

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 183

Representatives Daniels, Allen, C. Evans, Seitz, Setzer, Raga, Ujvagi

A B I L L

To amend section 4123.01 and to enact sections 1
4125.01 to 4125.08 and 4125.99 of the Revised Code 2
to register professional employer organizations 3
for purposes of enforcing compliance with workers' 4
compensation laws. 5

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

Section 1. That section 4123.01 be amended and sections 6
4125.01, 4125.02, 4125.03, 4125.04, 4125.05, 4125.06, 4125.07, 7
4125.08, and 4125.99 of the Revised Code be enacted to read as 8
follows: 9

Sec. 4123.01. As used in this chapter: 10

(A)(1) "Employee" means: 11

(a) Every person in the service of the state, or of any 12
county, municipal corporation, township, or school district 13
therein, including regular members of lawfully constituted police 14
and fire departments of municipal corporations and townships, 15
whether paid or volunteer, and wherever serving within the state 16
or on temporary assignment outside thereof, and executive officers 17
of boards of education, under any appointment or contract of hire, 18
express or implied, oral or written, including any elected 19
official of the state, or of any county, municipal corporation, or 20

township, or members of boards of education. 21

As used in division (A)(1)(a) of this section, the term 22
"employee" includes the following persons when responding to an 23
inherently dangerous situation that calls for an immediate 24
response on the part of the person, regardless of whether the 25
person is within the limits of the jurisdiction of the person's 26
regular employment or voluntary service when responding, on the 27
condition that the person responds to the situation as the person 28
otherwise would if the person were on duty in the person's 29
jurisdiction: 30

(i) Off-duty peace officers. As used in division (A)(1)(a)(i) 31
of this section, "peace officer" has the same meaning as in 32
section 2935.01 of the Revised Code. 33

(ii) Off-duty firefighters, whether paid or volunteer, of a 34
lawfully constituted fire department. 35

(iii) Off-duty first responders, emergency medical 36
technicians-basic, emergency medical technicians-intermediate, or 37
emergency medical technicians-paramedic, whether paid or 38
volunteer, of an ambulance service organization or emergency 39
medical service organization pursuant to Chapter 4765. of the 40
Revised Code. 41

(b) Every person in the service of any person, firm, or 42
private corporation, including any public service corporation, 43
that (i) employs one or more persons regularly in the same 44
business or in or about the same establishment under any contract 45
of hire, express or implied, oral or written, including aliens and 46
minors, household workers who earn one hundred sixty dollars or 47
more in cash in any calendar quarter from a single household and 48
casual workers who earn one hundred sixty dollars or more in cash 49
in any calendar quarter from a single employer, or (ii) is bound 50
by any such contract of hire or by any other written contract, to 51

pay into the state insurance fund the premiums provided by this 52
chapter. 53

(c) Every person who performs labor or provides services 54
pursuant to a construction contract, as defined in section 4123.79 55
of the Revised Code, if at least ten of the following criteria 56
apply: 57

(i) The person is required to comply with instructions from 58
the other contracting party regarding the manner or method of 59
performing services; 60

(ii) The person is required by the other contracting party to 61
have particular training; 62

(iii) The person's services are integrated into the regular 63
functioning of the other contracting party; 64

(iv) The person is required to perform the work personally; 65

(v) The person is hired, supervised, or paid by the other 66
contracting party; 67

(vi) A continuing relationship exists between the person and 68
the other contracting party that contemplates continuing or 69
recurring work even if the work is not full time; 70

(vii) The person's hours of work are established by the other 71
contracting party; 72

(viii) The person is required to devote full time to the 73
business of the other contracting party; 74

(ix) The person is required to perform the work on the 75
premises of the other contracting party; 76

(x) The person is required to follow the order of work set by 77
the other contracting party; 78

(xi) The person is required to make oral or written reports 79
of progress to the other contracting party; 80

