

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 308

Representative Patton

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 concerning workers' compensation and 4
disability retirement for peace officers, 5
firefighters, and emergency medical workers 6
diagnosed with post-traumatic stress disorder 7
arising from employment without an accompanying 8
physical injury. 9

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

Section 1. That sections 4123.01, 4123.026, and 4123.46 be 10
amended and sections 145.364, 742.391, 3309.402, 4123.87, and 11
5505.182 of the Revised Code be enacted to read as follows: 12

Sec. 145.364. Upon determining that a member's post- 13
traumatic stress disorder, without an accompanying physical 14
injury, qualifies that member for a disability benefit under 15
section 145.36 or 145.361 of the Revised Code, the public 16
employees retirement board, notwithstanding the exceptions to 17
public inspection in division (A) (2) of section 145.27 of the 18
Revised Code or the privileges contained in division (B) of that 19

section, shall notify the administrator of workers' compensation 20
of all of the following: 21

(A) The name of the member; 22

(B) That the member's post-traumatic stress disorder, 23
without an accompanying physical injury, qualifies that member 24
for a disability benefit under section 145.36 or 145.361 of the 25
Revised Code; 26

(C) The effective date of the member's disability benefit; 27

(D) The date that payments for the member's disability 28
benefit commence. 29

Sec. 742.391. Upon determining that a member's post- 30
traumatic stress disorder, without an accompanying physical 31
injury, qualifies that member for a disability benefit under 32
section 742.38 or 742.39 of the Revised Code, the board of 33
trustees of the Ohio police and fire pension fund, 34
notwithstanding the exceptions to public inspection in division 35
(B) of section 742.41 of the Revised Code or the privileges 36
contained in division (C) of that section, shall notify the 37
administrator of workers' compensation of all of the following: 38

(A) The name of the member; 39

(B) That the member's post-traumatic stress disorder, 40
without an accompanying physical injury, qualifies that member 41
for a disability benefit under section 742.38 or 742.39 of the 42
Revised Code; 43

(C) The effective date of the member's disability benefit; 44

(D) The date that payments for the member's disability 45
benefit commence. 46

Sec. 3309.402. Upon determining that a member's post- 47
traumatic stress disorder, without an accompanying physical 48
injury, qualifies that member for a disability benefit under 49
section 3309.35, 3309.40, or 3309.401 of the Revised Code, the 50
school employees retirement board, notwithstanding the 51
exceptions to public inspection in division (A)(2) of section 52
3309.22 of the Revised Code or the privileges contained in 53
division (B) of that section, shall notify the administrator of 54
workers' compensation of all of the following: 55

(A) The name of the member; 56

(B) That the member's post-traumatic stress disorder, 57
without an accompanying physical injury, qualifies that member 58
for a disability benefit under section 3309.35, 3309.40, or 59
3309.401 of the Revised Code; 60

(C) The effective date of the member's disability benefit; 61

(D) The date that payments for the member's disability 62
benefit commence. 63

Sec. 4123.01. As used in this chapter: 64

(A) (1) "Employee" means: 65

(a) Every person in the service of the state, or of any 66
county, municipal corporation, township, or school district 67
therein, including regular members of lawfully constituted 68
police and fire departments of municipal corporations and 69
townships, whether paid or volunteer, and wherever serving 70
within the state or on temporary assignment outside thereof, and 71
executive officers of boards of education, under any appointment 72
or contract of hire, express or implied, oral or written, 73
including any elected official of the state, or of any county, 74
municipal corporation, or township, or members of boards of 75

education. 76

As used in division (A) (1) (a) of this section, the term 77
"employee" includes the following persons when responding to an 78
inherently dangerous situation that calls for an immediate 79
response on the part of the person, regardless of whether the 80
person is within the limits of the jurisdiction of the person's 81
regular employment or voluntary service when responding, on the 82
condition that the person responds to the situation as the 83
person otherwise would if the person were on duty in the 84
person's jurisdiction: 85

