

As Passed by the House

**126th General Assembly
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Sub. S. B. No. 19

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

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A B I L L

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| 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:

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

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

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| (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
the patient if deceased, or the patient's guardian or other legal
representative.

(b) In any civil action concerning court-ordered treatment or
services received by a patient, if the court-ordered treatment or
services were ordered 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.

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

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

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

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 82
testimony, demonstrates to the court that that party would be an 83
heir of the patient if the patient died without a will, is a 84
beneficiary under the will that is the subject of the will contest 85
action, or is a beneficiary under another testamentary document 86
allegedly executed by the patient, and demonstrates to the court 87
that the testimony is necessary to establish the party's rights as 88
described in this division. 89

(2)(a) If any law enforcement officer submits a written 90
statement to a health care provider that states that an official 91
criminal investigation has begun regarding a specified person or 92
that a criminal action or proceeding has been commenced against a 93
specified person, that requests the provider to supply to the 94
officer copies of any records the provider possesses that pertain 95
to any test or the results of any test administered to the 96
specified person to determine the presence or concentration of 97
alcohol, a drug of abuse, or alcohol and a drug of abuse in the 98
person's blood, breath, or urine at any time relevant to the 99
criminal offense in question, and that conforms to section 100
2317.022 of the Revised Code, the provider, except to the extent 101
specifically prohibited by any law of this state or of the United 102
States, shall supply to the officer a copy of any of the requested 103
records the provider possesses. If the health care provider does 104
not possess any of the requested records, the provider shall give 105
the officer a written statement that indicates that the provider 106
does not possess any of the requested records. 107

(b) If a health care provider possesses any records of the 108
type described in division (B)(2)(a) of this section regarding the 109
person in question at any time relevant to the criminal offense in 110

question, in lieu of personally testifying as to the results of 111
the test in question, the custodian of the records may submit a 112
certified copy of the records, and, upon its submission, the 113
certified copy is qualified as authentic evidence and may be 114
admitted as evidence in accordance with the Rules of Evidence. 115
Division (A) of section 2317.422 of the Revised Code does not 116
apply to any certified copy of records submitted in accordance 117
with this division. Nothing in this division shall be construed to 118
limit the right of any party to call as a witness the person who 119
administered the test to which the records pertain, the person 120
under whose supervision the test was administered, the custodian 121
of the records, the person who made the records, or the person 122
under whose supervision the records were made. 123

(3)(a) If the testimonial privilege described in division 124
(B)(1) of this section does not apply as provided in division 125
(B)(1)(a)(iii) of this section, a physician or dentist may be 126
compelled to testify or to submit to discovery under the Rules of 127
Civil Procedure only as to a communication made to the physician 128
or dentist by the patient in question in that relation, or the 129
physician's or dentist's advice to the patient in question, that 130
related causally or historically to physical or mental injuries 131
that are relevant to issues in the medical claim, dental claim, 132
chiropractic claim, or optometric claim, action for wrongful 133
death, other civil action, or claim under Chapter 4123. of the 134
Revised Code. 135

(b) If the testimonial privilege described in division (B)(1) 136
of this section does not apply to a physician or dentist as 137
provided in division (B)(1)(c) of this section, the physician or 138
dentist, in lieu of personally testifying as to the results of the 139
test in question, may submit a certified copy of those results, 140
and, upon its submission, the certified copy is qualified as 141
authentic evidence and may be admitted as evidence in accordance 142

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.

(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.

(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.

