

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 5**

**Senators Patton, Brown**

**Cosponsors: Senators LaRose, Gentile, Bacon, Eklund, Lehner, Yuko, Cafaro,  
Schiavoni, Manning**

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**A BILL**

To amend sections 4123.01, 4123.026, and 4123.46 of 1  
the Revised Code to make peace officers, 2  
firefighters, and emergency medical workers 3  
diagnosed with post-traumatic stress disorder 4  
arising from employment without an accompanying 5  
physical injury eligible for compensation and 6  
benefits under Ohio's Workers' Compensation Law. 7

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

**Section 1.** That sections 4123.01, 4123.026, and 4123.46 of 8  
the Revised Code be amended to read as follows: 9

**Sec. 4123.01.** As used in this chapter: 10

(A) (1) "Employee" means: 11

(a) Every person in the service of the state, or of any 12  
county, municipal corporation, township, or school district 13  
therein, including regular members of lawfully constituted 14  
police and fire departments of municipal corporations and 15  
townships, whether paid or volunteer, and wherever serving 16  
within the state or on temporary assignment outside thereof, and 17

executive officers of boards of education, under any appointment 18  
or contract of hire, express or implied, oral or written, 19  
including any elected official of the state, or of any county, 20  
municipal corporation, or township, or members of boards of 21  
education. 22

As used in division (A)(1)(a) of this section, the term 23  
"employee" includes the following persons when responding to an 24  
inherently dangerous situation that calls for an immediate 25  
response on the part of the person, regardless of whether the 26  
person is within the limits of the jurisdiction of the person's 27  
regular employment or voluntary service when responding, on the 28  
condition that the person responds to the situation as the 29  
person otherwise would if the person were on duty in the 30  
person's jurisdiction: 31

(i) ~~Off-duty peace officers. As used in division (A)(1)(a)~~ 32  
~~(i) of this section, "peace officer" has the same meaning as in~~ 33  
~~section 2935.01 of the Revised Code.;~~ 34

(ii) ~~Off-duty firefighters, whether paid or volunteer, of~~ 35  
~~a lawfully constituted fire department.;~~ 36

(iii) ~~Off-duty first responders, emergency medical~~ 37  
~~technicians basic, emergency medical technicians intermediate,~~ 38  
~~or emergency medical technicians paramedic, whether paid or~~ 39  
~~volunteer, emergency medical workers of an ambulance service~~ 40  
~~organization or emergency medical service organization pursuant~~ 41  
~~to Chapter 4765. of the Revised Code.~~ 42

(b) Every person in the service of any person, firm, or 43  
private corporation, including any public service corporation, 44  
that (i) employs one or more persons regularly in the same 45  
business or in or about the same establishment under any 46

contract of hire, express or implied, oral or written, including 47  
aliens and minors, household workers who earn one hundred sixty 48  
dollars or more in cash in any calendar quarter from a single 49  
household and casual workers who earn one hundred sixty dollars 50  
or more in cash in any calendar quarter from a single employer, 51  
or (ii) is bound by any such contract of hire or by any other 52  
written contract, to pay into the state insurance fund the 53  
premiums provided by this chapter. 54

(c) Every person who performs labor or provides services 55  
pursuant to a construction contract, as defined in section 56  
4123.79 of the Revised Code, if at least ten of the following 57  
criteria apply: 58

(i) The person is required to comply with instructions 59  
from the other contracting party regarding the manner or method 60  
of performing services; 61

(ii) The person is required by the other contracting party 62  
to have particular training; 63

(iii) The person's services are integrated into the 64  
regular functioning of the other contracting party; 65

(iv) The person is required to perform the work 66  
personally; 67

(v) The person is hired, supervised, or paid by the other 68  
contracting party; 69

(vi) A continuing relationship exists between the person 70  
and the other contracting party that contemplates continuing or 71  
recurring work even if the work is not full time; 72

(vii) The person's hours of work are established by the 73  
other contracting party; 74