(i) Off-duty peace officers. ~~As used in division (A) (1) (a)~~ 86
~~(i) of this section, "peace officer" has the same meaning as in~~ 87
~~section 2935.01 of the Revised Code.~~ 88

(ii) Off-duty firefighters, ~~whether paid or volunteer, of~~ 89
~~a lawfully constituted fire department.~~ 90

(iii) Off-duty ~~first responders, emergency medical~~ 91
~~technicians basic, emergency medical technicians intermediate,~~ 92
~~or emergency medical technicians paramedic, whether paid or~~ 93
~~volunteer, emergency medical workers~~ of an ambulance service 94
organization or emergency medical service organization ~~pursuant~~ 95
~~to Chapter 4765. of the Revised Code.~~ 96

(b) Every person in the service of any person, firm, or 97
private corporation, including any public service corporation, 98
that (i) employs one or more persons regularly in the same 99
business or in or about the same establishment under any 100
contract of hire, express or implied, oral or written, including 101
aliens and minors, household workers who earn one hundred sixty 102
dollars or more in cash in any calendar quarter from a single 103
household and casual workers who earn one hundred sixty dollars 104

or more in cash in any calendar quarter from a single employer, 105
or (ii) is bound by any such contract of hire or by any other 106
written contract, to pay into the state insurance fund the 107
premiums provided by this chapter. 108

(c) Every person who performs labor or provides services 109
pursuant to a construction contract, as defined in section 110
4123.79 of the Revised Code, if at least ten of the following 111
criteria apply: 112

(i) The person is required to comply with instructions 113
from the other contracting party regarding the manner or method 114
of performing services; 115

(ii) The person is required by the other contracting party 116
to have particular training; 117

(iii) The person's services are integrated into the 118
regular functioning of the other contracting party; 119

(iv) The person is required to perform the work 120
personally; 121

(v) The person is hired, supervised, or paid by the other 122
contracting party; 123

(vi) A continuing relationship exists between the person 124
and the other contracting party that contemplates continuing or 125
recurring work even if the work is not full time; 126

(vii) The person's hours of work are established by the 127
other contracting party; 128

(viii) The person is required to devote full time to the 129
business of the other contracting party; 130

(ix) The person is required to perform the work on the 131

premises of the other contracting party;	132
(x) The person is required to follow the order of work set	133
by the other contracting party;	134
(xi) The person is required to make oral or written	135
reports of progress to the other contracting party;	136
(xii) The person is paid for services on a regular basis	137
such as hourly, weekly, or monthly;	138
(xiii) The person's expenses are paid for by the other	139
contracting party;	140
(xiv) The person's tools and materials are furnished by	141
the other contracting party;	142
(xv) The person is provided with the facilities used to	143
perform services;	144
(xvi) The person does not realize a profit or suffer a	145
loss as a result of the services provided;	146
(xvii) The person is not performing services for a number	147
of employers at the same time;	148
(xviii) The person does not make the same services	149
available to the general public;	150
(xix) The other contracting party has a right to discharge	151
the person;	152
(xx) The person has the right to end the relationship with	153
the other contracting party without incurring liability pursuant	154
to an employment contract or agreement.	155
Every person in the service of any independent contractor	156
or subcontractor who has failed to pay into the state insurance	157
fund the amount of premium determined and fixed by the	158

administrator of workers' compensation for the person's 159
employment or occupation or who is a self-insuring employer and 160
who has failed to pay compensation and benefits directly to the 161
employer's injured and to the dependents of the employer's 162
killed employees as required by section 4123.35 of the Revised 163
Code, shall be considered as the employee of the person who has 164
entered into a contract, whether written or verbal, with such 165
independent contractor unless such employees or their legal 166
representatives or beneficiaries elect, after injury or death, 167
to regard such independent contractor as the employer. 168

(2) "Employee" does not mean any of the following: 169

(a) A duly ordained, commissioned, or licensed minister or 170
assistant or associate minister of a church in the exercise of 171
ministry; 172