(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;

(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

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. 268

(d) The client voluntarily testifies, in which case the 269
school guidance counselor or person licensed or registered under 270
Chapter 4757. of the Revised Code may be compelled to testify on 271
the same subject. 272

(e) The court in camera determines that the information 273
communicated by the client is not germane to the counselor-client, 274
marriage and family therapist-client, or social worker-client 275
relationship. 276

(f) A court, in an action brought against a school, its 277
administration, or any of its personnel by the client, rules after 278
an in-camera inspection that the testimony of the school guidance 279
counselor is relevant to that action. 280

(g) The testimony is sought in a civil action and concerns 281
court-ordered treatment or services received by a patient as part 282
of a case plan journalized under section 2151.412 of the Revised 283
Code or the court-ordered treatment or services are necessary or 284
relevant to dependency, neglect, or abuse or temporary or 285
permanent custody proceedings under Chapter 2151. of the Revised 286
Code. 287

(2) Nothing in division (G)(1) of this section shall relieve 288
a school guidance counselor or a person licensed or registered 289
under Chapter 4757. of the Revised Code from the requirement to 290
report information concerning child abuse or neglect under section 291
2151.421 of the Revised Code. 292

(H) A mediator acting under a mediation order issued under 293
division (A) of section 3109.052 of the Revised Code or otherwise 294
issued in any proceeding for divorce, dissolution, legal 295
separation, annulment, or the allocation of parental rights and 296
responsibilities for the care of children, in any action or 297
proceeding, other than a criminal, delinquency, child abuse, child 298

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

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

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

(J)(1) A chiropractor in a civil proceeding concerning a
communication made to the chiropractor by a patient in that
relation or the chiropractor's advice to a patient, except as
otherwise provided in this division. The testimonial privilege
established under this division does not apply, and a chiropractor
may testify or may be compelled to testify, 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:

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

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

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 361
section, a critical incident stress management team member 362
concerning a communication received from an individual who 363
receives crisis response services from the team member, or the 364
team member's advice to the individual, during a debriefing 365
session. 366

(2) The testimonial privilege established under division 367
(K)(1) of this section does not apply if any of the following are 368
true: 369

(a) The communication or advice indicates clear and present 370
danger to the individual who receives crisis response services or 371
to other persons. For purposes of this division, cases in which 372
there are indications of present or past child abuse or neglect of 373
the individual constitute a clear and present danger. 374

(b) The individual who received crisis response services 375
gives express consent to the testimony. 376

(c) If the individual who received crisis response services 377
is deceased, the surviving spouse or the executor or administrator 378
of the estate of the deceased individual gives express consent. 379

(d) The individual who received crisis response services 380
voluntarily testifies, in which case the team member may be 381
compelled to testify on the same subject. 382

(e) The court in camera determines that the information 383
communicated by the individual who received crisis response 384
services is not germane to the relationship between the individual 385
and the team member. 386

(f) The communication or advice pertains or is related to any 387
criminal act. 388

(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
provided by a critical incident stress management team to
individuals affected by crisis or disaster.

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

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

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

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

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

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

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

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

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| <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.~~

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

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

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

conciliators from the American arbitration association and appoint
therefrom.

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

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

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

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

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

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 726
conciliator's award or order by mutual agreement. 727

(12) The parties shall bear equally the cost of the final 728
offer settlement procedure. 729

(13) Conciliators appointed pursuant to this section shall be 730
residents of the state. 731

(H) All final offer settlement awards and orders of the 732
conciliator made pursuant to Chapter 4117. of the Revised Code are 733
subject to review by the court of common pleas having jurisdiction 734
over the public employer as provided in Chapter 2711. of the 735
Revised Code. If the public employer is located in more than one 736
court of common pleas district, the court of common pleas in which 737
the principal office of the chief executive is located has 738
jurisdiction. 739

(I) The issuance of a final offer settlement award 740
constitutes a binding mandate to the public employer and the 741
exclusive representative to take whatever actions are necessary to 742
implement the award. 743

Section 2. That existing sections 2317.02 and 4117.14 of the 744
Revised Code are hereby repealed. 745

Section 3. Section 2317.02 of the Revised Code is presented 746
in this act as a composite of the section as amended by Am. Sub. 747
H.B. 374, Am. H.B. 533, and Am. Sub. S.B. 281, all of the 124th 748
General Assembly. The General Assembly, applying the principle 749
stated in division (B) of section 1.52 of the Revised Code that 750
amendments are to be harmonized if reasonably capable of 751
simultaneous operation, finds that the composite is the resulting 752
version of the section in effect prior to the effective date of 753
the section as presented in this act. 754