

As Introduced

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Representatives Seitz, Householder

**Cosponsors: Representatives Schaffer, Henne, Retherford, Vitale, Thompson,
Becker, Merrin, Antani, Lang, Keller, Hood, Riedel**

A BILL

To amend sections 2743.02, 2744.02, 4123.01, and 1
4123.511 and to enact sections 2307.82 and 2
4123.513 of the Revised Code to prohibit illegal 3
and unauthorized aliens from receiving 4
compensation and certain benefits under Ohio's 5
Workers' Compensation Law. 6

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

Section 1. That sections 2743.02, 2744.02, 4123.01, and 7
4123.511 be amended and sections 2307.82 and 4123.513 of the 8
Revised Code be enacted to read as follows: 9

Sec. 2307.82. (A) As used in this section, "employer," 10
"illegal alien," "occupational disease," and "unauthorized 11
alien" have the same meanings as in section 4123.01 of the 12
Revised Code. 13

(B) Except as provided in division (C) of this section, no 14
court in this state has jurisdiction over a claim for damages 15
suffered by an illegal alien or an unauthorized alien by reason 16
of personal injury sustained or occupational disease contracted 17

by the illegal alien or unauthorized alien in the course of 18
employment caused by the wrongful act or omission or neglect of 19
the employer. Except as provided in division (C) of this 20
section, an illegal alien or unauthorized alien assumes the risk 21
of incurring such injury or contracting an occupational disease, 22
and that assumption is a complete bar to a recovery of damages 23
for such injury or occupational disease. 24

(C) A court in this state has jurisdiction over a claim 25
brought by an illegal alien or unauthorized alien against an 26
employer for damages suffered by reason of personal injury 27
sustained or occupational disease contracted in the course of 28
employment caused by the wrongful act or omission or neglect of 29
the employer if the employer employed the illegal alien or 30
unauthorized alien knowing that the illegal alien or 31
unauthorized alien was not authorized to work under section 32
101(a) of the "Immigration Reform and Control Act of 1986," 100 33
Stat. 3360, 8 U.S.C. 1324a. 34

Nothing in this section shall be construed to prevent an 35
illegal alien or an unauthorized alien from bringing a claim 36
against an employer in a court of competent jurisdiction for an 37
intentional tort allegedly committed by the employer against the 38
illegal alien or unauthorized alien. 39

Sec. 2743.02. (A) (1) The state hereby waives its immunity 40
from liability, except as provided for the office of the state 41
fire marshal in division (G) (1) of section 9.60 and division (B) 42
of section 3737.221 of the Revised Code, except as provided in 43
division (I) of this section, and subject to division (H) of 44
this section, and consents to be sued, and have its liability 45
determined, in the court of claims created in this chapter in 46
accordance with the same rules of law applicable to suits 47

between private parties, except that the determination of 48
liability is subject to the limitations set forth in this 49
chapter and, in the case of state universities or colleges, in 50
section 3345.40 of the Revised Code, and except as provided in 51
division (A) (2) or (3) of this section. To the extent that the 52
state has previously consented to be sued, this chapter has no 53
applicability. 54

Except in the case of a civil action filed by the state, 55
filing a civil action in the court of claims results in a 56
complete waiver of any cause of action, based on the same act or 57
omission, that the filing party has against any officer or 58
employee, as defined in section 109.36 of the Revised Code. The 59
waiver shall be void if the court determines that the act or 60
omission was manifestly outside the scope of the officer's or 61
employee's office or employment or that the officer or employee 62
acted with malicious purpose, in bad faith, or in a wanton or 63
reckless manner. 64

(2) If a claimant proves in the court of claims that an 65
officer or employee, as defined in section 109.36 of the Revised 66
Code, would have personal liability for the officer's or 67
employee's acts or omissions but for the fact that the officer 68
or employee has personal immunity under section 9.86 of the 69
Revised Code, the state shall be held liable in the court of 70
claims in any action that is timely filed pursuant to section 71
2743.16 of the Revised Code and that is based upon the acts or 72
omissions. 73

(3) (a) Except as provided in division (A) (3) (b) of this 74
section, the state is immune from liability in any civil action 75
or proceeding involving the performance or nonperformance of a 76
public duty, including the performance or nonperformance of a 77

public duty that is owed by the state in relation to any action 78
of an individual who is committed to the custody of the state. 79

(b) The state immunity provided in division (A) (3) (a) of 80
this section does not apply to any action of the state under 81
circumstances in which a special relationship can be established 82
between the state and an injured party. A special relationship 83
under this division is demonstrated if all of the following 84
elements exist: 85

(i) An assumption by the state, by means of promises or 86
actions, of an affirmative duty to act on behalf of the party 87
who was allegedly injured; 88

(ii) Knowledge on the part of the state's agents that 89
inaction of the state could lead to harm; 90

(iii) Some form of direct contact between the state's 91
agents and the injured party; 92

(iv) The injured party's justifiable reliance on the 93
state's affirmative undertaking. 94

(B) The state hereby waives the immunity from liability of 95
all hospitals owned or operated by one or more political 96
subdivisions and consents for them to be sued, and to have their 97
liability determined, in the court of common pleas, in 98
accordance with the same rules of law applicable to suits 99
between private parties, subject to the limitations set forth in 100
this chapter. This division is also applicable to hospitals 101
owned or operated by political subdivisions that have been 102
determined by the supreme court to be subject to suit prior to 103
July 28, 1975. 104

