

**As Concurred by the Senate**

**126th General Assembly  
Regular Session  
2005-2006**

**Sub. S. B. No. 19**

**Senators Schuler, Wachtmann, Mumper, Clancy, Hagan, Goodman, Austria,  
Padgett, Niehaus  
Representatives Willamowski, Blessing, Calvert, Flowers, Schneider, Seitz,  
Setzer, Webster**

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**A B I L L**

To amend sections 2317.02 and 4117.14 of the Revised 1  
Code to make the testimonial privilege against 2  
disclosure of certain communications applicable to 3  
critical incident stress management (CISM) team 4  
members, to create a testimonial privilege between 5  
employee-assistance program personnel and program 6  
clients, and to reenact the provision of law 7  
designating the Controlling Board as the 8  
legislative body authorized to reject 9  
recommendations of a fact-finding panel. 10

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

**Section 1.** That sections 2317.02 and 4117.14 of the Revised 11  
Code be amended to read as follows: 12

**Sec. 2317.02.** The following persons shall not testify in 13  
certain respects: 14

(A) An attorney, concerning a communication made to the 15  
attorney by a client in that relation or the attorney's advice to 16  
a client, except that the attorney may testify by express consent 17

of the client or, if the client is deceased, by the express  
consent of the surviving spouse or the executor or administrator  
of the estate of the deceased client and except that, if the  
client voluntarily testifies or is deemed by section 2151.421 of  
the Revised Code to have waived any testimonial privilege under  
this division, the attorney may be compelled to testify on the  
same subject;

(B)(1) A physician or a dentist concerning a communication  
made to the physician or dentist by a patient in that relation or  
the physician's or dentist's advice to a patient, except as  
otherwise provided in this division, division (B)(2), and division  
(B)(3) of this section, and except that, if the patient is deemed  
by section 2151.421 of the Revised Code to have waived any  
testimonial privilege under this division, the physician may be  
compelled to testify on the same subject.

The testimonial privilege established under this division  
does not apply, and a physician or dentist may testify or may be  
compelled to testify, in any of the following circumstances:

(a) In any civil action, in accordance with the discovery  
provisions of the Rules of Civil Procedure in connection with a  
civil action, or in connection with a claim under Chapter 4123. of  
the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal  
representative of the patient gives express consent;

(ii) If the patient is deceased, the spouse of the patient or  
the executor or administrator of the patient's estate gives  
express consent;

(iii) If a medical claim, dental claim, chiropractic claim,  
or optometric claim, as defined in section 2305.113 of the Revised  
Code, an action for wrongful death, any other type of civil  
action, or a claim under Chapter 4123. of the Revised Code is

filed by the patient, the personal representative of the estate of 49  
the patient if deceased, or the patient's guardian or other legal 50  
representative. 51

(b) In any civil action concerning court-ordered treatment or 52  
services received by a patient, if the court-ordered treatment or 53  
services were ordered as part of a case plan journalized under 54  
section 2151.412 of the Revised Code or the court-ordered 55  
treatment or services are necessary or relevant to dependency, 56  
neglect, or abuse or temporary or permanent custody proceedings 57  
under Chapter 2151. of the Revised Code. 58

(c) In any criminal action concerning any test or the results 59  
of any test that determines the presence or concentration of 60  
alcohol, a drug of abuse, or alcohol and a drug of abuse in the 61  
patient's blood, breath, urine, or other bodily substance at any 62  
time relevant to the criminal offense in question. 63

(d) In any criminal action against a physician or dentist. In 64  
such an action, the testimonial privilege established under this 65  
division does not prohibit the admission into evidence, in 66  
accordance with the Rules of Evidence, of a patient's medical or 67  
dental records or other communications between a patient and the 68  
physician or dentist that are related to the action and obtained 69  
by subpoena, search warrant, or other lawful means. A court that 70  
permits or compels a physician or dentist to testify in such an 71  
action or permits the introduction into evidence of patient 72  
records or other communications in such an action shall require 73  
that appropriate measures be taken to ensure that the 74  
confidentiality of any patient named or otherwise identified in 75  
the records is maintained. Measures to ensure confidentiality that 76  
may be taken by the court include sealing its records or deleting 77  
specific information from its records. 78

