

As Introduced

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Representatives Szollosi, Wagoner

**Cosponsors: Representatives Dyer, Barrett, Okey, McGregor, J., Evans,
Yuko, Harwood, Mallory, Brown, Williams, S., Patton, Stebelton**

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A B I L L

To amend section 4123.01 of the Revised Code to 1
exempt individuals covered under the federal 2
Longshore and Harbor Workers' Compensation Act 3
from coverage under Ohio's Workers' Compensation 4
Law unless an employer elects to provide such 5
coverage. 6

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

Section 1. That section 4123.01 of the Revised Code be 7
amended to read as follows: 8

Sec. 4123.01. As used in this chapter: 9

(A)(1) "Employee" means: 10

(a) Every person in the service of the state, or of any 11
county, municipal corporation, township, or school district 12
therein, including regular members of lawfully constituted police 13
and fire departments of municipal corporations and townships, 14
whether paid or volunteer, and wherever serving within the state 15
or on temporary assignment outside thereof, and executive officers 16
of boards of education, under any appointment or contract of hire, 17
express or implied, oral or written, including any elected 18

official of the state, or of any county, municipal corporation, or township, or members of boards of education.

As used in division (A)(1)(a) of this section, the term "employee" includes the following persons when responding to an inherently dangerous situation that calls for an immediate response on the part of the person, regardless of whether the person is within the limits of the jurisdiction of the person's regular employment or voluntary service when responding, on the condition that the person responds to the situation as the person otherwise would if the person were on duty in the person's jurisdiction:

(i) Off-duty peace officers. As used in division (A)(1)(a)(i) of this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(ii) Off-duty firefighters, whether paid or volunteer, of a lawfully constituted fire department.

(iii) Off-duty first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or emergency medical technicians-paramedic, whether paid or volunteer, of an ambulance service organization or emergency medical service organization pursuant to Chapter 4765. of the Revised Code.

(b) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (i) employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, or (ii) is bound

by any such contract of hire or by any other written contract, to 50
pay into the state insurance fund the premiums provided by this 51
chapter. 52

(c) Every person who performs labor or provides services 53
pursuant to a construction contract, as defined in section 4123.79 54
of the Revised Code, if at least ten of the following criteria 55
apply: 56

(i) The person is required to comply with instructions from 57
the other contracting party regarding the manner or method of 58
performing services; 59

(ii) The person is required by the other contracting party to 60
have particular training; 61

(iii) The person's services are integrated into the regular 62
functioning of the other contracting party; 63

(iv) The person is required to perform the work personally; 64

(v) The person is hired, supervised, or paid by the other 65
contracting party; 66

(vi) A continuing relationship exists between the person and 67
the other contracting party that contemplates continuing or 68
recurring work even if the work is not full time; 69

(vii) The person's hours of work are established by the other 70
contracting party; 71

(viii) The person is required to devote full time to the 72
business of the other contracting party; 73

(ix) The person is required to perform the work on the 74
premises of the other contracting party; 75

(x) The person is required to follow the order of work set by 76
the other contracting party; 77

(xi) The person is required to make oral or written reports 78

of progress to the other contracting party;	79
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	80 81
(xiii) The person's expenses are paid for by the other contracting party;	82 83
(xiv) The person's tools and materials are furnished by the other contracting party;	84 85
(xv) The person is provided with the facilities used to perform services;	86 87
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	88 89
(xvii) The person is not performing services for a number of employers at the same time;	90 91
(xviii) The person does not make the same services available to the general public;	92 93
(xix) The other contracting party has a right to discharge the person;	94 95
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	96 97 98
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or if a self-insuring employer has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their	99 100 101 102 103 104 105 106 107 108

legal representatives or beneficiaries elect, after injury or	109
death, to regard such independent contractor as the employer.	110
(2) "Employee" does not mean:	111
(a) A duly ordained, commissioned, or licensed minister or	112
assistant or associate minister of a church in the exercise of	113
ministry;	114
(b) Any officer of a family farm corporation;	115
(c) An individual incorporated as a corporation; or	116
(d) An individual who otherwise is an employee of an employer	117
but who signs the waiver and affidavit specified in section	118
4123.15 of the Revised Code on the condition that the	119
administrator has granted a waiver and exception to the	120
individual's employer under section 4123.15 of the Revised Code;	121
<u>(e) An individual who is covered under the federal "Longshore</u>	122
<u>and Harbor Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C.</u>	123
<u>901 et seq.</u>	124
Any employer may elect to include as an "employee" within	125
this chapter, any person excluded from the definition of	126
"employee" pursuant to division (A)(2) of this section. If an	127
employer is a partnership, sole proprietorship, individual	128
incorporated as a corporation, or family farm corporation, such	129
employer may elect to include as an "employee" within this	130
chapter, any member of such partnership, the owner of the sole	131
proprietorship, the individual incorporated as a corporation, or	132
the officers of the family farm corporation. In the event of an	133
election, the employer shall serve upon the bureau of workers'	134
compensation written notice naming the persons to be covered,	135
include such employee's remuneration for premium purposes in all	136
future payroll reports, and no person excluded from the definition	137
of "employee" pursuant to division (A)(2) of this section,	138
proprietor, individual incorporated as a corporation, or partner	139

shall be deemed an employee within this division until the 140
employer has served such notice. 141

