

AN ACT

To amend sections 121.08, 4121.12, 4121.121, 4121.37, 4123.511, 4167.02, 4167.06, 4167.07, 4167.08, 4167.09, 4167.10, 4167.11, 4167.12, 4167.14, 4167.15, 4167.16, 4167.17, 4167.19, and 4167.27, to enact section 4121.48, and to repeal section 4167.18 of the Revised Code to transfer the Public Employees Risk Reduction Program and the Occupational Safety and Health Act On-site Consultation Program from the Department of Commerce to the Bureau of Workers' Compensation, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2005, and ending June 30, 2007, and to provide authorization and conditions for the operation of the Bureau's programs.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 121.08, 4121.12, 4121.121, 4121.37, 4123.511, 4167.02, 4167.06, 4167.07, 4167.08, 4167.09, 4167.10, 4167.11, 4167.12, 4167.14, 4167.15, 4167.16, 4167.17, 4167.19, and 4167.27 be amended and section 4121.48 of the Revised Code be enacted to read as follows:

Sec. 121.08. (A) There is hereby created in the department of commerce the position of deputy director of administration. This officer shall be appointed by the director of commerce, serve under the director's direction, supervision, and control, perform the duties the director prescribes, and hold office during the director's pleasure. The director of commerce may designate an assistant director of commerce to serve as the deputy director of administration. The deputy director of administration shall perform the duties prescribed by the director of commerce in supervising the activities of the division of administration of the department of commerce.

(B) Except as provided in section 121.07 of the Revised Code, the department of commerce shall have all powers and perform all duties vested

in the deputy director of administration, the state fire marshal, the superintendent of financial institutions, the superintendent of real estate and professional licensing, the superintendent of liquor control, the superintendent of the division of industrial compliance, the superintendent of labor and worker safety, and the commissioner of securities, and shall have all powers and perform all duties vested by law in all officers, deputies, and employees of those offices. Except as provided in section 121.07 of the Revised Code, wherever powers are conferred or duties imposed upon any of those officers, the powers and duties shall be construed as vested in the department of commerce.

(C)(1) There is hereby created in the department of commerce a division of financial institutions, which shall have all powers and perform all duties vested by law in the superintendent of financial institutions. Wherever powers are conferred or duties imposed upon the superintendent of financial institutions, those powers and duties shall be construed as vested in the division of financial institutions. The division of financial institutions shall be administered by a superintendent of financial institutions.

(2) All provisions of law governing the superintendent of financial institutions shall apply to and govern the superintendent of financial institutions provided for in this section; all authority vested by law in the superintendent of financial institutions with respect to the management of the division of financial institutions shall be construed as vested in the superintendent of financial institutions created by this section with respect to the division of financial institutions provided for in this section; and all rights, privileges, and emoluments conferred by law upon the superintendent of financial institutions shall be construed as conferred upon the superintendent of financial institutions as head of the division of financial institutions. The director of commerce shall not transfer from the division of financial institutions any of the functions specified in division (C)(2) of this section.

(D) There is hereby created in the department of commerce a division of liquor control, which shall have all powers and perform all duties vested by law in the superintendent of liquor control. Wherever powers are conferred or duties are imposed upon the superintendent of liquor control, those powers and duties shall be construed as vested in the division of liquor control. The division of liquor control shall be administered by a superintendent of liquor control.

(E) The director of commerce shall not be interested, directly or indirectly, in any firm or corporation which is a dealer in securities as defined in sections 1707.01 and 1707.14 of the Revised Code, or in any firm

or corporation licensed under sections 1321.01 to 1321.19 of the Revised Code.

(F) The director of commerce shall not have any official connection with a savings and loan association, a savings bank, a bank, a bank holding company, a savings and loan association holding company, a consumer finance company, or a credit union that is under the supervision of the division of financial institutions, or a subsidiary of any of the preceding entities, or be interested in the business thereof.

(G) There is hereby created in the state treasury the division of administration fund. The fund shall receive assessments on the operating funds of the department of commerce in accordance with procedures prescribed by the director of commerce and approved by the director of budget and management. All operating expenses of the division of administration shall be paid from the division of administration fund.

(H) There is hereby created in the department of commerce a division of real estate and professional licensing, which shall be under the control and supervision of the director of commerce. The division of real estate and professional licensing shall be administered by a superintendent of real estate and professional licensing. The superintendent of real estate and professional licensing shall exercise the powers and perform the functions and duties delegated to the superintendent under Chapters 4735., 4763., and 4767. of the Revised Code.

(I) There is hereby created in the department of commerce a division of labor and worker safety, which shall have all powers and perform all duties vested by law in the superintendent of labor and worker safety. Wherever powers are conferred or duties imposed upon the superintendent of labor and worker safety, those powers and duties shall be construed as vested in the division of labor and worker safety. The division of labor and worker safety shall be under the control and supervision of the director of commerce and be administered by a superintendent of labor and worker safety. The superintendent of labor and worker safety shall exercise the powers and perform the duties delegated to the superintendent by the director under Chapters 4109., 4111., and 4115., ~~and 4167.~~ of the Revised Code.

(J) The department of commerce or a division of the department created by the Revised Code that is acting with authorization on the department's behalf may request from the bureau of criminal identification and investigation pursuant to section 109.572 of the Revised Code, or coordinate with appropriate federal, state, and local government agencies to accomplish, criminal records checks for the persons whose identities are required to be disclosed by an applicant for the issuance or transfer of a

permit, license, or certification issued or transferred by the department or division. At or before the time of making a request for a criminal records check, the department or division may require any person whose identity is required to be disclosed by an applicant for the issuance or transfer of such a license, permit, or certification to submit to the department or division valid fingerprint impressions in a format and by any media or means acceptable to the bureau of criminal identification and investigation and, when applicable, the federal bureau of investigation. The department or division may cause the bureau of criminal identification and investigation to conduct a criminal records check through the federal bureau of investigation only if the person for whom the criminal records check would be conducted resides or works outside of this state or has resided or worked outside of this state during the preceding five years, or if a criminal records check conducted by the bureau of criminal identification and investigation within this state indicates that the person may have a criminal record outside of this state.

In the case of a criminal records check under section 109.572 of the Revised Code, the department or division shall forward to the bureau of criminal identification and investigation the requisite form, fingerprint impressions, and fee described in division (C) of that section. When requested by the department or division in accordance with this section, the bureau of criminal identification and investigation shall request from the federal bureau of investigation any information it has with respect to the person who is the subject of the requested criminal records check and shall forward the requisite fingerprint impressions and information to the federal bureau of investigation for that criminal records check. After conducting a criminal records check or receiving the results of a criminal records check from the federal bureau of investigation, the bureau of criminal identification and investigation shall provide the results to the department or division.

The department or division may require any person about whom a criminal records check is requested to pay to the department or division the amount necessary to cover the fee charged to the department or division by the bureau of criminal identification and investigation under division (C)(3) of section 109.572 of the Revised Code, including, when applicable, any fee for a criminal records check conducted by the federal bureau of investigation.

Sec. 4121.12. (A) There is hereby created the workers' compensation oversight commission consisting of nine members, of which members the governor shall appoint five with the advice and consent of the senate. Of the five members the governor appoints, two shall be individuals who, on

account of their previous vocation, employment, or affiliations, can be classed as representative of employees, at least one of whom is representative of employees who are members of an employee organization; two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employers, one of whom represents self-insuring employers and one of whom has experience as an employer in compliance with section 4123.35 of the Revised Code other than a self-insuring employer, and one of those two representatives also shall represent employers whose employees are not members of an employee organization; and one shall represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers. The governor shall select the chairperson of the commission who shall serve as chairperson at the pleasure of the governor. No more than three members appointed by the governor shall belong to or be affiliated with the same political party.

Each of these five members shall have at least three years' experience in the field of insurance, finance, workers' compensation, law, accounting, actuarial, personnel, investments, or data processing, or in the management of an organization whose size is commensurate with that of the bureau of workers' compensation. At least one of these five members shall be an attorney licensed under Chapter 4705. of the Revised Code to practice law in this state.

(B) Of the initial appointments made to the commission, the governor shall appoint one member who represents employees to a term ending one year after September 1, 1995, one member who represents employers to a term ending two years after September 1, 1995, the member who represents the public to a term ending three years after September 1, 1995, one member who represents employees to a term ending four years after September 1, 1995, and one member who represents employers to a term ending five years after September 1, 1995. Thereafter, terms of office shall be for five years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of the member's appointment until the end of the term for which the member was appointed.

The governor shall not appoint any person to more than two full terms of office on the commission. This restriction does not prevent the governor from appointing a person to fill a vacancy caused by the death, resignation, or removal of a commission member and also appointing that person twice

to full terms on the commission, or from appointing a person previously appointed to fill less than a full term twice to full terms on the commission. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until a successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(C) In making appointments to the commission, the governor shall select the members from the list of names submitted by the workers' compensation oversight commission nominating committee pursuant to this division. Within fourteen days after the governor calls the initial meeting of the nominating committee pursuant to division (C) of section 4121.123 of the Revised Code, the nominating committee shall submit to the governor, for the initial appointments, a list containing four separate names for each of the members on the commission. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list.

For the appointment of the member who is representative of employees who are members of an employee organization, both for initial appointments and for the filling of vacancies, the list of four names submitted by the nominating committee shall be comprised of four individuals who are members of the executive committee of the largest statewide labor federation.

Thereafter, within sixty days after a vacancy occurring as a result of the expiration of a term and within thirty days after other vacancies occurring on the commission, the nominating committee shall submit a list containing four names for each vacancy. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list. With respect to the filling of vacancies, the nominating committee shall provide the governor with a list of four individuals who are, in the judgment of the nominating committee, the most fully qualified to accede to membership on the commission. The nominating committee shall not include the name of an individual upon the list for the filling of vacancies if the appointment of that individual by the governor would result in more than three members of the commission belonging to or being affiliated with the same political party. The committee shall include on the list for the filling of vacancies only the names of attorneys admitted to practice law in this state if, to fulfill the requirement of division (A) of section 4121.12 of the Revised Code, the vacancy must be filled by an attorney.

In order for the name of an individual to be submitted to the governor

under this division, the nominating committee shall approve the individual by an affirmative vote of a majority of its members.

(D) The remaining four members of the commission shall be the chairperson and ranking minority member of the standing committees of the house of representatives and of the senate to which legislation concerning this chapter and Chapters 4123., 4127., and 4131. of the Revised Code normally are referred, or a designee of the chairperson or ranking minority member, provided that the designee is a member of the standing committee. Legislative members shall serve during the session of the general assembly to which they are elected and for as long as they are members of the general assembly. Legislative members shall serve in an advisory capacity to the commission and shall have no voting rights on matters coming before the commission. Membership on the commission by legislative members shall not be deemed as holding a public office.