(e) In any will contest action under sections 2107.71 to 79

2107.77 of the Revised Code if all of the following apply:	80
(i) The patient is deceased.	81
(ii) A party to the will contest action requests the testimony, demonstrates to the court that that party would be an heir of the patient if the patient died without a will, is a beneficiary under the will that is the subject of the will contest action, or is a beneficiary under another testamentary document allegedly executed by the patient, and demonstrates to the court that the testimony is necessary to establish the party's rights as described in this division.	82 83 84 85 86 87 88 89
(2)(a) If any law enforcement officer submits a written statement to a health care provider that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the person's blood, breath, or urine at any time relevant to the criminal offense in question, and that conforms to section 2317.022 of the Revised Code, the provider, except to the extent specifically prohibited by any law of this state or of the United States, shall supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider shall give the officer a written statement that indicates that the provider does not possess any of the requested records.	90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107
(b) If a health care provider possesses any records of the type described in division (B)(2)(a) of this section regarding the person in question at any time relevant to the criminal offense in	108 109 110

question, in lieu of personally testifying as to the results of  
the test in question, the custodian of the records may submit a  
certified copy of the records, and, upon its submission, the  
certified copy is qualified as authentic evidence and may be  
admitted as evidence in accordance with the Rules of Evidence.  
Division (A) of section 2317.422 of the Revised Code does not  
apply to any certified copy of records submitted in accordance  
with this division. Nothing in this division shall be construed to  
limit the right of any party to call as a witness the person who  
administered the test to which the records pertain, the person  
under whose supervision the test was administered, the custodian  
of the records, the person who made the records, or the person  
under whose supervision the records were made.

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(3)(a) If the testimonial privilege described in division  
(B)(1) of this section does not apply as provided in division  
(B)(1)(a)(iii) of this section, a physician or dentist may be  
compelled to testify or to submit to discovery under the Rules of  
Civil Procedure only as to a communication made to the physician  
or dentist by the patient in question in that relation, or the  
physician's or dentist's advice to the patient in question, that  
related causally or historically to physical or mental injuries  
that are relevant to issues in the medical claim, dental claim,  
chiropractic claim, or optometric claim, action for wrongful  
death, other civil action, or claim under Chapter 4123. of the  
Revised Code.

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(b) If the testimonial privilege described in division (B)(1)  
of this section does not apply to a physician or dentist as  
provided in division (B)(1)(c) of this section, the physician or  
dentist, in lieu of personally testifying as to the results of the  
test in question, may submit a certified copy of those results,  
and, upon its submission, the certified copy is qualified as  
authentic evidence and may be admitted as evidence in accordance

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with the Rules of Evidence. Division (A) of section 2317.422 of  
the Revised Code does not apply to any certified copy of results  
submitted in accordance with this division. Nothing in this  
division shall be construed to limit the right of any party to  
call as a witness the person who administered the test in  
question, the person under whose supervision the test was  
administered, the custodian of the results of the test, the person  
who compiled the results, or the person under whose supervision  
the results were compiled.

(c) If the testimonial privilege described in division (B)(1)  
of this section does not apply as provided in division (B)(1)(e)  
of this section, a physician or dentist may be compelled to  
testify or to submit to discovery in the will contest action under  
sections 2107.71 to 2107.77 of the Revised Code only as to the  
patient in question on issues relevant to the competency of the  
patient at the time of the execution of the will. Testimony or  
discovery conducted pursuant to this division shall be conducted  
in accordance with the Rules of Civil Procedure.

(4) The testimonial privilege described in division (B)(1) of  
this section is not waived when a communication is made by a  
physician to a pharmacist or when there is communication between a  
patient and a pharmacist in furtherance of the physician-patient  
relation.

(5)(a) As used in divisions (B)(1) to (4) of this section,  
"communication" means acquiring, recording, or transmitting any  
information, in any manner, concerning any facts, opinions, or  
statements necessary to enable a physician or dentist to diagnose,  
treat, prescribe, or act for a patient. A "communication" may  
include, but is not limited to, any medical or dental, office, or  
hospital communication such as a record, chart, letter,  
memorandum, laboratory test and results, x-ray, photograph,  
financial statement, diagnosis, or prognosis.

(b) As used in division (B)(2) of this section, "health care provider" means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

(c) As used in division (B)(5)(b) of this section:

(i) "Ambulatory care facility" means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. "Ambulatory health care facility" does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(ii) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(iii) "Health care practitioner" has the same meaning as in section 4769.01 of the Revised Code.