(C) Any hospital, as defined in section 2305.113 of the 105
Revised Code, may purchase liability insurance covering its 106

operations and activities and its agents, employees, nurses, 107
interns, residents, staff, and members of the governing board 108
and committees, and, whether or not such insurance is purchased, 109
may, to the extent that its governing board considers 110
appropriate, indemnify or agree to indemnify and hold harmless 111
any such person against expense, including attorney's fees, 112
damage, loss, or other liability arising out of, or claimed to 113
have arisen out of, the death, disease, or injury of any person 114
as a result of the negligence, malpractice, or other action or 115
inaction of the indemnified person while acting within the scope 116
of the indemnified person's duties or engaged in activities at 117
the request or direction, or for the benefit, of the hospital. 118
Any hospital electing to indemnify those persons, or to agree to 119
so indemnify, shall reserve any funds that are necessary, in the 120
exercise of sound and prudent actuarial judgment, to cover the 121
potential expense, fees, damage, loss, or other liability. The 122
superintendent of insurance may recommend, or, if the hospital 123
requests the superintendent to do so, the superintendent shall 124
recommend, a specific amount for any period that, in the 125
superintendent's opinion, represents such a judgment. This 126
authority is in addition to any authorization otherwise provided 127
or permitted by law. 128

(D) Recoveries against the state shall be reduced by the 129
aggregate of insurance proceeds, disability award, or other 130
collateral recovery received by the claimant. This division does 131
not apply to civil actions in the court of claims against a 132
state university or college under the circumstances described in 133
section 3345.40 of the Revised Code. The collateral benefits 134
provisions of division (B) (2) of that section apply under those 135
circumstances. 136

(E) The only defendant in original actions in the court of 137

claims is the state. The state may file a third-party complaint 138
or counterclaim in any civil action, except a civil action for 139
ten thousand dollars or less, that is filed in the court of 140
claims. 141

(F) A civil action against an officer or employee, as 142
defined in section 109.36 of the Revised Code, that alleges that 143
the officer's or employee's conduct was manifestly outside the 144
scope of the officer's or employee's employment or official 145
responsibilities, or that the officer or employee acted with 146
malicious purpose, in bad faith, or in a wanton or reckless 147
manner shall first be filed against the state in the court of 148
claims that has exclusive, original jurisdiction to determine, 149
initially, whether the officer or employee is entitled to 150
personal immunity under section 9.86 of the Revised Code and 151
whether the courts of common pleas have jurisdiction over the 152
civil action. The officer or employee may participate in the 153
immunity determination proceeding before the court of claims to 154
determine whether the officer or employee is entitled to 155
personal immunity under section 9.86 of the Revised Code. 156

The filing of a claim against an officer or employee under 157
this division tolls the running of the applicable statute of 158
limitations until the court of claims determines whether the 159
officer or employee is entitled to personal immunity under 160
section 9.86 of the Revised Code. 161

(G) If a claim lies against an officer or employee who is 162
a member of the Ohio national guard, and the officer or employee 163
was, at the time of the act or omission complained of, subject 164
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 165
2671, et seq., the Federal Tort Claims Act is the exclusive 166
remedy of the claimant and the state has no liability under this 167

section. 168

(H) If an inmate of a state correctional institution has a 169
claim against the state for the loss of or damage to property 170
and the amount claimed does not exceed three hundred dollars, 171
before commencing an action against the state in the court of 172
claims, the inmate shall file a claim for the loss or damage 173
under the rules adopted by the director of rehabilitation and 174
correction pursuant to this division. The inmate shall file the 175
claim within the time allowed for commencement of a civil action 176
under section 2743.16 of the Revised Code. If the state admits 177
or compromises the claim, the director shall make payment from a 178
fund designated by the director for that purpose. If the state 179
denies the claim or does not compromise the claim at least sixty 180
days prior to expiration of the time allowed for commencement of 181
a civil action based upon the loss or damage under section 182
2743.16 of the Revised Code, the inmate may commence an action 183
in the court of claims under this chapter to recover damages for 184
the loss or damage. 185

The director of rehabilitation and correction shall adopt 186
rules pursuant to Chapter 119. of the Revised Code to implement 187
this division. 188

(I) The state is not liable in any civil action brought by 189
or on behalf of an illegal alien or an unauthorized alien for 190
damages suffered by reason of personal injury sustained or 191
occupational disease contracted in the course of employment 192
caused by the wrongful act or omission or neglect of the state 193
acting as an employer unless the state employed that illegal 194
alien or unauthorized alien knowing that the illegal alien or 195
unauthorized alien was not authorized to work under section 196
101(a) of the "Immigration Reform and Control Act of 1986," 100 197

Stat. 3360, 8 U.S.C. 1324a. 198

As used in this division, "illegal alien," "occupational 199
disease," and "unauthorized alien" have the same meanings as in 200
section 4123.01 of the Revised Code. 201

Sec. 2744.02. (A) (1) For the purposes of this chapter, the 202
functions of political subdivisions are hereby classified as 203
governmental functions and proprietary functions. Except as 204
provided in division (B) of this section, a political 205
subdivision is not liable in damages in a civil action for 206
injury, death, or loss to person or property allegedly caused by 207
any act or omission of the political subdivision or an employee 208
of the political subdivision in connection with a governmental 209
or proprietary function. A political subdivision is not liable 210
in any civil action brought by or on behalf of an illegal alien 211
or an unauthorized alien for damages suffered by reason of 212
personal injury sustained or occupational disease contracted in 213
the course of employment caused by the wrongful act or omission 214
or neglect of the political subdivision acting as an employer 215
unless the political subdivision employed that illegal alien or 216
unauthorized alien knowing that the illegal alien or 217
unauthorized alien was not authorized to work under section 218
101(a) of the "Immigration Reform and Control Act of 1986," 100 219
Stat. 3360, 8 U.S.C. 1324a. 220

As used in this division, "illegal alien," "occupational 221
disease," and "unauthorized alien" have the same meanings as in 222
section 4123.01 of the Revised Code. 223