(E) All members of the commission shall receive their reasonable and necessary expenses pursuant to section 126.31 of the Revised Code while engaged in the performance of their duties as members. Legislative members also shall receive fifty dollars per meeting that they attend. Members appointed by the governor also shall receive an annual salary as follows:

(1) On and before August 31, 1998, not to exceed six thousand dollars payable at the rate of five hundred dollars per month. A member shall receive the monthly five hundred dollar salary only if the member has attended at least one meeting of the commission during that month. A member may receive no more than the monthly five hundred dollar salary regardless of the number of meetings held by the commission during a month or the number of meetings in excess of one within a month that the member attends.

(2) After August 31, 1998, not to exceed eighteen thousand dollars payable on the following basis:

(a) Except as provided in division (E)(2)(b) of this section, a member shall receive two thousand dollars during a month in which the member attends one or more meetings of the commission and shall receive no payment during a month in which the member attends no meeting of the commission.

(b) A member may receive no more than the annual eighteen thousand dollar salary regardless of the number of meetings held by the commission during a year or the number of meetings in excess of nine within a year that the member attends.

The chairperson of the commission shall set the meeting dates of the

commission as necessary to perform the duties of the commission under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code. The commission shall meet at least nine times during the period commencing on the first day of September and ending on the thirty-first day of August of the following year. The administrator of workers' compensation shall provide professional and clerical assistance to the commission, as the commission considers appropriate.

(F) The commission shall:

(1) Review progress of the bureau in meeting its cost and quality objectives and in complying with this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

(2) Issue an annual report on the cost and quality objectives of the bureau to the president of the senate, the speaker of the house of representatives, and the governor;

(3) Review all independent financial audits of the bureau. The administrator shall provide access to records of the bureau to facilitate the review required under this division.

(4) Study issues as requested by the administrator or the governor;

(5) Contract with an independent actuarial firm to assist the commission in making recommendations to the administrator regarding premium rates;

(6) Establish objectives, policies, and criteria for the administration of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines, and monitor the administrator's progress in implementing the objectives, policies, and criteria on a quarterly basis. The commission shall publish the objectives, policies, and criteria no less than annually and shall make copies available to interested parties. The commission shall prohibit, on a prospective basis, specific investment activity it finds to be contrary to its investment objectives, policies, and criteria.

The investment policy in existence on March 7, 1997, shall continue until the commission approves objectives, policies, and criteria for the administration of the investment program pursuant to this section.

(7) Advise and consent on all of the following:

(a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;

(b) The overall policy of the bureau of workers' compensation as set by

the administrator;

(c) The duties and authority conferred upon the administrator pursuant to section 4121.37 of the Revised Code;

(d) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code;

(e) Rules the administrator submits to it pursuant to Chapter 4167. of the Revised Code regarding the public employment risk reduction program and the protection of public health care workers from exposure incidents.

As used in this division, "public health care worker" and "exposure incident" have the same meanings as in section 4167.25 of the Revised Code.

(8) Perform all duties required under section 4121.125 of the Revised Code.

(G) As used in this section, "employee organization" means any labor or bona fide organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms and other conditions of employment.

Sec. 4121.121. (A) There is hereby created the bureau of workers' compensation, which shall be administered by the administrator of workers' compensation. A person appointed to the position of administrator shall possess significant management experience in effectively managing an organization or organizations of substantial size and complexity. The governor shall appoint the administrator as provided in section 121.03 of the Revised Code, and the administrator shall serve at the pleasure of the governor. The governor shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and Chapters 4123., 4127., ~~and 4131.~~ and 4167. of the Revised Code. The governor shall not appoint to the position of administrator any person who has, or whose spouse has, given a contribution to the campaign committee of the governor in an amount greater than one thousand dollars during the two-year period immediately preceding the date of the appointment of the administrator.

The administrator shall hold no other public office and shall devote full time to the duties of administrator. Before entering upon the duties of the office, the administrator shall take an oath of office as required by sections 3.22 and 3.23 of the Revised Code, and shall file in the office of the secretary of state, a bond signed by the administrator and by surety approved by the governor, for the sum of fifty thousand dollars payable to the state,

conditioned upon the faithful performance of the administrator's duties.

(B) The administrator is responsible for the management of the bureau of workers' compensation and for the discharge of all administrative duties imposed upon the administrator in this chapter and Chapters 4123., 4127., ~~and 4131.~~ and 4167. of the Revised Code, and in the discharge thereof shall do all of the following:

(1) Establish the overall administrative policy of the bureau for the purposes of this chapter and Chapters 4123., 4127., ~~and 4131.~~ and 4167. of the Revised Code, and perform all acts and exercise all authorities and powers, discretionary and otherwise that are required of or vested in the bureau or any of its employees in this chapter and Chapters 4123., 4127., ~~and 4131.~~ and 4167. of the Revised Code, except the acts and the exercise of authority and power that is required of and vested in the oversight commission or the industrial commission pursuant to those chapters. The treasurer of state shall honor all warrants signed by the administrator, or by one or more of the administrator's employees, authorized by the administrator in writing, or bearing the facsimile signature of the administrator or such employee under sections 4123.42 and 4123.44 of the Revised Code.

(2) Employ, direct, and supervise all employees required in connection with the performance of the duties assigned to the bureau by this chapter and Chapters 4123., 4127., ~~and 4131.~~ and 4167. of the Revised Code, and may establish job classification plans and compensation for all employees of the bureau provided that this grant of authority shall not be construed as affecting any employee for whom the state employment relations board has established an appropriate bargaining unit under section 4117.06 of the Revised Code. All positions of employment in the bureau are in the classified civil service except those employees the administrator may appoint to serve at the administrator's pleasure in the unclassified civil service pursuant to section 124.11 of the Revised Code. The administrator shall fix the salaries of employees the administrator appoints to serve at the administrator's pleasure, including the chief operating officer, staff physicians, and other senior management personnel of the bureau and shall establish the compensation of staff attorneys of the bureau's legal section and their immediate supervisors, and take whatever steps are necessary to provide adequate compensation for other staff attorneys.

The administrator may appoint a person holding a certified position in the classified service to any state position in the unclassified service of the bureau of workers' compensation. A person so appointed shall retain the right to resume the position and status held by the person in the classified

service immediately prior to the person's appointment in the unclassified service. If the position the person previously held has been filled or placed in the unclassified service, or is otherwise unavailable, the person shall be appointed to a position in the classified service within the bureau that the department of administrative services certifies is comparable in compensation to the position the person previously held. Reinstatement to a position in the classified service shall be to a position substantially equal to that held previously, as certified by the department of administrative services. Service in the position in the unclassified service shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment in the unclassified service. When a person is reinstated to a position in the classified service as provided in this section, the person is entitled to all rights, status, and benefits accruing to the position during the person's time of service in the position in the unclassified service.

(3) Reorganize the work of the bureau, its sections, departments, and offices to the extent necessary to achieve the most efficient performance of its functions and to that end may establish, change, or abolish positions and assign and reassign duties and responsibilities of every employee of the bureau. All persons employed by the commission in positions that, after November 3, 1989, are supervised and directed by the administrator under this section are transferred to the bureau in their respective classifications but subject to reassignment and reclassification of position and compensation as the administrator determines to be in the interest of efficient administration. The civil service status of any person employed by the commission is not affected by this section. Personnel employed by the bureau or the commission who are subject to Chapter 4117. of the Revised Code shall retain all of their rights and benefits conferred pursuant to that chapter as it presently exists or is hereafter amended and nothing in this chapter or Chapter 4123. of the Revised Code shall be construed as eliminating or interfering with Chapter 4117. of the Revised Code or the rights and benefits conferred under that chapter to public employees or to any bargaining unit.

(4) Provide offices, equipment, supplies, and other facilities for the bureau.

(5) Prepare and submit to the oversight commission information the administrator considers pertinent or the oversight commission requires, together with the administrator's recommendations, in the form of administrative rules, for the advice and consent of the oversight commission, for classifications of occupations or industries, for premium

rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating. The administrator shall obtain, prepare, and submit any other information the oversight commission requires for the prompt and efficient discharge of its duties.

(6) Keep the accounts required by division (A) of section 4123.34 of the Revised Code and all other accounts and records necessary to the collection, administration, and distribution of the workers' compensation funds and shall obtain the statistical and other information required by section 4123.19 of the Revised Code.

(7) Exercise the investment powers vested in the administrator by section 4123.44 of the Revised Code in accordance with the investment objectives, policies, and criteria established by the oversight commission pursuant to section 4121.12 of the Revised Code. The administrator shall not engage in any prohibited investment activity specified by the oversight commission pursuant to division (F)(6) of section 4121.12 of the Revised Code. All business shall be transacted, all funds invested, all warrants for money drawn and payments made, and all cash and securities and other property held, in the name of the bureau, or in the name of its nominee, provided that nominees are authorized by the administrator solely for the purpose of facilitating the transfer of securities, and restricted to the administrator and designated employees.

(8) Make contracts for and supervise the construction of any project or improvement or the construction or repair of buildings under the control of the bureau.

(9) Purchase supplies, materials, equipment, and services; make contracts for, operate, and superintend the telephone, other telecommunication, and computer services for the use of the bureau; and make contracts in connection with office reproduction, forms management, printing, and other services. Notwithstanding sections 125.12 to 125.14 of the Revised Code, the administrator may transfer surplus computers and computer equipment directly to an accredited public school within the state. The computers and computer equipment may be repaired or refurbished prior to the transfer.

(10) Separately from the budget the industrial commission submits, prepare and submit to the director of budget and management a budget for each biennium. The budget submitted shall include estimates of the costs and necessary expenditures of the bureau in the discharge of any duty imposed by law.

(11) As promptly as possible in the course of efficient administration,

decentralize and relocate such of the personnel and activities of the bureau as is appropriate to the end that the receipt, investigation, determination, and payment of claims may be undertaken at or near the place of injury or the residence of the claimant and for that purpose establish regional offices, in such places as the administrator considers proper, capable of discharging as many of the functions of the bureau as is practicable so as to promote prompt and efficient administration in the processing of claims. All active and inactive lost-time claims files shall be held at the service office responsible for the claim. A claimant, at the claimant's request, shall be provided with information by telephone as to the location of the file pertaining to the claimant's claim. The administrator shall ensure that all service office employees report directly to the director for their service office.

(12) Provide a written binder on new coverage where the administrator considers it to be in the best interest of the risk. The administrator, or any other person authorized by the administrator, shall grant the binder upon submission of a request for coverage by the employer. A binder is effective for a period of thirty days from date of issuance and is nonrenewable. Payroll reports and premium charges shall coincide with the effective date of the binder.

(13) Set standards for the reasonable and maximum handling time of claims payment functions, ensure, by rules, the impartial and prompt treatment of all claims and employer risk accounts, and establish a secure, accurate method of time stamping all incoming mail and documents hand delivered to bureau employees.

(14) Ensure that all employees of the bureau follow the orders and rules of the commission as such orders and rules relate to the commission's overall adjudicatory policy-making and management duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

(15) Manage and operate a data processing system with a common data base for the use of both the bureau and the commission and, in consultation with the commission, using electronic data processing equipment, shall develop a claims tracking system that is sufficient to monitor the status of a claim at any time and that lists appeals that have been filed and orders or determinations that have been issued pursuant to section 4123.511 or 4123.512 of the Revised Code, including the dates of such filings and issuances.