(iv) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(v) "Long-term care facility" means a nursing home, residential care facility, or home for the aging, as those terms are defined in section 3721.01 of the Revised Code; an adult care facility, as defined in section 3722.01 of the Revised Code; a nursing facility or intermediate care facility for the mentally retarded, as those terms are defined in section 5111.20 of the Revised Code; a facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 49 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(vi) "Pharmacy" has the same meaning as in section 4729.01 of the Revised Code. 206  
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(6) Divisions (B)(1), (2), (3), (4), and (5) of this section apply to doctors of medicine, doctors of osteopathic medicine, doctors of podiatry, and dentists. 208  
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(7) Nothing in divisions (B)(1) to (6) of this section affects, or shall be construed as affecting, the immunity from civil liability conferred by section 307.628 or 2305.33 of the Revised Code upon physicians who report an employee's use of a drug of abuse, or a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee in accordance with division (B) of that section. As used in division (B)(7) of this section, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code. 211  
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(C) A member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect, when the member of the clergy, rabbi, priest, or minister remains accountable to the authority of that church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the member of the clergy, rabbi, priest, or minister for a religious counseling purpose in the member of the clergy's, rabbi's, priest's, or minister's professional character; however, the member of the clergy, rabbi, priest, or minister may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust; 221  
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(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act 234  
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done, in the known presence or hearing of a third person competent 237  
to be a witness; and such rule is the same if the marital relation 238  
has ceased to exist; 239

(E) A person who assigns a claim or interest, concerning any 240  
matter in respect to which the person would not, if a party, be 241  
permitted to testify; 242

(F) A person who, if a party, would be restricted under 243  
section 2317.03 of the Revised Code, when the property or thing is 244  
sold or transferred by an executor, administrator, guardian, 245  
trustee, heir, devisee, or legatee, shall be restricted in the 246  
same manner in any action or proceeding concerning the property or 247  
thing. 248

(G)(1) A school guidance counselor who holds a valid educator 249  
license from the state board of education as provided for in 250  
section 3319.22 of the Revised Code, a person licensed under 251  
Chapter 4757. of the Revised Code as a professional clinical 252  
counselor, professional counselor, social worker, independent 253  
social worker, marriage and family therapist or independent 254  
marriage and family therapist, or registered under Chapter 4757. 255  
of the Revised Code as a social work assistant concerning a 256  
confidential communication received from a client in that relation 257  
or the person's advice to a client unless any of the following 258  
applies: 259

(a) The communication or advice indicates clear and present 260  
danger to the client or other persons. For the purposes of this 261  
division, cases in which there are indications of present or past 262  
child abuse or neglect of the client constitute a clear and 263  
present danger. 264

(b) The client gives express consent to the testimony. 265

(c) If the client is deceased, the surviving spouse or the 266  
executor or administrator of the estate of the deceased client 267

gives express consent.

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(d) The client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject.

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(e) The court in camera determines that the information communicated by the client is not germane to the counselor-client, marriage and family therapist-client, or social worker-client relationship.

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(f) A court, in an action brought against a school, its administration, or any of its personnel by the client, rules after an in-camera inspection that the testimony of the school guidance counselor is relevant to that action.

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(g) The testimony is sought in a civil action and concerns court-ordered treatment or services received by a patient as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

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(2) Nothing in division (G)(1) of this section shall relieve a school guidance counselor or a person licensed or registered under Chapter 4757. of the Revised Code from the requirement to report information concerning child abuse or neglect under section 2151.421 of the Revised Code.

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(H) A mediator acting under a mediation order issued under division (A) of section 3109.052 of the Revised Code or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child

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neglect, or dependent child action or proceeding, that is brought 299  
by or against either parent who takes part in mediation in 300  
accordance with the order and that pertains to the mediation 301  
process, to any information discussed or presented in the 302  
mediation process, to the allocation of parental rights and 303  
responsibilities for the care of the parents' children, or to the 304  
awarding of parenting time rights in relation to their children; 305

(I) A communications assistant, acting within the scope of 306  
the communication assistant's authority, when providing 307  
telecommunications relay service pursuant to section 4931.35 of 308  
the Revised Code or Title II of the "Communications Act of 1934," 309  
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 310  
made through a telecommunications relay service. Nothing in this 311  
section shall limit the obligation of a communications assistant 312  
to divulge information or testify when mandated by federal law or 313  
regulation or pursuant to subpoena in a criminal proceeding. 314