(2) The defenses and immunities conferred under this 224
chapter apply in connection with all governmental and 225
proprietary functions performed by a political subdivision and 226
its employees, whether performed on behalf of that political 227

subdivision or on behalf of another political subdivision. 228

(3) Subject to statutory limitations upon their monetary 229
jurisdiction, the courts of common pleas, the municipal courts, 230
and the county courts have jurisdiction to hear and determine 231
civil actions governed by or brought pursuant to this chapter. 232

(B) Subject to sections 2744.03 and 2744.05 of the Revised 233
Code, a political subdivision is liable in damages in a civil 234
action for injury, death, or loss to person or property 235
allegedly caused by an act or omission of the political 236
subdivision or of any of its employees in connection with a 237
governmental or proprietary function, as follows: 238

(1) Except as otherwise provided in this division, 239
political subdivisions are liable for injury, death, or loss to 240
person or property caused by the negligent operation of any 241
motor vehicle by their employees when the employees are engaged 242
within the scope of their employment and authority. The 243
following are full defenses to that liability: 244

(a) A member of a municipal corporation police department 245
or any other police agency was operating a motor vehicle while 246
responding to an emergency call and the operation of the vehicle 247
did not constitute willful or wanton misconduct; 248

(b) A member of a municipal corporation fire department or 249
any other firefighting agency was operating a motor vehicle 250
while engaged in duty at a fire, proceeding toward a place where 251
a fire is in progress or is believed to be in progress, or 252
answering any other emergency alarm and the operation of the 253
vehicle did not constitute willful or wanton misconduct; 254

(c) A member of an emergency medical service owned or 255
operated by a political subdivision was operating a motor 256

vehicle while responding to or completing a call for emergency 257
medical care or treatment, the member was holding a valid 258
commercial driver's license issued pursuant to Chapter 4506. or 259
a driver's license issued pursuant to Chapter 4507. of the 260
Revised Code, the operation of the vehicle did not constitute 261
willful or wanton misconduct, and the operation complies with 262
the precautions of section 4511.03 of the Revised Code. 263

(2) Except as otherwise provided in sections 3314.07 and 264
3746.24 of the Revised Code, political subdivisions are liable 265
for injury, death, or loss to person or property caused by the 266
negligent performance of acts by their employees with respect to 267
proprietary functions of the political subdivisions. 268

(3) Except as otherwise provided in section 3746.24 of the 269
Revised Code, political subdivisions are liable for injury, 270
death, or loss to person or property caused by their negligent 271
failure to keep public roads in repair and other negligent 272
failure to remove obstructions from public roads, except that it 273
is a full defense to that liability, when a bridge within a 274
municipal corporation is involved, that the municipal 275
corporation does not have the responsibility for maintaining or 276
inspecting the bridge. 277

(4) Except as otherwise provided in section 3746.24 of the 278
Revised Code, political subdivisions are liable for injury, 279
death, or loss to person or property that is caused by the 280
negligence of their employees and that occurs within or on the 281
grounds of, and is due to physical defects within or on the 282
grounds of, buildings that are used in connection with the 283
performance of a governmental function, including, but not 284
limited to, office buildings and courthouses, but not including 285
jails, places of juvenile detention, workhouses, or any other 286

detention facility, as defined in section 2921.01 of the Revised Code. 287
288

(5) In addition to the circumstances described in 289
divisions (B) (1) to (4) of this section, a political subdivision 290
is liable for injury, death, or loss to person or property when 291
civil liability is expressly imposed upon the political 292
subdivision by a section of the Revised Code, including, but not 293
limited to, sections 2743.02 and 5591.37 of the Revised Code. 294
Civil liability shall not be construed to exist under another 295
section of the Revised Code merely because that section imposes 296
a responsibility or mandatory duty upon a political subdivision, 297
because that section provides for a criminal penalty, because of 298
a general authorization in that section that a political 299
subdivision may sue and be sued, or because that section uses 300
the term "shall" in a provision pertaining to a political 301
subdivision. 302

(C) An order that denies a political subdivision or an 303
employee of a political subdivision the benefit of an alleged 304
immunity from liability as provided in this chapter or any other 305
provision of the law is a final order. 306

Sec. 4123.01. As used in this chapter: 307

(A) (1) "Employee" means: 308

(a) Every person in the service of the state, or of any 309
county, municipal corporation, township, or school district 310
therein, including regular members of lawfully constituted 311
police and fire departments of municipal corporations and 312
townships, whether paid or volunteer, and wherever serving 313
within the state or on temporary assignment outside thereof, and 314
executive officers of boards of education, under any appointment 315

or contract of hire, express or implied, oral or written, 316
including any elected official of the state, or of any county, 317
municipal corporation, or township, or members of boards of 318
education. 319

As used in division (A)(1)(a) of this section, the term 320
"employee" includes the following persons when responding to an 321
inherently dangerous situation that calls for an immediate 322
response on the part of the person, regardless of whether the 323
person is within the limits of the jurisdiction of the person's 324
regular employment or voluntary service when responding, on the 325
condition that the person responds to the situation as the 326
person otherwise would if the person were on duty in the 327
person's jurisdiction: 328

(i) Off-duty peace officers. As used in division (A)(1)(a) 329
(i) of this section, "peace officer" has the same meaning as in 330
section 2935.01 of the Revised Code. 331

(ii) Off-duty firefighters, whether paid or volunteer, of 332
a lawfully constituted fire department. 333

(iii) Off-duty first responders, emergency medical 334
technicians-basic, emergency medical technicians-intermediate, 335
or emergency medical technicians-paramedic, whether paid or 336
volunteer, of an ambulance service organization or emergency 337
medical service organization pursuant to Chapter 4765. of the 338
Revised Code. 339

