

AN ACT

To amend sections 4167.01 and 4167.09 and to enact sections 4167.25 to 4167.28 of the Revised Code to require that each public employer of health care workers develop an exposure control plan incorporating the use of needleless systems, sharps with injury protection devices, and other devices determined effective in reducing the risk of exposure incidence.

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

SECTION 1. That sections 4167.01 and 4167.09 be amended and sections 4167.25, 4167.26, 4167.27, and 4167.28 of the Revised Code be enacted to read as follows:

Sec. 4167.01. As used in this chapter:

(A) "Public employer" means any of the following:

- (1) The state and its instrumentalities;
- (2) Any political subdivisions and their instrumentalities, including any county, county hospital, municipal corporation, city, village, township, park district, school district, state institution of higher learning, public or special district, state agency, authority, commission, or board;
- (3) Any other branch of public employment not mentioned in division (A)(1) or (2) of this section.

(B) "Public employee" means any individual who engages to furnish services subject to the direction and control of a public employer, including those individuals working for a private employer who has contracted with a public employer and over whom the national labor relations board has declined jurisdiction. "Public employee" does not mean any of the following:

- (1) A ~~fire—fighter~~ firefighter, an emergency medical ~~technician-ambulance~~ technician-basic, an ~~advanced~~ emergency medical ~~technician-ambulance~~ technician-intermediate, a paramedic, or a peace officer employed by a public employer as defined in division (A)(2) of this section, any member of the organized militia ordered to duty by state

authority pursuant to Chapter 5923. of the Revised Code, or a ~~fire-fighter~~ firefighter, an emergency medical ~~technician-ambulance~~ technician-basic, an ~~advanced~~ emergency medical ~~technician-ambulance~~ technician-intermediate, or a paramedic employed by a private employer that is organized as a nonprofit fire company or life squad that contracts with a public employer to provide fire protection or emergency medical services;

(2) Any person employed as a correctional officer in a county or municipal corporation correctional institution, whether the county or municipal corporation solely or in conjunction with each other operates the institution;

(3) Any person who engages to furnish services subject to the direction and control of a public employer but does not receive compensation, either directly or indirectly, for those services;

(4) Any forest officer, park officer, watercraft officer, wildlife officer, or preserve officer.

(C) "Public employee representative" means an employee organization certified by the state employment relations board under section 4117.05 of the Revised Code as the exclusive representative of the public employees in a bargaining unit.

(D) "Employment risk reduction standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment and places of employment.

(E) "Ohio employment risk reduction standard" means any risk reduction standard adopted or issued under this chapter.

(F) "Undue hardship" means any requirement imposed under this chapter or a rule or order issued thereunder that would require a public employer to take an action with significant difficulty or expense when considered in light of all of the following factors:

(1) The nature and cost of the action required under this chapter;

(2) The overall financial resources of the public employer involved in the action;

(3) The number of persons employed by the public employer at the particular location where the action may be required;

(4) The effect on expenses and resources or the impact otherwise of the action required upon the operations of the public employer at the location where the action may be required;

(5) The overall size of the public employer with respect to the number of its public employees;

(6) The number, type, and location of the public employer's operations, including the composition, structure, and functions of the workforce of the public entity;

(7) The geographic separateness, administrative, or fiscal relationship of the public employer's operations to the whole public employer.

Sec. 4167.09. (A) Any public employer affected by a proposed rule or Ohio employment risk reduction standard or any provision thereof proposed under section 4167.07 ~~or~~, 4167.08, or 4167.26 of the Revised Code may apply to the director of commerce for an order granting a temporary variance from the standard or provision thereof. The application for the order and any extension thereof shall contain a reasonable application fee, as determined by the public employment risk reduction advisory commission, and all of the following information:

(1) A specification of the Ohio public employment risk reduction standard or portion thereof from which the public employer seeks the temporary variance;

(2) A representation by the public employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the public employer is unable to comply with the Ohio employment risk reduction standard or portion thereof and a detailed statement of the reasons therefor;

(3) A statement of the steps that the public employer has taken and will take, with dates specified, to protect employees against the hazard covered by the standard;

(4) A statement of when the public employer expects to be able to comply fully with the Ohio employment risk reduction standard and what steps the public employer has taken and will take, with dates specified, to come into full compliance with the standard;

(5) A certification that the public employer has informed the public employer's public employees of the application by giving a copy of the application to the public employee representative, if any, and by posting a statement giving a summary of the application and specifying where a copy of the application may be examined at the place or places where notices to public employees are normally posted, and by any other appropriate means of public employee notification. The public employer must also inform the public employer's public employees of their rights to a hearing under section 4167.15 of the Revised Code. The certification also shall contain a description of how public employees have been informed of the application and of their rights to a hearing.

(B) The director shall issue an order providing for a temporary variance

if the public employer files an application that meets the requirements of division (A) of this section and establishes that all of the following pertaining to the public employer are true:

(1) The public employer is unable to comply with the Ohio employment risk reduction standard or a provision thereof by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the Ohio employment risk reduction standard or provision thereof or because necessary construction or alteration of facilities cannot be completed by the effective date of the standard.