(b) Any officer of a family farm corporation; 173

(c) An individual incorporated as a corporation; 174

(d) An officer of a nonprofit corporation, as defined in 175
section 1702.01 of the Revised Code, who volunteers the person's 176
services as an officer; 177

(e) An individual who otherwise is an employee of an 178
employer but who signs the waiver and affidavit specified in 179
section 4123.15 of the Revised Code on the condition that the 180
administrator has granted a waiver and exception to the 181
individual's employer under section 4123.15 of the Revised Code; 182

(f) (i) A qualifying employee described in division (A) (14) 183
(a) of section 5703.94 of the Revised Code when the qualifying 184
employee is performing disaster work in this state during a 185
disaster response period pursuant to a qualifying solicitation 186
received by the employee's employer; 187

(ii) A qualifying employee described in division (A) (14) 188
(b) of section 5703.94 of the Revised Code when the qualifying 189
employee is performing disaster work in this state during a 190
disaster response period on critical infrastructure owned or 191
used by the employee's employer; 192

(iii) As used in division (A) (2) (f) of this section, 193
"critical infrastructure," "disaster response period," "disaster 194
work," and "qualifying employee" have the same meanings as in 195
section 5703.94 of the Revised Code. 196

Any employer may elect to include as an "employee" within 197
this chapter, any person excluded from the definition of 198
"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 199
this section in accordance with rules adopted by the 200
administrator, with the advice and consent of the bureau of 201
workers' compensation board of directors. If an employer is a 202
partnership, sole proprietorship, individual incorporated as a 203
corporation, or family farm corporation, such employer may elect 204
to include as an "employee" within this chapter, any member of 205
such partnership, the owner of the sole proprietorship, the 206
individual incorporated as a corporation, or the officers of the 207
family farm corporation. Nothing in this section shall prohibit 208
a partner, sole proprietor, or any person excluded from the 209
definition of "employee" pursuant to division (A) (2) (a), (b), 210
(c), or (e) of this section from electing to be included as an 211
"employee" under this chapter in accordance with rules adopted 212
by the administrator, with the advice and consent of the board. 213

In the event of an election, the employer or person 214
electing coverage shall serve upon the bureau of workers' 215
compensation written notice naming the person to be covered and 216
include the person's remuneration for premium purposes in all 217

future payroll reports. No partner, sole proprietor, or person 218
excluded from the definition of "employee" pursuant to division 219
(A) (2) (a), (b), (c), or (e) of this section, shall receive 220
benefits or compensation under this chapter until the bureau 221
receives written notice of the election permitted by this 222
section. 223

For informational purposes only, the bureau shall 224
prescribe such language as it considers appropriate, on such of 225
its forms as it considers appropriate, to advise employers of 226
their right to elect to include as an "employee" within this 227
chapter a sole proprietor, any member of a partnership, or a 228
person excluded from the definition of "employee" under division 229
(A) (2) (a), (b), (c), or (e) of this section, that they should 230
check any health and disability insurance policy, or other form 231
of health and disability plan or contract, presently covering 232
them, or the purchase of which they may be considering, to 233
determine whether such policy, plan, or contract excludes 234
benefits for illness or injury that they might have elected to 235
have covered by workers' compensation. 236

(B) (1) "Employer" means: 237

(a) The state, including state hospitals, each county, 238
municipal corporation, township, school district, and hospital 239
owned by a political subdivision or subdivisions other than the 240
state; 241

(b) Every person, firm, professional employer 242
organization, and private corporation, including any public 243
service corporation, that (i) has in service one or more 244
employees or shared employees regularly in the same business or 245
in or about the same establishment under any contract of hire, 246
express or implied, oral or written, or (ii) is bound by any 247

such contract of hire or by any other written contract, to pay 248
into the insurance fund the premiums provided by this chapter. 249

All such employers are subject to this chapter. Any member 250
of a firm or association, who regularly performs manual labor in 251
or about a mine, factory, or other establishment, including a 252
household establishment, shall be considered an employee in 253
determining whether such person, firm, or private corporation, 254
or public service corporation, has in its service, one or more 255
employees and the employer shall report the income derived from 256
such labor to the bureau as part of the payroll of such 257
employer, and such member shall thereupon be entitled to all the 258
benefits of an employee. 259