(b) Every person in the service of any person, firm, or 340
private corporation, including any public service corporation, 341
that (i) employs one or more persons regularly in the same 342
business or in or about the same establishment under any 343
contract of hire, express or implied, oral or written, including 344

aliens ~~and authorized to work by the United States department of~~ 345
~~homeland security or its successors;~~ minors~~;~~ household workers 346
who earn one hundred sixty dollars or more in cash in any 347
calendar quarter from a single household~~;~~ and casual workers who 348
earn one hundred sixty dollars or more in cash in any calendar 349
quarter from a single employer~~;~~ or (ii) is bound by any such 350
contract of hire or by any other written contract, to pay into 351
the state insurance fund the premiums provided by this chapter. 352

(c) Every person who performs labor or provides services 353
pursuant to a construction contract, as defined in section 354
4123.79 of the Revised Code, if at least ten of the following 355
criteria apply: 356

(i) The person is required to comply with instructions 357
from the other contracting party regarding the manner or method 358
of performing services; 359

(ii) The person is required by the other contracting party 360
to have particular training; 361

(iii) The person's services are integrated into the 362
regular functioning of the other contracting party; 363

(iv) The person is required to perform the work 364
personally; 365

(v) The person is hired, supervised, or paid by the other 366
contracting party; 367

(vi) A continuing relationship exists between the person 368
and the other contracting party that contemplates continuing or 369
recurring work even if the work is not full time; 370

(vii) The person's hours of work are established by the 371
other contracting party; 372

(viii) The person is required to devote full time to the 373
business of the other contracting party; 374

(ix) The person is required to perform the work on the 375
premises of the other contracting party; 376

(x) The person is required to follow the order of work set 377
by the other contracting party; 378

(xi) The person is required to make oral or written 379
reports of progress to the other contracting party; 380

(xii) The person is paid for services on a regular basis 381
such as hourly, weekly, or monthly; 382

(xiii) The person's expenses are paid for by the other 383
contracting party; 384

(xiv) The person's tools and materials are furnished by 385
the other contracting party; 386

(xv) The person is provided with the facilities used to 387
perform services; 388

(xvi) The person does not realize a profit or suffer a 389
loss as a result of the services provided; 390

(xvii) The person is not performing services for a number 391
of employers at the same time; 392

(xviii) The person does not make the same services 393
available to the general public; 394

(xix) The other contracting party has a right to discharge 395
the person; 396

(xx) The person has the right to end the relationship with 397
the other contracting party without incurring liability pursuant 398
to an employment contract or agreement. 399

Every person in the service of any independent contractor 400
or subcontractor who has failed to pay into the state insurance 401
fund the amount of premium determined and fixed by the 402
administrator of workers' compensation for the person's 403
employment or occupation or if a self-insuring employer has 404
failed to pay compensation and benefits directly to the 405
employer's injured and to the dependents of the employer's 406
killed employees as required by section 4123.35 of the Revised 407
Code, shall be considered as the employee of the person who has 408
entered into a contract, whether written or verbal, with such 409
independent contractor unless such employees or their legal 410
representatives or beneficiaries elect, after injury or death, 411
to regard such independent contractor as the employer. 412

(2) "Employee" does not mean any of the following: 413

(a) A duly ordained, commissioned, or licensed minister or 414
assistant or associate minister of a church in the exercise of 415
ministry; 416

(b) Any officer of a family farm corporation; 417

(c) An individual incorporated as a corporation; 418

(d) An officer of a nonprofit corporation, as defined in 419
section 1702.01 of the Revised Code, who volunteers the person's 420
services as ~~a~~an officer; 421

(e) An individual who otherwise is an employee of an 422
employer but who signs the waiver and affidavit specified in 423
section 4123.15 of the Revised Code on the condition that the 424
administrator has granted a waiver and exception to the 425
individual's employer under section 4123.15 of the Revised Code; 426

(f) An illegal alien or an unauthorized alien. 427

Any employer may elect to include as an "employee" within 428
this chapter, any person excluded from the definition of 429
"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 430
this section in accordance with rules adopted by the 431
administrator, with the advice and consent of the bureau of 432
workers' compensation board of directors. If an employer is a 433
partnership, sole proprietorship, individual incorporated as a 434
corporation, or family farm corporation, such employer may elect 435
to include as an "employee" within this chapter, any member of 436
such partnership, the owner of the sole proprietorship, the 437
individual incorporated as a corporation, or the officers of the 438
family farm corporation. Nothing in this section shall prohibit 439
a partner, sole proprietor, or any person excluded from the 440
definition of "employee" pursuant to division (A) (2) (a), (b), 441
(c), or (e) of this section from electing to be included as an 442
"employee" under this chapter in accordance with rules adopted 443
by the administrator, with the advice and consent of the board. 444

In the event of an election, the employer or person 445
electing coverage shall serve upon the bureau of workers' 446
compensation written notice naming the person to be covered and 447
include the person's remuneration for premium purposes in all 448
future payroll reports. No partner, sole proprietor, or person 449
excluded from the definition of "employee" pursuant to division 450
(A) (2) (a), (b), (c), or (e) of this section, shall receive 451
benefits or compensation under this chapter until the bureau 452
receives written notice of the election permitted by this 453
section. 454

For informational purposes only, the bureau shall 455
prescribe such language as it considers appropriate, on such of 456
its forms as it considers appropriate, to advise employers of 457
their right to elect to include as an "employee" within this 458

chapter a sole proprietor, any member of a partnership, or a 459
person excluded from the definition of "employee" under division 460
(A) (2) (a), (b), (c), or (e) of this section, that they should 461
check any health and disability insurance policy, or other form 462
of health and disability plan or contract, presently covering 463
them, or the purchase of which they may be considering, to 464
determine whether such policy, plan, or contract excludes 465
benefits for illness or injury that they might have elected to 466
have covered by workers' compensation. 467

(B) "Employer" means: 468

(1) The state, including state hospitals, each county, 469
municipal corporation, township, school district, and hospital 470
owned by a political subdivision or subdivisions other than the 471
state; 472

