

As Reported by the House Commerce and Labor Committee

125th General Assembly

Regular Session

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Sub. H. B. No. 183

**Representatives Daniels, Allen, C. Evans, Seitz, Setzer, Raga, Ujvagi, Young,
McGregor**

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

(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	100 101 102 103 104 105 106 107 108 109

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; 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	197 198 199 200 201 202

manner from the public in general. 203

(G) "Self-insuring employer" means an employer who is granted 204
the privilege of paying compensation and benefits directly under 205
section 4123.35 of the Revised Code, including a board of county 206
commissioners for the sole purpose of constructing a sports 207
facility as defined in section 307.696 of the Revised Code, 208
provided that the electors of the county in which the sports 209
facility is to be built have approved construction of a sports 210
facility by ballot election no later than November 6, 1997. 211

(H) "Public employer" means an employer as defined in 212
division (B)(1) of this section. 213

Sec. 4123.291. (A) An adjudicating committee appointed by the 214
administrator of workers' compensation to hear any matter 215
specified in divisions (B)(1) to ~~(6)~~(7) of this section shall hear 216
the matter within sixty days of the date on which an employer 217
files the request, protest, or petition. An employer desiring to 218
file a request, protest, or petition regarding any matter 219
specified in divisions (B)(1) to ~~(6)~~(7) of this section shall file 220
the request, protest, or petition to the adjudicating committee on 221
or before twenty-four months after the administrator sends notice 222
of the determination about which the employer is filing the 223
request, protest, or petition. 224

(B) An employer who is adversely affected by a decision of an 225
adjudicating committee appointed by the administrator may appeal 226
the decision of the committee to the administrator or the 227
administrator's designee. The employer shall file the appeal in 228
writing within thirty days after the employer receives the 229
decision of the adjudicating committee. The administrator or the 230
designee shall hear the appeal and hold a hearing, provided that 231
the decision of the adjudicating committee relates to one of the 232
following: 233

(1) An employer request for a waiver of a default in the payment of premiums pursuant to section 4123.37 of the Revised Code;	234 235 236
(2) An employer request for the settlement of liability as a noncomplying employer under section 4123.75 of the Revised Code;	237 238
(3) An employer petition objecting to the assessment of a premium pursuant to section 4123.37 of the Revised Code and the rules adopted pursuant to that section;	239 240 241
(4) An employer request for the abatement of penalties assessed pursuant to section 4123.32 of the Revised Code and the rules adopted pursuant to that section;	242 243 244
(5) An employer protest relating to an audit finding or a determination of a manual classification, experience rating, or transfer or combination of risk experience;	245 246 247
(6) Any decision relating to any other risk premium matter under Chapters 4121., 4123., and 4131. of the Revised Code;	248 249
<u>(7) An employer petition objecting to the amount of security required under division (C) of section 4125.05 of the Revised Code and the rules adopted pursuant to that section.</u>	250 251 252
<u>Sec. 4125.01. As used in this chapter:</u>	253
<u>(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.</u>	254 255 256 257 258
<u>(B) "Coemploy" means the sharing of the responsibilities and liabilities of being an employer.</u>	259 260
<u>(C) "Professional employer organization" means a sole proprietor, partnership, association, limited liability company,</u>	261 262

or corporation that enters into an agreement with one or more 263
client employers for the purpose of coemploying all or part of the 264
client employer's workforce at the client employer's work site. 265

(D) "Professional employer organization agreement" means a 266
written contract between a professional employer organization and 267
a client employer to coemploy employees for a duration of not less 268
than twelve months in accordance with the requirements of this 269
chapter. 270

(E) "Shared employee" means an individual intended to be 271
assigned to a client employer on a permanent basis, not as a 272
temporary supplement to the client employer's workforce, who is 273
coemployed by a professional employer organization and a client 274
employer pursuant to a professional employer organization 275
agreement. 276

Sec. 4125.02. The administrator of the bureau of workers' 277
compensation shall adopt rules in accordance with Chapter 119. of 278
the Revised Code to administer and enforce this chapter. 279

Sec. 4125.03. (A) The professional employer organization with 280
whom a shared employee is coemployed shall do all of the 281
following: 282

(1) Pay wages associated with a shared employee pursuant to 283
the terms and conditions of compensation in the professional 284
employer organization agreement between the professional employer 285
organization and the client employer; 286

(2) Pay all related payroll taxes associated with a shared 287
employee independent of the terms and conditions contained in the 288
professional employer organization agreement between the 289
professional employer organization and the client employer; 290

(3) Maintain workers' compensation coverage, pay all workers' 291

compensation premiums and manage all workers' compensation claims, 292
filings, and related procedures associated with a shared employee 293
in compliance with Chapters 4121. and 4123. of the Revised Code, 294
except that when shared employees include family farm officers, 295
ordained ministers, or corporate officers of the client employer, 296
payroll reports shall include the entire amount of payroll 297
associated with those persons; 298

(4) Provide written notice to each shared employee it assigns 299
to perform services to a client employer of the relationship 300
between and the responsibilities of the professional employer 301
organization and the client employer; 302

(5) Maintain complete records separately listing the manual 303
classifications of each client employer and the payroll reported 304
to each manual classification for each client employer for each 305
payroll reporting period during the time period covered in the 306
professional employer organization agreement; 307

(6) Maintain a record of workers' compensation claims for 308
each client employer. 309

(B) The professional employer organization with whom a shared 310
employee is coemployed has a right of direction and control over 311
each shared employee assigned to a client employer's location. 312

