

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 118

Senators LaRose, Brown

Cosponsors: Senators Bacon, Eklund, Skindell, Thomas, Yuko, Schiavoni

A BILL

To amend sections 4123.01, 4123.026, and 4123.46 1
and to enact sections 145.364, 742.391, 2
3309.402, 4123.87, and 5505.182 of the Revised 3
Code to make peace officers, firefighters, and 4
emergency medical workers diagnosed with post- 5
traumatic stress disorder arising from 6
employment without an accompanying physical 7
injury eligible for compensation and benefits 8
under Ohio's Workers' Compensation Law for up to 9
one year and to prohibit such a person from 10
receiving a disability benefit from a state 11
retirement system for post-traumatic stress 12
disorder arising from employment without an 13
accompanying physical injury during the time 14
period the person receives compensation and 15
benefits under the Workers' Compensation Law for 16
the disorder. 17

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

Section 1. That sections 4123.01, 4123.026, and 4123.46 be 18
amended and sections 145.364, 742.391, 3309.402, 4123.87, and 19

5505.182 of the Revised Code be enacted to read as follows:

Sec. 145.364. Upon determining that a member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 145.36 or 145.361 of the Revised Code, the public employees retirement board, notwithstanding the exceptions to public inspection in division (A)(2) of section 145.27 of the Revised Code or the privileges contained in division (B) of that section, shall notify the administrator of workers' compensation of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 145.36 or 145.361 of the Revised Code;

(C) The effective date of the member's disability benefit;

(D) The date that payments for the member's disability benefit commence.

Sec. 742.391. Upon determining that a member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 742.38 or 742.39 of the Revised Code, the board of trustees of the Ohio police and fire pension fund, notwithstanding the exceptions to public inspection in division (B) of section 742.41 of the Revised Code or the privileges contained in division (C) of that section, shall notify the administrator of workers' compensation of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder, 48
without an accompanying physical injury, qualifies that member 49
for a disability benefit under section 742.38 or 742.39 of the 50
Revised Code; 51

(C) The effective date of the member's disability benefit; 52

(D) The date that payments for the member's disability 53
benefit commence. 54

Sec. 3309.402. Upon determining that a member's post- 55
traumatic stress disorder, without an accompanying physical 56
injury, qualifies that member for a disability benefit under 57
section 3309.35, 3309.40, or 3309.401 of the Revised Code, the 58
school employees retirement board, notwithstanding the 59
exceptions to public inspection in division (A) (2) of section 60
3309.22 of the Revised Code or the privileges contained in 61
division (B) of that section, shall notify the administrator of 62
workers' compensation of all of the following: 63

(A) The name of the member; 64

(B) That the member's post-traumatic stress disorder, 65
without an accompanying physical injury, qualifies that member 66
for a disability benefit under section 3309.35, 3309.40, or 67
3309.401 of the Revised Code; 68

(C) The effective date of the member's disability benefit; 69

(D) The date that payments for the member's disability 70
benefit commence. 71

Sec. 4123.01. As used in this chapter: 72

(A) (1) "Employee" means: 73

(a) Every person in the service of the state, or of any 74

county, municipal corporation, township, or school district 75
therein, including regular members of lawfully constituted 76
police and fire departments of municipal corporations and 77
townships, whether paid or volunteer, and wherever serving 78
within the state or on temporary assignment outside thereof, and 79
executive officers of boards of education, under any appointment 80
or contract of hire, express or implied, oral or written, 81
including any elected official of the state, or of any county, 82
municipal corporation, or township, or members of boards of 83
education. 84

As used in division (A)(1)(a) of this section, the term 85
"employee" includes the following persons when responding to an 86
inherently dangerous situation that calls for an immediate 87
response on the part of the person, regardless of whether the 88
person is within the limits of the jurisdiction of the person's 89
regular employment or voluntary service when responding, on the 90
condition that the person responds to the situation as the 91
person otherwise would if the person were on duty in the 92
person's jurisdiction: 93