(16) Establish and maintain a medical section within the bureau. The medical section shall do all of the following:

(a) Assist the administrator in establishing standard medical fees,

approving medical procedures, and determining eligibility and reasonableness of the compensation payments for medical, hospital, and nursing services, and in establishing guidelines for payment policies which recognize usual, customary, and reasonable methods of payment for covered services;

(b) Provide a resource to respond to questions from claims examiners for employees of the bureau;

(c) Audit fee bill payments;

(d) Implement a program to utilize, to the maximum extent possible, electronic data processing equipment for storage of information to facilitate authorizations of compensation payments for medical, hospital, drug, and nursing services;

(e) Perform other duties assigned to it by the administrator.

(17) Appoint, as the administrator determines necessary, panels to review and advise the administrator on disputes arising over a determination that a health care service or supply provided to a claimant is not covered under this chapter or Chapter 4123. of the Revised Code or is medically unnecessary. If an individual health care provider is involved in the dispute, the panel shall consist of individuals licensed pursuant to the same section of the Revised Code as such health care provider.

(18) Pursuant to section 4123.65 of the Revised Code, approve applications for the final settlement of claims for compensation or benefits under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code as the administrator determines appropriate, except in regard to the applications of self-insuring employers and their employees.

(19) Comply with section 3517.13 of the Revised Code, and except in regard to contracts entered into pursuant to the authority contained in section 4121.44 of the Revised Code, comply with the competitive bidding procedures set forth in the Revised Code for all contracts into which the administrator enters provided that those contracts fall within the type of contracts and dollar amounts specified in the Revised Code for competitive bidding and further provided that those contracts are not otherwise specifically exempt from the competitive bidding procedures contained in the Revised Code.

(20) Adopt, with the advice and consent of the oversight commission, rules for the operation of the bureau.

(21) Prepare and submit to the oversight commission information the administrator considers pertinent or the oversight commission requires, together with the administrator's recommendations, in the form of administrative rules, for the advice and consent of the oversight

commission, for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code.

(C) The administrator, with the advice and consent of the senate, shall appoint a chief operating officer who has significant experience in the field of workers' compensation insurance or other similar insurance industry experience if the administrator does not possess such experience. The chief operating officer shall not commence the chief operating officer's duties until after the senate consents to the chief operating officer's appointment. The chief operating officer shall serve in the unclassified civil service of the state.

Sec. 4121.37. The administrator of workers' compensation having, by virtue of Section 35 of Article II, Ohio Constitution, the expenditure of the fund therein created for the investigation and prevention of industrial accidents and diseases, shall, with the advice and consent of the workers' compensation oversight commission, in the exercise of the administrator's authority and in the performance of the administrator's duty, employ a superintendent and the necessary experts, engineers, investigators, clerks, and stenographers for the efficient operation of a division of safety and hygiene of the bureau of workers' compensation, which is hereby created.

The administrator of workers' compensation, with the advice and consent of the oversight commission, shall pay into the safety and hygiene fund, which is hereby created in the state treasury, the portion of the contributions paid by employers, calculated as though all employers paid premiums based upon payroll, not to exceed one per cent thereof in any year, as is necessary for the payment of the salary of the superintendent of the division of safety and hygiene and the compensation of the other employees of the division of safety and hygiene, ~~and~~ the expenses of investigations and researches for the prevention of industrial accidents and diseases, and for operating the long-term care loan fund program established under section 4121.48 of the Revised Code. All investment earnings of the fund shall be credited to the fund. The administrator has the same powers to invest any of the funds belonging to the fund as are delegated to the administrator under section 4123.44 of the Revised Code with respect to the state insurance fund. The superintendent, under the direction of the administrator, with the advice and consent of the oversight commission, shall conduct investigations and researches for the prevention of industrial accidents and diseases, conduct loss prevention programs and courses for employers, establish and administrate cooperative programs with employers for the purchase of individual safety equipment for employees, and print and

distribute information as may be of benefit to employers and employees. The administrator shall pay from the safety and hygiene fund the salary of the superintendent of the division of safety and hygiene, the compensation of the other employees of the division of safety and hygiene, the expenses necessary or incidental to investigations and researches for the prevention of industrial accidents and diseases, and the cost of printing and distributing such information.

The superintendent, under the direction of the administrator, shall prepare an annual report, addressed to the governor, on the amount of the expenditures and the purposes for which they have been made, and the results of the investigations and researches. The administrator shall include the administrative costs, salaries, and other expenses of the division of safety and hygiene as a part of the budget of the bureau of workers' compensation that is submitted to the director of budget and management and shall identify those expenditures separately from other bureau expenditures.

The superintendent shall be a competent person with at least five years' experience in industrial accident or disease prevention work. The superintendent and up to six positions in the division of safety and hygiene as the administrator, with the advice and consent of the oversight commission, designates are in the unclassified civil service of the state as long as the administrator, with the advice and consent of the oversight commission, determines the positions subordinate to the superintendent are primarily and distinctively administrative, managerial, or professional in character. All other full-time employees of the division of safety and hygiene are in the classified civil service of the state.

Sec. 4121.48. (A) The bureau of workers' compensation shall operate a long-term care loan fund program. The administrator of workers' compensation may adopt rules, employ personnel, and do all things necessary for that purpose.

(B) The administrator shall use the long-term care loan fund program to make loans without interest to employers that are nursing homes for the purpose of allowing those employers to purchase, improve, install, or erect sit-to-stand floor lifts, ceiling lifts, other lifts, and fast electric beds, and to pay for the education and training of personnel, in order to implement a facility policy of no manual lifting of residents by employees.

The administrator, with the advice and consent of the workers' compensation oversight commission, may adopt rules establishing criteria for loan eligibility, maximum loan amounts, loan periods, default penalties, and any other terms the administrator considers necessary for a loan.

(C) There is hereby created in the state treasury the long-term care loan fund. The fund shall consist of money the administrator, with the advice and consent of the oversight commission, requests the director of budget and management to transfer from the safety and hygiene fund created in section 4121.37 of the Revised Code. The fund shall be used solely for purposes identified in this section. All investment earnings of the fund shall be credited to the fund. All money the administrator receives for payment of a default penalty assessed or for repayment of any loan made pursuant to this section shall be credited to the safety and hygiene fund created under section 4121.37 of the Revised Code.

(D) As used in this section, "nursing home" has the same meaning as in section 3721.01 of the Revised Code.

Sec. 4123.511. (A) Within seven days after receipt of any claim under this chapter, the bureau of workers' compensation shall notify the claimant and the employer of the claimant of the receipt of the claim and of the facts alleged therein. If the bureau receives from a person other than the claimant written or facsimile information or information communicated verbally over the telephone indicating that an injury or occupational disease has occurred or been contracted which may be compensable under this chapter, the bureau shall notify the employee and the employer of the information. If the information is provided verbally over the telephone, the person providing the information shall provide written verification of the information to the bureau according to division (E) of section 4123.84 of the Revised Code. The receipt of the information in writing or facsimile, or if initially by telephone, the subsequent written verification, and the notice by the bureau shall be considered an application for compensation under section 4123.84 or 4123.85 of the Revised Code, provided that the conditions of division (E) of section 4123.84 of the Revised Code apply to information provided verbally over the telephone. Upon receipt of a claim, the bureau shall advise the claimant of the claim number assigned and the claimant's right to representation in the processing of a claim or to elect no representation. If the bureau determines that a claim is determined to be a compensable lost-time claim, the bureau shall notify the claimant and the employer of the availability of rehabilitation services. No bureau or industrial commission employee shall directly or indirectly convey any information in derogation of this right. This section shall in no way abrogate the bureau's responsibility to aid and assist a claimant in the filing of a claim and to advise the claimant of the claimant's rights under the law.

The administrator of workers' compensation shall assign all claims and investigations to the bureau service office from which investigation and

determination may be made most expeditiously.

The bureau shall investigate the facts concerning an injury or occupational disease and ascertain such facts in whatever manner is most appropriate and may obtain statements of the employee, employer, attending physician, and witnesses in whatever manner is most appropriate.

The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, may adopt rules that identify specified medical conditions that have a historical record of being allowed whenever included in a claim. The administrator may grant immediate allowance of any medical condition identified in those rules upon the filing of a claim involving that medical condition and may make immediate payment of medical bills for any medical condition identified in those rules that is included in a claim. If an employer contests the allowance of a claim involving any medical condition identified in those rules, and the claim is disallowed, payment for the medical condition included in that claim shall be charged to and paid from the surplus fund created under section 4123.34 of the Revised Code.

(B)(1) Except as provided in division (B)(2) of this section, in claims other than those in which the employer is a self-insuring employer, if the administrator determines under division (A) of this section that a claimant is or is not entitled to an award of compensation or benefits, the administrator shall issue an order no later than twenty-eight days after the sending of the notice under division (A) of this section, granting or denying the payment of the compensation or benefits, or both as is appropriate to the claimant. Notwithstanding the time limitation specified in this division for the issuance of an order, if a medical examination of the claimant is required by statute, the administrator promptly shall schedule the claimant for that examination and shall issue an order no later than twenty-eight days after receipt of the report of the examination. The administrator shall notify the claimant and the employer of the claimant and their respective representatives in writing of the nature of the order and the amounts of compensation and benefit payments involved. The employer or claimant may appeal the order pursuant to division (C) of this section within fourteen days after the date of the receipt of the order. The employer and claimant may waive, in writing, their rights to an appeal under this division.

(2) Notwithstanding the time limitation specified in division (B)(1) of this section for the issuance of an order, if the employer certifies a claim for payment of compensation or benefits, or both, to a claimant, and the administrator has completed the investigation of the claim, the payment of benefits or compensation, or both, as is appropriate, shall commence upon

the later of the date of the certification or completion of the investigation and issuance of the order by the administrator, provided that the administrator shall issue the order no later than the time limitation specified in division (B)(1) of this section.

(3) If an appeal is made under division (B)(1) or (2) of this section, the administrator shall forward the claim file to the appropriate district hearing officer within seven days of the appeal. In contested claims other than state fund claims, the administrator shall forward the claim within seven days of the administrator's receipt of the claim to the commission, which shall refer the claim to an appropriate district hearing officer for a hearing in accordance with division (C) of this section.

(C) If an employer or claimant timely appeals the order of the administrator issued under division (B) of this section or in the case of other contested claims other than state fund claims, the commission shall refer the claim to an appropriate district hearing officer according to rules the commission adopts under section 4121.36 of the Revised Code. The district hearing officer shall notify the parties and their respective representatives of the time and place of the hearing.

The district hearing officer shall hold a hearing on a disputed issue or claim within forty-five days after the filing of the appeal under this division and issue a decision within seven days after holding the hearing. The district hearing officer shall notify the parties and their respective representatives in writing of the order. Any party may appeal an order issued under this division pursuant to division (D) of this section within fourteen days after receipt of the order under this division.