(C) Notwithstanding division (B) of this section, a client 313
employer may retain sufficient direction and control over a shared 314
employee as is necessary to conduct the client employer's business 315
and to discharge any fiduciary responsibility that it may have, or 316
to comply with any applicable licensure, regulatory, or statutory 317
requirement of the client employer. 318

Sec. 4125.04. (A) When a client employer enters into a 319
professional employer organization agreement with a professional 320
employer organization, the professional employer organization is 321

the employer of record and the succeeding employer for the 322
purposes of determining a workers' compensation experience rating 323
pursuant to Chapter 4123. of the Revised Code. 324

(B) Pursuant to Section 35 of Article II, Ohio Constitution 325
and section 4123.74 of the Revised Code, the exclusive remedy for 326
a shared employee to recover for injuries, diseases, or death 327
incurred in the course of and arising out of the employment 328
relationship against either the professional employer organization 329
or the client employer are those benefits provided under Chapters 330
4121. and 4123. of the Revised Code. 331

Sec. 4125.05. (A) Not later than thirty days after the 332
effective date of this section or not later than thirty days after 333
the formation of a professional employer organization, whichever 334
date occurs later, a professional employer organization operating 335
in this state shall register with the administrator of the bureau 336
of workers' compensation on forms provided by the administrator. 337
Following initial registration, each professional employer 338
organization shall register with the administrator annually on or 339
before the thirty-first day of December. 340

(B) Initial registration and each annual registration renewal 341
shall include all of the following: 342

(1) A list of each of the professional employer 343
organization's client employers current as of the date of 344
registration for purposes of initial registration or current as of 345
the date of annual registration renewal, or within fourteen days 346
of adding or releasing a client that includes the client 347
employer's name, address, federal tax identification number, and 348
bureau of workers' compensation risk number; 349

(2) A fee as determined by the administrator; 350

(3) Any other information required by the administrator. 351

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

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

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

Sec. 4125.06. (A) In accordance with Chapter 119. of the Revised Code, the administrator of the bureau of workers' compensation may deny registration or revoke the registration of a professional employer organization and rescind its status as a

coemployer upon reasonable belief that the professional employer 383
organization has done any of the following: 384

(1) Obtained or attempted to obtain registration through 385
misrepresentation, misstatement, or fraud; 386

(2) Misappropriated or converted to its own, or improperly 387
withheld, money required to be held in a fiduciary capacity in 388
accordance with Chapters 4121. and 4123. of the Revised Code; 389

(3) Used fraudulent, coercive, or dishonest practices or 390
demonstrated incompetence, untrustworthiness, or financial 391
irresponsibility; 392

(4) Failed to appear, without reasonable cause or excuse, in 393
response to a subpoena lawfully issued by the administrator of the 394
bureau of workers' compensation; 395

(5) Failed to comply with the requirements of this chapter. 396

(B) Upon revocation of the registration of a professional 397
employer organization, all client employers associated with that 398
professional employer organization shall file payroll reports and 399
pay workers' compensation premiums directly to the administrator 400
on its own behalf at a rate determined by the administrator based 401
solely on the claims experience of the client employer. 402

(C) Upon revocation of a professional employer organization's 403
registration, each client employer associated with that 404
professional employer organization shall file on its own behalf 405
the appropriate documents or data with all state and federal 406
agencies as required by law with respect to any shared employee 407
the client employer and the professional employer organization 408
shared. 409

Sec. 4125.07. Not later than fourteen calendar days after the 410
date on which a professional employer organization agreement is 411

terminated, the professional employer organization is adjudged 412
bankrupt, the professional employer organization ceases operations 413
within the state of Ohio, or the registration of the professional 414
employer organization is revoked, the professional employer 415
organization shall submit to the administrator of the bureau of 416
workers' compensation and each client employer associated with 417
that professional employer organization a completed workers' 418
compensation lease termination notice form provided by the 419
administrator. The completed form shall include all client payroll 420
and claim information listed in a format specified by the 421
administrator and notice of all workers' compensation claims that 422
have been reported to the professional employer organization in 423
accordance with its internal reporting policies. 424

Sec. 4125.08. Nothing in this chapter exempts a professional 425
employer organization, client employer, or shared employee from 426
any applicable federal, state, or local licensing, registration, 427
or certification statutes or regulations. An individual required 428
to obtain and maintain a license, registration, or certification 429
under law and who is a shared employee of a professional employer 430
organization and a client employer is an employee of the client 431
employer for purposes of obtaining and maintaining the appropriate 432
license, registration, or certification as required by law. A 433
professional employer organization does not engage in any 434
occupation, trade, or profession that requires a license, 435
certification, or registration solely by entering into a 436
professional employer agreement with a client employer or 437
coemploying a shared employee. 438

Sec. 4125.99. Whoever violates section 4125.05 of the Revised 439
Code is guilty of a minor misdemeanor. Whoever knowingly violates 440
section 4125.05 of the Revised Code is guilty of a misdemeanor of 441

the second degree. 442

Section 2. That existing section 4123.01 of the Revised Code 443
is hereby repealed. 444

Section 3. Section 4123.01 of the Revised Code is presented 445
in this act as a composite of the section as amended by both H.B. 446
675 and Am. Sub. S.B. 223 of the 124th General Assembly. The 447
General Assembly, applying the principle stated in division (B) of 448
section 1.52 of the Revised Code that amendments are to be 449
harmonized if reasonably capable of simultaneous operation, finds 450
that the composite is the resulting version of the section in 451
effect prior to the effective date of the section as presented in 452
this act. 453