(2) "Employer" does not include a franchisor with respect 260
to the franchisor's relationship with a franchisee or an 261
employee of a franchisee, unless the franchisor agrees to assume 262
that role in writing or a court of competent jurisdiction 263
determines that the franchisor exercises a type or degree of 264
control over the franchisee or the franchisee's employees that 265
is not customarily exercised by a franchisor for the purpose of 266
protecting the franchisor's trademark, brand, or both. For 267
purposes of this division, "franchisor" and "franchisee" have 268
the same meanings as in 16 C.F.R. 436.1. 269

(C) "Injury" includes any injury, whether caused by 270
external accidental means or accidental in character and result, 271
received in the course of, and arising out of, the injured 272
employee's employment. "Injury" does not include: 273

(1) Psychiatric conditions except ~~where~~ as follows: 274

(a) Where the claimant's psychiatric conditions have 275
arisen from an injury or occupational disease sustained by that 276

claimant ~~or where~~; 277

(b) Where the claimant's psychiatric conditions have 278
arisen from sexual conduct in which the claimant was forced by 279
threat of physical harm to engage or participate; 280

(c) Where the claimant is a peace officer, firefighter, or 281
emergency medical worker and is diagnosed with post-traumatic 282
stress disorder that has been received in the course of, and has 283
arisen out of, the claimant's employment as a peace officer, 284
firefighter, or emergency medical worker. 285

(2) Injury or disability caused primarily by the natural 286
deterioration of tissue, an organ, or part of the body; 287

(3) Injury or disability incurred in voluntary 288
participation in an employer-sponsored recreation or fitness 289
activity if the employee signs a waiver of the employee's right 290
to compensation or benefits under this chapter prior to engaging 291
in the recreation or fitness activity; 292

(4) A condition that pre-existed an injury unless that 293
pre-existing condition is substantially aggravated by the 294
injury. Such a substantial aggravation must be documented by 295
objective diagnostic findings, objective clinical findings, or 296
objective test results. Subjective complaints may be evidence of 297
such a substantial aggravation. However, subjective complaints 298
without objective diagnostic findings, objective clinical 299
findings, or objective test results are insufficient to 300
substantiate a substantial aggravation. 301

(D) "Child" includes a posthumous child and a child 302
legally adopted prior to the injury. 303

(E) "Family farm corporation" means a corporation founded 304
for the purpose of farming agricultural land in which the 305

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

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

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

(H) "Private employer" means an employer as defined in
division (B) (1) (b) of this section.

(I) "Professional employer organization" has the same

meaning as in section 4125.01 of the Revised Code. 336

(J) "Public employer" means an employer as defined in 337
division (B)(1)(a) of this section. 338

(K) "Sexual conduct" means vaginal intercourse between a 339
male and female; anal intercourse, fellatio, and cunnilingus 340
between persons regardless of gender; and, without privilege to 341
do so, the insertion, however slight, of any part of the body or 342
any instrument, apparatus, or other object into the vaginal or 343
anal cavity of another. Penetration, however slight, is 344
sufficient to complete vaginal or anal intercourse. 345

(L) "Other-states' insurer" means an insurance company 346
that is authorized to provide workers' compensation insurance 347
coverage in any of the states that permit employers to obtain 348
insurance for workers' compensation claims through insurance 349
companies. 350

(M) "Other-states' coverage" means both of the following: 351

(1) Insurance coverage secured by an eligible employer for 352
workers' compensation claims of employees who are in employment 353
relationships localized in a state other than this state or 354
those employees' dependents; 355

(2) Insurance coverage secured by an eligible employer for 356
workers' compensation claims that arise in a state other than 357
this state where an employer elects to obtain coverage through 358
either the administrator or an other-states' insurer. 359