(D) Upon the timely filing of an appeal of the order of the district hearing officer issued under division (C) of this section, the commission shall refer the claim file to an appropriate staff hearing officer according to its rules adopted under section 4121.36 of the Revised Code. The staff hearing officer shall hold a hearing within forty-five days after the filing of an appeal under this division and issue a decision within seven days after holding the hearing under this division. The staff hearing officer shall notify the parties and their respective representatives in writing of the staff hearing officer's order. Any party may appeal an order issued under this division pursuant to division (E) of this section within fourteen days after receipt of the order under this division.

(E) Upon the filing of a timely appeal of the order of the staff hearing officer issued under division (D) of this section, the commission or a designated staff hearing officer, on behalf of the commission, shall determine whether the commission will hear the appeal. If the commission

or the designated staff hearing officer decides to hear the appeal, the commission or the designated staff hearing officer shall notify the parties and their respective representatives in writing of the time and place of the hearing. The commission shall hold the hearing within forty-five days after the filing of the notice of appeal and, within seven days after the conclusion of the hearing, the commission shall issue its order affirming, modifying, or reversing the order issued under division (D) of this section. The commission shall notify the parties and their respective representatives in writing of the order. If the commission or the designated staff hearing officer determines not to hear the appeal, within fourteen days after the filing of the notice of appeal, the commission or the designated staff hearing officer shall issue an order to that effect and notify the parties and their respective representatives in writing of that order.

Except as otherwise provided in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code, any party may appeal an order issued under this division to the court pursuant to section 4123.512 of the Revised Code within sixty days after receipt of the order, subject to the limitations contained in that section.

(F) Every notice of an appeal from an order issued under divisions (B), (C), (D), and (E) of this section shall state the names of the claimant and employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom.

(G) All of the following apply to the proceedings under divisions (C), (D), and (E) of this section:

(1) The parties shall proceed promptly and without continuances except for good cause;

(2) The parties, in good faith, shall engage in the free exchange of information relevant to the claim prior to the conduct of a hearing according to the rules the commission adopts under section 4121.36 of the Revised Code;

(3) The administrator is a party and may appear and participate at all administrative proceedings on behalf of the state insurance fund. However, in cases in which the employer is represented, the administrator shall neither present arguments nor introduce testimony that is cumulative to that presented or introduced by the employer or the employer's representative. The administrator may file an appeal under this section on behalf of the state insurance fund; however, except in cases arising under section 4123.343 of the Revised Code, the administrator only may appeal questions of law or issues of fraud when the employer appears in person or by representative.

(H) Except as provided in section 4121.63 of the Revised Code and

division (J) of this section, payments of compensation to a claimant or on behalf of a claimant as a result of any order issued under this chapter shall commence upon the earlier of the following:

(1) Fourteen days after the date the administrator issues an order under division (B) of this section, unless that order is appealed;

(2) The date when the employer has waived the right to appeal a decision issued under division (B) of this section;

(3) If no appeal of an order has been filed under this section or to a court under section 4123.512 of the Revised Code, the expiration of the time limitations for the filing of an appeal of an order;

(4) The date of receipt by the employer of an order of a district hearing officer, a staff hearing officer, or the industrial commission issued under division (C), (D), or (E) of this section.

(I) No medical benefits payable under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code are payable until the earlier of the following:

(1) The date of the issuance of the staff hearing officer's order under division (D) of this section;

(2) The date of the final administrative or judicial determination.

(J) Upon the final administrative or judicial determination under this section or section 4123.512 of the Revised Code of an appeal of an order to pay compensation, if a claimant is found to have received compensation pursuant to a prior order which is reversed upon subsequent appeal, the claimant's employer, if a self-insuring employer, or the bureau, shall withhold from any amount to which the claimant becomes entitled pursuant to any claim, past, present, or future, under Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the amount of previously paid compensation to the claimant which, due to reversal upon appeal, the claimant is not entitled, pursuant to the following criteria:

(1) No withholding for the first twelve weeks of temporary total disability compensation pursuant to section 4123.56 of the Revised Code shall be made;

(2) Forty per cent of all awards of compensation paid pursuant to sections 4123.56 and 4123.57 of the Revised Code, until the amount overpaid is refunded;

(3) Twenty-five per cent of any compensation paid pursuant to section 4123.58 of the Revised Code until the amount overpaid is refunded;

(4) If, pursuant to an appeal under section 4123.512 of the Revised Code, the court of appeals or the supreme court reverses the allowance of the claim, then no amount of any compensation will be withheld.

The administrator and self-insuring employers, as appropriate, are subject to the repayment schedule of this division only with respect to an order to pay compensation that was properly paid under a previous order, but which is subsequently reversed upon an administrative or judicial appeal. The administrator and self-insuring employers are not subject to, but may utilize, the repayment schedule of this division, or any other lawful means, to collect payment of compensation made to a person who was not entitled to the compensation due to fraud as determined by the administrator or the industrial commission.

(K) If a staff hearing officer or the commission fails to issue a decision or the commission fails to refuse to hear an appeal within the time periods required by this section, payments to a claimant shall cease until the staff hearing officer or commission issues a decision or hears the appeal, unless the failure was due to the fault or neglect of the employer or the employer agrees that the payments should continue for a longer period of time.

(L) Except as otherwise provided in this section or section 4123.522 of the Revised Code, no appeal is timely filed under this section unless the appeal is filed with the time limits set forth in this section.

(M) No person who is not an employee of the bureau or commission or who is not by law given access to the contents of a claims file shall have a file in the person's possession.

(N) Upon application of a party who resides in an area in which an emergency or disaster is declared, the industrial commission and hearing officers of the commission may waive the time frame within which claims and appeals of claims set forth in this section must be filed upon a finding that the applicant was unable to comply with a filing deadline due to an emergency or a disaster.

As used in this division:

(1) "Emergency" means any occasion or instance for which the governor of Ohio or the president of the United States publicly declares an emergency and orders state or federal assistance to save lives and protect property, the public health and safety, or to lessen or avert the threat of a catastrophe.

(2) "Disaster" means any natural catastrophe or fire, flood, or explosion, regardless of the cause, that causes damage of sufficient magnitude that the governor of Ohio or the president of the United States, through a public declaration, orders state or federal assistance to alleviate damage, loss, hardship, or suffering that results from the occurrence.

Sec. 4167.02. (A) The ~~director of commerce~~ administrator of worker's compensation shall operate and enforce the public employment risk reduction program created by this chapter.

~~(B) There is hereby created in the department of commerce the public employment risk reduction advisory commission consisting of sixteen members appointed by the director of commerce. Eight members of the commission shall be representatives of public employers, eight members shall be representatives of public employees, all of whom shall have expertise in the area of occupational safety and health issues.~~

~~In making appointments to the commission, the director shall select the members representing public employers from a list of six names submitted by the Ohio municipal league, six names submitted by the Ohio township association, six names submitted by the county commissioners association of Ohio, three names submitted by the inter-university council of Ohio, and three names submitted by the Ohio school board association, provided that from the lists submitted, the director shall appoint two members from the names submitted by the Ohio municipal league, one of whom shall represent a larger municipal corporation and one of whom shall represent a smaller municipal corporation, two members from the names submitted by the Ohio township association, one of whom shall represent a larger township and one of whom shall represent a smaller township, two members from the names submitted by the county commissioners association of Ohio, one of whom shall represent a larger county and one of whom shall represent a smaller county, one member from the names submitted by the inter-university council of Ohio, and one member from the names submitted by the Ohio school board association.~~

~~A member appointed to represent public employers must represent a jurisdiction that is subject to this chapter and a member appointed to represent public employees must represent public employees who are subject to this chapter. No more than eight members, at any time, may be of the same political party.~~

~~(C) The director shall make the initial appointments to the commission within ninety days after April 20, 1993. Of the initial appointments, the director shall appoint two public employer and two public employee members to serve for a term ending two years after the appointment date, two public employer and two public employee members to serve for a term ending three years after the appointment date, two public employer and two public employee members to serve for a term ending four years after the appointment date, and two public employer, and two public employee members to serve a term ending five years after the appointment date. Thereafter, terms of office are for five years ending on the fifth anniversary of the appointment date. Each member shall serve subsequent to the expiration of the member's term until the member's successor is appointed~~

~~and qualified or until a period of sixty days has elapsed, whichever occurs first. Before entering upon the duties of office, each member shall take and subscribe to and file with the secretary of state the constitutional oath of office. The director shall fill all vacancies in the manner prescribed for regular appointments to the commission but such appointments are limited to the unexpired terms. Members are eligible for reappointment to the commission.~~

~~The director, after giving the member notice and an opportunity for a hearing, may remove a member for misfeasance, malfeasance, or nonfeasance. Three or more absences by a member from commission meetings that are not excused by the commission constitute nonfeasance. If the director removes a member, the director promptly shall fill the vacancy created in accordance with the requirements of this section.~~

~~(D) Annually, upon the appointment and qualification of the members appointed in that year, the commission shall organize by selecting among its members a chairperson and such other officers as the commission considers appropriate. Each member shall receive actual and necessary expenses incurred in the performance of the member's official duties as a commission member.~~

~~(E) The commission shall meet at the call of the chairperson or upon the written request of at least seven members of the commission. A majority of the members of the commission constitutes a quorum to conduct the business of the commission.~~

~~(F) The commission administrator shall do all of the following:~~

~~(1) Adopt rules, with the advice and consent of the workers' compensation oversight commission and in accordance with Chapter 119. of the Revised Code, for the administration and enforcement of this chapter, including rules covering standards the ~~director~~ administrator shall follow in issuing an emergency temporary Ohio employment risk reduction standard under section 4167.08 of the Revised Code and a temporary variance and a variance from an Ohio employment risk reduction standard or part thereof under section 4167.09 of the Revised Code;~~

~~(2) Do all things necessary and appropriate for the administration and enforcement of this chapter.~~

~~(G)(C) In carrying out the responsibilities of this chapter, the ~~director~~ administrator may use, with the consent of any federal, state, or local agency, the services, facilities, and personnel of such agency, with or without reimbursement, and may retain or contract with experts, consultants, and organizations for services or personnel on such terms as the ~~director~~ administrator determines appropriate.~~

Sec. 4167.06. (A) A public employee acting in good faith has the right to refuse to work under conditions that the public employee reasonably believes present an imminent danger of death or serious harm to the public employee, provided that such conditions are not such as normally exist for or reasonably might be expected to occur in the occupation of the public employee. A public employer shall not discriminate against a public employee for a good faith refusal to perform assigned tasks if the public employee has requested that the public employer correct the hazardous conditions but the conditions remain uncorrected, there was insufficient time to eliminate the danger by resorting to the enforcement methods provided in this chapter, and the danger was one that a reasonable person under the circumstances then confronting the public employee would conclude is an imminent danger of death or serious physical harm to the public employee. A public employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the public employer shall, in addition to retaining a right to continued employment, receive full compensation for the tasks that would have been performed. If the public employer reassigns the public employee, the public employer shall pay the public employee's full compensation as if the public employee were not reassigned.

