

As Passed by the House

124th General Assembly

Regular Session

2001-2002

Am. Sub. S. B. No. 223

SENATORS Wachtmann, Herington, Hottinger, Armbruster, Nein, Mumper,
Austria, Randy Gardner, Brady, Mallory, Ryan, Roberts, White, Blessing,
Hagan, Prentiss

REPRESENTATIVES Rhine, Fedor, D. Miller, Collier, Schaffer, Williams,
Willamowski, Womer Benjamin, Krupinski, Bocchieri, Roman, Allen, Buehrer,
Hagan, Driehaus, Olman, Gilb, Fessler, Coates, Oakar, Brown, Metzger,
Kearns, Webster, Perry, Mason, Koziura, Faber, Jerse, Callender, Jolivette,
Latell, Distel, Wolpert, Clancy, Latta, Setzer, Key, DePiero, Seitz, DeBose,
Wilson, Woodard, Aslanides, Strahorn, Hoops, Sykes, Flowers, Otterman,
Schmidt, Cates, Blasdel, Beatty, Britton, Hartnett, Widowfield, Evans,
Lendrum

A B I L L

To amend sections 4123.01 and 4123.32 and to enact 1
sections 4123.026 of the Revised Code to require 2
payment, under the Workers' Compensation Law, for 3
the costs of conducting medical diagnostic services 4
to investigate whether an emergency worker 5
sustained an injury or occupational disease when 6
coming into direct contact with the blood or other 7
body fluid of another person and to allow for 8
refunds of surplus premiums regardless of when 9
premium obligations accrue. 10

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

Section 1. That sections 4123.01 and 4123.32 be amended and 11

section 4123.026 of the Revised Code be enacted to read as 12
follows: 13

Sec. 4123.01. As used in this chapter: 14

(A)(1) "Employee" means: 15

(a) Every person in the service of the state, or of any 16
county, municipal corporation, township, or school district 17
therein, including regular members of lawfully constituted police 18
and fire departments of municipal corporations and townships, 19
whether paid or volunteer, and wherever serving within the state 20
or on temporary assignment outside thereof, and executive officers 21
of boards of education, under any appointment or contract of hire, 22
express or implied, oral or written, including any elected 23
official of the state, or of any county, municipal corporation, or 24
township, or members of boards of education. 25

As used in division (A)(1)(a) of this section, the term 26
~~"regular members of lawfully constituted police and fire~~ 27
~~departments~~ employee" includes the following persons when ~~the~~ 28
~~person responds~~ responding to an inherently dangerous situation 29
that calls for an immediate response on the part of the person, 30
regardless of whether the person is within the limits of the 31
jurisdiction of the person's regular employment or voluntary 32
service when responding, on the condition that the person responds 33
to the situation as the person otherwise would if the person were 34
on duty in the person's jurisdiction: 35

(i) Off-duty peace officers. As used in division (A)(1)(a)(i) 36
of this section, "peace officer" ~~means a member of the organized~~ 37
~~police department of any municipal corporation, including a member~~ 38
~~of the organized police department of a municipal corporation in~~ 39
~~an adjoining state serving in Ohio under a contract pursuant to~~ 40
~~section 737.04 of the Revised Code, member of a police force~~ 41

~~employed by a metropolitan housing authority under division (D) of~~ 42
~~section 3735.31 of the Revised Code, member of a police force~~ 43
~~employed by a regional transit authority under division (Y) of~~ 44
~~section 306.05 of the Revised Code, state university law~~ 45
~~enforcement officer appointed under section 3345.04 of the Revised~~ 46
~~Code, Ohio veterans' home police officer appointed under section~~ 47
~~5907.02 of the Revised Code, police constable of any township,~~ 48
~~police officer of a township or joint township police district,~~ 49
~~state highway patrol trooper, and member of a qualified nonprofit~~ 50
~~corporation police department established pursuant to has the same~~ 51
~~meaning as in section ~~1702.80~~ 2935.01 of the Revised Code.~~ 52

