

As Passed by the House

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

Am. Sub. H. B. No. 183

**Representatives Daniels, Allen, C. Evans, Seitz, Setzer, Raga, Ujvagi, Young,
McGregor, Barrett, Carano, Cates, Chandler, Cirelli, Clancy, DeBose,
Domenick, Jolivette, Niehaus, Olman, T. Patton, Schaffer, Schlichter,
Schmidt, Webster, Yates**

A B I L L

To amend sections 4123.01 and 4123.291 and to enact 1
sections 4125.01 to 4125.08 and 4125.99 of the 2
Revised Code to register professional employer 3
organizations for purposes of enforcing compliance 4
with workers' compensation laws. 5

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

Section 1. That sections 4123.01 and 4123.291 be amended and 6
sections 4125.01, 4125.02, 4125.03, 4125.04, 4125.05, 4125.06, 7
4125.07, 4125.08, and 4125.99 of the Revised Code be enacted to 8
read as 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

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| (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 | 81 |
| as hourly, weekly, or monthly; | 82 |
| (xiii) The person's expenses are paid for by the other | 83 |
| contracting party; | 84 |
| (xiv) The person's tools and materials are furnished by the | 85 |
| other contracting party; | 86 |
| (xv) The person is provided with the facilities used to | 87 |
| perform services; | 88 |
| (xvi) The person does not realize a profit or suffer a loss | 89 |
| as a result of the services provided; | 90 |
| (xvii) The person is not performing services for a number of | 91 |
| employers at the same time; | 92 |
| (xviii) The person does not make the same services available | 93 |
| to the general public; | 94 |
| (xix) The other contracting party has a right to discharge | 95 |
| the person; | 96 |
| (xx) The person has the right to end the relationship with | 97 |
| the other contracting party without incurring liability pursuant | 98 |
| to an employment contract or agreement. | 99 |
| Every person in the service of any independent contractor or | 100 |
| subcontractor who has failed to pay into the state insurance fund | 101 |
| the amount of premium determined and fixed by the administrator of | 102 |
| workers' compensation for the person's employment or occupation or | 103 |
| if a self-insuring employer has failed to pay compensation and | 104 |
| benefits directly to the employer's injured and to the dependents | 105 |
| of the employer's killed employees as required by section 4123.35 | 106 |
| of the Revised Code, shall be considered as the employee of the | 107 |
| person who has entered into a contract, whether written or verbal, | 108 |

with such independent contractor unless such employees or their 109
legal representatives or beneficiaries elect, after injury or 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; 115

(b) Any officer of a family farm corporation; or 116

(c) An individual who otherwise is an employee of an employer 117
but who signs the waiver and affidavit specified in section 118
4123.15 of the Revised Code on the condition that the 119
administrator has granted a waiver and exception to the 120
individual's employer under section 4123.15 of the Revised Code. 121

Any employer may elect to include as an "employee" within 122
this chapter, any person excluded from the definition of 123
"employee" pursuant to division (A)(2) of this section. If an 124
employer is a partnership, sole proprietorship, or family farm 125
corporation, such employer may elect to include as an "employee" 126
within this chapter, any member of such partnership, the owner of 127
the sole proprietorship, or the officers of the family farm 128
corporation. In the event of an election, the employer shall serve 129
upon the bureau of workers' compensation written notice naming the 130
persons to be covered, include such employee's remuneration for 131
premium purposes in all future payroll reports, and no person 132
excluded from the definition of "employee" pursuant to division 133
(A)(2) of this section, proprietor, or partner shall be deemed an 134
employee within this division until the employer has served such 135
notice. 136

For informational purposes only, the bureau shall prescribe 137
such language as it considers appropriate, on such of its forms as 138
it considers appropriate, to advise employers of their right to 139

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, professional employer organization as defined in section 4125.01 of the Revised Code, and private corporation, including any public service corporation, that (a) has in service one or more employees or shared 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 172
an employee. 173

(C) "Injury" includes any injury, whether caused by external 174
accidental means or accidental in character and result, received 175
in the course of, and arising out of, the injured employee's 176
employment. "Injury" does not include: 177