(2) Every person, firm, professional employer 473
organization, and private corporation, including any public 474
service corporation, that (a) has in service one or more 475
employees or shared employees regularly in the same business or 476
in or about the same establishment under any contract of hire, 477
express or implied, oral or written, or (b) is bound by any such 478
contract of hire or by any other written contract, to pay into 479
the insurance fund the premiums provided by this chapter. 480

All such employers are subject to this chapter. Any member 481
of a firm or association, who regularly performs manual labor in 482
or about a mine, factory, or other establishment, including a 483
household establishment, shall be considered an employee in 484
determining whether such person, firm, or private corporation, 485
or public service corporation, has in its service, one or more 486
employees and the employer shall report the income derived from 487
such labor to the bureau as part of the payroll of such 488

employer, and such member shall thereupon be entitled to all the 489
benefits of an employee. 490

(C) "Injury" includes any injury, whether caused by 491
external accidental means or accidental in character and result, 492
received in the course of, and arising out of, the injured 493
employee's employment. "Injury" does not include: 494

(1) Psychiatric conditions except where the claimant's 495
psychiatric conditions have arisen from an injury or 496
occupational disease sustained by that claimant or where the 497
claimant's psychiatric conditions have arisen from sexual 498
conduct in which the claimant was forced by threat of physical 499
harm to engage or participate; 500

(2) Injury or disability caused primarily by the natural 501
deterioration of tissue, an organ, or part of the body; 502

(3) Injury or disability incurred in voluntary 503
participation in an employer-sponsored recreation or fitness 504
activity if the employee signs a waiver of the employee's right 505
to compensation or benefits under this chapter prior to engaging 506
in the recreation or fitness activity; 507

(4) A condition that pre-existed an injury unless that 508
pre-existing condition is substantially aggravated by the 509
injury. Such a substantial aggravation must be documented by 510
objective diagnostic findings, objective clinical findings, or 511
objective test results. Subjective complaints may be evidence of 512
such a substantial aggravation. However, subjective complaints 513
without objective diagnostic findings, objective clinical 514
findings, or objective test results are insufficient to 515
substantiate a substantial aggravation. 516

(D) "Child" includes a posthumous child and a child 517

legally adopted prior to the injury. 518

(E) "Family farm corporation" means a corporation founded 519
for the purpose of farming agricultural land in which the 520
majority of the voting stock is held by and the majority of the 521
stockholders are persons or the spouse of persons related to 522
each other within the fourth degree of kinship, according to the 523
rules of the civil law, and at least one of the related persons 524
is residing on or actively operating the farm, and none of whose 525
stockholders are a corporation. A family farm corporation does 526
not cease to qualify under this division where, by reason of any 527
devise, bequest, or the operation of the laws of descent or 528
distribution, the ownership of shares of voting stock is 529
transferred to another person, as long as that person is within 530
the degree of kinship stipulated in this division. 531

(F) "Occupational disease" means a disease contracted in 532
the course of employment, which by its causes and the 533
characteristics of its manifestation or the condition of the 534
employment results in a hazard which distinguishes the 535
employment in character from employment generally, and the 536
employment creates a risk of contracting the disease in greater 537
degree and in a different manner from the public in general. 538

(G) "Self-insuring employer" means an employer who is 539
granted the privilege of paying compensation and benefits 540
directly under section 4123.35 of the Revised Code, including a 541
board of county commissioners for the sole purpose of 542
constructing a sports facility as defined in section 307.696 of 543
the Revised Code, provided that the electors of the county in 544
which the sports facility is to be built have approved 545
construction of a sports facility by ballot election no later 546
than November 6, 1997. 547

(H) "Private employer" means an employer as defined in 548
division (B) (2) of this section. 549

(I) "Professional employer organization" has the same 550
meaning as in section 4125.01 of the Revised Code. 551

(J) "Public employer" means an employer as defined in 552
division (B) (1) of this section. 553

(K) "Sexual conduct" means vaginal intercourse between a 554
male and female; anal intercourse, fellatio, and cunnilingus 555
between persons regardless of gender; and, without privilege to 556
do so, the insertion, however slight, of any part of the body or 557
any instrument, apparatus, or other object into the vaginal or 558
anal cavity of another. Penetration, however slight, is 559
sufficient to complete vaginal or anal intercourse. 560

(L) "Other-states' insurer" means an insurance company 561
that is authorized to provide workers' compensation insurance 562
coverage in any of the states that permit employers to obtain 563
insurance for workers' compensation claims through insurance 564
companies. 565

(M) "Other-states' coverage" means both of the following: 566

(1) Insurance coverage secured by an eligible employer for 567
workers' compensation claims of employees who are in employment 568
relationships localized in a state other than this state or 569
those employees' dependents; 570

(2) Insurance coverage secured by an eligible employer for 571
workers' compensation claims that arise in a state other than 572
this state where an employer elects to obtain coverage through 573
either the administrator or an other-states' insurer. 574

(N) "Limited other-states coverage" means insurance 575

coverage provided by the administrator to an eligible employer 576
for workers' compensation claims of employees who are in an 577
employment relationship localized in this state but are 578
temporarily working in a state other than this state, or those 579
employees' dependents. 580

(O) "Illegal alien" means an alien who is deportable if 581
apprehended because of one of the following: 582

(1) The alien entered the United States illegally without 583
the proper authorization and documents. 584

(2) The alien once entered the United States legally and 585
has since violated the terms of the status under which the alien 586
entered the United States, making that alien an "out of status" 587
alien. 588

(3) The alien once entered the United States legally but 589
has overstayed the time limits of the original legal status. 590

(P) "Unauthorized alien" means an alien who is not 591
authorized to be employed as determined in accordance with 592
section 101(a) of the "Immigration Reform and Control Act of 593
1986," 100 Stat. 3360, 8 U.S.C. 1324a. 594