Nothing in this section shall limit any immunity or privilege 315  
granted under federal law or regulation. 316

(J)(1) A chiropractor in a civil proceeding concerning a 317  
communication made to the chiropractor by a patient in that 318  
relation or the chiropractor's advice to a patient, except as 319  
otherwise provided in this division. The testimonial privilege 320  
established under this division does not apply, and a chiropractor 321  
may testify or may be compelled to testify, in any civil action, 322  
in accordance with the discovery provisions of the Rules of Civil 323  
Procedure in connection with a civil action, or in connection with 324  
a claim under Chapter 4123. of the Revised Code, under any of the 325  
following circumstances: 326

(a) If the patient or the guardian or other legal 327  
representative of the patient gives express consent. 328

(b) If the patient is deceased, the spouse of the patient or 329

the executor or administrator of the patient's estate gives 330  
express consent. 331

(c) If a medical claim, dental claim, chiropractic claim, or 332  
optometric claim, as defined in section 2305.113 of the Revised 333  
Code, an action for wrongful death, any other type of civil 334  
action, or a claim under Chapter 4123. of the Revised Code is 335  
filed by the patient, the personal representative of the estate of 336  
the patient if deceased, or the patient's guardian or other legal 337  
representative. 338

(2) If the testimonial privilege described in division (J)(1) 339  
of this section does not apply as provided in division (J)(1)(c) 340  
of this section, a chiropractor may be compelled to testify or to 341  
submit to discovery under the Rules of Civil Procedure only as to 342  
a communication made to the chiropractor by the patient in 343  
question in that relation, or the chiropractor's advice to the 344  
patient in question, that related causally or historically to 345  
physical or mental injuries that are relevant to issues in the 346  
medical claim, dental claim, chiropractic claim, or optometric 347  
claim, action for wrongful death, other civil action, or claim 348  
under Chapter 4123. of the Revised Code. 349

(3) The testimonial privilege established under this division 350  
does not apply, and a chiropractor may testify or be compelled to 351  
testify, in any criminal action or administrative proceeding. 352

(4) As used in this division, "communication" means 353  
acquiring, recording, or transmitting any information, in any 354  
manner, concerning any facts, opinions, or statements necessary to 355  
enable a chiropractor to diagnose, treat, or act for a patient. A 356  
communication may include, but is not limited to, any 357  
chiropractic, office, or hospital communication such as a record, 358  
chart, letter, memorandum, laboratory test and results, x-ray, 359  
photograph, financial statement, diagnosis, or prognosis. 360

(K)(1) Except as provided under division (K)(2) of this section, a critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session. 361  
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(2) The testimonial privilege established under division (K)(1) of this section does not apply if any of the following are true: 367  
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(a) The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. For purposes of this division, cases in which there are indications of present or past child abuse or neglect of the individual constitute a clear and present danger. 370  
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(b) The individual who received crisis response services gives express consent to the testimony. 375  
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(c) If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent. 377  
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(d) The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject. 380  
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(e) The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member. 383  
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(f) The communication or advice pertains or is related to any criminal act. 387  
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(3) As used in division (K) of this section: 389

(a) "Crisis response services" means consultation, risk 390

assessment, referral, and on-site crisis intervention services 391  
provided by a critical incident stress management team to 392  
individuals affected by crisis or disaster. 393

(b) "Critical incident stress management team member" or 394  
"team member" means an individual specially trained to provide 395  
crisis response services as a member of an organized community or 396  
local crisis response team that holds membership in the Ohio 397  
critical incident stress management network. 398

(c) "Debriefing session" means a session at which crisis 399  
response services are rendered by a critical incident stress 400  
management team member during or after a crisis or disaster. 401

(L)(1) Subject to division (L)(2) of this section and except 402  
as provided in division (L)(3) of this section, an employee 403  
assistance professional, concerning a communication made to the 404  
employee assistance professional by a client in the employee 405  
assistance professional's official capacity as an employee 406  
assistance professional. 407

(2) Division (L)(1) of this section applies to an employee 408  
assistance professional who meets either or both of the following 409  
requirements: 410

(a) Is certified by the employee assistance certification 411  
commission to engage in the employee assistance profession; 412