(B) A public employee who exercises the right to refuse to work under division (A) of this section shall notify by a written statement that is signed by the public employee, as soon as practicable after exercising that right, the ~~director of commerce~~ administrator of workers' compensation of the condition that presents an imminent danger of death or serious harm to the public employee. Upon receipt of the notification, the ~~director~~ administrator or the ~~director's~~ administrator's designee immediately shall inspect the premises of the public employer. The ~~director~~ administrator and the ~~director's~~ administrator's designee shall comply with section 4167.10 of the Revised Code in conducting the inspection and investigation and in issuing orders and citations.

(C) A public employee who refuses to perform assigned tasks under division (A) of this section and fails to meet all of the conditions set forth in that division for the refusal is subject to any disciplinary action provided by law or agreement between the public employer and public employee for a refusal to work, including, but not limited to, suspension, nonpayment of wages for the duration of the refusal to work, and discharge.

Sec. 4167.07. (A) The ~~public employment risk reduction advisory administrator of workers' compensation, with the advice and consent of the workers' compensation oversight~~ commission, shall adopt rules that

establish employment risk reduction standards. Except as provided in division (B) of this section, in adopting these rules, the ~~commission~~ administrator shall do both of the following:

(1) By no later than July 1, 1994, adopt as a rule and an Ohio employment risk reduction standard every federal occupational safety and health standard then adopted by the United States secretary of labor pursuant to the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as amended;

(2) By no later than one hundred twenty days after the United States secretary of labor adopts, modifies, or revokes any federal occupational safety and health standard, by rule do one of the following:

(a) Adopt the federal occupational safety and health standard as a rule and an Ohio employment risk reduction standard;

(b) Amend the existing rule and Ohio employment risk reduction standard to conform to the modification of the federal occupational safety and health standard;

(c) Rescind the existing rule and Ohio employment risk reduction standard that corresponds to the federal occupational safety and health standard the United States secretary of labor revoked.

(B) The administrator, with the advice and consent of the workers' compensation oversight ~~commission~~, may decline to adopt any federal occupational safety and health standard as a rule and an Ohio employment risk reduction standard or to modify or rescind any existing rule and Ohio employment risk reduction standard to conform to any federal occupational safety and health standard modified or revoked by the United States secretary of labor or may adopt as a rule and an Ohio employment risk reduction standard any occupational safety and health standard that is not covered under the federal law or that differs from one adopted or modified by the United States secretary of labor, if the ~~commission~~ administrator determines that existing rules and Ohio employment risk reduction standards provide protection at least as effective as that which would be provided by the existing, new, or modified federal occupational safety and health standard or if ~~the administrator~~ determines that local conditions warrant a different standard from that of the existing federal occupational safety and health standard or from standards the United States secretary of labor adopts, modifies, or revokes.

(C) In adopting, modifying, or rescinding any rule or Ohio employment risk reduction standard dealing with toxic materials or harmful physical agents, the administrator, with the advice and consent of the workers' compensation oversight ~~commission~~, shall do all of the following:

(1) Set the employment risk reduction standard to most adequately assure, to the extent technologically feasible and on the basis of the best available evidence, that no public employee will suffer material impairment of health or functional capacity as a result of the hazards dealt with by the rule or Ohio employment risk reduction standard for the period of the public employee's working life;

(2) Base the development of these rules and Ohio employment risk reduction standards on research, demonstrations, experiments, and other information as is appropriate and upon the technological feasibility of the rule and standard, using the latest available scientific data in the field and the experience gained in the workplace under this chapter and other health and safety laws, to establish the highest degree of safety and health for the public employee;

(3) Whenever practicable, express the rule and Ohio employment risk reduction standard in terms of objective criteria and of the performance desired;

(4) Prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that public employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure where appropriate;

(5) Prescribe suitable protective equipment and control procedures to be used in connection with the hazards;

(6) Provide for measuring or monitoring public employee exposure in a manner necessary for the protection of the public employees;

(7) Where appropriate, prescribe the type and frequency of medical examinations or other tests the public employer shall make available, at the cost of the public employer, to the public employees exposed to the hazards in order to determine any adverse effect from the exposure.

(D) In determining the priority for adopting rules and Ohio employment risk reduction standards under this section, the ~~commission~~ administrator shall give due regard to the urgency of need and recommendations of the department of health regarding that need for mandatory employment risk reduction standards for particular trades, crafts, occupations, services, and workplaces.

(E)(1) Except for rules adopted under division (A) of this section, the administrator, with the advice and consent of the workers' compensation oversight commission, shall adopt all rules under this section in accordance with Chapter 119. of the Revised Code, provided that notwithstanding that chapter, the ~~commission~~ administrator may delay the effective date of any

rule or Ohio employment risk reduction standard for the period the ~~commission~~ administrator determines necessary to ensure that affected public employers and public employees will be informed of the adoption, modification, or rescission of the rule and Ohio employment risk reduction standard and have the opportunity to familiarize themselves with the specific requirements of the rule and standard. In no case, however, shall the ~~commission~~ administrator delay the effective date of a rule adopted pursuant to Chapter 119. of the Revised Code in excess of ninety days beyond the otherwise required effective date.

(2) In regard to the rules for which the ~~commission~~ administrator does not have to comply with Chapter 119. of the Revised Code, the ~~commission~~ administrator shall file two certified copies of the rules and Ohio employment risk reduction standards adopted with the secretary of state and the director of the legislative service commission.

Sec. 4167.08. (A) In the event of an emergency or unusual situation, the ~~director of commerce~~ administrator of workers' compensation shall issue an emergency temporary Ohio employment risk reduction standard to take immediate effect upon publication in newspapers of general circulation in Cleveland, Columbus, Cincinnati, and Toledo if the ~~director~~ administrator finds both of the following:

(1) Public employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards;

(2) The emergency temporary Ohio employment risk reduction standard is necessary to protect employees from the danger.

(B)(1) Except as provided in division (B)(2) of this section an emergency temporary Ohio employment risk reduction standard issued by the ~~director~~ administrator under division (A) of this section shall be in effect no longer than fifteen days, unless the commission approves the emergency temporary Ohio employment risk reduction standard as issued by the ~~director~~ administrator, in which case, the emergency temporary Ohio employment risk reduction standard shall be in effect no longer than one hundred twenty days after the date the ~~director~~ administrator issues it.

(2) The ~~director~~ administrator may renew an emergency temporary Ohio employment risk reduction standard that has been approved by the ~~public employment risk reduction advisory~~ workers' compensation oversight commission for an additional time period not to exceed one hundred days if the ~~director~~ administrator finds that the conditions identified in divisions (A)(1) and (2) of this section continue to exist.

On or before the expiration date of the emergency temporary Ohio

employment risk reduction standard or renewal thereof, if the conditions identified in divisions (A)(1) and (2) of this section continue to exist, the administrator, with the advice and consent of the oversight commission, shall adopt a permanent Ohio employment risk reduction standard pursuant to section 4167.07 of the Revised Code as a rule to replace the emergency temporary Ohio employment risk reduction standard.

Sec. 4167.09. (A) Any public employer affected by a proposed rule or Ohio employment risk reduction standard or any provision of a standard proposed under section 4167.07 or 4167.08 of the Revised Code may apply to the ~~director of commerce~~ administrator of workers' compensation for an order granting a temporary variance from the standard or provision. The application for the order and any extension of the order shall contain a reasonable application fee, as determined by the ~~public employment risk reduction advisory~~ workers' compensation oversight commission, and all of the following information:

(1) A specification of the Ohio public employment risk reduction standard or provision of it from which the public employer seeks the temporary variance;

(2) A representation by the public employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the public employer is unable to comply with the Ohio employment risk reduction standard or provision of it and a detailed statement of the reasons for the inability to comply;

(3) A statement of the steps that the public employer has taken and will take, with dates specified, to protect employees against the hazard covered by the standard;

(4) A statement of when the public employer expects to be able to comply fully with the Ohio employment risk reduction standard and what steps the public employer has taken and will take, with dates specified, to come into full compliance with the standard;

(5) A certification that the public employer has informed the public employer's public employees of the application by giving a copy of the application to the public employee representative, if any, and by posting a statement giving a summary of the application and specifying where a copy of the application may be examined at the place or places where notices to public employees are normally posted, and by any other appropriate means of public employee notification. The public employer also shall inform the public employer's public employees of their rights to a hearing under section 4167.15 of the Revised Code. The certification also shall contain a description of how public employees have been informed of the application

and of their rights to a hearing.

(B) The ~~director~~ administrator shall issue an order providing for a temporary variance if the public employer files an application that meets the requirements of division (A) of this section and establishes that all of the following pertaining to the public employer are true:

(1) The public employer is unable to comply with the Ohio employment risk reduction standard or a provision of it by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the Ohio employment risk reduction standard or provision of it or because necessary construction or alteration of facilities cannot be completed by the effective date of the standard.

(2) The public employer is taking all available steps to safeguard the public employer's public employees against the hazards covered by the Ohio employment risk reduction standard.

(3) The public employer has an effective program for coming into compliance with the Ohio employment risk reduction standard as quickly as practicable.

(4) The granting of the variance will not create an imminent danger of death or serious physical harm to public employees.

(C)(1) If the ~~director~~ administrator issues an order providing for a temporary variance under division (B) of this section, the ~~director~~ administrator shall prescribe the practices, means, methods, operations, and processes that the public employer must adopt and use while the order is in effect and state in detail the public employer's program for coming into compliance with the Ohio employment risk reduction standard. The ~~director~~ administrator may issue the order only after providing notice to affected public employees and their public employee representative, if any, and an opportunity for a hearing pursuant to section 4167.15 of the Revised Code, provided that the ~~director~~ administrator may issue one interim order granting a temporary order to be effective until a decision on a hearing is made. Except as provided in division (C)(2) of this section, no temporary variance may be in effect for longer than the period needed by the public employer to achieve compliance with the Ohio employment risk reduction standard or one year, whichever is shorter.

(2) The ~~director~~ administrator may renew an order issued under division (C) of this section up to two times provided that the requirements of divisions (A), (B), and (C)(1) of this section and section 4167.15 of the Revised Code are met and the public employer files an application for renewal with the ~~director~~ administrator at least ninety days prior to the

expiration date of the order.

(D) Any public employer affected by an Ohio employment risk reduction standard or any provision of it proposed, adopted, or otherwise issued under section 4167.07 or 4167.08 of the Revised Code may apply to the ~~director~~ administrator for an order granting a variance from the standard or provision. The ~~director~~ administrator shall provide affected public employees and their public employee representative, if any, notice of the application and shall provide an opportunity for a hearing pursuant to section 4167.15 of the Revised Code. The ~~director~~ administrator shall issue the order granting the variance if the public employer files an application that meets the requirements of division (B) of this section, and after an opportunity for a hearing pursuant to section 4167.15 of the Revised Code, and if the public employer establishes to the satisfaction of the ~~director~~ administrator that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the public employer will provide employment and places of employment to the public employer's public employees that are as safe and healthful as those that would prevail if the public employer complied with the Ohio employment risk reduction standard. The ~~director~~ administrator shall prescribe in the order granting the variance the conditions the public employer must maintain, and the practices, means, methods, operations, and processes the public employer must adopt and utilize in lieu of the Ohio employment risk reduction standard that would otherwise apply. The ~~director~~ administrator may modify or revoke the order upon application of the public employer, public employee, or public employee representative, or upon the ~~director's~~ administrator's own motion in the manner prescribed for the issuance of an order under this division at any time during six months after the date of issuance of the order.