Sec. 4123.511. (A) Within seven days after receipt of any 595
claim under this chapter, the bureau of workers' compensation 596
shall notify the claimant and the employer of the claimant of 597
the receipt of the claim and of the facts alleged therein. If 598
the bureau receives from a person other than the claimant 599
written or facsimile information or information communicated 600
verbally over the telephone indicating that an injury or 601
occupational disease has occurred or been contracted which may 602
be compensable under this chapter, the bureau shall notify the 603
employee and the employer of the information. If the information 604

is provided verbally over the telephone, the person providing 605
the information shall provide written verification of the 606
information to the bureau according to division (E) of section 607
4123.84 of the Revised Code. The receipt of the information in 608
writing or facsimile, or if initially by telephone, the 609
subsequent written verification, and the notice by the bureau 610
shall be considered an application for compensation under 611
section 4123.84 or 4123.85 of the Revised Code, provided that 612
the conditions of division (E) of section 4123.84 of the Revised 613
Code apply to information provided verbally over the telephone. 614
Upon receipt of a claim, the bureau shall advise the claimant of 615
the claim number assigned and the claimant's right to 616
representation in the processing of a claim or to elect no 617
representation. ~~If~~ 618

To be considered eligible for compensation or benefits 619
paid under this chapter or Chapter 4121., 4127., or 4131. of the 620
Revised Code other than medical benefits as described in section 621
4123.66 of the Revised Code, the claimant shall submit to the 622
administrator of workers' compensation a signed attestation that 623
the claimant is an eligible "employee" as that term is defined 624
in section 4123.01 of the Revised Code or, if the claimant is a 625
dependent of an individual who died as a result of suffering an 626
injury or contracting an occupational disease, that the 627
individual who is the subject of the claim was such an employee. 628
The administrator shall not pay compensation or benefits, other 629
than medical benefits described in section 4123.66 of the 630
Revised Code, unless the administrator receives the signed 631
attestation. The administrator, if the administrator has reason 632
to believe that a submitted attestation is not valid, may 633
request the claimant to submit proof to the administrator that 634
the attestation is valid. The administrator shall make the 635

request in writing and shall state in the request the type of 636
proof necessary to determine validity and the date by which the 637
claimant shall submit the proof. If a claimant fails to comply 638
with the request, the administrator shall deny the claim for 639
compensation or benefits other than medical benefits and the 640
claimant is barred from refiling that claim for compensation or 641
benefits. A denial of a claim for compensation or benefits for 642
failing to comply with the written request may be appealed under 643
this section and section 4123.512 of the Revised Code. In the 644
event a claimant provides a signed attestation required under 645
this division and it is later determined that the claimant is or 646
the deceased individual who is the subject of the claim was an 647
illegal or unauthorized alien, the claimant shall be subject to 648
prosecution for a violation of section 2913.48 of the Revised 649
Code. 650

If the bureau determines that a claim is determined to be 651
a compensable lost-time claim, the bureau shall notify the 652
claimant and the employer of the availability of rehabilitation 653
services. No bureau or industrial commission employee shall 654
directly or indirectly convey any information in derogation of 655
this right. This section shall in no way abrogate the bureau's 656
responsibility to aid and assist a claimant in the filing of a 657
claim and to advise the claimant of the claimant's rights under 658
the law. 659

The administrator ~~of workers' compensation~~ shall assign 660
all claims and investigations to the bureau service office from 661
which investigation and determination may be made most 662
expeditiously. 663

The bureau shall investigate the facts concerning an 664
injury or occupational disease and ascertain such facts in 665

whatever manner is most appropriate and may obtain statements of 666
the employee, employer, attending physician, and witnesses in 667
whatever manner is most appropriate. 668

The administrator, with the advice and consent of the 669
bureau of workers' compensation board of directors, may adopt 670
rules that identify specified medical conditions that have a 671
historical record of being allowed whenever included in a claim. 672
The administrator may grant immediate allowance of any medical 673
condition identified in those rules upon the filing of a claim 674
involving that medical condition and may make immediate payment 675
of medical bills for any medical condition identified in those 676
rules that is included in a claim. If an employer contests the 677
allowance of a claim involving any medical condition identified 678
in those rules, and the claim is disallowed, payment for the 679
medical condition included in that claim shall be charged to and 680
paid from the surplus fund account created under section 4123.34 681
of the Revised Code. 682

(B) (1) Except as provided in division (B) (2) of this 683
section, in claims other than those in which the employer is a 684
self-insuring employer, if the administrator determines under 685
division (A) of this section that a claimant is or is not 686
entitled to an award of compensation or benefits, the 687
administrator shall issue an order no later than twenty-eight 688
days after the sending of the notice under division (A) of this 689
section, granting or denying the payment of the compensation or 690
benefits, or both as is appropriate to the claimant. 691
Notwithstanding the time limitation specified in this division 692
for the issuance of an order, if a medical examination of the 693
claimant is required by statute, the administrator promptly 694
shall schedule the claimant for that examination and shall issue 695
an order no later than twenty-eight days after receipt of the 696

report of the examination. The administrator shall notify the
claimant and the employer of the claimant and their respective
representatives in writing of the nature of the order and the
amounts of compensation and benefit payments involved. The
employer or claimant may appeal the order pursuant to division
(C) of this section within fourteen days after the date of the
receipt of the order. The employer and claimant may waive, in
writing, their rights to an appeal under this division.

(2) Notwithstanding the time limitation specified in
division (B) (1) of this section for the issuance of an order, if
the employer certifies a claim for payment of compensation or
benefits, or both, to a claimant, and the administrator has
completed the investigation of the claim, the payment of
benefits or compensation, or both, as is appropriate, shall
commence upon the later of the date of the certification or
completion of the investigation and issuance of the order by the
administrator, provided that the administrator shall issue the
order no later than the time limitation specified in division
(B) (1) of this section.