(i) Off-duty peace officers. ~~As used in division (A)(1)(a)~~ 94
~~(i) of this section, "peace officer" has the same meaning as in~~ 95
~~section 2935.01 of the Revised Code.~~ 96

(ii) Off-duty firefighters, ~~whether paid or volunteer, of~~ 97
~~a lawfully constituted fire department.~~ 98

(iii) ~~Off-duty first responders, emergency medical~~ 99
~~technicians-basic, emergency medical technicians-intermediate,~~ 100
~~or emergency medical technicians-paramedic, whether paid or~~ 101
~~volunteer, Emergency medical workers of an ambulance service~~ 102
~~organization or emergency medical service organization-pursuant-~~ 103
~~to Chapter 4765. of the Revised Code.~~ 104

(b) Every person in the service of any person, firm, or 105
private corporation, including any public service corporation, 106
that (i) employs one or more persons regularly in the same 107
business or in or about the same establishment under any 108
contract of hire, express or implied, oral or written, including 109
aliens and minors, household workers who earn one hundred sixty 110
dollars or more in cash in any calendar quarter from a single 111
household and casual workers who earn one hundred sixty dollars 112
or more in cash in any calendar quarter from a single employer, 113
or (ii) is bound by any such contract of hire or by any other 114
written contract, to pay into the state insurance fund the 115
premiums provided by this chapter. 116

(c) Every person who performs labor or provides services 117
pursuant to a construction contract, as defined in section 118
4123.79 of the Revised Code, if at least ten of the following 119
criteria apply: 120

(i) The person is required to comply with instructions 121
from the other contracting party regarding the manner or method 122
of performing services; 123

(ii) The person is required by the other contracting party 124
to have particular training; 125

(iii) The person's services are integrated into the 126
regular functioning of the other contracting party; 127

(iv) The person is required to perform the work 128
personally; 129

(v) The person is hired, supervised, or paid by the other 130
contracting party; 131

(vi) A continuing relationship exists between the person 132
and the other contracting party that contemplates continuing or 133

recurring work even if the work is not full time;	134
(vii) The person's hours of work are established by the	135
other contracting party;	136
(viii) The person is required to devote full time to the	137
business of the other contracting party;	138
(ix) The person is required to perform the work on the	139
premises of the other contracting party;	140
(x) The person is required to follow the order of work set	141
by the other contracting party;	142
(xi) The person is required to make oral or written	143
reports of progress to the other contracting party;	144
(xii) The person is paid for services on a regular basis	145
such as hourly, weekly, or monthly;	146
(xiii) The person's expenses are paid for by the other	147
contracting party;	148
(xiv) The person's tools and materials are furnished by	149
the other contracting party;	150
(xv) The person is provided with the facilities used to	151
perform services;	152
(xvi) The person does not realize a profit or suffer a	153
loss as a result of the services provided;	154
(xvii) The person is not performing services for a number	155
of employers at the same time;	156
(xviii) The person does not make the same services	157
available to the general public;	158
(xix) The other contracting party has a right to discharge	159

the person; 160

(xx) The person has the right to end the relationship with 161
the other contracting party without incurring liability pursuant 162
to an employment contract or agreement. 163

Every person in the service of any independent contractor 164
or subcontractor who has failed to pay into the state insurance 165
fund the amount of premium determined and fixed by the 166
administrator of workers' compensation for the person's 167
employment or occupation or if a self-insuring employer has 168
failed to pay compensation and benefits directly to the 169
employer's injured and to the dependents of the employer's 170
killed employees as required by section 4123.35 of the Revised 171
Code, shall be considered as the employee of the person who has 172
entered into a contract, whether written or verbal, with such 173
independent contractor unless such employees or their legal 174
representatives or beneficiaries elect, after injury or death, 175
to regard such independent contractor as the employer. 176

(2) "Employee" does not mean any of the following: 177

(a) A duly ordained, commissioned, or licensed minister or 178
assistant or associate minister of a church in the exercise of 179
ministry; 180