(b) Has education, training, and experience in all of the 413  
following: 414

(i) Providing workplace-based services designed to address 415  
employer and employee productivity issues; 416

(ii) Providing assistance to employees and employees' 417  
dependents in identifying and finding the means to resolve 418  
personal problems that affect the employees or the employees' 419  
performance; 420

<u>(iii) Identifying and resolving productivity problems</u>	421
<u>associated with an employee's concerns about any of the following</u>	422
<u>matters: health, marriage, family, finances, substance abuse or</u>	423
<u>other addiction, workplace, law, and emotional issues;</u>	424
<u>(iv) Selecting and evaluating available community resources;</u>	425
<u>(v) Making appropriate referrals;</u>	426
<u>(vi) Local and national employee assistance agreements;</u>	427
<u>(vii) Client confidentiality.</u>	428
<u>(3) Division (L)(1) of this section does not apply to any of</u>	429
<u>the following:</u>	430
<u>(a) A criminal action or proceeding involving an offense</u>	431
<u>under sections 2903.01 to 2903.06 of the Revised Code if the</u>	432
<u>employee assistance professional's disclosure or testimony relates</u>	433
<u>directly to the facts or immediate circumstances of the offense;</u>	434
<u>(b) A communication made by a client to an employee</u>	435
<u>assistance professional that reveals the contemplation or</u>	436
<u>commission of a crime or serious, harmful act;</u>	437
<u>(c) A communication that is made by a client who is an</u>	438
<u>unemancipated minor or an adult adjudicated to be incompetent and</u>	439
<u>indicates that the client was the victim of a crime or abuse;</u>	440
<u>(d) A civil proceeding to determine an individual's mental</u>	441
<u>competency or a criminal action in which a plea of not guilty by</u>	442
<u>reason of insanity is entered;</u>	443
<u>(e) A civil or criminal malpractice action brought against</u>	444
<u>the employee assistance professional;</u>	445
<u>(f) When the employee assistance professional has the express</u>	446
<u>consent of the client or, if the client is deceased or disabled,</u>	447
<u>the client's legal representative;</u>	448
<u>(g) When the testimonial privilege otherwise provided by</u>	449

division (L)(1) of this section is abrogated under law.

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**Sec. 4117.14.** (A) The procedures contained in this section govern the settlement of disputes between an exclusive representative and a public employer concerning the termination or modification of an existing collective bargaining agreement or negotiation of a successor agreement, or the negotiation of an initial collective bargaining agreement.

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(B)(1) In those cases where there exists a collective bargaining agreement, any public employer or exclusive representative desiring to terminate, modify, or negotiate a successor collective bargaining agreement shall:

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(a) Serve written notice upon the other party of the proposed termination, modification, or successor agreement. The party must serve the notice not less than sixty days prior to the expiration date of the existing agreement or, in the event the existing collective bargaining agreement does not contain an expiration date, not less than sixty days prior to the time it is proposed to make the termination or modifications or to make effective a successor agreement.

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(b) Offer to bargain collectively with the other party for the purpose of modifying or terminating any existing agreement or negotiating a successor agreement;

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(c) Notify the state employment relations board of the offer by serving upon the board a copy of the written notice to the other party and a copy of the existing collective bargaining agreement.

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(2) In the case of initial negotiations between a public employer and an exclusive representative, where a collective bargaining agreement has not been in effect between the parties, any party may serve notice upon the board and the other party

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setting forth the names and addresses of the parties and offering 480  
to meet, for a period of ninety days, with the other party for the 481  
purpose of negotiating a collective bargaining agreement. 482

If the settlement procedures specified in divisions (B), (C), 483  
and (D) of this section govern the parties, where those procedures 484  
refer to the expiration of a collective bargaining agreement, it 485  
means the expiration of the sixty-day period to negotiate a 486  
collective bargaining agreement referred to in this subdivision, 487  
or in the case of initial negotiations, it means the ninety day 488  
period referred to in this subdivision. 489

(3) The parties shall continue in full force and effect all 490  
the terms and conditions of any existing collective bargaining 491  
agreement, without resort to strike or lock-out, for a period of 492  
sixty days after the party gives notice or until the expiration 493  
date of the collective bargaining agreement, whichever occurs 494  
later, or for a period of ninety days where applicable. 495

(4) Upon receipt of the notice, the parties shall enter into 496  
collective bargaining. 497