(3) If an appeal is made under division (B) (1) or (2) of
this section, the administrator shall forward the claim file to
the appropriate district hearing officer within seven days of
the appeal. In contested claims other than state fund claims,
the administrator shall forward the claim within seven days of
the administrator's receipt of the claim to the industrial
commission, which shall refer the claim to an appropriate
district hearing officer for a hearing in accordance with
division (C) of this section.

(C) If an employer or claimant timely appeals the order of
the administrator issued under division (B) of this section or

in the case of other contested claims other than state fund 727
claims, the commission shall refer the claim to an appropriate 728
district hearing officer according to rules the commission 729
adopts under section 4121.36 of the Revised Code. The district 730
hearing officer shall notify the parties and their respective 731
representatives of the time and place of the hearing. 732

The district hearing officer shall hold a hearing on a 733
disputed issue or claim within forty-five days after the filing 734
of the appeal under this division and issue a decision within 735
seven days after holding the hearing. The district hearing 736
officer shall notify the parties and their respective 737
representatives in writing of the order. Any party may appeal an 738
order issued under this division pursuant to division (D) of 739
this section within fourteen days after receipt of the order 740
under this division. 741

(D) Upon the timely filing of an appeal of the order of 742
the district hearing officer issued under division (C) of this 743
section, the commission shall refer the claim file to an 744
appropriate staff hearing officer according to its rules adopted 745
under section 4121.36 of the Revised Code. The staff hearing 746
officer shall hold a hearing within forty-five days after the 747
filing of an appeal under this division and issue a decision 748
within seven days after holding the hearing under this division. 749
The staff hearing officer shall notify the parties and their 750
respective representatives in writing of the staff hearing 751
officer's order. Any party may appeal an order issued under this 752
division pursuant to division (E) of this section within 753
fourteen days after receipt of the order under this division. 754

(E) Upon the filing of a timely appeal of the order of the 755
staff hearing officer issued under division (D) of this section, 756

the commission or a designated staff hearing officer, on behalf 757
of the commission, shall determine whether the commission will 758
hear the appeal. If the commission or the designated staff 759
hearing officer decides to hear the appeal, the commission or 760
the designated staff hearing officer shall notify the parties 761
and their respective representatives in writing of the time and 762
place of the hearing. The commission shall hold the hearing 763
within forty-five days after the filing of the notice of appeal 764
and, within seven days after the conclusion of the hearing, the 765
commission shall issue its order affirming, modifying, or 766
reversing the order issued under division (D) of this section. 767
The commission shall notify the parties and their respective 768
representatives in writing of the order. If the commission or 769
the designated staff hearing officer determines not to hear the 770
appeal, within fourteen days after the expiration of the period 771
in which an appeal of the order of the staff hearing officer may 772
be filed as provided in division (D) of this section, the 773
commission or the designated staff hearing officer shall issue 774
an order to that effect and notify the parties and their 775
respective representatives in writing of that order. 776

Except as otherwise provided in this chapter and Chapters 777
4121., 4127., and 4131. of the Revised Code, any party may 778
appeal an order issued under this division to the court pursuant 779
to section 4123.512 of the Revised Code within sixty days after 780
receipt of the order, subject to the limitations contained in 781
that section. 782

(F) Every notice of an appeal from an order issued under 783
divisions (B), (C), (D), and (E) of this section shall state the 784
names of the claimant and employer, the number of the claim, the 785
date of the decision appealed from, and the fact that the 786
appellant appeals therefrom. 787

(G) All of the following apply to the proceedings under 788
divisions (C), (D), and (E) of this section: 789

(1) The parties shall proceed promptly and without 790
continuances except for good cause; 791

(2) The parties, in good faith, shall engage in the free 792
exchange of information relevant to the claim prior to the 793
conduct of a hearing according to the rules the commission 794
adopts under section 4121.36 of the Revised Code; 795

(3) The administrator is a party and may appear and 796
participate at all administrative proceedings on behalf of the 797
state insurance fund. However, in cases in which the employer is 798
represented, the administrator shall neither present arguments 799
nor introduce testimony that is cumulative to that presented or 800
introduced by the employer or the employer's representative. The 801
administrator may file an appeal under this section on behalf of 802
the state insurance fund; however, except in cases arising under 803
section 4123.343 of the Revised Code, the administrator only may 804
appeal questions of law or issues of fraud when the employer 805
appears in person or by representative. 806

(H) Except as provided in section 4121.63 of the Revised 807
Code and division (K) of this section, payments of compensation 808
to a claimant or on behalf of a claimant as a result of any 809
order issued under this chapter shall commence upon the earlier 810
of the following: 811

(1) Fourteen days after the date the administrator issues 812
an order under division (B) of this section, unless that order 813
is appealed; 814

(2) The date when the employer has waived the right to 815
appeal a decision issued under division (B) of this section; 816

(3) If no appeal of an order has been filed under this 817
section or to a court under section 4123.512 of the Revised 818
Code, the expiration of the time limitations for the filing of 819
an appeal of an order; 820

(4) The date of receipt by the employer of an order of a 821
district hearing officer, a staff hearing officer, or the 822
industrial commission issued under division (C), (D), or (E) of 823
this section. 824

(I) Except as otherwise provided in division (B) of 825
section 4123.66 of the Revised Code, payments of medical 826
benefits payable under this chapter or Chapter 4121., 4127., or 827
4131. of the Revised Code shall commence upon the earlier of the 828
following: 829

(1) The date of the issuance of the staff hearing 830
officer's order under division (D) of this section; 831

(2) The date of the final administrative or judicial 832
determination. 833

(J) The administrator shall charge the compensation 834
payments made in accordance with division (H) of this section or 835
medical benefits payments made in accordance with division (I) 836
of this section to an employer's experience immediately after 837
the employer has exhausted the employer's administrative appeals 838
as provided in this section or has waived the employer's right 839
to an administrative appeal under division (B) of this section, 840
subject to the adjustment specified in division (H) of section 841
4123.512 of the Revised Code. 842