(2) The public employer is taking all available steps to safeguard the public employer's public employees against the hazards covered by the Ohio employment risk reduction standard.

(3) The public employer has an effective program for coming into compliance with the Ohio employment risk reduction standard as quickly as practicable.

(4) The granting of the variance will not create an imminent danger of death or serious physical harm to public employees.

(C)(1) If the director issues an order providing for a temporary variance under division (B) of this section, the director shall prescribe the practices, means, methods, operations, and processes that the public employer must adopt and use while the order is in effect and state in detail the public employer's program for coming into compliance with the Ohio employment risk reduction standard. The director may issue the order only after providing notice to affected public employees and their public employee representative, if any, and an opportunity for a hearing pursuant to section 4167.15 of the Revised Code, provided that the director may issue one interim order granting a temporary order to be effective until a decision on a hearing is made. Except as provided in division (C)(2) of this section, no temporary variance may be in effect for longer than the period needed by the public employer to achieve compliance with the Ohio employment risk reduction standard or one year, whichever is shorter.

(2) The director may renew an order issued under division (C) of this section up to two times provided that the requirements of divisions (A), (B), and (C)(1) of this section and section 4167.15 of the Revised Code are met and the public employer files an application for renewal with the director at least ninety days prior to the expiration date of the order.

(D) Any public employer affected by an Ohio employment risk reduction standard or any provision thereof proposed, adopted, or otherwise issued under section 4167.07 ~~or 4167.09, 4167.08, or 4167.26~~ of the

Revised Code may apply to the director for an order granting a variance from the standard or portion thereof. The director shall provide affected public employees and their public employee representative, if any, notice of the application and shall provide an opportunity for a hearing pursuant to section 4167.15 of the Revised Code. The director shall issue the order granting the variance if the public employer files an application that meets the requirements of division (B) of this section, and after an opportunity for a hearing pursuant to section 4167.15 of the Revised Code, and if the public employer establishes to the satisfaction of the director that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the public employer will provide employment and places of employment to the public employer's public employees that are as safe and healthful as those that would prevail if the public employer complied with the Ohio employment risk reduction standard. The director shall prescribe in the order granting the variance the conditions the public employer must maintain, and the practices, means, methods, operations, and processes the public employer must adopt and utilize in lieu of the Ohio employment risk reduction standard which would otherwise apply. The director may modify or revoke the order upon application of the public employer, public employee, or public employee representative, or upon the director's own motion in the manner prescribed for the issuance of an order under this division at any time during six months after the date of issuance of the order.

Sec. 4167.25. As used in this section and sections 4167.26 to 4767.28 of the Revised Code:

(A) "Bloodborne pathogen" means a microorganism present in human blood that can cause disease in humans, including the human immunodeficiency virus, hepatitis B virus, hepatitis C virus, and other pathogenic microorganisms.

(B) "Engineered sharps injury protection" means either of the following:

(1) A physical attribute built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or any other effective mechanism;

(2) A physical attribute built into a type of needle device not included in division (B)(1) of this section, or built into a non-needle sharp, that effectively reduces the risk of an exposure incident.

(C) "Exposure incident" means an occurrence of occupational exposure to blood or other material potentially containing bloodborne pathogens, including exposure that occurs through a sharps injury.

(D) "Needleless system" means a device that does not utilize needles for the following:

(1) Withdrawing body fluids after initial venous or arterial access is established;

(2) Administering medication or fluids;

(3) Performing any other procedure involving potential exposure incidents.

(E) "Public health care worker" means a person who is employed by a public employer to provide health services that carry with them the potential for exposure incidents, including a person employed by a public hospital or other public health care facility, a person employed by a public employer to provide home health care, and a person employed by a public employer as a firefighter, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic. "Public health care worker" does not include a person who is employed by a public employer to provide dental services, treatment, or training or a dental student who is receiving training from a public employer.

(F) "Sharp" means an object used in or encountered when providing health care services that can be reasonably anticipated to penetrate the skin or any other part of the body and result in an exposure incident, including objects such as needle devices, scalpels, lancets, and broken glass.

(G) "Sharps injury" means an injury caused by a sharp, including such injuries as cuts, abrasions, and needlesticks.

Sec. 4167.26. (A) The public employment risk reduction advisory commission shall appoint a subcommittee for purposes of protecting public health care workers from exposure incidents. At all times, at least half of the subcommittee's members shall be public health care workers who are actively engaged in providing direct care to and for patients. These front-line public health care workers shall be appointed in such a manner that the membership represents a variety of occupational classifications, including physicians, nurses, nurse aides, laboratory technicians, and phlebotomists. at all times, the subcommittee's members shall include at least one fire chief; at least one firefighter; at least one emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic; AND AT LEAST ONE INDIVIDUAL WHO PRACTICES INFECTION CONTROL OR IS AN INFECTION CONTROL COORDINATOR FOR A HOSPITAL.