(1) Psychiatric conditions except where the conditions have 178
arisen from an injury or occupational disease; 179

(2) Injury or disability caused primarily by the natural 180
deterioration of tissue, an organ, or part of the body; 181

(3) Injury or disability incurred in voluntary participation 182
in an employer-sponsored recreation or fitness activity if the 183
employee signs a waiver of the employee's right to compensation or 184
benefits under this chapter prior to engaging in the recreation or 185
fitness activity. 186

(D) "Child" includes a posthumous child and a child legally 187
adopted prior to the injury. 188

(E) "Family farm corporation" means a corporation founded for 189
the purpose of farming agricultural land in which the majority of 190
the voting stock is held by and the majority of the stockholders 191
are persons or the spouse of persons related to each other within 192
the fourth degree of kinship, according to the rules of the civil 193
law, and at least one of the related persons is residing on or 194
actively operating the farm, and none of whose stockholders are a 195
corporation. A family farm corporation does not cease to qualify 196
under this division where, by reason of any devise, bequest, or 197
the operation of the laws of descent or distribution, the 198
ownership of shares of voting stock is transferred to another 199
person, as long as that person is within the degree of kinship 200
stipulated in this division. 201

(F) "Occupational disease" means a disease contracted in the 202

course of employment, which by its causes and the characteristics 203
of its manifestation or the condition of the employment results in 204
a hazard which distinguishes the employment in character from 205
employment generally, and the employment creates a risk of 206
contracting the disease in greater degree and in a different 207
manner from the public in general. 208

(G) "Self-insuring employer" means an employer who is granted 209
the privilege of paying compensation and benefits directly under 210
section 4123.35 of the Revised Code, including a board of county 211
commissioners for the sole purpose of constructing a sports 212
facility as defined in section 307.696 of the Revised Code, 213
provided that the electors of the county in which the sports 214
facility is to be built have approved construction of a sports 215
facility by ballot election no later than November 6, 1997. 216

(H) "Public employer" means an employer as defined in 217
division (B)(1) of this section. 218

Sec. 4123.291. (A) An adjudicating committee appointed by the 219
administrator of workers' compensation to hear any matter 220
specified in divisions (B)(1) to ~~(6)~~(7) of this section shall hear 221
the matter within sixty days of the date on which an employer 222
files the request, protest, or petition. An employer desiring to 223
file a request, protest, or petition regarding any matter 224
specified in divisions (B)(1) to ~~(6)~~(7) of this section shall file 225
the request, protest, or petition to the adjudicating committee on 226
or before twenty-four months after the administrator sends notice 227
of the determination about which the employer is filing the 228
request, protest, or petition. 229

(B) An employer who is adversely affected by a decision of an 230
adjudicating committee appointed by the administrator may appeal 231
the decision of the committee to the administrator or the 232
administrator's designee. The employer shall file the appeal in 233

writing within thirty days after the employer receives the 234
decision of the adjudicating committee. The administrator or the 235
designee shall hear the appeal and hold a hearing, provided that 236
the decision of the adjudicating committee relates to one of the 237
following: 238

(1) An employer request for a waiver of a default in the 239
payment of premiums pursuant to section 4123.37 of the Revised 240
Code; 241

(2) An employer request for the settlement of liability as a 242
noncomplying employer under section 4123.75 of the Revised Code; 243

(3) An employer petition objecting to the assessment of a 244
premium pursuant to section 4123.37 of the Revised Code and the 245
rules adopted pursuant to that section; 246

(4) An employer request for the abatement of penalties 247
assessed pursuant to section 4123.32 of the Revised Code and the 248
rules adopted pursuant to that section; 249

(5) An employer protest relating to an audit finding or a 250
determination of a manual classification, experience rating, or 251
transfer or combination of risk experience; 252

(6) Any decision relating to any other risk premium matter 253
under Chapters 4121., 4123., and 4131. of the Revised Code; 254