(b) Any officer of a family farm corporation; 181

(c) An individual incorporated as a corporation; 182

(d) An officer of a nonprofit corporation, as defined in 183
section 1702.01 of the Revised Code, who volunteers the person's 184
services as ~~a~~an officer; 185

(e) An individual who otherwise is an employee of an 186
employer but who signs the waiver and affidavit specified in 187

section 4123.15 of the Revised Code on the condition that the 188
administrator has granted a waiver and exception to the 189
individual's employer under section 4123.15 of the Revised Code. 190

Any employer may elect to include as an "employee" within 191
this chapter, any person excluded from the definition of 192
"employee" pursuant to division (A)(2)(a), (b), (c), or (e) of 193
this section in accordance with rules adopted by the 194
administrator, with the advice and consent of the bureau of 195
workers' compensation board of directors. If an employer is a 196
partnership, sole proprietorship, individual incorporated as a 197
corporation, or family farm corporation, such employer may elect 198
to include as an "employee" within this chapter, any member of 199
such partnership, the owner of the sole proprietorship, the 200
individual incorporated as a corporation, or the officers of the 201
family farm corporation. Nothing in this section shall prohibit 202
a partner, sole proprietor, or any person excluded from the 203
definition of "employee" pursuant to division (A)(2)(a), (b), 204
(c), or (e) of this section from electing to be included as an 205
"employee" under this chapter in accordance with rules adopted 206
by the administrator, with the advice and consent of the board. 207

In the event of an election, the employer or person 208
electing coverage shall serve upon the bureau of workers' 209
compensation written notice naming the person to be covered and 210
include the person's remuneration for premium purposes in all 211
future payroll reports. No partner, sole proprietor, or person 212
excluded from the definition of "employee" pursuant to division 213
(A)(2)(a), (b), (c), or (e) of this section, shall receive 214
benefits or compensation under this chapter until the bureau 215
receives written notice of the election permitted by this 216
section. 217

For informational purposes only, the bureau shall 218
prescribe such language as it considers appropriate, on such of 219
its forms as it considers appropriate, to advise employers of 220
their right to elect to include as an "employee" within this 221
chapter a sole proprietor, any member of a partnership, or a 222
person excluded from the definition of "employee" under division 223
(A) (2) (a), (b), (c), or (e) of this section, that they should 224
check any health and disability insurance policy, or other form 225
of health and disability plan or contract, presently covering 226
them, or the purchase of which they may be considering, to 227
determine whether such policy, plan, or contract excludes 228
benefits for illness or injury that they might have elected to 229
have covered by workers' compensation. 230

(B) "Employer" means: 231

(1) The state, including state hospitals, each county, 232
municipal corporation, township, school district, and hospital 233
owned by a political subdivision or subdivisions other than the 234
state; 235

(2) Every person, firm, professional employer 236
organization, and private corporation, including any public 237
service corporation, that (a) has in service one or more 238
employees or shared employees regularly in the same business or 239
in or about the same establishment under any contract of hire, 240
express or implied, oral or written, or (b) is bound by any such 241
contract of hire or by any other written contract, to pay into 242
the insurance fund the premiums provided by this chapter. 243

All such employers are subject to this chapter. Any member 244
of a firm or association, who regularly performs manual labor in 245
or about a mine, factory, or other establishment, including a 246
household establishment, shall be considered an employee in 247

determining whether such person, firm, or private corporation, 248
or public service corporation, has in its service, one or more 249
employees and the employer shall report the income derived from 250
such labor to the bureau as part of the payroll of such 251
employer, and such member shall thereupon be entitled to all the 252
benefits of an employee. 253

(C) "Injury" includes any injury, whether caused by 254
external accidental means or accidental in character and result, 255
received in the course of, and arising out of, the injured 256
employee's employment. "Injury" does not include: 257

(1) Psychiatric conditions except ~~where~~ as follows: 258

(a) Where the claimant's psychiatric conditions have 259
arisen from an injury or occupational disease sustained by that 260
claimant ~~or where~~; 261

(b) Where the claimant's psychiatric conditions have 262
arisen from sexual conduct in which the claimant was forced by 263
threat of physical harm to engage or participate; 264