Sec. 4167.10. (A) In order to carry out the purposes of this chapter, the ~~director of commerce~~ administrator of workers' compensation or the ~~director's~~ administrator's designee shall, as provided in this section, inspect and investigate any plant, facility, establishment, construction site, or any other area, workplace, or environment where work is being performed by a public employee of a public employer, and any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any public employer, administrator, department head, operator, agent, or public employee. The authority to inspect and investigate includes the taking of environmental samples, the taking and obtaining of photographs related to the purposes of the inspection or investigation, the examination of records required to be

kept under section 4167.11 of the Revised Code and other documents and records relevant to the inspection and investigation, the issuance of subpoenas, and the conducting of tests and other studies reasonably calculated to serve the purposes of implementing and enforcing this chapter. Except as provided in this section, the ~~director~~ administrator or the ~~director's~~ administrator's designee shall conduct inspections and investigations only pursuant to a request to do so by a public employee or public employee representative, or the notification the ~~director~~ administrator receives pursuant to division (B) of section 4167.06 of the Revised Code and only if the ~~director~~ administrator or the ~~director's~~ administrator's designee complies with this section. The ~~director~~ administrator or the ~~director's~~ administrator's designee shall conduct all requested or required inspections within a reasonable amount of time following receipt of the request or notification.

(B)(1) Any public employee or public employee representative who believes that a violation of an Ohio employment risk reduction standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving written notice to the ~~director~~ administrator or the ~~director's~~ administrator's designee of the violation or danger. The notice shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the public employee or public employee representative. The names of individual public employees making the notice or referred to therein shall not appear in the copy provided to the public employer pursuant to division (B)(2) of this section and shall be kept confidential.

(2) If, upon receipt of a notification pursuant to division (B)(1) of this section, the ~~director~~ administrator determines that there are no reasonable grounds to believe that a violation or danger exists, the ~~director~~ administrator shall inform the public employee or public employee representative in writing of the determination. If, upon receipt of a notification, the ~~director~~ administrator determines that there are reasonable grounds to believe that a violation or danger exists, the ~~director~~ administrator shall, within one week, excluding Saturdays, Sundays, and any legal holiday as defined in section 1.14 of the Revised Code, after receipt of the notification, notify the public employer, by certified mail, return receipt requested, of the alleged violation or danger. The notice provided to the public employer or the public employer's agent shall contain a copy of the notice provided to the ~~director~~ administrator by the public employee or the public employee representative under division (B)(1) of this section and shall inform the public employer of the alleged violation or danger and that the ~~director~~ administrator or the ~~director's~~ administrator's designee will

investigate and inspect the public employer's workplace as provided in this section. The public employer must respond to the ~~director~~ administrator, in a method determined by the ~~director~~ administrator, concerning the alleged violation or danger, within thirty days after receipt of the notice. If the public employer does not correct the violation or danger within the thirty-day period or if the public employer fails to respond within that time period, the ~~director~~ administrator or the ~~director's~~ administrator's designee shall investigate and inspect the public employer's workplace as provided in this section. The ~~director~~ administrator or the ~~director's~~ administrator's designee shall not conduct any inspection prior to the end of the thirty-day period unless requested or permitted by the public employer. The ~~director~~ administrator may, at any time upon the request of the public employer, inspect and investigate any violation or danger alleged to exist at the public employer's place of employment.

(3) The authority of the ~~director~~ administrator or the ~~director's~~ administrator's designee to investigate and inspect a premises pursuant to a public employee or public employee representative notification is not limited to the alleged violation or danger contained in the notification. The ~~director~~ administrator or the ~~director's~~ administrator's designee may investigate and inspect any other area of the premises where there is reason to believe that a violation or danger exists. In addition, if the ~~director~~ administrator or the ~~director's~~ administrator's designee detects any obvious or apparent violation at any temporary place of employment while en route to the premises to be inspected or investigated, and that violation presents a substantial probability that the condition or practice could result in death or serious physical harm, the ~~director~~ administrator or the ~~director's~~ administrator's designee may use any of the enforcement mechanisms provided in this section to correct or remove the condition or practice.

(4) If, during an inspection or investigation, the ~~director~~ administrator or the ~~director's~~ administrator's designee finds any condition or practice in any place of employment that presents a substantial probability that the condition or practice could result in death or serious physical harm, after notifying the employer of the ~~director's~~ administrator's intent to issue an order, the ~~director~~ administrator shall issue an order, or the ~~director's~~ administrator's designee shall issue an order after consultation either by telephone or in person with the ~~director~~ administrator and upon the recommendation of the ~~director~~ administrator, which prohibits the employment of any public employee or any continuing operation or process under such condition or practice until necessary steps are taken to correct or remove the condition or practice. The order shall not be effective for more

than fifteen days, unless a court of competent jurisdiction otherwise orders as provided in section 4167.14 of the Revised Code.

(C) In making any inspections or investigations under this chapter, the ~~director~~ administrator or the ~~director's~~ administrator's designee may administer oaths and require, by subpoena, the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall receive the same fees and mileage provided for witnesses in civil cases in the court of common pleas. In the case of contumacy, failure, or refusal of any person to comply with an order or any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which the witness may lawfully be interrogated, a judge of the court of common pleas of any county in this state, on the application of the ~~director~~ administrator or the ~~director's~~ administrator's designee, shall issue an order requiring the person to appear and to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question. The court may punish any failure to obey the order of the court as a contempt thereof.

(D) If, upon inspection or investigation, the ~~director~~ administrator or the ~~director's~~ administrator's designee believes that a public employer has violated any requirement of this chapter or any rule, Ohio employment risk reduction standard, or order adopted or issued pursuant thereto, the ~~director~~ administrator or the ~~director's~~ administrator's designee shall, with reasonable promptness, issue a citation to the public employer. The citation shall be in writing and describe with particularity the nature of the alleged violation, including a reference to the provision of law, Ohio employment risk reduction standard, rule, or order alleged to have been violated. In addition, the citation shall fix a time for the abatement of the violation, as provided in division (H) of this section. The ~~director~~ administrator may prescribe procedures for the issuance of a notice with respect to minor violations and for enforcement of minor violations that have no direct or immediate relationship to safety or health.

(E) Upon receipt of any citation under this section, the public employer shall immediately post the citation, or a copy thereof, at or near each place an alleged violation referred to in the citation occurred.

(F) The ~~director~~ administrator may not issue a citation under this section after the expiration of six months following the final occurrence of any violation.

(G) If the ~~director~~ administrator issues a citation pursuant to this section, the ~~director~~ administrator shall mail the citation to the public employer by certified mail, return receipt requested. The public employer has fourteen

days after receipt of the citation within which to notify the ~~director~~ administrator that the employer wishes to contest the citation. If the employer notifies the ~~director~~ administrator within the fourteen days that the employer wishes to contest the citation, or if within fourteen days after the issuance of a citation a public employee or public employee representative files notice that the time period fixed in the citation for the abatement of the violation is unreasonable, the ~~director~~ administrator shall hold an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(H) In establishing the time limits in which a public employer must abate a violation under this section, the ~~director~~ administrator shall consider the costs to the public employer, the size and financial resources of the public employer, the severity of the violation, the technological feasibility of the public employer's ability to comply with requirements of the citation, the possible present and future detriment to the health and safety of any public employee for failure of the public employer to comply with requirements of the citation, and such other factors as the ~~director~~ administrator determines appropriate. The ~~director~~ administrator may, after considering the above factors, permit the public employer to comply with the citation over a period of up to two years and may extend that period an additional one year, as the ~~director~~ administrator determines appropriate.

(I) Any public employer may request the ~~director~~ administrator to conduct an employment risk reduction inspection of the public employer's place of employment. The ~~director~~ administrator or the ~~director's~~ administrator's designee shall conduct the inspection within a reasonable amount of time following the request. Neither the ~~director~~ administrator nor any other person may use any information obtained from the inspection for a period not to exceed three years in any proceeding for a violation of this chapter or any rule or order issued thereunder nor in any other action in any court in this state.

Sec. 4167.11. (A) In order to further the purposes of this chapter, the ~~director of commerce~~ administrator of workers' compensation shall develop and maintain, for public employers and public employees, an effective program of collection, compilation, and analysis of employment risk reduction statistics.

(B) To implement and maintain division (A) of this section, the ~~public employment risk reduction advisory~~ administrator, with the advice and consent of the workers' compensation oversight commission, shall adopt rules in accordance with Chapter 119. of the Revised Code that extend to all of the following:

- (1) Requiring each public employer to make, keep, and preserve, and

make available to the ~~director~~ administrator, reports and records regarding the public employer's activities, as determined by the rule that are necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. The rule shall prescribe which of these reports and records shall or may be furnished to public employees and public employee representatives.

(2) Requiring every public employer, through posting of notices or other appropriate means, to keep their public employees informed of public employees' rights and obligations under this chapter, including the provisions of applicable Ohio employment risk reduction standards;

(3) Requiring public employers to maintain accurate records of public employee exposure to potentially toxic materials, carcinogenic materials, and harmful physical agents that are required to be monitored or measured under rules adopted under the guidelines of division (C) of section 4167.07 of the Revised Code. The rule shall provide public employees or public employee representatives an opportunity to observe the monitoring or measuring, and to have access on request to the records thereof, and may provide public employees or public employee representatives an opportunity to participate in and to undertake their own monitoring or measuring. The rules also shall permit each current or former public employee to have access to the records that indicate their own exposure to toxic materials, carcinogenic materials, or harmful agents.

(C) The ~~director~~ administrator shall obtain any information under division (B) of this section with a minimum burden upon the public employer and shall, to the maximum extent feasible, reduce unnecessary duplication of efforts in obtaining the information.

Sec. 4167.12. All information reported to or otherwise obtained by the ~~director of commerce~~ administrator of workers' compensation or the ~~director's administrator's~~ designee in connection with any investigation, inspection, or proceeding under this chapter that reveals a trade secret of any person is confidential, except that the information may be disclosed to other agents or authorized representatives of the ~~director~~ administrator concerned with fulfilling the requirements of this chapter, or when relevant, to any proceeding under this chapter. In any proceeding, the ~~director~~ administrator or the court shall issue orders as appropriate to protect the confidentiality of trade secrets.