(viii) The person is required to devote full time to the business of the other contracting party;	75 76
(ix) The person is required to perform the work on the premises of the other contracting party;	77 78
(x) The person is required to follow the order of work set by the other contracting party;	79 80
(xi) The person is required to make oral or written reports of progress to the other contracting party;	81 82
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	83 84
(xiii) The person's expenses are paid for by the other contracting party;	85 86
(xiv) The person's tools and materials are furnished by the other contracting party;	87 88
(xv) The person is provided with the facilities used to perform services;	89 90
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	91 92
(xvii) The person is not performing services for a number of employers at the same time;	93 94
(xviii) The person does not make the same services available to the general public;	95 96
(xix) The other contracting party has a right to discharge the person;	97 98
(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.	99 100 101

Every person in the service of any independent contractor 102  
or subcontractor who has failed to pay into the state insurance 103  
fund the amount of premium determined and fixed by the 104  
administrator of workers' compensation for the person's 105  
employment or occupation or if a self-insuring employer has 106  
failed to pay compensation and benefits directly to the 107  
employer's injured and to the dependents of the employer's 108  
killed employees as required by section 4123.35 of the Revised 109  
Code, shall be considered as the employee of the person who has 110  
entered into a contract, whether written or verbal, with such 111  
independent contractor unless such employees or their legal 112  
representatives or beneficiaries elect, after injury or death, 113  
to regard such independent contractor as the employer. 114

(2) "Employee" does not mean: 115

(a) A duly ordained, commissioned, or licensed minister or 116  
assistant or associate minister of a church in the exercise of 117  
ministry; 118

(b) Any officer of a family farm corporation; 119

(c) An individual incorporated as a corporation; or 120

(d) An individual who otherwise is an employee of an 121  
employer but who signs the waiver and affidavit specified in 122  
section 4123.15 of the Revised Code on the condition that the 123  
administrator has granted a waiver and exception to the 124  
individual's employer under section 4123.15 of the Revised Code. 125

Any employer may elect to include as an "employee" within 126  
this chapter, any person excluded from the definition of 127  
"employee" pursuant to division (A)(2) of this section. If an 128  
employer is a partnership, sole proprietorship, individual 129  
incorporated as a corporation, or family farm corporation, such 130

employer may elect to include as an "employee" within this 131  
chapter, any member of such partnership, the owner of the sole 132  
proprietorship, the individual incorporated as a corporation, or 133  
the officers of the family farm corporation. In the event of an 134  
election, the employer shall serve upon the bureau of workers' 135  
compensation written notice naming the persons to be covered, 136  
include such employee's remuneration for premium purposes in all 137  
future payroll reports, and no person excluded from the 138  
definition of "employee" pursuant to division (A) (2) of this 139  
section, proprietor, individual incorporated as a corporation, 140  
or partner shall be deemed an employee within this division 141  
until the employer has served such notice. 142

For informational purposes only, the bureau shall 143  
prescribe such language as it considers appropriate, on such of 144  
its forms as it considers appropriate, to advise employers of 145  
their right to elect to include as an "employee" within this 146  
chapter a sole proprietor, any member of a partnership, an 147  
individual incorporated as a corporation, the officers of a 148  
family farm corporation, or a person excluded from the 149  
definition of "employee" under division (A) (2) of this section, 150  
that they should check any health and disability insurance 151  
policy, or other form of health and disability plan or contract, 152  
presently covering them, or the purchase of which they may be 153  
considering, to determine whether such policy, plan, or contract 154  
excludes benefits for illness or injury that they might have 155  
elected to have covered by workers' compensation. 156

(B) "Employer" means: 157

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

state; 161

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

All such employers are subject to this chapter. Any member 170  
of a firm or association, who regularly performs manual labor in 171  
or 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, 174  
or 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 177  
employer, and such member shall thereupon be entitled to all the 178  
benefits of an employee. 179

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

(1) Psychiatric conditions except ~~where~~ as follows: 184

(a) Where the claimant's psychiatric conditions have 185  
arisen from an injury or occupational disease sustained by that 186  
claimant ~~or where~~; 187

(b) Where the claimant's psychiatric conditions have 188  
arisen from sexual conduct in which the claimant was forced by 189

threat of physical harm to engage or participate; 190

(c) Where the claimant is a peace officer, firefighter, or 191  
emergency medical worker and is diagnosed with post-traumatic 192  
stress disorder that has been received in the course of, and has 193  
arisen out of, the claimant's employment as a peace officer, 194  
firefighter, or emergency medical worker. 195

(2) Injury or disability caused primarily by the natural 196  
deterioration of tissue, an organ, or part of the body; 197