(c) Where the claimant is a peace officer, firefighter, or 265
emergency medical worker and is diagnosed with post-traumatic 266
stress disorder that has been received in the course of, and has 267
arisen out of, the claimant's employment as a peace officer, 268
firefighter, or emergency medical worker. 269

(2) Injury or disability caused primarily by the natural 270
deterioration of tissue, an organ, or part of the body; 271

(3) Injury or disability incurred in voluntary 272
participation in an employer-sponsored recreation or fitness 273
activity if the employee signs a waiver of the employee's right 274
to compensation or benefits under this chapter prior to engaging 275
in the recreation or fitness activity; 276

(4) A condition that pre-existed an injury unless that 277
pre-existing condition is substantially aggravated by the 278
injury. Such a substantial aggravation must be documented by 279
objective diagnostic findings, objective clinical findings, or 280
objective test results. Subjective complaints may be evidence of 281
such a substantial aggravation. However, subjective complaints 282
without objective diagnostic findings, objective clinical 283
findings, or objective test results are insufficient to 284
substantiate a substantial aggravation. 285

(D) "Child" includes a posthumous child and a child 286
legally adopted prior to the injury. 287

(E) "Family farm corporation" means a corporation founded 288
for the purpose of farming agricultural land in which the 289
majority of the voting stock is held by and the majority of the 290
stockholders are persons or the spouse of persons related to 291
each other within the fourth degree of kinship, according to the 292
rules of the civil law, and at least one of the related persons 293
is residing on or actively operating the farm, and none of whose 294
stockholders are a corporation. A family farm corporation does 295
not cease to qualify under this division where, by reason of any 296
devise, bequest, or the operation of the laws of descent or 297
distribution, the ownership of shares of voting stock is 298
transferred to another person, as long as that person is within 299
the degree of kinship stipulated in this division. 300

(F) "Occupational disease" means a disease contracted in 301
the course of employment, which by its causes and the 302
characteristics of its manifestation or the condition of the 303
employment results in a hazard which distinguishes the 304
employment in character from employment generally, and the 305
employment creates a risk of contracting the disease in greater 306

degree and in a different manner from the public in general. 307

(G) "Self-insuring employer" means an employer who is 308
granted the privilege of paying compensation and benefits 309
directly under section 4123.35 of the Revised Code, including a 310
board of county commissioners for the sole purpose of 311
constructing a sports facility as defined in section 307.696 of 312
the Revised Code, provided that the electors of the county in 313
which the sports facility is to be built have approved 314
construction of a sports facility by ballot election no later 315
than November 6, 1997. 316

(H) "Private employer" means an employer as defined in 317
division (B) (2) of this section. 318

(I) "Professional employer organization" has the same 319
meaning as in section 4125.01 of the Revised Code. 320

(J) "Public employer" means an employer as defined in 321
division (B) (1) of this section. 322

(K) "Sexual conduct" means vaginal intercourse between a 323
male and female; anal intercourse, fellatio, and cunnilingus 324
between persons regardless of gender; and, without privilege to 325
do so, the insertion, however slight, of any part of the body or 326
any instrument, apparatus, or other object into the vaginal or 327
anal cavity of another. Penetration, however slight, is 328
sufficient to complete vaginal or anal intercourse. 329

(L) "Other-states' insurer" means an insurance company 330
that is authorized to provide workers' compensation insurance 331
coverage in any of the states that permit employers to obtain 332
insurance for workers' compensation claims through insurance 333
companies. 334

(M) "Other-states' coverage" means both of the following: 335

(1) Insurance coverage secured by an eligible employer for 336
workers' compensation claims of employees who are in employment 337
relationships localized in a state other than this state or 338
those employees' dependents; 339

(2) Insurance coverage secured by an eligible employer for 340
workers' compensation claims that arise in a state other than 341
this state where an employer elects to obtain coverage through 342
either the administrator or an other-states' insurer. 343