(C) In the event the parties are unable to reach an 498  
agreement, they may submit, at any time prior to forty-five days 499  
before the expiration date of the collective bargaining agreement, 500  
the issues in dispute to any mutually agreed upon dispute 501  
settlement procedure which supersedes the procedures contained in 502  
this section. 503

(1) The procedures may include: 504

(a) Conventional arbitration of all unsettled issues; 505

(b) Arbitration confined to a choice between the last offer 506  
of each party to the agreement as a single package; 507

(c) Arbitration confined to a choice of the last offer of 508  
each party to the agreement on each issue submitted; 509

(d) The procedures described in division (C)(1)(a), (b), or 510  
(c) of this section and including among the choices for the 511  
arbitrator, the recommendations of the fact finder, if there are 512  
recommendations, either as a single package or on each issue 513  
submitted; 514

(e) Settlement by a citizens' conciliation council composed 515  
of three residents within the jurisdiction of the public employer. 516  
The public employer shall select one member and the exclusive 517  
representative shall select one member. The two members selected 518  
shall select the third member who shall chair the council. If the 519  
two members cannot agree upon a third member within five days 520  
after their appointments, the board shall appoint the third 521  
member. Once appointed, the council shall make a final settlement 522  
of the issues submitted to it pursuant to division (G) of this 523  
section. 524

(f) Any other dispute settlement procedure mutually agreed to 525  
by the parties. 526

(2) If, fifty days before the expiration date of the 527  
collective bargaining agreement, the parties are unable to reach 528  
an agreement, any party may request the state employment relations 529  
board to intervene. The request shall set forth the names and 530  
addresses of the parties, the issues involved, and, if applicable, 531  
the expiration date of any agreement. 532

The board shall intervene and investigate the dispute to 533  
determine whether the parties have engaged in collective 534  
bargaining. 535

If an impasse exists or forty-five days before the expiration 536  
date of the collective bargaining agreement if one exists, the 537  
board shall appoint a mediator to assist the parties in the 538  
collective bargaining process. 539

(3) Any time after the appointment of a mediator, either 540

party may request the appointment of a fact-finding panel. Within 541  
fifteen days after receipt of a request for a fact-finding panel, 542  
the board shall appoint a fact-finding panel of not more than 543  
three members who have been selected by the parties in accordance 544  
with rules established by the board, from a list of qualified 545  
persons maintained by the board. 546

(a) The fact-finding panel shall, in accordance with rules 547  
and procedures established by the board that include the 548  
regulation of costs and expenses of fact-finding, gather facts and 549  
make recommendations for the resolution of the matter. The board 550  
shall by its rules require each party to specify in writing the 551  
unresolved issues and its position on each issue to the 552  
fact-finding panel. The fact-finding panel shall make final 553  
recommendations as to all the unresolved issues. 554

(b) The board may continue mediation, order the parties to 555  
engage in collective bargaining until the expiration date of the 556  
agreement, or both. 557

(4) The following guidelines apply to fact-finding: 558

(a) The fact-finding panel may establish times and place of 559  
hearings which shall be, where feasible, in the jurisdiction of 560  
the state. 561

(b) The fact-finding panel shall conduct the hearing pursuant 562  
to rules established by the board. 563

(c) Upon request of the fact-finding panel, the board shall 564  
issue subpoenas for hearings conducted by the panel. 565

(d) The fact-finding panel may administer oaths. 566

(e) The board shall prescribe guidelines for the fact-finding 567  
panel to follow in making findings. In making its recommendations, 568  
the fact-finding panel shall take into consideration the factors 569  
listed in divisions (G)(7)(a) to (f) of this section. 570

(f) The fact-finding panel may attempt mediation at any time 571  
during the fact-finding process. From the time of appointment 572  
until the fact-finding panel makes a final recommendation, it 573  
shall not discuss the recommendations for settlement of the 574  
dispute with parties other than the direct parties to the dispute. 575

(5) The fact-finding panel, acting by a majority of its 576  
members, shall transmit its findings of fact and recommendations 577  
on the unresolved issues to the public employer and employee 578  
organization involved and to the board no later than fourteen days 579  
after the appointment of the fact-finding panel, unless the 580  
parties mutually agree to an extension. The parties shall share 581  
the cost of the fact-finding panel in a manner agreed to by the 582  
parties. 583