~~As used in division (A)(1)(a) of this section with respect to~~ 54
~~off-duty peace officers, "jurisdiction" means the limits of the~~ 55
~~municipal corporation, township, metropolitan housing authority~~ 56
~~housing project, regional transit authority facilities or areas of~~ 57
~~a municipal corporation that have been agreed to by a regional~~ 58
~~transit authority and a municipal corporation located within its~~ 59
~~territorial jurisdiction, college, university, or Ohio veterans'~~ 60
~~home in which the peace officer is appointed, employed, or~~ 61
~~elected.~~ 62

(ii) Off-duty firefighters, whether paid or volunteer, of a 63
lawfully constituted fire department. ~~As used in division~~ 64
~~(A)(1)(a) of this section with respect to off-duty firefighters,~~ 65
~~"jurisdiction" means the limits of the political subdivision,~~ 66
~~joint ambulance district, fire district, or joint fire district in~~ 67
~~which the firefighter is appointed or employed.~~ 68

(iii) Off-duty first responders, emergency medical 69
technicians-basic, emergency medical technicians-intermediate, or 70
emergency medical technicians-paramedic, whether paid or 71
volunteer, of an ambulance service organization or emergency 72
medical service organization pursuant to Chapter 4765. of the 73

~~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.~~

74
75
76
77
78
79

(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.

80
81
82
83
84
85
86
87
88
89
90
91

(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:

92
93
94
95

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

96
97
98

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

99
100

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

101
102

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

103

(v) The person is hired, supervised, or paid by the other

104

contracting party;	105
(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;	106 107 108
(vii) The person's hours of work are established by the other contracting party;	109 110
(viii) The person is required to devote full time to the business of the other contracting party;	111 112
(ix) The person is required to perform the work on the premises of the other contracting party;	113 114
(x) The person is required to follow the order of work set by the other contracting party;	115 116
(xi) The person is required to make oral or written reports of progress to the other contracting party;	117 118
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	119 120
(xiii) The person's expenses are paid for by the other contracting party;	121 122
(xiv) The person's tools and materials are furnished by the other contracting party;	123 124
(xv) The person is provided with the facilities used to perform services;	125 126
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	127 128
(xvii) The person is not performing services for a number of employers at the same time;	129 130
(xviii) The person does not make the same services available to the general public;	131 132

(xix) The other contracting party has a right to discharge 133
the person; 134

(xx) The person has the right to end the relationship with 135
the other contracting party without incurring liability pursuant 136
to an employment contract or agreement. 137

Every person in the service of any independent contractor or 138
subcontractor who has failed to pay into the state insurance fund 139
the amount of premium determined and fixed by the administrator of 140
workers' compensation for the person's employment or occupation or 141
if a self-insuring employer has failed to pay compensation and 142
benefits directly to the employer's injured and to the dependents 143
of the employer's killed employees as required by section 4123.35 144
of the Revised Code, shall be considered as the employee of the 145
person who has entered into a contract, whether written or verbal, 146
with such independent contractor unless such employees or their 147
legal representatives or beneficiaries elect, after injury or 148
death, to regard such independent contractor as the employer. 149

(2) "Employee" does not mean: 150

(a) A duly ordained, commissioned, or licensed minister or 151
assistant or associate minister of a church in the exercise of 152
ministry; or 153

(b) Any officer of a family farm corporation. 154

Any employer may elect to include as an "employee" within 155
this chapter, any person excluded from the definition of 156
"employee" pursuant to division (A)(2) of this section. If an 157
employer is a partnership, sole proprietorship, or family farm 158
corporation, such employer may elect to include as an "employee" 159
within this chapter, any member of such partnership, the owner of 160
the sole proprietorship, or the officers of the family farm 161
corporation. In the event of an election, the employer shall serve 162
upon the bureau of workers' compensation written notice naming the 163

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.