(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	81 82
(xiii) The person's expenses are paid for by the other contracting party;	83 84
(xiv) The person's tools and materials are furnished by the other contracting party;	85 86
(xv) The person is provided with the facilities used to perform services;	87 88
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	89 90
(xvii) The person is not performing services for a number of employers at the same time;	91 92
(xviii) The person does not make the same services available to the general public;	93 94
(xix) The other contracting party has a right to discharge the person;	95 96
(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.	97 98 99
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	100 101 102 103 104 105 106 107 108 109 110

death, to regard such independent contractor as the employer. 111

(2) "Employee" does not mean: 112

(a) A duly ordained, commissioned, or licensed minister or 113
assistant or associate minister of a church in the exercise of 114
ministry; or 115

(b) Any officer of a family farm corporation. 116

Any employer may elect to include as an "employee" within 117
this chapter, any person excluded from the definition of 118
"employee" pursuant to division (A)(2) of this section. If an 119
employer is a partnership, sole proprietorship, or family farm 120
corporation, such employer may elect to include as an "employee" 121
within this chapter, any member of such partnership, the owner of 122
the sole proprietorship, or the officers of the family farm 123
corporation. In the event of an election, the employer shall serve 124
upon the bureau of workers' compensation written notice naming the 125
persons to be covered, include such employee's remuneration for 126
premium purposes in all future payroll reports, and no person 127
excluded from the definition of "employee" pursuant to division 128
(A)(2) of this section, proprietor, or partner shall be deemed an 129
employee within this division until the employer has served such 130
notice. 131

For informational purposes only, the bureau shall prescribe 132
such language as it considers appropriate, on such of its forms as 133
it considers appropriate, to advise employers of their right to 134
elect to include as an "employee" within this chapter a sole 135
proprietor, any member of a partnership, the officers of a family 136
farm corporation, or a person excluded from the definition of 137
"employee" under division (A)(2)(a) of this section, that they 138
should check any health and disability insurance policy, or other 139
form of health and disability plan or contract, presently covering 140
them, or the purchase of which they may be considering, to 141

determine whether such policy, plan, or contract excludes benefits 142
for illness or injury that they might have elected to have covered 143
by workers' compensation. 144

(B) "Employer" means: 145

(1) The state, including state hospitals, each county, 146
municipal corporation, township, school district, and hospital 147
owned by a political subdivision or subdivisions other than the 148
state; 149

(2) Every person, firm, professional employer organization as 150
defined in section 4125.01 of the Revised Code, and private 151
corporation, including any public service corporation, that (a) 152
has in service one or more employees or shared employees regularly 153
in the same business or in or about the same establishment under 154
any contract of hire, express or implied, oral or written, or (b) 155
is bound by any such contract of hire or by any other written 156
contract, to pay into the insurance fund the premiums provided by 157
this chapter. 158

All such employers are subject to this chapter. Any member of 159
a firm or association, who regularly performs manual labor in or 160
about a mine, factory, or other establishment, including a 161
household establishment, shall be considered an employee in 162
determining whether such person, firm, or private corporation, or 163
public service corporation, has in its service, one or more 164
employees and the employer shall report the income derived from 165
such labor to the bureau as part of the payroll of such employer, 166
and such member shall thereupon be entitled to all the benefits of 167
an employee. 168

(C) "Injury" includes any injury, whether caused by external 169
accidental means or accidental in character and result, received 170
in the course of, and arising out of, the injured employee's 171
employment. "Injury" does not include: 172

(1) Psychiatric conditions except where the conditions have arisen from an injury or occupational disease;	173 174
(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;	175 176
(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.	177 178 179 180 181
(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.	182 183
(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.	184 185 186 187 188 189 190 191 192 193 194 195 196
(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.	197 198 199 200 201 202 203

(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.

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

Sec. 4125.01. As used in this chapter:

(A) "Client employer" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into a professional employer organization agreement and is assigned shared employees by the professional employer organization.

(B) "Coemploy" means the sharing of the responsibilities and liabilities of being an employer.

(C) "Professional employer organization" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for the purpose of coemploying all or part of the client employer's workforce at the client employer's work site.

(D) "Professional employer organization agreement" means a written contract between a professional employer organization and a client employer to coemploy employees for a duration of not less than twelve months in accordance with the requirements of this chapter.