For informational purposes only, the bureau shall prescribe 142
such language as it considers appropriate, on such of its forms as 143
it considers appropriate, to advise employers of their right to 144
elect to include as an "employee" within this chapter a sole 145
proprietor, any member of a partnership, an individual 146
incorporated as a corporation, the officers of a family farm 147
corporation, or a person excluded from the definition of 148
"employee" under division (A)(2) of this section, that they should 149
check any health and disability insurance policy, or other form of 150
health and disability plan or contract, presently covering them, 151
or the purchase of which they may be considering, to determine 152
whether such policy, plan, or contract excludes benefits for 153
illness or injury that they might have elected to have covered by 154
workers' compensation. 155

(B) "Employer" means: 156

(1) The state, including state hospitals, each county, 157
municipal corporation, township, school district, and hospital 158
owned by a political subdivision or subdivisions other than the 159
state; 160

(2) Every person, firm, professional employer organization as 161
defined in section 4125.01 of the Revised Code, and private 162
corporation, including any public service corporation, that (a) 163
has in service one or more employees or shared employees regularly 164
in the same business or in or about the same establishment under 165
any contract of hire, express or implied, oral or written, or (b) 166
is bound by any such contract of hire or by any other written 167
contract, to pay into the insurance fund the premiums provided by 168
this chapter. 169

All such employers are subject to this chapter. Any member of 170

a firm or association, who regularly performs manual labor in or 171
about a mine, factory, or other establishment, including a 172
household establishment, shall be considered an employee in 173
determining whether such person, firm, or private corporation, or 174
public service corporation, has in its service, one or more 175
employees and the employer shall report the income derived from 176
such labor to the bureau as part of the payroll of such employer, 177
and such member shall thereupon be entitled to all the benefits of 178
an employee. 179

(C) "Injury" includes any injury, whether caused by external 180
accidental means or accidental in character and result, received 181
in the course of, and arising out of, the injured employee's 182
employment. "Injury" does not include: 183

(1) Psychiatric conditions except where the claimant's 184
psychiatric conditions have arisen from an injury or occupational 185
disease sustained by that claimant or where the claimant's 186
psychiatric conditions have arisen from sexual conduct in which 187
the claimant was forced by threat of physical harm to engage or 188
participate; 189

(2) Injury or disability caused primarily by the natural 190
deterioration of tissue, an organ, or part of the body; 191

(3) Injury or disability incurred in voluntary participation 192
in an employer-sponsored recreation or fitness activity if the 193
employee signs a waiver of the employee's right to compensation or 194
benefits under this chapter prior to engaging in the recreation or 195
fitness activity; 196

(4) A condition that pre-existed an injury unless that 197
pre-existing condition is substantially aggravated by the injury. 198
Such a substantial aggravation must be documented by objective 199
diagnostic findings, objective clinical findings, or objective 200
test results. Subjective complaints may be evidence of such a 201

substantial aggravation. However, subjective complaints without 202
objective diagnostic findings, objective clinical findings, or 203
objective test results are insufficient to substantiate a 204
substantial aggravation. 205

(D) "Child" includes a posthumous child and a child legally 206
adopted prior to the injury. 207

(E) "Family farm corporation" means a corporation founded for 208
the purpose of farming agricultural land in which the majority of 209
the voting stock is held by and the majority of the stockholders 210
are persons or the spouse of persons related to each other within 211
the fourth degree of kinship, according to the rules of the civil 212
law, and at least one of the related persons is residing on or 213
actively operating the farm, and none of whose stockholders are a 214
corporation. A family farm corporation does not cease to qualify 215
under this division where, by reason of any devise, bequest, or 216
the operation of the laws of descent or distribution, the 217
ownership of shares of voting stock is transferred to another 218
person, as long as that person is within the degree of kinship 219
stipulated in this division. 220

(F) "Occupational disease" means a disease contracted in the 221
course of employment, which by its causes and the characteristics 222
of its manifestation or the condition of the employment results in 223
a hazard which distinguishes the employment in character from 224
employment generally, and the employment creates a risk of 225
contracting the disease in greater degree and in a different 226
manner from the public in general. 227

(G) "Self-insuring employer" means an employer who is granted 228
the privilege of paying compensation and benefits directly under 229
section 4123.35 of the Revised Code, including a board of county 230
commissioners for the sole purpose of constructing a sports 231
facility as defined in section 307.696 of the Revised Code, 232
provided that the electors of the county in which the sports 233

facility is to be built have approved construction of a sports	234
facility by ballot election no later than November 6, 1997.	235
(H) "Public employer" means an employer as defined in	236
division (B)(1) of this section.	237
(I) "Sexual conduct" means vaginal intercourse between a male	238
and female; anal intercourse, fellatio, and cunnilingus between	239
persons regardless of gender; and, without privilege to do so, the	240
insertion, however slight, of any part of the body or any	241
instrument, apparatus, or other object into the vaginal or anal	242
cavity of another. Penetration, however slight, is sufficient to	243
complete vaginal or anal intercourse.	244
Section 2. That existing section 4123.01 of the Revised Code	245
is hereby repealed.	246
Section 3. This act applies to all claims pursuant to	247
Chapters 4121., 4123., 4127., and 4131. of the Revised Code	248
arising on and after the effective date of this act.	249