(7) An employer petition objecting to the amount of security 255
required under division (C) of section 4125.05 of the Revised Code 256
and the rules adopted pursuant to that section. 257

Sec. 4125.01. As used in this chapter: 258

(A) "Client employer" means a sole proprietor, partnership, 259
association, limited liability company, or corporation that enters 260
into a professional employer organization agreement and is 261
assigned shared employees by the professional employer 262
organization. 263

(B) "Coemploy" means the sharing of the responsibilities and 264
liabilities of being an employer. 265

(C) "Professional employer organization" means a sole 266
proprietor, partnership, association, limited liability company, 267
or corporation that enters into an agreement with one or more 268
client employers for the purpose of coemploying all or part of the 269
client employer's workforce at the client employer's work site. 270

(D) "Professional employer organization agreement" means a 271
written contract between a professional employer organization and 272
a client employer to coemploy employees for a duration of not less 273
than twelve months in accordance with the requirements of this 274
chapter. 275

(E) "Shared employee" means an individual intended to be 276
assigned to a client employer on a permanent basis, not as a 277
temporary supplement to the client employer's workforce, who is 278
coemployed by a professional employer organization and a client 279
employer pursuant to a professional employer organization 280
agreement. 281

Sec. 4125.02. The administrator of the bureau of workers' 282
compensation shall adopt rules in accordance with Chapter 119. of 283
the Revised Code to administer and enforce this chapter. 284

Sec. 4125.03. (A) The professional employer organization with 285
whom a shared employee is coemployed shall do all of the 286
following: 287

(1) Pay wages associated with a shared employee pursuant to 288
the terms and conditions of compensation in the professional 289
employer organization agreement between the professional employer 290
organization and the client employer; 291

(2) Pay all related payroll taxes associated with a shared 292

employee independent of the terms and conditions contained in the 293
professional employer organization agreement between the 294
professional employer organization and the client employer; 295

(3) Maintain workers' compensation coverage, pay all workers' 296
compensation premiums and manage all workers' compensation claims, 297
filings, and related procedures associated with a shared employee 298
in compliance with Chapters 4121. and 4123. of the Revised Code, 299
except that when shared employees include family farm officers, 300
ordained ministers, or corporate officers of the client employer, 301
payroll reports shall include the entire amount of payroll 302
associated with those persons; 303

(4) Provide written notice to each shared employee it assigns 304
to perform services to a client employer of the relationship 305
between and the responsibilities of the professional employer 306
organization and the client employer; 307

(5) Maintain complete records separately listing the manual 308
classifications of each client employer and the payroll reported 309
to each manual classification for each client employer for each 310
payroll reporting period during the time period covered in the 311
professional employer organization agreement; 312

(6) Maintain a record of workers' compensation claims for 313
each client employer. 314

(B) The professional employer organization with whom a shared 315
employee is coemployed has a right of direction and control over 316
each shared employee assigned to a client employer's location. 317

(C) Notwithstanding division (B) of this section, a client 318
employer may retain sufficient direction and control over a shared 319
employee as is necessary to conduct the client employer's business 320
and to discharge any fiduciary responsibility that it may have, or 321
to comply with any applicable licensure, regulatory, or statutory 322
requirement of the client employer. 323

Sec. 4125.04. (A) When a client employer enters into a 324
professional employer organization agreement with a professional 325
employer organization, the professional employer organization is 326
the employer of record and the succeeding employer for the 327
purposes of determining a workers' compensation experience rating 328
pursuant to Chapter 4123. of the Revised Code. 329

(B) Pursuant to Section 35 of Article II, Ohio Constitution 330
and section 4123.74 of the Revised Code, the exclusive remedy for 331
a shared employee to recover for injuries, diseases, or death 332
incurred in the course of and arising out of the employment 333
relationship against either the professional employer organization 334
or the client employer are those benefits provided under Chapters 335
4121. and 4123. of the Revised Code. 336