Sec. 4167.14. (A) Any court of common pleas has jurisdiction, upon petition of the ~~director of commerce~~ administrator of workers' compensation, to restrain any conditions or practices in any places of

employment that present a danger that could reasonably be expected to cause death or serious harm or contribute significantly to occupationally related illness immediately or before the imminence of the danger can be eliminated through the enforcement procedures provided in this chapter. Any order issued under this section may require that steps be taken as necessary to avoid, correct, or remove the imminent danger and prohibit the employment or presence of any individual in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

(B) Upon the filing of a petition under division (A) of this section, the court of common pleas may grant injunctive relief or a temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter, except that no temporary restraining order issued without notice is effective for a period longer than five calendar days.

(C) If the ~~director~~ administrator or the ~~director's~~ administrator's designee responsible for inspections determines that the imminent danger as described in division (A) of this section is such that immediate action is necessary, and further determines that there is not sufficient time in light of the nature, severity, and imminence of the danger to seek and obtain a temporary restraining order or injunction, the ~~director~~ administrator or the ~~director's~~ administrator's designee immediately shall file a petition with the court under division (A) of this section and issue an order requiring action to be taken as is necessary to avoid, correct, or remove the imminent danger.

The ~~public employment risk reduction advisory~~ administrator, with the advice and consent of the workers' compensation oversight commission, shall adopt rules, in accordance with Chapter 119. of the Revised Code, to permit a public employer expeditious informal reconsideration of any order issued by the ~~director~~ administrator under this division. Unless the ~~director~~ administrator reverses an order pursuant to the informal reconsideration, the order remains in effect pending the court's determination under this section. If the ~~director~~ administrator modifies an order pursuant to the informal reconsideration, the ~~director~~ administrator shall provide the court with whom the ~~director~~ administrator filed the petition under this section with a copy of the modified order. The modified order remains in effect pending the court's determination under this section.

Sec. 4167.15. Any public employer, public employee, or public employee representative affected by an order, rule, or Ohio employment risk reduction standard proposed, adopted, or otherwise issued pursuant to this chapter, may request, within fourteen days after the proposal, adoption, or issuance of the order, rule, or standard, a hearing from the ~~director~~ of

~~commerce~~ administrator of workers' compensation. The ~~director~~ administrator, within fourteen days after receipt of a request for a hearing, shall appoint a hearing officer to make a determination as to the request. The hearing officer, within fourteen days after the hearing officer's appointment, shall hold a hearing in accordance with Chapter 119. of the Revised Code and, within fourteen days after the hearing, render a decision. A public employer, public employee, or public employee representative may appeal the decision of the hearing officer to the ~~director~~ administrator, provided that the appeal is made within thirty days after the hearing officer issues the decision. The decision of the hearing officer is final unless appealed to the ~~director~~ administrator within the time period set in this section or unless the ~~director~~ administrator, on the ~~director's~~ administrator's own motion, modifies or reverses the decision within that time period. If a party fails to appeal the decision of the hearing officer, the decision of the hearing officer is not, for purposes of section 4167.16 of the Revised Code, a final order of the ~~director~~ administrator and is not appealable to court as provided in section 4167.16 of the Revised Code, except that if the party fails to appeal the decision of the hearing officer, and the ~~director~~ administrator modifies or reverses the decision under this section, the decision of the ~~director~~ administrator is appealable to court pursuant to section 4167.16 of the Revised Code.

Sec. 4167.16. (A) Any party who is adversely affected by a final order of the ~~director of commerce~~ administrator of workers' compensation issued pursuant to division (G) of section 4167.10 or section 4167.15 of the Revised Code, and who has exhausted all administrative appeals from such order may appeal the order, within thirty days after the issuance of a final order, to the court of common pleas of Franklin county or to the court of common pleas of the county in which the alleged violation occurred. If the court finds an undue hardship to the appellant will result from the enforcement of the order pending determination of the appeal, the court may grant a suspension of the order and fix the terms thereof.

(B)(1) The court shall conduct a hearing on the appeal filed under division (A) of this section and shall give preference to all proceedings under this section over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. The hearing shall proceed as in the case of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to the action.

(2) The court shall affirm the order of the ~~director~~ administrator if it finds, upon consideration of the record as a whole, and additional evidence as the court has admitted, that the order is supported by reliable, probative,

and substantial evidence and is in accordance with law. In absence of that finding, the court shall reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court is final and conclusive, unless reversed, vacated, or modified on appeal. Any party may appeal as provided in Chapter 2505. of the Revised Code.

(C) No person who has failed to exhaust all of the administrative appeals provided in this chapter may file an appeal of a final order of the ~~director~~ administrator under division (A) of this section.

Sec. 4167.17. (A) If a public employer, public employee, or public employee representative willfully fails to comply with any final order of the ~~director of commerce~~ administrator of workers' compensation issued pursuant to this chapter, the ~~director~~ administrator may apply to the court of common pleas of Franklin county or the court of common pleas of the county in which the violation occurred, for an injunction, restraining order, or any other appropriate relief compelling the public employer, public employee, or public employee representative to comply with such order. The court shall order such relief as it considers appropriate and shall, in addition, impose a civil penalty of not more than five hundred dollars per day per violation and not to exceed a total of ten thousand dollars per violation.

(B) The ~~director~~ administrator shall not seek to enforce this chapter, or any Ohio employment risk reduction standard, rule, or order adopted or issued pursuant thereto, in any manner that derogates from the immunity offered to a public employer by variances obtained under this chapter, or by variations, tolerance, or exemption allowed a public employer for reasons of national defense by the United States secretary of labor pursuant to section 16 of the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as amended.

Sec. 4167.19. (A) A public employer, other than a state agency, may apply to the ~~director of commerce~~ administrator of workers' compensation for an order exempting the public employer from compliance with this chapter, except as provided in division (K) of this section, if the public employer satisfies both of the following criteria:

(1) The public employer is a member of a group that qualifies for a group rating plan pursuant to division (A)(4) of section 4123.29 of the Revised Code or the public employer's premium rate is at least fifty per cent less than the base rate for its workers' compensation premiums;

(2) The public employer establishes and maintains a safety committee with both public employees and representatives of the public employer as

members if the public employer does not qualify for a group rating plan. A public employer that employs five or fewer public employees need not have a safety committee.

(B) The application shall be on a form prescribed by the ~~director~~ administrator and shall be transmitted to the ~~director~~ administrator by certified mail, return receipt requested. The application shall contain a certification of all of the following:

(1) The public employer has adopted an ordinance or resolution requesting an exemption from this chapter;

(2) At least ten working days prior to passage of an ordinance or resolution described in division (B)(1) of this section, the public employer has informed its public employees of the application by giving a copy of the application to the public employee representative, if any;

(3) The public employer has informed its public employees by posting a statement for thirty consecutive days giving a summary of the application and specifying where a copy of the application may be examined at the place or places where notices to public employees are normally posted, and by any other appropriate means of public employee notification;

(4) The public employer has informed its public employees of their rights to a hearing under section 4167.15 of the Revised Code.

The certification also shall contain a description of how public employees have been informed of the application and of their rights to a hearing.

(C) Except as provided in this section, the ~~director~~ administrator shall issue an order providing for an exemption if the public employer meets the requirements of division (A) of this section and files an application that meets the requirements of division (B) of this section.

(D) The ~~director~~ administrator shall not grant an exemption under division (C) of this section until after the superintendent of the division of safety and hygiene in the bureau of workers' compensation conducts an employment risk reduction inspection of the public employer's place of employment to determine the presence of any hazardous or unsafe conditions. The ~~director~~ administrator shall not cite the public employer for a violation of this chapter during this inspection.

(E) The superintendent shall provide a copy of the report of the inspection conducted pursuant to division (D) of this section and any findings to the public employer. Within six months after receipt of the report, the public employer shall submit the report to the ~~director~~ administrator, if the public employer wishes to proceed with the exemption request. If the report does not contain a description of any hazardous or

unsafe conditions, the ~~director~~ administrator shall grant the public employer an exemption from this chapter, except as provided in division (K) of this section. If the report contains a description of any hazardous or unsafe conditions, the public employer shall submit to the ~~director~~ administrator a plan that describes how it intends to remedy, within a one-year period of time, the hazardous or unsafe conditions.

Within thirty days after receipt of the plan from the public employer, the ~~director~~ administrator may approve or disapprove the plan as submitted. If the ~~director~~ administrator approves the plan as submitted, the ~~director~~ administrator shall grant the public employer an exemption from this chapter, except as provided in division (K) of this section.

If the ~~director~~ administrator disapproves the plan, the ~~director~~ administrator shall return it and the reasons for its rejection to the public employer. The public employer may submit a revised plan, which corrects the deficiencies for which the original plan was rejected, within thirty days after receipt of the disapproved plan from the ~~director~~ administrator. The ~~director~~ administrator has thirty days after receipt of the revised plan to review it, and if it remedies the ~~director's~~ administrator's objections, to approve it and grant the exemption. The public employer shall be exempted from this chapter, except as provided in division (K) of this section, if the ~~director~~ administrator fails to act within the thirty-day period.

(F) Within ten working days after completing implementation of the plan, the public employer shall certify to the ~~director~~ administrator, by certified mail, return receipt requested, that the hazardous or unsafe conditions have been abated.

If a public employer fails to complete the plan within the one-year period of time, the ~~director~~ administrator may do either of the following:

- (1) Terminate the exemption;
- (2) Grant to the public employer a sixty-day extension to the one-year period of time, provided that the ~~director~~ administrator determines that the public employer is making significant progress in completing implementation of the plan.

The ~~director~~ administrator shall terminate the exemption of a public employer who does not complete implementation of the plan within the sixty-day extension granted by the ~~director~~ administrator under division (F)(2) of this section.

(G) The ~~director~~ administrator shall inspect a public employer's place of employment immediately after either of the following occur:

- (1) A public employee of the public employer is killed due to an incident that is related to the public employee's employment;

(2) Three or more public employees of the public employer are hospitalized due to an incident that is related to the public employees' employment.

After reviewing the inspection report, the ~~director~~ administrator may require the public employer to submit to the ~~director~~ administrator, within a reasonable amount of time as determined by the ~~director~~ administrator, a plan that describes how the public employer intends to remedy any conditions described in the report that the ~~director~~ administrator determines need to be remedied.

Nothing in this division constitutes the granting of a new exemption for purposes of determining the seven-year expiration date pursuant to division (H) of this section.

(H) Except as provided in division (F) of this section, an exemption granted pursuant to this section expires seven years after the date of its issuance. A public employer may apply for a subsequent exemption in the same manner provided in this section for the grant of an original exemption.

(I) Each public employer granted an exemption under this section may request the superintendent of the division of safety and hygiene in the bureau of workers' compensation to conduct a safety inspection of the public employer's place of employment any time during the exemption period. Based on this inspection, the superintendent shall note any hazards or unsafe conditions and recommend abatement of these hazards and unsafe conditions. The superintendent shall provide a copy of the report of the inspection conducted pursuant to this division and any resulting recommendations to the public employer. The ~~director~~ administrator shall not cite the public employer for a violation of this chapter due to a hazardous or unsafe condition identified by the superintendent pursuant to this inspection.