(N) "Limited other-states coverage" means insurance 344
coverage provided by the administrator to an eligible employer 345
for workers' compensation claims of employees who are in an 346
employment relationship localized in this state but are 347
temporarily working in a state other than this state, or those 348
employees' dependents. 349

(O) "Peace officer" has the same meaning as in section 350
2935.01 of the Revised Code. 351

(P) "Firefighter" means a firefighter, whether paid or 352
volunteer, of a lawfully constituted fire department. 353

(Q) "Emergency medical worker" means a first responder, 354
emergency medical technician-basic, emergency medical 355
technician-intermediate, or emergency medical technician- 356
paramedic, certified under Chapter 4765. of the Revised Code, 357
whether paid or volunteer. 358

Sec. 4123.026. ~~(A)~~—The administrator of workers' 359
compensation, or a self-insuring public employer for the peace 360
officers, firefighters, and emergency medical workers employed 361
by or volunteering for that self-insuring public employer, shall 362
pay the costs of conducting post-exposure medical diagnostic 363
services, consistent with the standards of medical care existing 364

at the time of the exposure, to investigate whether an injury or 365
occupational disease was sustained by a peace officer, 366
firefighter, or emergency medical worker when coming into 367
contact with the blood or other body fluid of another person in 368
the course of and arising out of the peace officer's, 369
firefighter's, or emergency medical worker's employment, or when 370
responding to an inherently dangerous situation in the manner 371
described in, and in accordance with the conditions specified 372
under, division (A) (1) (a) of section 4123.01 of the Revised 373
Code, through any of the following means: 374

~~(1) (A) Splash or spatter in the eye or mouth, including 375~~
~~when received in the course of conducting mouth-to-mouth 376~~
~~resuscitation; 377~~

~~(2) (B) A puncture in the skin; 378~~

~~(3) (C) A cut in the skin or another opening in the skin 379~~
~~such as an open sore, wound, lesion, abrasion, or ulcer. 380~~

~~(B) As used in this section: 381~~

~~(1) "Peace officer" has the same meaning as in section 382~~
~~2935.01 of the Revised Code. 383~~

~~(2) "Firefighter" means a firefighter, whether paid or 384~~
~~volunteer, of a lawfully constituted fire department. 385~~

~~(3) "Emergency medical worker" means a first responder, 386~~
~~emergency medical technician-basic, emergency medical 387~~
~~technician-intermediate, or emergency medical technician- 388~~
~~paramedic, certified under Chapter 4765. of the Revised Code, 389~~
~~whether paid or volunteer. 390~~

Sec. 4123.46. (A) (1) Except as provided in division (A) (2) 391
of this section, the bureau of workers' compensation shall 392

disburse the state insurance fund to employees of employers who 393
have paid into the fund the premiums applicable to the classes 394
to which they belong when the employees have been injured in the 395
course of their employment, wherever the injuries have occurred, 396
and provided the injuries have not been purposely self- 397
inflicted, or to the dependents of the employees in case death 398
has ensued. 399

(2) As long as injuries have not been purposely self- 400
inflicted, the bureau shall disburse the surplus fund created 401
under section 4123.34 of the Revised Code to off-duty peace 402
officers, firefighters, and emergency medical ~~technicians, and~~ 403
~~first responders~~ workers, or to their dependents if death 404
ensues, who are injured while responding to inherently dangerous 405
situations that call for an immediate response on the part of 406
the person, regardless of whether the person was within the 407
limits of the person's jurisdiction when responding, on the 408
condition that the person responds to the situation as the 409
person otherwise would if the person were on duty in the 410
person's jurisdiction. 411

~~As used in division (A) (2) of this section, "peace-~~ 412
~~officer," "firefighter," "emergency medical technician," "first-~~ 413
~~responder," and "jurisdiction" have the same meanings as in~~ 414
~~section 4123.01 of the Revised Code.~~ 415