(6)~~(a)~~(a) Not later than seven days after the findings and 584  
recommendations are sent, the legislative body, by a three-fifths 585  
vote of its total membership, and in the case of the public 586  
employee organization, the membership, by a three-fifths vote of 587  
the total membership, may reject the recommendations; if neither 588  
rejects the recommendations, the recommendations shall be deemed 589  
agreed upon as the final resolution of the issues submitted and a 590  
collective bargaining agreement shall be executed between the 591  
parties, including the fact-finding panel's recommendations, 592  
except as otherwise modified by the parties by mutual agreement. 593  
If either the legislative body or the public employee organization 594  
rejects the recommendations, the board shall publicize the 595  
findings of fact and recommendations of the fact-finding panel. 596  
The board shall adopt rules governing the procedures and methods 597  
for public employees to vote on the recommendations of the 598  
fact-finding panel. 599

~~(b) As used in division (C)(6)(a) of this section, 600  
"legislative body" means the controlling board when the state or 601  
any of its agencies, authorities, commissions, boards, or other 602~~

~~branch of public employment is party to the fact-finding process.~~ 603  
(b) As used in division (C)(6)(a) of this section, "legislative 604  
body" means the controlling board when the state or any of its 605  
agencies, authorities, commissions, boards, or other branch of 606  
public employment is party to the fact-finding process. 607

(D) If the parties are unable to reach agreement within seven 608  
days after the publication of findings and recommendations from 609  
the fact-finding panel or the collective bargaining agreement, if 610  
one exists, has expired, then the: 611

(1) Public employees, who are members of a police or fire 612  
department, members of the state highway patrol, deputy sheriffs, 613  
dispatchers employed by a police, fire or sheriff's department or 614  
the state highway patrol or civilian dispatchers employed by a 615  
public employer other than a police, fire, or sheriff's department 616  
to dispatch police, fire, sheriff's department, or emergency 617  
medical or rescue personnel and units, an exclusive nurse's unit, 618  
employees of the state school for the deaf or the state school for 619  
the blind, employees of any public employee retirement system, 620  
corrections officers, guards at penal or mental institutions, 621  
special police officers appointed in accordance with sections 622  
5119.14 and 5123.13 of the Revised Code, psychiatric attendants 623  
employed at mental health forensic facilities, or youth leaders 624  
employed at juvenile correctional facilities, shall submit the 625  
matter to a final offer settlement procedure pursuant to a board 626  
order issued forthwith to the parties to settle by a conciliator 627  
selected by the parties. The parties shall request from the board 628  
a list of five qualified conciliators and the parties shall select 629  
a single conciliator from the list by alternate striking of names. 630  
If the parties cannot agree upon a conciliator within five days 631  
after the board order, the board shall on the sixth day after its 632  
order appoint a conciliator from a list of qualified persons 633  
maintained by the board or shall request a list of qualified 634

conciliators from the American arbitration association and appoint 635  
therefrom. 636

(2) Public employees other than those listed in division 637  
(D)(1) of this section have the right to strike under Chapter 638  
4117. of the Revised Code provided that the employee organization 639  
representing the employees has given a ten-day prior written 640  
notice of an intent to strike to the public employer and to the 641  
board, and further provided that the strike is for full, 642  
consecutive work days and the beginning date of the strike is at 643  
least ten work days after the ending date of the most recent prior 644  
strike involving the same bargaining unit; however, the board, at 645  
its discretion, may attempt mediation at any time. 646

(E) Nothing in this section shall be construed to prohibit 647  
the parties, at any time, from voluntarily agreeing to submit any 648  
or all of the issues in dispute to any other alternative dispute 649  
settlement procedure. An agreement or statutory requirement to 650  
arbitrate or to settle a dispute pursuant to a final offer 651  
settlement procedure and the award issued in accordance with the 652  
agreement or statutory requirement is enforceable in the same 653  
manner as specified in division (B) of section 4117.09 of the 654  
Revised Code. 655

(F) Nothing in this section shall be construed to prohibit a 656  
party from seeking enforcement of a collective bargaining 657  
agreement or a conciliator's award as specified in division (B) of 658  
section 4117.09 of the Revised Code. 659

(G) The following guidelines apply to final offer settlement 660  
proceedings under division (D)(1) of this section: 661

(1) The parties shall submit to final offer settlement those 662  
issues that are subject to collective bargaining as provided by 663  
section 4117.08 of the Revised Code and upon which the parties 664  
have not reached agreement and other matters mutually agreed to by 665

the public employer and the exclusive representative; except that  
the conciliator may attempt mediation at any time.