(E) "Shared employee" means an individual intended to be assigned to a client employer on a permanent basis, not as a

temporary supplement to the client employer's workforce, who is 234
coemployed by a professional employer organization and a client 235
employer pursuant to a professional employer organization 236
agreement. 237

Sec. 4125.02. The administrator of the bureau of workers' 238
compensation shall adopt rules in accordance with Chapter 119. of 239
the Revised Code to administer and enforce this chapter. 240

Sec. 4125.03. (A) The professional employer organization with 241
whom a shared employee is coemployed shall do all of the 242
following: 243

(1) Pay wages associated with a shared employee pursuant to 244
the terms and conditions of compensation in the professional 245
employer organization agreement between the professional employer 246
organization and the client employer; 247

(2) Pay all related payroll taxes associated with a shared 248
employee independent of the terms and conditions contained in the 249
professional employer organization agreement between the 250
professional employer organization and the client employer; 251

(3) Maintain workers' compensation coverage, pay all workers' 252
compensation premiums and manage all workers' compensation claims, 253
filings, and related procedures associated with a shared employee 254
in compliance with Chapters 4121. and 4123. of the Revised Code, 255
except that when shared employees include family farm officers, 256
ordained ministers, or corporate officers of the client employer, 257
payroll reports shall include the entire amount of payroll 258
associated with those persons; 259

(4) Provide written notice to each shared employee it assigns 260
to perform services to a client employer of the relationship 261
between and the responsibilities of the professional employer 262
organization and the client employer; 263

(5) Maintain complete records separately listing the payroll, manual classifications, and workers' compensation claims, if any, of each shared employee grouped in a manner that indicates the client employer that coemploys each shared employee. 264
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(B) The professional employer organization with whom a shared employee is coemployed has a right of direction and control over each shared employee assigned to a client employer's location. 268
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(C) Notwithstanding division (B) of this section, a client employer may retain sufficient direction and control over a shared employee as is necessary to conduct the client employer's business and to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client employer. 271
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Sec. 4125.04. (A) When a client employer enters into a professional employer organization agreement with a professional employer organization, the professional employer organization is the employer of record and the succeeding employer for the purposes of determining a workers' compensation experience rating pursuant to Chapter 4123. of the Revised Code. 277
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(B) Pursuant to Section 35 of Article II, Ohio Constitution and section 4123.74 of the Revised Code, the exclusive remedy for a shared employee to recover for injuries, diseases, or death incurred in the course of and arising out of the employment relationship against either the professional employer organization or the client employer are those benefits provided under Chapters 4121. and 4123. of the Revised Code. 283
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Sec. 4125.05. (A) Not later than thirty days after the effective date of this section or not later than thirty days after the formation of a professional employer organization, whichever date occurs later, a professional employer organization operating 290
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in this state shall register with the administrator of the bureau 294
of workers' compensation on forms provided by the administrator. 295
Following initial registration, each professional employer 296
organization shall register with the administrator annually on or 297
before the thirty-first day of December. 298

(B) Initial registration and each annual registration renewal 299
shall include all of the following: 300

(1) A list of each of the professional employer 301
organization's client employers current as of the date of 302
registration for purposes of initial registration or current as of 303
the date of annual registration renewal, or within thirty days of 304
adding or releasing a client, whichever is appropriate, that 305
includes the client employer's name, address, federal tax 306
identification number, and bureau of workers' compensation risk 307
number; 308

(2) A financial statement prepared by an independent 309
certified public accountant in accordance with generally accepted 310
accounting principles, within six months prior to the date of 311
initial registration or renewal; 312

(3) A fee as determined by the administrator; 313

(4) Any other information required by the administrator. 314

(C) The administrator, with the advice and consent of the 315
workers' compensation oversight commission, may adopt rules in 316
accordance with Chapter 119. of the Revised Code to require 317
professional employer organizations to provide security in the 318
form of a bond or letter of credit not to exceed an amount equal 319
to the premiums incurred for the two most recent payroll periods, 320
prior to any discounts or dividends, to meet the financial 321
obligations of the professional employer organizations pursuant to 322
this chapter and Chapters 4121. and 4123. of the Revised Code. 323

