurring on the commission, the nominating committee shall submit a list containing four names for each vacancy. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list. With respect to the filling of vacancies, the nominating committee shall provide the governor with a list of four individuals who are, in the judgment of the nominating committee, the most fully qualified to accede to membership on the commission. The nominating committee shall not include the name of an individual upon the list for the filling of vacancies if the appointment of that individual by the governor would result in more than three members of the commission belonging to or being affiliated with the same political party. The committee shall include on the list for the filling of vacancies only the names of attorneys admitted to practice law in this state if, to fulfill the requirement of division (A) of section 4121.12 of the Revised Code, the vacancy must be filled by an attorney.

In order for the name of an individual to be submitted to the governor under this division, the nominating committee shall approve the individual by an affirmative vote of a majority of its members.

(D) The remaining four members of the commission shall be the chairperson and ranking minority member of the standing committees of the house of representatives and of the senate to which legislation concerning this chapter and Chapters 4123., 4127., and 4131. of the Revised Code normally are referred, or a designee of the chairperson or ranking minority member, provided that the designee is a member of the standing committee. Legislative members shall serve during the session of the general assembly to which they are elected and for as long as they are members of the general assembly. Legislative members shall serve in an advisory capacity to the commission and shall have no voting rights on matters coming before the commission. Membership on the commission by legislative members shall

not be deemed as holding a public office.

(E) All members of the commission shall receive their reasonable and necessary expenses pursuant to section 126.31 of the Revised Code while engaged in the performance of their duties as members. Legislative members also shall receive fifty dollars per meeting that they attend. Members appointed by the governor also shall receive an annual salary as follows:

(1) On and before August 31, 1998, not to exceed six thousand dollars payable at the rate of five hundred dollars per month. A member shall receive the monthly five hundred dollar salary only if the member has attended at least one meeting of the commission during that month. A member may receive no more than the monthly five hundred dollar salary regardless of the number of meetings held by the commission during a month or the number of meetings in excess of one within a month that the member attends.

(2) After August 31, 1998, not to exceed eighteen thousand dollars payable ~~at the rate of fifteen hundred dollars per month. A~~ on the following basis:

(a) ~~Except as provided in division (E)(2)(b) of this section, a member shall receive the monthly fifteen hundred dollar salary only if two thousand dollars during a month in which the member has attended at least attends one meeting or more meetings of the commission during that month and shall receive no payment during a month in which the member attends no meeting of the commission. A~~

(b) ~~A member may receive no more than the monthly fifteen hundred annual eighteen thousand dollar salary regardless of the number of meetings held by the commission during the month a year or the number of meetings in excess of one nine within a month year that the member attends.~~

The chairperson of the commission shall set the meeting dates of the commission as necessary to perform the duties of the commission under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code. The commission shall meet at least nine times during the period commencing on the first day of September and ending on the thirty-first day of August of the following year. The administrator of workers' compensation shall provide professional and clerical assistance to the commission, as the commission considers appropriate.

(F) The commission shall:

(1) Review progress of the bureau in meeting its cost and quality objectives and in complying with this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

(2) Issue an annual report on the cost and quality objectives of the bureau to the president of the senate, the speaker of the house of representatives, and the governor;

(3) Review all independent financial audits of the bureau. The administrator shall provide access to records of the bureau to facilitate the review required under this division.

(4) Study issues as requested by the administrator or the governor;

(5) Contract with an independent actuarial firm to assist the commission in making recommendations to the administrator regarding premium rates;

(6) Establish objectives, policies, and criteria for the administration of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines, and monitor the administrator's progress in implementing the objectives, policies, and criteria on a quarterly basis. The commission shall publish the objectives, policies, and criteria no less than annually and shall make copies available to interested parties. The commission shall prohibit, on a prospective basis, specific investment activity it finds to be contrary to its investment objectives, policies, and criteria.

The investment policy in existence on March 7, 1997, shall continue until the commission approves objectives, policies, and criteria for the administration of the investment program pursuant to this section.

(7) Advise and consent on all of the following:

(a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;

(b) The overall policy of the bureau of workers' compensation as set by the administrator;

(c) The duties and authority conferred upon the administrator pursuant to section 4121.37 of the Revised Code;

(d) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code.

(8) Perform all duties required under section 4121.125 of the Revised Code;

(9) After August 31, 2000, appoint an administrator who meets the qualifications required under section 4121.121 of the Revised Code and fix the salary of the administrator, the amount of which the commission shall

base upon the experience of the administrator and the responsibilities and duties of the administrator pursuant to this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

(G) The commission may enter into an employment contract with an administrator it appoints, provided that the contract does not exceed two years in length.

~~(F)~~(H) As used in this section, "employee organization" means any labor or bona fide organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms and other conditions of employment.