(B) The subcommittee shall study methods by which public health care workers can be protected from exposure incidents. The study shall include evaluations of needleless systems, products that have been manufactured

with engineered sharps injury protection, AND OTHER DEVICES THAT COMPLY WITH THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S BLOODBORNE PATHOGEN STANDARDS. Before a member may participate in the evaluation of a product, the member shall be trained in the proper method of using product evaluation criteria.

(C) The subcommittee shall submit recommendations to the commission for purposes of the commission's adoption, modification, or rescission of rules under section 4167.27 of the Revised Code. In making its recommendations, the subcommittee shall address all of the following:

(1) Creation of a list of needleless systems, sharps that are manufactured with engineered sharps injury protection, AND OTHER DEVICES THAT COMPLY WITH THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S BLOODBORNE PATHOGEN STANDARDS. The list may be based on existing sources of information, including the United States food and drug administration, the centers for disease control and prevention, the national institute of occupational safety and health, and the United States department of veterans affairs.

(2) Establishment of control procedures for the prevention of exposure incidents, including training and educational requirements, increased use of vaccinations, strategic placement of containers for sharps as close to the work area as possible, and increased use of personal protective equipment;

(3) Any other matter the subcommittee considers relevant.

(D) If a subcommittee member represents a profession or a facility in which health care services are provided, and the profession or facility is subject to regulation by this state, the member shall report the subcommittee's recommendations to the state agency responsible for regulating the profession or facility.

Sec. 4167.27. (A) The public employment risk reduction advisory commission shall adopt a rule and Ohio employment risk reduction standard for the prevention of exposure incidents. The initial rule and standard shall be adopted not later than one hundred eighty days after the effective date of this section. In adopting, modifying, or rescinding the rule or standard, the commission shall act in accordance with recommendations submitted by the commission's subcommittee appointed under section 4167.26 of the Revised Code.

(B) The commission shall provide advice to public employers with regard to their implementation of the requirements established by the rule and standard adopted under this section and the requirements of section 4167.28 of the Revised Code.

Sec. 4167.28. (A) Except as provided in division (B) of this section, each public employer of public health care workers shall do all of the following:

(1) Include, as part of the employer's engineering and work practice controls, needleless systems, sharps that are manufactured with engineered sharps injury protection, AND OTHER DEVICES THAT COMPLY WITH THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S BLOODBORNE PATHOGEN STANDARDS;

(2) Develop and implement a written exposure control plan that is consistent with the employment risk reduction standard established in rules adopted under section 4167.27 of the Revised Code, including procedures for both of the following:

(a) Identifying and selecting needleless systems, sharps that are manufactured with engineered sharps injury protection, AND OTHER DEVICES THAT COMPLY WITH THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S BLOODBORNE PATHOGEN STANDARDS;

(b) Updating, at least once a year, the exposure control plan when necessary to reflect progress in implementing needleless systems and sharps that are manufactured with engineered sharps injury protection.

(3) Ensure that all public health care workers are trained in the use of engineering and work practice controls before undertaking any task with potential for exposure incidents;

(4) Maintain accurate records of public health care worker exposure incidents. The records shall contain the following information:

(a) The date and time of the incident;

(b) The type and brand of sharp involved;

(c) The job classification of each worker involved;

(d) The department or work area where the incident occurred;

(e) The procedure the worker was performing at the time of the incident;

(f) How the incident occurred;

(g) The body part involved;

(h) If the sharp involved in the incident was manufactured with engineered sharps injury protection, a specification of whether the incident occurred before, during, or after activation of the protective mechanism;

(i) If the sharp involved in the incident was not manufactured with engineered sharps injury protection, an assessment of whether and how the incident could have been prevented by a sharp with protection, and the basis for the assessment;

(j) Any other relevant description of the exposure incident.

(B) Notwithstanding any provision of the rule and Ohio employment risk reduction standard adopted under section 4167.27 of the Revised Code, both of the following apply:

(1) A public employer, under division (D) of section 4167.09 of the Revised Code, may be granted a variance from the requirements of this section for either of the following reasons:

(a) Needleless systems or sharps that are manufactured with engineered sharps injury protection are not available in the marketplace;

(b) The employer determines, with respect to a specific medical procedure, that use of needleless systems or sharps that are manufactured with engineered sharps injury protection would jeopardize patient or worker safety.

(2) Until five years after the effective date of this section, the employer may allow a drug or other substance to be administered with a device without engineered sharps injury protection, if the drug or substance is received in a prefilled syringe or any other prepackaged administration system and has been approved for commercial distribution or investigational use by the United States food and drug administration.

(C) Any of the records maintained under division (A)(4) of this section may be used by the public employer for purposes of complying with the record-keeping and reporting requirements established under section 4167.11 of the Revised Code.

SECTION 2. That existing sections 4167.01 and 4167.09 of the Revised Code are hereby repealed.

SECTION 3. Section 4167.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 10 and Am. Sub. S.B. 162 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

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 _____