

**As Passed by the Senate**

**124th General Assembly  
Regular Session  
2001-2002**

**Sub. S. B. No. 223**

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

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**A B I L L**

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

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

**Section 1.** That section 4123.01 be amended and section 9  
4123.026 of the Revised Code be enacted to read as follows: 10

**Sec. 4123.01.** As used in this chapter: 11

(A)(1) "Employee" means: 12

(a) Every person in the service of the state, or of any 13  
county, municipal corporation, township, or school district 14  
therein, including regular members of lawfully constituted police 15  
and fire departments of municipal corporations and townships, 16  
whether paid or volunteer, and wherever serving within the state 17  
or on temporary assignment outside thereof, and executive officers 18

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~~ employee" includes the following persons when ~~the person responds~~ responding 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~~ has the same meaning as in section 1702.80 2935.01 of the Revised Code.

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~~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.

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(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:

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

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

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

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

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

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(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;

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

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

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

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(x) The person is required to follow the order of work set by the other contracting party;	112 113
(xi) The person is required to make oral or written reports of progress to the other contracting party;	114 115
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	116 117
(xiii) The person's expenses are paid for by the other contracting party;	118 119
(xiv) The person's tools and materials are furnished by the other contracting party;	120 121
(xv) The person is provided with the facilities used to perform services;	122 123
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	124 125
(xvii) The person is not performing services for a number of employers at the same time;	126 127
(xviii) The person does not make the same services available to the general public;	128 129
(xix) The other contracting party has a right to discharge the person;	130 131
(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.	132 133 134
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	135 136 137 138 139 140

of the employer's killed employees as required by section 4123.35 141  
of the Revised Code, shall be considered as the employee of the 142  
person who has entered into a contract, whether written or verbal, 143  
with such independent contractor unless such employees or their 144  
legal representatives or beneficiaries elect, after injury or 145  
death, to regard such independent contractor as the employer. 146

(2) "Employee" does not mean: 147

(a) A duly ordained, commissioned, or licensed minister or 148  
assistant or associate minister of a church in the exercise of 149  
ministry; or 150

(b) Any officer of a family farm corporation. 151

Any employer may elect to include as an "employee" within 152  
this chapter, any person excluded from the definition of 153  
"employee" pursuant to division (A)(2) of this section. If an 154  
employer is a partnership, sole proprietorship, or family farm 155  
corporation, such employer may elect to include as an "employee" 156  
within this chapter, any member of such partnership, the owner of 157  
the sole proprietorship, or the officers of the family farm 158  
corporation. In the event of an election, the employer shall serve 159  
upon the bureau of workers' compensation written notice naming the 160  
persons to be covered, include such employee's remuneration for 161  
premium purposes in all future payroll reports, and no person 162  
excluded from the definition of "employee" pursuant to division 163  
(A)(2) of this section, proprietor, or partner shall be deemed an 164  
employee within this division until the employer has served such 165  
notice. 166

For informational purposes only, the bureau shall prescribe 167  
such language as it considers appropriate, on such of its forms as 168  
it considers appropriate, to advise employers of their right to 169  
elect to include as an "employee" within this chapter a sole 170  
proprietor, any member of a partnership, the officers of a family 171

farm corporation, or a person excluded from the definition of 172  
"employee" under division (A)(2)(a) of this section, that they 173  
should check any health and disability insurance policy, or other 174  
form of health and disability plan or contract, presently covering 175  
them, or the purchase of which they may be considering, to 176  
determine whether such policy, plan, or contract excludes benefits 177  
for illness or injury that they might have elected to have covered 178  
by workers' compensation. 179

(B) "Employer" means: 180

(1) The state, including state hospitals, each county, 181  
municipal corporation, township, school district, and hospital 182  
owned by a political subdivision or subdivisions other than the 183  
state; 184