(2) The conciliator shall hold a hearing within thirty days  
of the board's order to submit to a final offer settlement  
procedure, or as soon thereafter as is practicable.

(3) The conciliator shall conduct the hearing pursuant to  
rules developed by the board. The conciliator shall establish the  
hearing time and place, but it shall be, where feasible, within  
the jurisdiction of the state. Not later than five calendar days  
before the hearing, each of the parties shall submit to the  
conciliator, to the opposing party, and to the board, a written  
report summarizing the unresolved issues, the party's final offer  
as to the issues, and the rationale for that position.

(4) Upon the request by the conciliator, the board shall  
issue subpoenas for the hearing.

(5) The conciliator may administer oaths.

(6) The conciliator shall hear testimony from the parties and  
provide for a written record to be made of all statements at the  
hearing. The board shall submit for inclusion in the record and  
for consideration by the conciliator the written report and  
recommendation of the fact-finders.

(7) After hearing, the conciliator shall resolve the dispute  
between the parties by selecting, on an issue-by-issue basis, from  
between each of the party's final settlement offers, taking into  
consideration the following:

(a) Past collectively bargained agreements, if any, between  
the parties;

(b) Comparison of the issues submitted to final offer  
settlement relative to the employees in the bargaining unit  
involved with those issues related to other public and private

employees doing comparable work, giving consideration to factors 696  
peculiar to the area and classification involved; 697

(c) The interests and welfare of the public, the ability of 698  
the public employer to finance and administer the issues proposed, 699  
and the effect of the adjustments on the normal standard of public 700  
service; 701

(d) The lawful authority of the public employer; 702

(e) The stipulations of the parties; 703

(f) Such other factors, not confined to those listed in this 704  
section, which are normally or traditionally taken into 705  
consideration in the determination of the issues submitted to 706  
final offer settlement through voluntary collective bargaining, 707  
mediation, fact-finding, or other impasse resolution procedures in 708  
the public service or in private employment. 709

(8) Final offer settlement awards made under Chapter 4117. of 710  
the Revised Code are subject to Chapter 2711. of the Revised Code. 711

(9) If more than one conciliator is used, the determination 712  
must be by majority vote. 713

(10) The conciliator shall make written findings of fact and 714  
promulgate a written opinion and order upon the issues presented 715  
to the conciliator, and upon the record made before the 716  
conciliator and shall mail or otherwise deliver a true copy 717  
thereof to the parties and the board. 718

(11) Increases in rates of compensation and other matters 719  
with cost implications awarded by the conciliator may be effective 720  
only at the start of the fiscal year next commencing after the 721  
date of the final offer settlement award; provided that if a new 722  
fiscal year has commenced since the issuance of the board order to 723  
submit to a final offer settlement procedure, the awarded 724  
increases may be retroactive to the commencement of the new fiscal 725



year. The parties may, at any time, amend or modify a  
conciliator's award or order by mutual agreement.

(12) The parties shall bear equally the cost of the final  
offer settlement procedure.

(13) Conciliators appointed pursuant to this section shall be  
residents of the state.

(H) All final offer settlement awards and orders of the  
conciliator made pursuant to Chapter 4117. of the Revised Code are  
subject to review by the court of common pleas having jurisdiction  
over the public employer as provided in Chapter 2711. of the  
Revised Code. If the public employer is located in more than one  
court of common pleas district, the court of common pleas in which  
the principal office of the chief executive is located has  
jurisdiction.

(I) The issuance of a final offer settlement award  
constitutes a binding mandate to the public employer and the  
exclusive representative to take whatever actions are necessary to  
implement the award.

**Section 2.** That existing sections 2317.02 and 4117.14 of the  
Revised Code are hereby repealed.

**Section 3.** Section 2317.02 of the Revised Code is presented  
in this act as a composite of the section as amended by Am. Sub.  
H.B. 374, Am. H.B. 533, and Am. Sub. S.B. 281, all of the 124th  
General Assembly. The General Assembly, applying the principle  
stated in division (B) of section 1.52 of the Revised Code that  
amendments are to be harmonized if reasonably capable of  
simultaneous operation, finds that the composite is the resulting  
version of the section in effect prior to the effective date of  
the section as presented in this act.