164
165
166
167
168
169

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.

170
171
172
173
174
175
176
177
178
179
180
181
182

(B) "Employer" means:

183

(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;

184
185
186
187

(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.

188
189
190
191
192
193
194

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 226
corporation. A family farm corporation does not cease to qualify 227
under this division where, by reason of any devise, bequest, or 228
the operation of the laws of descent or distribution, the 229
ownership of shares of voting stock is transferred to another 230
person, as long as that person is within the degree of kinship 231
stipulated in this division. 232

(F) "Occupational disease" means a disease contracted in the 233
course of employment, which by its causes and the characteristics 234
of its manifestation or the condition of the employment results in 235
a hazard which distinguishes the employment in character from 236
employment generally, and the employment creates a risk of 237
contracting the disease in greater degree and in a different 238
manner from the public in general. 239

(G) "Self-insuring employer" means an employer who is granted 240
the privilege of paying compensation and benefits directly under 241
section 4123.35 of the Revised Code, including a board of county 242
commissioners for the sole purpose of constructing a sports 243
facility as defined in section 307.696 of the Revised Code, 244
provided that the electors of the county in which the sports 245
facility is to be built have approved construction of a sports 246
facility by ballot election no later than November 6, 1997. 247

(H) "Public employer" means an employer as defined in 248
division (B)(1) of this section. 249

Sec. 4123.026. (A) The administrator of workers' 250
compensation, or a self-insuring public employer for the peace 251
officers, firefighters, and emergency medical workers employed by 252
or volunteering for that self-insuring public employer, shall pay 253
the costs of conducting post-exposure medical diagnostic services, 254
consistent with the standards of medical care existing at the time 255
of the exposure, to investigate whether an injury or occupational 256

disease was sustained by a peace officer, firefighter, or 257
emergency medical worker when coming into contact with the blood 258
or other body fluid of another person in the course of and arising 259
out of the peace officer's, firefighter's, or emergency medical 260
worker's employment, or when responding to an inherently dangerous 261
situation in the manner described in, and in accordance with the 262
conditions specified under, division (A)(1)(a) of section 4123.01 263
of the Revised Code, through any of the following means: 264

(1) Splash or spatter in the eye or mouth, including when 265
received in the course of conducting mouth-to-mouth resuscitation; 266

(2) A puncture in the skin; 267

(3) A cut in the skin or another opening in the skin such as 268
an open sore, wound, lesion, abrasion, or ulcer. 269

(B) As used in this section: 270

(1) "Peace officer" has the same meaning as in section 271
2935.01 of the Revised Code. 272

(2) "Firefighter" means a firefighter, whether paid or 273
volunteer, of a lawfully constituted fire department. 274

(3) "Emergency medical worker" means a first responder, 275
emergency medical technician-basic, emergency medical 276
technician-intermediate, or emergency medical 277
technician-paramedic, certified under Chapter 4765. of the Revised 278
Code, whether paid or volunteer. 279

Sec. 4123.32. The administrator of workers' compensation, 280
with the advice and consent of the workers' compensation oversight 281
commission, shall adopt rules with respect to the collection, 282
maintenance, and disbursements of the state insurance fund 283
including all of the following: 284

(A) A rule providing that in the event there is developed as 285

of any given rate revision date a surplus of earned premium over 286
all losses which, in the judgment of the administrator, is larger 287
than is necessary adequately to safeguard the solvency of the 288
fund, the administrator may return such excess surplus to the 289
subscriber to the fund in either the form of cash refunds or a 290
reduction of ~~future~~ premiums, regardless of when the premium 291
obligations have accrued; 292

(B) A rule providing that the premium security deposit 293
collected from any employer entitles the employer to the benefits 294
of this chapter for the remainder of the six months and also for 295
an additional adjustment period of two months, and, thereafter, if 296
the employer pays the premium due at the close of any six-month 297
period, coverage shall be extended for an additional eight-month 298
period beginning from the end of the six-month period for which 299
the employer pays the premium due; 300

