

**As Introduced
Corrected Version**

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S. B. No. 252

Senators Patton, Brown

Cosponsors: Senators Hughes, Turner, Schiavoni, Kearney

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A B I L L

To amend sections 4123.01 and 4123.026 of the Revised Code to make peace officers and firefighters diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.

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

Section 1. That sections 4123.01 and 4123.026 of the Revised Code be amended to read as follows:

Sec. 4123.01. As used in this chapter:

(A)(1) "Employee" means:

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

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
(d) Every person to whom all of the following apply:	111
(i) The person is a resident of a state other than this state	112
and is covered by that other state's workers' compensation law;	113
(ii) The person performs labor or provides services for that	114
person's employer while temporarily within this state;	115
(iii) The laws of that other state do not include the	116
provisions described in division (H)(4) of section 4123.54 of the	117
Revised Code.	118
(2) "Employee" does not mean:	119
(a) A duly ordained, commissioned, or licensed minister or	120
assistant or associate minister of a church in the exercise of	121
ministry;	122
(b) Any officer of a family farm corporation;	123
(c) An individual incorporated as a corporation; or	124
(d) An individual who otherwise is an employee of an employer	125
but who signs the waiver and affidavit specified in section	126
4123.15 of the Revised Code on the condition that the	127
administrator has granted a waiver and exception to the	128
individual's employer under section 4123.15 of the Revised Code.	129
Any employer may elect to include as an "employee" within	130
this chapter, any person excluded from the definition of	131
"employee" pursuant to division (A)(2) of this section. If an	132
employer is a partnership, sole proprietorship, individual	133
incorporated as a corporation, or family farm corporation, such	134
employer may elect to include as an "employee" within this	135
chapter, any member of such partnership, the owner of the sole	136
proprietorship, the individual incorporated as a corporation, or	137
the officers of the family farm corporation. In the event of an	138

election, the employer shall serve upon the bureau of workers' 139
compensation written notice naming the persons to be covered, 140
include such employee's remuneration for premium purposes in all 141
future payroll reports, and no person excluded from the definition 142
of "employee" pursuant to division (A)(2) of this section, 143
proprietor, individual incorporated as a corporation, or partner 144
shall be deemed an employee within this division until the 145
employer has served such notice. 146

For informational purposes only, the bureau shall prescribe 147
such language as it considers appropriate, on such of its forms as 148
it considers appropriate, to advise employers of their right to 149
elect to include as an "employee" within this chapter a sole 150
proprietor, any member of a partnership, an individual 151
incorporated as a corporation, the officers of a family farm 152
corporation, or a person excluded from the definition of 153
"employee" under division (A)(2) of this section, that they should 154
check any health and disability insurance policy, or other form of 155
health and disability plan or contract, presently covering them, 156
or the purchase of which they may be considering, to determine 157
whether such policy, plan, or contract excludes benefits for 158
illness or injury that they might have elected to have covered by 159
workers' compensation. 160

(B) "Employer" means: 161

(1) The state, including state hospitals, each county, 162
municipal corporation, township, school district, and hospital 163
owned by a political subdivision or subdivisions other than the 164
state; 165

(2) Every person, firm, professional employer organization as 166
defined in section 4125.01 of the Revised Code, and private 167
corporation, including any public service corporation, that (a) 168
has in service one or more employees or shared employees regularly 169
in the same business or in or about the same establishment under 170

any contract of hire, express or implied, oral or written, or (b) 171
is bound by any such contract of hire or by any other written 172
contract, to pay into the insurance fund the premiums provided by 173
this chapter. 174

All such employers are subject to this chapter. Any member of 175
a firm or association, who regularly performs manual labor in or 176
about a mine, factory, or other establishment, including a 177
household establishment, shall be considered an employee in 178
determining whether such person, firm, or private corporation, or 179
public service corporation, has in its service, one or more 180
employees and the employer shall report the income derived from 181
such labor to the bureau as part of the payroll of such employer, 182
and such member shall thereupon be entitled to all the benefits of 183
an employee. 184

(C) "Injury" includes any injury, whether caused by external 185
accidental means or accidental in character and result, received 186
in the course of, and arising out of, the injured employee's 187
employment. "Injury" does not include: 188

(1) Psychiatric conditions except ~~where~~ as follows: 189

(a) Where the claimant's psychiatric conditions have arisen 190
from an injury or occupational disease sustained by that claimant 191
~~or where;~~ 192

(b) Where the claimant's psychiatric conditions have arisen 193
from sexual conduct in which the claimant was forced by threat of 194
physical harm to engage or participate; 195

(c) Where the claimant is a peace officer or firefighter and 196
is diagnosed with post-traumatic stress disorder that has arisen 197
from the claimant's employment as a peace officer or a 198
firefighter. 199

(2) Injury or disability caused primarily by the natural 200
deterioration of tissue, an organ, or part of the body; 201