Sec. 4123.01. As used in this chapter:

(A)(1) "Employee" means:

(a) Every person in the service of the state, or of any county, municipal corporation, township, or school district 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 "regular members of lawfully constituted police and fire departments" includes the following persons when the person responds 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" means a member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to section 737.04 of the Revised Code, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.05 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, Ohio veterans' home

police officer appointed under section 5907.02 of the Revised Code, police constable of any township, police officer of a township or joint township police district, state highway patrol trooper, and member of a qualified nonprofit corporation police department established pursuant to section 1702.80 Of the Revised Code.

As used in division (A)(1)(a) of this section with respect to off-duty peace officers, "jurisdiction" means the limits of the municipal corporation, township, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, or Ohio veterans' home in which the peace officer is appointed, employed, or elected.

(ii) Off-duty firefighters, whether paid or volunteer, of a lawfully constituted fire department. As used in division (A)(1)(a) of this section with respect to off-duty firefighters, "jurisdiction" means the limits of the political subdivision, joint ambulance district, fire district, or joint fire district in which the firefighter is appointed or employed.

(iii) Off-duty first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or emergency medical technicians-paramedic, whether paid or volunteer, of an ambulance service organization or emergency medical service organization pursuant to Chapter 4765. of the Revised Code. As used in division (A)(1)(a) of this section with respect to off-duty first responders and emergency medical technicians, "jurisdiction" means the limits of the political subdivision or joint ambulance district in which the first responder or emergency medical technician is employed or volunteers as a first responder or emergency medical technician.

(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 recurring work even if the work is not full time;

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

(viii) The person is required to devote full time to the business of the other contracting party;

(ix) The person is required to perform the work on the premises of the other contracting party;

(x) The person is required to follow the order of work set by the other contracting party;

(xi) The person is required to make oral or written reports of progress to the other contracting party;

(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;

(xiii) The person's expenses are paid for by the other contracting party;

(xiv) The person's tools and materials are furnished by the other contracting party;

(xv) The person is provided with the facilities used to perform services;

(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;

(xvii) The person is not performing services for a number of employers at the same time;

(xviii) The person does not make the same services available to the general public;

(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 if a self-insuring employer 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.

(2) "Employee" does not mean:

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

(b) Any officer of a family farm corporation.

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) of this section. If an employer is a partnership, sole proprietorship, 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, or the officers of the family farm corporation. In the event of an election, the employer shall serve upon the bureau of workers' compensation written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no person excluded from the definition of "employee" pursuant to division (A)(2) of this section, proprietor, or partner shall be deemed an employee within this division until the employer has served such notice.

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, the officers of a family farm corporation, or a person excluded from the definition of "employee" under division (A)(2)(a) of this section, that they should check any health and disability insurance policy, or other form of health and disability plan or contract, presently covering them, or the purchase of which they may be considering, to determine whether such policy, plan, or contract excludes benefits for illness or injury that they might have elected to have covered by workers' compensation.

(B) "Employer" means:

(1) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political

subdivision or subdivisions other than the state;

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

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

(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 the conditions have arisen from an injury or occupational disease;

(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 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.

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

(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 the degree of kinship stipulated in this division.

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

(G) "Self-insuring employer" means any of the following categories of employers if granted the privilege of paying compensation and benefits directly under section 4123.35 of the Revised Code:

- (1) Any employer mentioned in division (B)(2) of this section;
- (2) A board of county hospital trustees;
- (3) A publicly owned utility;

(4) A board of county commissioners for the sole purpose of constructing a sports facility as defined in section 307.696 of the Revised Code, provided that the electors of the county in which the sports facility is to be built have approved construction of a sports facility by ballot election no later than November 6, 1997.

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

(2) As long as injuries have not been purposely self-inflicted, the bureau shall disburse the surplus fund created under section 4123.34 of the Revised Code to off-duty peace officers, firefighters, emergency medical technicians, and first responders, or to their dependents if death ensues, who are injured while responding to inherently dangerous situations that call for an immediate response on the part of the person, regardless of whether the person was within the limits of the person's jurisdiction 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.

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

(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 ~~his~~ 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.

SECTION 2. That existing sections 4121.12, 4123.01, and 4123.46 of the Revised Code are hereby repealed.

SECTION 3. Notwithstanding sections 4123.01 and 4123.46 of the Revised Code as amended by this act, the amendments to those sections as they apply to state university law enforcement officers appointed under section 3345.04 of the Revised Code, Ohio Veterans' Home police officers appointed under section 5907.02 of the Revised Code, and state highway patrol troopers, shall take effect July 1, 1999, and apply to the claims of those persons that arise on and after that date for an injury or death that occurs on and after that date.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____