(C) A rule providing for ascertaining the correctness of any 301
employer's report of estimated or actual expenditure of wages and 302
the determination and adjustment of proper premiums and the 303
payment of those premiums by the employer for or during any period 304
less than eight months and notwithstanding any payment or 305
determination of premium made when exceptional conditions or 306
circumstances in the judgment of the administrator justify the 307
action; 308

(D) Such special rules as the administrator considers 309
necessary to safeguard the fund and that are just in the 310
circumstances, covering the rates to be applied where one employer 311
takes over the occupation or industry of another or where an 312
employer first makes application for state insurance, and the 313
administrator may require that if any employer transfers ~~his~~ a 314
business in whole or in part or otherwise reorganizes the 315
business, the successor in interest shall assume, in proportion to 316
the extent of the transfer, as determined by the administrator, 317

the employer's account and shall continue the payment of all 318
contributions due under this chapter; 319

(E) A rule providing for all of the following: 320

(1) If, within two months immediately after the expiration of 321
the six-month period, an employer fails to file a report of the 322
employer's actual payroll expenditures for the period, the premium 323
found to be due from the employer for the period shall be 324
increased in an amount equal to one per cent of the premium, but 325
the increase shall not be less than three nor more than fifteen 326
dollars; 327

(2) The premium determined by the administrator to be due 328
from an employer shall be payable on or before the end of the 329
coverage period established by the premium security deposit, or 330
within the time specified by the administrator if the period for 331
which the advance premium has been paid is less than eight months. 332
If an employer fails to pay the premium when due, an amount equal 333
to three per cent of the premium shall be added to the premium. If 334
the failure to pay continues for more than one month, the premium 335
shall be increased further in an amount equal to two per cent of 336
the premium for each additional month or part of a month, but the 337
total of all additional amounts shall not exceed twelve per cent 338
of the premium. If the employer files an appropriate payroll 339
report, within the time provided by law or within the time 340
specified by the administrator if the period for which the 341
employer paid an estimated premium is less than eight months, the 342
employer shall not be in default and division (E) of section 343
4123.32 of the Revised Code shall not apply if the employer pays 344
the premiums within fifteen days after being first notified by the 345
administrator of the amount due. 346

(3) Any deficiencies in the amounts of the premium security 347
deposit paid by an employer for any period shall be subject to an 348
interest charge of six per cent per annum from the date the 349

premium obligation is incurred. In determining the interest due on
deficiencies in premium security deposit payments, a charge in
each case shall be made against the employer in an amount equal to
interest at the rate of six per cent per annum on the premium
security deposit due but remaining unpaid sixty days after notice
by the administrator.

350
351
352
353
354
355

(4) Any interest charges or penalties provided for in
divisions (E)(2) and (3) of this section shall be credited to the
employer's account for rating purposes in the same manner as
premiums.

356
357
358
359

(F) A rule providing that each employer, on the occasion of
instituting coverage under this chapter, shall submit a premium
security deposit. The deposit shall be calculated equivalent to
thirty per cent of the semiannual premium obligation of the
employer based upon the employer's estimated expenditure for wages
for the ensuing six-month period plus thirty per cent of an
additional adjustment period of two months but only up to a
maximum of one thousand dollars and not less than ten dollars. The
administrator shall review the security deposit of every employer
who has submitted a deposit which is less than the
one-thousand-dollar maximum. The administrator may require any
such employer to submit additional money up to the maximum of one
thousand dollars that, in the administrator's opinion, reflects
the employer's current payroll expenditure for an eight-month
period.

360
361
362
363
364
365
366
367
368
369
370
371
372
373
374

Section 2. That existing sections 4123.01 and 4123.32 of the
Revised Code are hereby repealed.

375
376