(J) Notwithstanding any other provision of this chapter, a public employer who meets the requirements of division (A) of this section and files an application that meets the requirements of division (B) of this section is not subject to this chapter, except section 4167.06 of the Revised Code and division (G) of this section, after the date on which the public employer meets the requirements of division (A) of this section and files an application that meets the requirements of division (B) of this section until the ~~director~~ administrator determines whether to grant the exemption under this section.

(K) Nothing in this section limits, or shall be construed as limiting, a public employee's rights as provided in section 4167.06 of the Revised Code. Nothing in this section limits, or shall be construed as limiting, a

public employer's right to adopt reasonable safety rules and require a public employee's compliance with those rules.

A public employer who is granted an exemption under this section shall not be exempt from divisions (G), (H), and (I) of this section.

Sec. 4167.27. (A) The ~~public employment risk reduction advisory commission~~ administrator of workers' compensation shall adopt a rule and Ohio employment risk reduction standard for the prevention of exposure incidents. The initial rule and standard shall be adopted not later than one hundred eighty days after October 5, 2000.

(B) The ~~commission~~ administrator shall provide advice to public employers with regard to their implementation of the requirements established by the rule and standard adopted under this section and the requirements of section 4167.28 of the Revised Code.

SECTION 2. That existing sections 121.08, 4121.12, 4121.121, 4121.37, 4123.511, 4167.02, 4167.06, 4167.07, 4167.08, 4167.09, 4167.10, 4167.11, 4167.12, 4167.14, 4167.15, 4167.16, 4167.17, 4167.19, and 4167.27 and section 4167.18 of the Revised Code are hereby repealed.

SECTION 3. All items in this section are hereby appropriated out of any moneys in the state treasury to the credit of the designated fund. For all appropriations made in this act, those in the first column are for fiscal year 2006, and those in the second column are for fiscal year 2007.

FND AI	AI TITLE	Appropriations	
BWC BUREAU OF WORKERS' COMPENSATION			
Workers' Compensation Fund Group			
023 855-401	William Green Lease	\$ 19,736,600	\$ 20,125,900
	Payments to OBA		
023 855-407	Claims, Risk & Medical Management	\$ 140,052,037	\$ 140,052,037
023 855-408	Fraud Prevention	\$ 11,713,797	\$ 11,713,797
023 855-409	Administrative Services	\$ 119,246,553	\$ 119,246,553
023 855-410	Attorney General Payments	\$ 4,314,644	\$ 4,314,644
822 855-606	Coal Workers' Fund	\$ 91,894	\$ 91,894
823 855-608	Marine Industry	\$ 53,952	\$ 53,952
825 855-605	Disabled Workers Relief Fund	\$ 693,764	\$ 693,764
826 855-609	Safety & Hygiene Operating	\$ 20,130,820	\$ 20,130,820
826 855-610	Safety Grants Program	\$ 4,000,000	\$ 4,000,000
TOTAL WCF Workers' Compensation Fund Group		\$ 320,034,061	\$ 320,423,361
Federal Special Revenue Fund Group			
349 855-601	OSHA Enforcement	\$ 1,527,750	\$ 1,604,140
TOTAL FED Federal Special Revenue Fund Group		\$ 1,527,750	\$ 1,604,140

TOTAL ALL BUDGET FUND GROUPS \$ 321,561,811 \$ 322,027,501

WILLIAM GREEN LEASE PAYMENTS

The foregoing appropriation item 855-401, William Green Lease Payments to OBA, shall be used for lease payments to the Ohio Building Authority, and these appropriations shall be used to meet all payments at the times they are required to be made during the period from July 1, 2005, to June 30, 2007, by the Bureau of Workers' Compensation to the Ohio Building Authority pursuant to leases and agreements made under Chapter 152. of the Revised Code and Section 6 of Am. Sub. H.B. 743 of the 118th General Assembly. Of the amounts received in Fund 023, appropriation item 855-401, up to \$39,862,500 shall be restricted for lease rental payments to the Ohio Building Authority. If it is determined that additional appropriations are necessary for such purpose, such amounts are hereby appropriated.

Notwithstanding any other provision of law to the contrary, all tenants of the William Green Building not funded by the Workers' Compensation Fund (Fund 023) shall pay their fair share of the costs of lease payments to the Workers' Compensation Fund (Fund 023) by intrastate transfer voucher.

WORKERS' COMPENSATION FRAUD UNIT

The Workers' Compensation Section Fund (Fund 195) shall receive payments from the Bureau of Workers' Compensation at the beginning of each quarter of each fiscal year to fund expenses of the Workers' Compensation Fraud Unit of the Attorney General's Office. Of the foregoing appropriation item 855-410, Attorney General Payments, \$773,151 in fiscal year 2006 and \$773,151 in fiscal year 2007 shall be used to provide these payments.

SAFETY AND HYGIENE

Notwithstanding section 4121.37 of the Revised Code, the Administrator of Workers' Compensation shall transfer moneys from the State Insurance Fund so that appropriation item 855-609, Safety and Hygiene Operating, is provided \$20,130,820 in fiscal year 2006 and \$20,130,820 in fiscal year 2007.

LONG-TERM CARE LOAN FUND

Upon the request of the Administrator of the Bureau of Workers' Compensation and with the advice and consent of the Bureau of Workers' Compensation Oversight Commission, the Director of Budget and Management shall transfer cash in the amounts requested from the Safety and Hygiene Operating Fund (Fund 826) to the Long-Term Care Loan Fund (Fund 829) created in section 4121.48 of the Revised Code. The amounts transferred are hereby appropriated.

OSHA ON-SITE CONSULTATION PROGRAM

The Bureau of Workers' Compensation may designate a portion of appropriation item 855-609, Safety and Hygiene Operating, to be used to match federal funding for the federal Occupational Safety and Health Administration's (OSHA) on-site consultation program.

VOCATIONAL REHABILITATION

The Bureau of Workers' Compensation and the Rehabilitation Services Commission shall enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. The bureau shall provide \$587,774 in fiscal year 2006 and \$605,407 in fiscal year 2007 from the State Insurance Fund to fund vocational rehabilitation services and staff in accordance with the interagency agreement.

FUND BALANCE

Any unencumbered cash balance in excess of \$45,000,000 in the Workers' Compensation Fund (Fund 023) on the thirtieth day of June of each fiscal year shall be used to reduce the administrative cost rate charged to employers to cover appropriations for Bureau of Workers' Compensation operations.

OSHA ENFORCEMENT FUND TRANSFER

On July 1, 2005, or as soon thereafter as possible, the Director of Budget and Management shall transfer the OSHA Enforcement Fund (Fund 349) from the Department of Commerce to the Bureau of Workers' Compensation. At the request of the Director of the Department of Commerce, the Director of Budget and Management may cancel encumbrances in this fund from appropriation item 800-626, OSHA Enforcement, within the budget of the Department of Commerce, and reestablish those encumbrances or parts of those encumbrances in fiscal year 2006 for the same purpose and to the same vendor to appropriation item 855-601, OSHA Enforcement, within the budget of the Bureau of Workers' Compensation. As determined by the Director of Budget and Management, the appropriation authority necessary to reestablish encumbrances or parts of encumbrances in fiscal year 2006 for the Bureau of Workers' Compensation is hereby granted.

SECTION 4. (A) Notwithstanding any provision of law to the contrary, the Director of Budget and Management is authorized to take the actions described under this section. The Director of Budget and Management may make any transfers of cash balances between funds made necessary by the administrative reorganization, program transfers, creation of new funds, and the consolidation of funds that are authorized by this act. At the request of the Office of Budget and Management, the administering agency head shall

certify to the Director of Budget and Management the amount or an estimate of the amount of the cash balance to be transferred to the receiving fund. The Director may transfer the amount or the estimate of the amount when needed to make payments. Not more than thirty days after certifying an estimated amount, the administering agency head shall certify the final amount to the Director. The Director shall then transfer the difference between any estimated amount previously transferred and the certified final amount.

(B) On July 1, 2005:

(1) The functions of the Department of Commerce, Division of Labor and Worker Safety, conducted pursuant to Chapter 4167. of the Revised Code, and all agreements with the federal Occupational Safety and Health Administration's (OSHA) on-site consultation program, are transferred to the Bureau of Workers' Compensation, together with all assets, liabilities, capital spending authority, equipment, and records, regardless of their form or medium, that relate to those functions and agreements. The Bureau of Workers' Compensation assumes these functions.

(2) Business commenced but not completed pursuant to Chapter 4167. of the Revised Code by the Director or the Department of Commerce, Division of Labor and Worker Safety, and any agreements with OSHA's on-site consultation program that are in effect, shall be completed by the Administrator or the Bureau of Workers' Compensation in the same manner, and with the same effect, as if completed by the Director or the Department of Commerce, Division of Labor and Worker Safety.

(3) All of the rules, orders, and determinations enacted or adopted by the Department of Commerce, Division of Labor and Worker Safety, that relate to the transfer of functions required by this section shall continue in effect as rules, orders, and determinations of the Bureau of Workers' Compensation until modified or rescinded by the Bureau of Workers' Compensation. If necessary to ensure the integrity of the numbering of the Administrative Code, the Director of the Legislative Service Commission shall renumber the rules of the Department of Commerce, Division of Labor and Worker Safety, enacted or adopted pursuant to Chapter 4167. of the Revised Code to reflect their transfer to the Bureau of Workers' Compensation.

(4) Subject to the layoff provisions of sections 124.321 to 124.328 of the Revised Code, all employees of the Department of Commerce, Division of Labor and Worker Safety, who perform functions pursuant to Chapter 4167. of the Revised Code or to agreements with the federal Occupational Safety and Health Administration related to OSHA's on-site consultation

program, are hereby transferred to the Bureau of Workers' Compensation. The vehicles and equipment assigned to these employees are also transferred to the Bureau of Workers' Compensation.

(C) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer of functions required by this section, and all shall be administered by the Bureau of Workers' Compensation.

(D) No action or proceeding pending as of the effective date of this section is affected by the transfer of functions required by this section, and shall be recognized, prosecuted, or defended in the name of the Administrator of Workers' Compensation. In all such actions, the Administrator or the Bureau of Workers' Compensation, upon application to the court, shall be substituted as a party.

(E) Whenever the Director or the Department of Commerce, or the Superintendent or the Division of Labor and Worker Safety is referred to in any law, contract, or other document relating to the functions transferred under this section, the reference shall be deemed to refer to the Administrator or the Bureau of Workers' Compensation, whichever is appropriate.

SECTION 5. Law contained in the main operating appropriations act of the 126th General Assembly that applies generally to the appropriations made in that act also applies generally to the appropriations made in this act.

SECTION 6. If any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, is held invalid, the invalidity does not affect the other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the codified and uncodified sections of law contained in this act are composed, and their applications, are independent and severable.

SECTION 7. The uncodified sections of law contained in this act, and the items of law of which the uncodified sections of law contained in this act are composed, are not subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code,

the uncodified sections of law contained in this act, and the items of law of which the uncodified sections of law contained in this act are composed, go into immediate effect when this act becomes law.

SECTION 8. An item that composes the whole or part of an uncodified section contained in this act has no effect after June 30, 2007, unless the context clearly indicates otherwise.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____