(N) "Limited other-states coverage" means insurance 360
coverage provided by the administrator to an eligible employer 361
for workers' compensation claims of employees who are in an 362
employment relationship localized in this state but are 363
temporarily working in a state other than this state, or those 364

employees' dependents. 365

(O) "Peace officer" has the same meaning as in section 366
2935.01 of the Revised Code. 367

(P) "Firefighter" means a firefighter, whether paid or 368
volunteer, of a lawfully constituted fire department. 369

(Q) "Emergency medical worker" means a first responder, 370
emergency medical technician-basic, emergency medical 371
technician-intermediate, or emergency medical technician- 372
paramedic, certified under Chapter 4765. of the Revised Code, 373
whether paid or volunteer. 374

Sec. 4123.026. ~~(A)~~—The administrator of workers' 375
compensation, or a self-insuring public employer for the peace 376
officers, firefighters, and emergency medical workers employed 377
by or volunteering for that self-insuring public employer, shall 378
pay the costs of conducting post-exposure medical diagnostic 379
services, consistent with the standards of medical care existing 380
at the time of the exposure, to investigate whether an injury or 381
occupational disease was sustained by a peace officer, 382
firefighter, or emergency medical worker when coming into 383
contact with the blood or other body fluid of another person in 384
the course of and arising out of the peace officer's, 385
firefighter's, or emergency medical worker's employment, or when 386
responding to an inherently dangerous situation in the manner 387
described in, and in accordance with the conditions specified 388
under, division (A)(1)(a) of section 4123.01 of the Revised 389
Code, through any of the following means: 390

~~(1)~~ (A) Splash or spatter in the eye or mouth, including 391
when received in the course of conducting mouth-to-mouth 392
resuscitation; 393

~~(2) (B) A puncture in the skin;~~ 394

~~(3) (C) A cut in the skin or another opening in the skin~~ 395
such as an open sore, wound, lesion, abrasion, or ulcer. 396

~~(B) As used in this section:~~ 397

~~(1) "Peace officer" has the same meaning as in section~~ 398
~~2935.01 of the Revised Code.~~ 399

~~(2) "Firefighter" means a firefighter, whether paid or~~ 400
~~volunteer, of a lawfully constituted fire department.~~ 401

~~(3) "Emergency medical worker" means a first responder,~~ 402
~~emergency medical technician basic, emergency medical~~ 403
~~technician intermediate, or emergency medical technician~~ 404
~~paramedic, certified under Chapter 4765. of the Revised Code,~~ 405
~~whether paid or volunteer.~~ 406

Sec. 4123.46. (A) (1) Except as provided in division (A) (2) 407
of this section, the bureau of workers' compensation shall 408
disburse the state insurance fund to employees of employers who 409
have paid into the fund the premiums applicable to the classes 410
to which they belong when the employees have been injured in the 411
course of their employment, wherever the injuries have occurred, 412
and provided the injuries have not been purposely self- 413
inflicted, or to the dependents of the employees in case death 414
has ensued. 415

(2) As long as injuries have not been purposely self- 416
inflicted, the bureau shall disburse the surplus fund created 417
under section 4123.34 of the Revised Code to off-duty peace 418
officers, firefighters, and emergency medical technicians, ~~and~~ 419
~~first responders~~ workers, or to their dependents if death 420
ensues, who are injured while responding to inherently dangerous 421
situations that call for an immediate response on the part of 422

the person, regardless of whether the person was within the 423
limits of the person's jurisdiction when responding, on the 424
condition that the person responds to the situation as the 425
person otherwise would if the person were on duty in the 426
person's jurisdiction. 427

~~As used in division (A) (2) of this section, "peace-~~ 428
~~officer," "firefighter," "emergency medical technician," "first-~~ 429
~~responder," and "jurisdiction" have the same meanings as in~~ 430
~~section 4123.01 of the Revised Code.~~ 431

(B) All self-insuring employers, in compliance with this 432
chapter, shall pay the compensation to injured employees, or to 433
the dependents of employees who have been killed in the course 434
of their employment, unless the injury or death of the employee 435
was purposely self-inflicted, and shall furnish the medical, 436
surgical, nurse, and hospital care and attention or funeral 437
expenses as would have been paid and furnished by virtue of this 438
chapter under a similar state of facts by the bureau out of the 439
state insurance fund if the employer had paid the premium into 440
the fund. 441