(3) Injury or disability incurred in voluntary participation 202
in an employer-sponsored recreation or fitness activity if the 203
employee signs a waiver of the employee's right to compensation or 204
benefits under this chapter prior to engaging in the recreation or 205
fitness activity; 206

(4) A condition that pre-existed an injury unless that 207
pre-existing condition is substantially aggravated by the injury. 208
Such a substantial aggravation must be documented by objective 209
diagnostic findings, objective clinical findings, or objective 210
test results. Subjective complaints may be evidence of such a 211
substantial aggravation. However, subjective complaints without 212
objective diagnostic findings, objective clinical findings, or 213
objective test results are insufficient to substantiate a 214
substantial aggravation. 215

(D) "Child" includes a posthumous child and a child legally 216
adopted prior to the injury. 217

(E) "Family farm corporation" means a corporation founded for 218
the purpose of farming agricultural land in which the majority of 219
the voting stock is held by and the majority of the stockholders 220
are persons or the spouse of persons related to each other within 221
the fourth degree of kinship, according to the rules of the civil 222
law, and at least one of the related persons is residing on or 223
actively operating the farm, and none of whose stockholders are a 224
corporation. A family farm corporation does not cease to qualify 225
under this division where, by reason of any devise, bequest, or 226
the operation of the laws of descent or distribution, the 227
ownership of shares of voting stock is transferred to another 228
person, as long as that person is within the degree of kinship 229
stipulated in this division. 230

(F) "Occupational disease" means a disease contracted in the 231
course of employment, which by its causes and the characteristics 232
of its manifestation or the condition of the employment results in 233

a hazard which distinguishes the employment in character from 234
employment generally, and the employment creates a risk of 235
contracting the disease in greater degree and in a different 236
manner from the public in general. 237

(G) "Self-insuring employer" means an employer who is granted 238
the privilege of paying compensation and benefits directly under 239
section 4123.35 of the Revised Code, including a board of county 240
commissioners for the sole purpose of constructing a sports 241
facility as defined in section 307.696 of the Revised Code, 242
provided that the electors of the county in which the sports 243
facility is to be built have approved construction of a sports 244
facility by ballot election no later than November 6, 1997. 245

(H) "Public employer" means an employer as defined in 246
division (B)(1) of this section. 247

(I) "Sexual conduct" means vaginal intercourse between a male 248
and female; anal intercourse, fellatio, and cunnilingus between 249
persons regardless of gender; and, without privilege to do so, the 250
insertion, however slight, of any part of the body or any 251
instrument, apparatus, or other object into the vaginal or anal 252
cavity of another. Penetration, however slight, is sufficient to 253
complete vaginal or anal intercourse. 254

(J) "Other-states' insurer" means an insurance company that 255
is authorized to provide workers' compensation insurance coverage 256
in any of the states that permit employers to obtain insurance for 257
workers' compensation claims through insurance companies. 258

(K) "Other-states' coverage" means insurance coverage 259
purchased by an employer for workers' compensation claims that 260
arise in a state or states other than this state and that are 261
filed by the employees of the employer or those employee's 262
dependents, as applicable, in that other state or those other 263
states. 264

(L) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code. 265
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Sec. 4123.026. (A) The administrator of workers' 267
compensation, or a self-insuring public employer for the peace 268
officers, firefighters, and emergency medical workers employed by 269
or volunteering for that self-insuring public employer, shall pay 270
the costs of conducting post-exposure medical diagnostic services, 271
consistent with the standards of medical care existing at the time 272
of the exposure, to investigate whether an injury or occupational 273
disease was sustained by a peace officer, firefighter, or 274
emergency medical worker when coming into contact with the blood 275
or other body fluid of another person in the course of and arising 276
out of the peace officer's, firefighter's, or emergency medical 277
worker's employment, or when responding to an inherently dangerous 278
situation in the manner described in, and in accordance with the 279
conditions specified under, division (A)(1)(a) of section 4123.01 280
of the Revised Code, through any of the following means: 281

(1) Splash or spatter in the eye or mouth, including when 282
received in the course of conducting mouth-to-mouth resuscitation; 283

(2) A puncture in the skin; 284

(3) A cut in the skin or another opening in the skin such as 285
an open sore, wound, lesion, abrasion, or ulcer. 286

(B) As used in this section: 287

~~(1) "Peace officer" has the same meaning as in section 288
2935.01 of the Revised Code.~~ 289

~~(2)~~ "Firefighter" means a firefighter, whether paid or 290
volunteer, of a lawfully constituted fire department. 291

~~(3)~~(2) "Emergency medical worker" means a first responder, 292
emergency medical technician-basic, emergency medical 293
technician-intermediate, or emergency medical 294

technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer. 295
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Section 2. That existing sections 4123.01 and 4123.026 of the Revised Code are hereby repealed. 297
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