(3) Injury or disability incurred in voluntary 198  
participation in an employer-sponsored recreation or fitness 199  
activity if the employee signs a waiver of the employee's right 200  
to compensation or benefits under this chapter prior to engaging 201  
in the recreation or fitness activity; 202

(4) A condition that pre-existed an injury unless that 203  
pre-existing condition is substantially aggravated by the 204  
injury. Such a substantial aggravation must be documented by 205  
objective diagnostic findings, objective clinical findings, or 206  
objective test results. Subjective complaints may be evidence of 207  
such a substantial aggravation. However, subjective complaints 208  
without objective diagnostic findings, objective clinical 209  
findings, or objective test results are insufficient to 210  
substantiate a substantial aggravation. 211

(D) "Child" includes a posthumous child and a child 212  
legally adopted prior to the injury. 213

(E) "Family farm corporation" means a corporation founded 214  
for the purpose of farming agricultural land in which the 215  
majority of the voting stock is held by and the majority of the 216  
stockholders are persons or the spouse of persons related to 217  
each other within the fourth degree of kinship, according to the 218



rules of the civil law, and at least one of the related persons 219  
is residing on or actively operating the farm, and none of whose 220  
stockholders are a corporation. A family farm corporation does 221  
not cease to qualify under this division where, by reason of any 222  
devise, bequest, or the operation of the laws of descent or 223  
distribution, the ownership of shares of voting stock is 224  
transferred to another person, as long as that person is within 225  
the degree of kinship stipulated in this division. 226

(F) "Occupational disease" means a disease contracted in 227  
the course of employment, which by its causes and the 228  
characteristics of its manifestation or the condition of the 229  
employment results in a hazard which distinguishes the 230  
employment in character from employment generally, and the 231  
employment creates a risk of contracting the disease in greater 232  
degree and in a different manner from the public in general. 233

(G) "Self-insuring employer" means an employer who is 234  
granted the privilege of paying compensation and benefits 235  
directly under section 4123.35 of the Revised Code, including a 236  
board of county commissioners for the sole purpose of 237  
constructing a sports facility as defined in section 307.696 of 238  
the Revised Code, provided that the electors of the county in 239  
which the sports facility is to be built have approved 240  
construction of a sports facility by ballot election no later 241  
than November 6, 1997. 242

(H) "Private employer" means an employer as defined in 243  
division (B) (2) of this section. 244

(I) "Professional employer organization" has the same 245  
meaning as in section 4125.01 of the Revised Code. 246

(J) "Public employer" means an employer as defined in 247

division (B) (1) of this section. 248

(K) "Sexual conduct" means vaginal intercourse between a 249  
male and female; anal intercourse, fellatio, and cunnilingus 250  
between persons regardless of gender; and, without privilege to 251  
do so, the insertion, however slight, of any part of the body or 252  
any instrument, apparatus, or other object into the vaginal or 253  
anal cavity of another. Penetration, however slight, is 254  
sufficient to complete vaginal or anal intercourse. 255

(L) "Other-states' insurer" means an insurance company 256  
that is authorized to provide workers' compensation insurance 257  
coverage in any of the states that permit employers to obtain 258  
insurance for workers' compensation claims through insurance 259  
companies. 260

(M) "Other-states' coverage" means both of the following: 261

(1) Insurance coverage secured by an eligible employer for 262  
workers' compensation claims of employees who are in employment 263  
relationships localized in a state other than this state or 264  
those employees' dependents; 265

(2) Insurance coverage secured by an eligible employer for 266  
workers' compensation claims that arise in a state other than 267  
this state where an employer elects to obtain coverage through 268  
either the administrator or an other-states' insurer. 269

(N) "Limited other-states coverage" means insurance 270  
coverage provided by the administrator to an eligible employer 271  
for workers' compensation claims of employees who are in an 272  
employment relationship localized in this state but are 273  
temporarily working in a state other than this state, or those 274  
employees' dependents. 275

(O) "Peace officer" has the same meaning as in section 276

2935.01 of the Revised Code. 277

(P) "Firefighter" means a firefighter, whether paid or 278  
volunteer, of a lawfully constituted fire department. 279

(Q) "Emergency medical worker" means a first responder, 280  
emergency medical technician-basic, emergency medical 281  
technician-intermediate, or emergency medical technician- 282  
paramedic, certified under Chapter 4765. of the Revised Code, 283  
whether paid or volunteer. 284