(2) Every person, firm, and private corporation, including 185  
any public service corporation, that (a) has in service one or 186  
more employees regularly in the same business or in or about the 187  
same establishment under any contract of hire, express or implied, 188  
oral or written, or (b) is bound by any such contract of hire or 189  
by any other written contract, to pay into the insurance fund the 190  
premiums provided by this chapter. 191

All such employers are subject to this chapter. Any member of 192  
a firm or association, who regularly performs manual labor in or 193  
about a mine, factory, or other establishment, including a 194  
household establishment, shall be considered an employee in 195  
determining whether such person, firm, or private corporation, or 196  
public service corporation, has in its service, one or more 197  
employees and the employer shall report the income derived from 198  
such labor to the bureau as part of the payroll of such employer, 199  
and such member shall thereupon be entitled to all the benefits of 200  
an employee. 201

(C) "Injury" includes any injury, whether caused by external 202

accidental means or accidental in character and result, received	203
in the course of, and arising out of, the injured employee's	204
employment. "Injury" does not include:	205
(1) Psychiatric conditions except where the conditions have	206
arisen from an injury or occupational disease;	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 participation	210
in an employer-sponsored recreation or fitness activity if the	211
employee signs a waiver of the employee's right to compensation or	212
benefits under this chapter prior to engaging in the recreation or	213
fitness activity.	214
(D) "Child" includes a posthumous child and a child legally	215
adopted prior to the injury.	216
(E) "Family farm corporation" means a corporation founded for	217
the purpose of farming agricultural land in which the majority of	218
the voting stock is held by and the majority of the stockholders	219
are persons or the spouse of persons related to each other within	220
the fourth degree of kinship, according to the rules of the civil	221
law, and at least one of the related persons is residing on or	222
actively operating the farm, and none of whose stockholders are a	223
corporation. A family farm corporation does not cease to qualify	224
under this division where, by reason of any devise, bequest, or	225
the operation of the laws of descent or distribution, the	226
ownership of shares of voting stock is transferred to another	227
person, as long as that person is within the degree of kinship	228
stipulated in this division.	229
(F) "Occupational disease" means a disease contracted in the	230
course of employment, which by its causes and the characteristics	231
of its manifestation or the condition of the employment results in	232
a hazard which distinguishes the employment in character from	233

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.

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(G) "Self-insuring employer" means an employer who is granted  
the privilege of paying compensation and benefits directly under  
section 4123.35 of the Revised Code, including 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.

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

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Sec. 4123.026. (A) The administrator of workers'  
compensation, or a self-insuring public employer for the peace  
officers, firefighters, and emergency medical workers employed by  
or volunteering for that self-insuring public employer, shall pay  
the costs of conducting post-exposure medical diagnostic services,  
consistent with the standards of medical care existing at the time  
of the exposure, to investigate whether an injury or occupational  
disease was sustained by a peace officer, firefighter, or  
emergency medical worker when coming into contact with the blood  
or other body fluid of another person in the course of and arising  
out of the peace officer's, firefighter's, or emergency medical  
worker's employment, or when responding to an inherently dangerous  
situation in the manner described in, and in accordance with the  
conditions specified under, division (A)(1)(a) of section 4123.01  
of the Revised Code, through any of the following means:

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

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(2) A puncture in the skin;

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(3) A cut in the skin or another opening in the skin such as 265  
an open sore, wound, lesion, abrasion, or ulcer. 266

(B) As used in this section: 267

(1) "Peace officer" has the same meaning as in section 268  
2935.01 of the Revised Code. 269

(2) "Firefighter" means a firefighter, whether paid or 270  
volunteer, of a lawfully constituted fire department. 271

(3) "Emergency medical worker" means a first responder, 272  
emergency medical technician-basic, emergency medical 273  
technician-intermediate, or emergency medical 274  
technician-paramedic, certified under Chapter 4765. of the Revised 275  
Code, whether paid or volunteer. 276

**Section 2.** That existing section 4123.01 of the Revised Code 277  
is hereby repealed. 278