(B) All self-insuring employers, in compliance with this 416
chapter, shall pay the compensation to injured employees, or to 417
the dependents of employees who have been killed in the course 418
of their employment, unless the injury or death of the employee 419
was purposely self-inflicted, and shall furnish the medical, 420
surgical, nurse, and hospital care and attention or funeral 421
expenses as would have been paid and furnished by virtue of this 422

chapter under a similar state of facts by the bureau out of the 423
state insurance fund if the employer had paid the premium into 424
the fund. 425

If any rule or regulation of a self-insuring employer 426
provides for or authorizes the payment of greater compensation 427
or more complete or extended medical care, nursing, surgical, 428
and hospital attention, or funeral expenses to the injured 429
employees, or to the dependents of the employees as may be 430
killed, the employer shall pay to the employees, or to the 431
dependents of employees killed, the amount of compensation and 432
furnish the medical care, nursing, surgical, and hospital 433
attention or funeral expenses provided by the self-insuring 434
employer's rules and regulations. 435

(C) Payment to injured employees, or to their dependents 436
in case death has ensued, is in lieu of any and all rights of 437
action against the employer of the injured or killed employees. 438

Sec. 4123.87. (A) Notwithstanding any provision in section 439
4123.52, 4123.54, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 440
4123.60, or 4123.66 of the Revised Code to the contrary, in the 441
case of disability due to an injury described in division (C) (1) 442
(c) of section 4123.01 of the Revised Code: 443

(1) Any entitlement of a claimant to compensation as a 444
result of any order issued under this chapter or Chapter 4121., 445
4127., or 4131. of the Revised Code regarding that injury shall 446
cease not later than one year after the date those payments 447
commence under division (H) of section 4123.511 of the Revised 448
Code. 449

(2) Any entitlement of a claimant to medical benefits 450
under this chapter or Chapter 4121., 4127., or 4131. of the 451

Revised Code regarding that injury shall cease not later than 452
one year after those payments commence under division (I) of 453
section 4123.511 of the Revised Code. 454

(B) No claimant shall be entitled to compensation or 455
benefits under this chapter for an injury described in division 456
(C) (1) (c) of section 4123.01 of the Revised Code for any period 457
of time during which the claimant received a disability benefit 458
or disability retirement from the public employees retirement 459
system, the Ohio police and fire pension fund, the school 460
employees retirement system, or the state highway patrol 461
retirement system. 462

(C) If a claimant receives an award of compensation or 463
benefits under this chapter or Chapter 4121., 4127., or 4131. of 464
the Revised Code for an injury described in division (C) (1) (c) 465
of section 4123.01 of the Revised Code for the same time period 466
for which the claimant received a disability benefit or 467
disability retirement from the public employees retirement 468
system, the Ohio police and fire pension fund, the school 469
employees retirement system, or the state highway patrol 470
retirement system, the administrator or any self-insuring 471
employer, by any lawful means, may collect from the employee or 472
the employee's dependents any of the following: 473

(1) The amount of compensation or benefits paid to the 474
claimant by the administrator or a self-insuring employer 475
pursuant to this chapter or Chapter 4121., 4127., or 4131. of 476
the Revised Code for that time period; 477

(2) Any interest, attorney's fees, and costs the 478
administrator or the self-insuring employer incurs in collecting 479
that payment. 480

Sec. 5505.182. Upon determining that a member's post- 481
traumatic stress disorder, without an accompanying physical 482
injury, qualifies that member for disability retirement under 483
section 5505.18 of the Revised Code, the state highway patrol 484
retirement board, notwithstanding the exceptions to public 485
inspection in division (C)(2) of section 5505.04 of the Revised 486
Code or the privileges contained in division (D) of that 487
section, shall notify the administrator of workers' compensation 488
of all of the following: 489

(A) The name of the member; 490

(B) That the member's post-traumatic stress disorder, 491
without an accompanying physical injury, qualifies that member 492
for disability retirement under section 5505.18 of the Revised 493
Code; 494

(C) The effective date of the member's disability 495
retirement; 496

(D) The date that payments for the member's disability 497
retirement commence. 498

Section 2. That existing sections 4123.01, 4123.026, and 499
4123.46 of the Revised Code are hereby repealed. 500