



**H.B. 397**

127th General Assembly  
(As Introduced)

**Reps. Szollosi and Wagoner, Dyer, Barrett, Okey, J. McGregor, Evans, Yuko, Harwood, Mallory, Brown, S. Williams, Patton, Stebelton**

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**BILL SUMMARY**

- Excludes individuals who are covered by the federal "Longshore and Harbor Workers' Compensation Act" from the definition of employee for the purposes of Ohio's Workers' Compensation Law.
- Permits an employer who employs individuals described in the dot point above to elect to provide those individuals coverage under Ohio's Workers' Compensation Law.

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**CONTENT AND OPERATION**

**Background**

**Overview of the Longshore and Harbor Workers' Compensation Act**

The federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.; hereafter "LHWCA") provides "compensation for injuries to certain workers engaged in 'maritime employment' that are incurred 'upon the navigable waters of the United States.'"<sup>1</sup> Under the LHWCA, an "employer" employs employees in maritime employment, in whole or in part, upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel (33 U.S.C. 902(4)). An "employee" is any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations,

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<sup>1</sup> *Chandris, Inc. v. Lastis* (1995), 515 U.S. 347, 360, citing 33 U.S.C. § 903(a). The issue in this case was to determine who was a "seaman," and thus covered by the Jones Act, 46 U.S.C. App. § 688(a), and who was otherwise covered by the LHWCA (*Chandris* at 350).

and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker. However, the LHWCA excludes a master or member of a crew of any vessel or any person engaged by a master to load or unload or repair any small vessel under 18 tons net from the definition of "employee." (33 U.S.C. 902(3).) Government employees and officers are not covered under the LHWCA, and employees of small vessels are not covered except under specified circumstances. (33 U.S.C. 903.) The LHWCA also excludes specified individuals from the definition of "employee" if those individuals are covered under the state's workers' compensation law. (33 U.S.C. 903.)

The Secretary of the United States Department of Labor administers and enforces the LHWCA (33 U.S.C. 939). Except as otherwise specified in the LHWCA, an employee may receive compensation in respect to the employee's disability or death, but only if the disability or death results from an injury occurring upon the navigable waters of the United States. Every employer is liable for and must secure the payment to the employer's employees of the compensation payable under the LHWCA. To satisfy the requirements of the LHWCA, an employer may obtain coverage either through (a) a private insurance company or (b) a person or fund authorized under state or federal law and by the Secretary to insure workers' compensation claims under the LHWCA. An employer also may receive authorization from the Secretary to pay claims directly (33 U.S.C. 932). In Ohio, an employer subject to the LHWCA may obtain coverage through a private insurer or through Ohio's Marine Industry Fund (R.C. 4131.11 to 4131.16), or may pay claims directly if authorized by the Secretary.

According to the United States Supreme Court, the LHWCA does not apply to an employee if compensation and benefits for the employee's disability or death is validly provided pursuant to state law. However, because it is occasionally difficult to determine, in advance of trial, whether an employee's injury, "although maritime in nature, was so 'local' as to allow state compensation laws validly to apply," the Court stated that an employee may elect to recover compensation under either state law or the LHWCA.<sup>2</sup> Additionally, the LHWCA specifies that, notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under the LHWCA pursuant to any other workers' compensation law or the Jones Act must be credited against any liability imposed by the LHWCA (33 U.S.C. 903(e)).

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<sup>2</sup> *Hahn v. Ross Island Sand and Gravel Co.* (1959), 358 U.S. 272, 272-273, citing *Davis v. Department of Labor* (1942), 317 U.S. 249.

### Coverage under Ohio's Workers' Compensation Law

Under current law, the following types of employers are subject to Ohio's Workers' Compensation Law (R.C. Chapters 4121. and 4123.):

- The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state;
- Every person, firm, professional employer organization, and private corporation, including any public service corporation, that:
  - (a) Has in service one or more employees or shared employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written; or
  - (b) Is bound by any such contract of hire or by any other written contract, to pay into the State Insurance Fund the premiums provided by the Workers' Compensation Law (sec. 4123.01(B)).

The current definition of employee for purposes of the Workers' Compensation Law is very broad and *generally* includes every person in the service of an employer (sec. 4123.01(A)(1)). However, current law excludes the following individuals from the definition of employee:

- (1) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;
- (2) Any officer of a family farm corporation;
- (3) An individual incorporated as a corporation;
- (4) An individual who on religious grounds conscientiously objects to the acceptance of public or private death, disability, old age, retirement, or health care benefits when conditions specified in the Workers' Compensation Law allowing an exemption are satisfied (sec. 4123.01(A)(2)(a) to (d) and sec. 4123.15, not in the bill).

Continuing law permits an employer to elect to include as an "employee" for coverage under the Workers' Compensation Law any person excluded from the definition of "employee" pursuant to (1) to (4) above. In the event of an election, the employer must serve upon the Bureau of Workers' Compensation written notice naming the persons to be covered and must include the remuneration paid for those employees for premium purposes in all future payroll reports. A person excluded from the definition of "employee" pursuant to (1) to (4) above is not

deemed an employee under the Workers' Compensation Law until the employer has served such notice. (Sec. 4123.01(A).)

**Coverage for employees covered under the LHWCA**

The bill expands the list of individuals excluded from the definition of employee under Ohio's Workers' Compensation Law to exclude an individual who is covered under the LHWCA from the definition of employee under Ohio's Workers' Compensation Law (sec. 4123.01(A)(2)(e)). The bill permits an employer who employs these individuals to elect to cover these individuals under Ohio's Workers' Compensation Law in accordance with the requirements specified in continuing law (see "Coverage under Ohio's Workers' Compensation Law" above) (sec. 4123.01(A)). The bill states that it applies to all claims pursuant to Ohio's Workers' Compensation Law arising on and after the bill's effective date (Section 3).

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**HISTORY**

ACTION	DATE
Introduced	11-20-07

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