**Sec. 4123.026.** ~~(A)~~—The administrator of workers' 285  
compensation, or a self-insuring public employer for the peace 286  
officers, firefighters, and emergency medical workers employed 287  
by or volunteering for that self-insuring public employer, shall 288  
pay the costs of conducting post-exposure medical diagnostic 289  
services, consistent with the standards of medical care existing 290  
at the time of the exposure, to investigate whether an injury or 291  
occupational disease was sustained by a peace officer, 292  
firefighter, or emergency medical worker when coming into 293  
contact with the blood or other body fluid of another person in 294  
the course of and arising out of the peace officer's, 295  
firefighter's, or emergency medical worker's employment, or when 296  
responding to an inherently dangerous situation in the manner 297  
described in, and in accordance with the conditions specified 298  
under, division (A) (1) (a) of section 4123.01 of the Revised 299  
Code, through any of the following means: 300

~~(1)~~—(A) Splash or spatter in the eye or mouth, including 301  
when received in the course of conducting mouth-to-mouth 302  
resuscitation; 303

~~(2)~~—(B) A puncture in the skin; 304

~~(3)~~—(C) A cut in the skin or another opening in the skin 305

such as an open sore, wound, lesion, abrasion, or ulcer. 306

~~(B) As used in this section:~~ 307

~~(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.~~ 308  
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~~(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.~~ 310  
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~~(3) "Emergency medical worker" means a first responder, emergency medical technician basic, emergency medical technician intermediate, or emergency medical technician paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.~~ 312  
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**Sec. 4123.46.** (A) (1) Except as provided in division (A) (2) 317  
of this section, the bureau of workers' compensation shall 318  
disburse the state insurance fund to employees of employers who 319  
have paid into the fund the premiums applicable to the classes 320  
to which they belong when the employees have been injured in the 321  
course of their employment, wherever the injuries have occurred, 322  
and provided the injuries have not been purposely self- 323  
inflicted, or to the dependents of the employees in case death 324  
has ensued. 325

(2) As long as injuries have not been purposely self- 326  
inflicted, the bureau shall disburse the surplus fund created 327  
under section 4123.34 of the Revised Code to off-duty peace 328  
officers, firefighters, and emergency medical technicians, and 329  
~~first responders~~ workers, or to their dependents if death 330  
ensues, who are injured while responding to inherently dangerous 331  
situations that call for an immediate response on the part of 332  
the person, regardless of whether the person was within the 333  
limits of the person's jurisdiction when responding, on the 334

condition that the person responds to the situation as the 335  
person otherwise would if the person were on duty in the 336  
person's jurisdiction. 337

~~As used in division (A) (2) of this section, "peace- 338  
officer," "firefighter," "emergency medical technician," "first- 339  
responder," and "jurisdiction" have the same meanings as in- 340  
section 4123.01 of the Revised Code. 341~~

(B) All self-insuring employers, in compliance with this 342  
chapter, shall pay the compensation to injured employees, or to 343  
the dependents of employees who have been killed in the course 344  
of their employment, unless the injury or death of the employee 345  
was purposely self-inflicted, and shall furnish the medical, 346  
surgical, nurse, and hospital care and attention or funeral 347  
expenses as would have been paid and furnished by virtue of this 348  
chapter under a similar state of facts by the bureau out of the 349  
state insurance fund if the employer had paid the premium into 350  
the fund. 351

If any rule or regulation of a self-insuring employer 352  
provides for or authorizes the payment of greater compensation 353  
or more complete or extended medical care, nursing, surgical, 354  
and hospital attention, or funeral expenses to the injured 355  
employees, or to the dependents of the employees as may be 356  
killed, the employer shall pay to the employees, or to the 357  
dependents of employees killed, the amount of compensation and 358  
furnish the medical care, nursing, surgical, and hospital 359  
attention or funeral expenses provided by the self-insuring 360  
employer's rules and regulations. 361

(C) Payment to injured employees, or to their dependents 362  
in case death has ensued, is in lieu of any and all rights of 363  
action against the employer of the injured or killed employees. 364

**Section 2.** That existing sections 4123.01, 4123.026, and 365  
4123.46 of the Revised Code are hereby repealed. 366  
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