(D) Notwithstanding divisions (B)(2) and (3) of this section, 324
a professional employer organization that qualifies for 325
self-insurance or retrospective rating under section 4123.29 or 326
4123.35 of the Revised Code shall abide by the financial 327
disclosure and bonding requirements pursuant to those sections and 328
the rules adopted under those sections in place of the 329
requirements set forth in divisions (B)(2) and (3) of this 330
section. 331

(E) Except to the extent necessary for the administrator to 332
administer the statutory duties of the administrator and for 333
employees of the state to perform their official duties, all 334
records, reports, client lists, and other information obtained 335
from a professional employer organization under divisions (A) and 336
(B) of this section are confidential and shall not be published or 337
open to public inspection. 338

Sec. 4125.06. (A) In accordance with Chapter 119. of the 339
Revised Code, the administrator of the bureau of workers' 340
compensation may deny registration or revoke the registration of a 341
professional employer organization and rescind its status as a 342
coemployer upon reasonable belief that the professional employer 343
organization has done any of the following: 344

(1) Willfully violated this chapter or any rule adopted 345
pursuant to this chapter; 346

(2) Intentionally made a material misrepresentation or 347
misstatement in its application for registration; 348

(3) Obtained or attempted to obtain registration through 349
misrepresentation or fraud; 350

(4) Misappropriated or converted to its own, or improperly 351
withheld, money required to be held in a fiduciary capacity in 352
accordance with Chapters 4121. and 4123. of the Revised Code; 353

(5) Used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility; 354
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(6) Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the administrator of the bureau of workers' compensation; 357
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(7) Failed to comply with the requirements of this chapter. 360

(B) Upon revocation of the registration of a professional employer organization, all client employers associated with that professional employer organization shall file payroll reports and pay workers' compensation premiums directly to the administrator on its own behalf at a rate determined by the administrator based solely on the claims experience of the client employer. 361
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(C) Upon revocation of a professional employer organization's registration, each client employer associated with that professional employer organization shall file on its own behalf the appropriate documents or data with all state and federal agencies as required by law with respect to any shared employee the client employer and the professional employer organization shared. 367
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Sec. 4125.07. Not later than fourteen calendar days after the date on which a professional employer organization agreement is terminated, the professional employer organization is adjudged bankrupt, the professional employer organization ceases operations within the state of Ohio, or the registration of the professional employer organization is revoked, the professional employer organization shall submit to the administrator of the bureau of workers' compensation and each client employer associated with that professional employer organization a completed workers' compensation lease termination notice form provided by the 374
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administrator. The completed form shall include all client payroll 384
information listed in a format specified by the administrator and 385
notice of all workers' compensation claims that have been reported 386
to the professional employer organization in accordance with its 387
internal reporting policies. 388

Sec. 4125.08. Nothing in this chapter exempts a professional 389
employer organization, client employer, or shared employee from 390
any applicable federal, state, or local licensing, registration, 391
or certification statutes or regulations. An individual required 392
to obtain and maintain a license, registration, or certification 393
under law and who is a shared employee of a professional employer 394
organization and a client employer is an employee of the client 395
employer for purposes of obtaining and maintaining the appropriate 396
license, registration, or certification as required by law. A 397
professional employer organization does not engage in any 398
occupation, trade, or profession that requires a license, 399
certification, or registration solely by entering into a 400
professional employer agreement with a client employer or 401
coemploying a shared employee. 402

Sec. 4125.99. Whoever violates section 4125.05 of the Revised 403
Code is guilty of a minor misdemeanor. Whoever knowingly violates 404
section 4125.05 of the Revised Code is guilty of a misdemeanor of 405
the second degree. 406

Section 2. That existing section 4123.01 of the Revised Code 407
is hereby repealed. 408

Section 3. Section 4123.01 of the Revised Code is presented 409
in this act as a composite of the section as amended by both H.B. 410
675 and Am. Sub. S.B. 223 of the 124th General Assembly. The 411
General Assembly, applying the principle stated in division (B) of 412

section 1.52 of the Revised Code that amendments are to be	413
harmonized if reasonably capable of simultaneous operation, finds	414
that the composite is the resulting version of the section in	415
effect prior to the effective date of the section as presented in	416
this act.	417