If any rule or regulation of a self-insuring employer 442
provides for or authorizes the payment of greater compensation 443
or more complete or extended medical care, nursing, surgical, 444
and hospital attention, or funeral expenses to the injured 445
employees, or to the dependents of the employees as may be 446
killed, the employer shall pay to the employees, or to the 447
dependents of employees killed, the amount of compensation and 448
furnish the medical care, nursing, surgical, and hospital 449
attention or funeral expenses provided by the self-insuring 450
employer's rules and regulations. 451

(C) Payment to injured employees, or to their dependents 452

in case death has ensued, is in lieu of any and all rights of 453
action against the employer of the injured or killed employees. 454

Sec. 4123.87. (A) Notwithstanding any provision in section 455
4123.52, 4123.54, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 456
4123.60, or 4123.66 of the Revised Code to the contrary, in the 457
case of disability due to an injury described in division (C)(1) 458
(c) of section 4123.01 of the Revised Code: 459

(1) Any entitlement of a claimant to compensation as a 460
result of any order issued under this chapter or Chapter 4121., 461
4127., or 4131. of the Revised Code regarding that injury shall 462
cease not later than one year after the date those payments 463
commence under division (H) of section 4123.511 of the Revised 464
Code. 465

(2) Any entitlement of a claimant to medical benefits 466
under this chapter or Chapter 4121., 4127., or 4131. of the 467
Revised Code regarding that injury shall cease not later than 468
one year after those payments commence under division (I) of 469
section 4123.511 of the Revised Code. 470

(B) No claimant shall be entitled to compensation or 471
benefits under this chapter for an injury described in division 472
(C)(1)(c) of section 4123.01 of the Revised Code for any period 473
of time during which the claimant received a disability benefit 474
or disability retirement from the public employees retirement 475
system, the Ohio police and fire pension fund, the school 476
employees retirement system, or the state highway patrol 477
retirement system. 478

(C) If a claimant receives an award of compensation or 479
benefits under this chapter or Chapter 4121., 4127., or 4131. of 480
the Revised Code for an injury described in division (C)(1)(c) 481

of section 4123.01 of the Revised Code for the same time period 482
for which the claimant received a disability benefit or 483
disability retirement from the public employees retirement 484
system, the Ohio police and fire pension fund, the school 485
employees retirement system, or the state highway patrol 486
retirement system, the administrator or any self-insuring 487
employer, by any lawful means, may collect from the employee or 488
the employee's dependents any of the following: 489

(1) The amount of compensation or benefits paid to the 490
claimant by the administrator or a self-insuring employer 491
pursuant to this chapter or Chapter 4121., 4127., or 4131. of 492
the Revised Code for that time period; 493

(2) Any interest, attorney's fees, and costs the 494
administrator or the self-insuring employer incurs in collecting 495
that payment. 496

Sec. 5505.182. Upon determining that a member's post- 497
traumatic stress disorder, without an accompanying physical 498
injury, qualifies that member for disability retirement under 499
section 5505.18 of the Revised Code, the state highway patrol 500
retirement board, notwithstanding the exceptions to public 501
inspection in division (C) (2) of section 5505.04 of the Revised 502
Code or the privileges contained in division (D) of that 503
section, shall notify the administrator of workers' compensation 504
of all of the following: 505

(A) The name of the member; 506

(B) That the member's post-traumatic stress disorder, 507
without an accompanying physical injury, qualifies that member 508
for disability retirement under section 5505.18 of the Revised 509
Code; 510

<u>(C) The effective date of the member's disability</u>	511
<u>retirement;</u>	512
<u>(D) The date that payments for the member's disability</u>	513
<u>retirement commence.</u>	514
Section 2. That existing sections 4123.01, 4123.026, and	515
4123.46 of the Revised Code are hereby repealed.	516