Sec. 4125.05. (A) Not later than thirty days after the 337
effective date of this section or not later than thirty days after 338
the formation of a professional employer organization, whichever 339
date occurs later, a professional employer organization operating 340
in this state shall register with the administrator of the bureau 341
of workers' compensation on forms provided by the administrator. 342
Following initial registration, each professional employer 343
organization shall register with the administrator annually on or 344
before the thirty-first day of December. 345

(B) Initial registration and each annual registration renewal 346
shall include all of the following: 347

(1) A list of each of the professional employer 348
organization's client employers current as of the date of 349
registration for purposes of initial registration or current as of 350
the date of annual registration renewal, or within fourteen days 351
of adding or releasing a client that includes the client 352
employer's name, address, federal tax identification number, and 353

bureau of workers' compensation risk number; 354

(2) A fee as determined by the administrator; 355

(3) Any other information required by the administrator. 356

(C) The administrator, with the advice and consent of the 357
workers' compensation oversight commission, may adopt rules in 358
accordance with Chapter 119. of the Revised Code to require 359
professional employer organizations to provide security in the 360
form of a bond or letter of credit assignable to the Ohio bureau 361
of workers' compensation not to exceed an amount equal to the 362
premiums and assessments incurred for the two most recent payroll 363
periods, prior to any discounts or dividends, to meet the 364
financial obligations of the professional employer organizations 365
pursuant to this chapter and Chapters 4121. and 4123. of the 366
Revised Code. A professional employer organization may appeal the 367
amount of the security required under this section in accordance 368
with section 4123.291 of the Revised Code. 369

(D) Notwithstanding division (C) of this section, a 370
professional employer organization that qualifies for 371
self-insurance or retrospective rating under section 4123.29 or 372
4123.35 of the Revised Code shall abide by the financial 373
disclosure and security requirements pursuant to those sections 374
and the rules adopted under those sections in place of the 375
requirements set forth in division (C) of this section. 376

(E) Except to the extent necessary for the administrator to 377
administer the statutory duties of the administrator and for 378
employees of the state to perform their official duties, all 379
records, reports, client lists, and other information obtained 380
from a professional employer organization under divisions (A) and 381
(B) of this section are confidential and shall not be published or 382
open to public inspection. 383

Sec. 4125.06. (A) In accordance with Chapter 119. of the 384
Revised Code, the administrator of the bureau of workers' 385
compensation may deny registration or revoke the registration of a 386
professional employer organization and rescind its status as a 387
coemployer upon reasonable belief that the professional employer 388
organization has done any of the following: 389

(1) Obtained or attempted to obtain registration through 390
misrepresentation, misstatement, or fraud; 391

(2) Misappropriated or converted to its own, or improperly 392
withheld, money required to be held in a fiduciary capacity in 393
accordance with Chapters 4121. and 4123. of the Revised Code; 394

(3) Used fraudulent, coercive, or dishonest practices or 395
demonstrated incompetence, untrustworthiness, or financial 396
irresponsibility; 397

(4) Failed to appear, without reasonable cause or excuse, in 398
response to a subpoena lawfully issued by the administrator of the 399
bureau of workers' compensation; 400

(5) Failed to comply with the requirements of this chapter. 401

(B) Upon revocation of the registration of a professional 402
employer organization, all client employers associated with that 403
professional employer organization shall file payroll reports and 404
pay workers' compensation premiums directly to the administrator 405
on its own behalf at a rate determined by the administrator based 406
solely on the claims experience of the client employer. 407

(C) Upon revocation of a professional employer organization's 408
registration, each client employer associated with that 409
professional employer organization shall file on its own behalf 410
the appropriate documents or data with all state and federal 411
agencies as required by law with respect to any shared employee 412
the client employer and the professional employer organization 413

shared.

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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
administrator. The completed form shall include all client payroll
and claim information listed in a format specified by the
administrator and notice of all workers' compensation claims that
have been reported to the professional employer organization in
accordance with its internal reporting policies.

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

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

Section 2. That existing sections 4123.01 and 4123.291 of the Revised Code are hereby repealed.

Section 3. Section 4123.01 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 675 and Am. Sub. S.B. 223 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.