(K) Upon the final administrative or judicial 843
determination under this section or section 4123.512 of the 844
Revised Code of an appeal of an order to pay compensation, if a 845

claimant is found to have received compensation pursuant to a 846
prior order which is reversed upon subsequent appeal, the 847
claimant's employer, if a self-insuring employer, or the bureau, 848
shall withhold from any amount to which the claimant becomes 849
entitled pursuant to any claim, past, present, or future, under 850
Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the 851
amount of previously paid compensation to the claimant which, 852
due to reversal upon appeal, the claimant is not entitled, 853
pursuant to the following criteria: 854

(1) No withholding for the first twelve weeks of temporary 855
total disability compensation pursuant to section 4123.56 of the 856
Revised Code shall be made; 857

(2) Forty per cent of all awards of compensation paid 858
pursuant to sections 4123.56 and 4123.57 of the Revised Code, 859
until the amount overpaid is refunded; 860

(3) Twenty-five per cent of any compensation paid pursuant 861
to section 4123.58 of the Revised Code until the amount overpaid 862
is refunded; 863

(4) If, pursuant to an appeal under section 4123.512 of 864
the Revised Code, the court of appeals or the supreme court 865
reverses the allowance of the claim, then no amount of any 866
compensation will be withheld. 867

The administrator and self-insuring employers, as 868
appropriate, are subject to the repayment schedule of this 869
division only with respect to an order to pay compensation that 870
was properly paid under a previous order, but which is 871
subsequently reversed upon an administrative or judicial appeal. 872
The administrator and self-insuring employers are not subject 873
to, but may utilize, the repayment schedule of this division, or 874

any other lawful means, to collect payment of compensation made 875
to a person who was not entitled to the compensation due to 876
fraud as determined by the administrator or the industrial 877
commission. 878

(L) If a staff hearing officer or the commission fails to 879
issue a decision or the commission fails to refuse to hear an 880
appeal within the time periods required by this section, 881
payments to a claimant shall cease until the staff hearing 882
officer or commission issues a decision or hears the appeal, 883
unless the failure was due to the fault or neglect of the 884
employer or the employer agrees that the payments should 885
continue for a longer period of time. 886

(M) Except as otherwise provided in this section or 887
section 4123.522 of the Revised Code, no appeal is timely filed 888
under this section unless the appeal is filed with the time 889
limits set forth in this section. 890

(N) No person who is not an employee of the bureau or 891
commission or who is not by law given access to the contents of 892
a claims file shall have a file in the person's possession. 893

(O) Upon application of a party who resides in an area in 894
which an emergency or disaster is declared, the industrial 895
commission and hearing officers of the commission may waive the 896
time frame within which claims and appeals of claims set forth 897
in this section must be filed upon a finding that the applicant 898
was unable to comply with a filing deadline due to an emergency 899
or a disaster. 900

As used in this division: 901

(1) "Emergency" means any occasion or instance for which 902
the governor of Ohio or the president of the United States 903

publicly declares an emergency and orders state or federal 904
assistance to save lives and protect property, the public health 905
and safety, or to lessen or avert the threat of a catastrophe. 906

(2) "Disaster" means any natural catastrophe or fire, 907
flood, or explosion, regardless of the cause, that causes damage 908
of sufficient magnitude that the governor of Ohio or the 909
president of the United States, through a public declaration, 910
orders state or federal assistance to alleviate damage, loss, 911
hardship, or suffering that results from the occurrence. 912

Sec. 4123.513. (A) Except as otherwise provided in 913
divisions (B) and (C) of this section, if a claim is denied 914
because the claimant is an unauthorized alien, or if the 915
claimant is a dependent of an individual who died as a result of 916
suffering an injury or contracting an occupational disease, that 917
individual was an unauthorized alien, the claimant's employer or 918
the individual's employer is not liable to that claimant for 919
damages suffered by reason of personal injury sustained or 920
occupational disease contracted in the course of employment 921
caused by the wrongful act or omission or neglect of the 922
employer. For such a claimant, filing a claim under Chapter 923
4121., 4123., 4127., or 4131. of the Revised Code is the 924
exclusive remedy against the employer on account of injury, 925
disease, or death in the course of and arising out of the 926
claimant's or deceased employee's employment. Notwithstanding 927
section 4123.77 of the Revised Code and except as provided in 928
division (B) of this section, an irrebuttable presumption exists 929
that the individual assumed the risk of incurring an injury or 930
contracting an occupational disease at the workplace, or dying 931
as a result of such an injury or occupational disease, when 932
performing services or providing labor for that employer. 933

(B) An employer is liable to a claimant whose claim is 934
denied because the claimant is an unauthorized alien or the 935
deceased individual who is the subject of the claim was an 936
unauthorized alien for damages suffered by reason of personal 937
injury sustained or occupational disease contracted in the 938
course of employment caused by the wrongful act or omission or 939
neglect of the employer if the claimant establishes, by clear 940
and convincing evidence, that the employer employed the claimant 941
or the deceased individual knowing that the claimant or deceased 942
individual was not authorized to work under section 101(a) of 943
the "Immigration Reform and Control Act of 1986," 100 Stat. 944
3360, 8 U.S.C. 1324a, on the date the claimant or deceased 945
individual suffered the injury or contracted the occupational 946
disease. An employer may not assert any of the common law 947
defenses listed in section 4123.77 of the Revised Code in an 948
action brought against the employer pursuant to this section. 949

(C) Nothing in this section shall be construed to prevent 950
a claimant whose claim is denied because the claimant is or the 951
deceased individual who is the subject of the claim was an 952
unauthorized alien from bringing a claim against an employer in 953
a court of competent jurisdiction for an intentional tort 954
allegedly committed by the employer against the claimant or 955
deceased individual who was the subject of the claim. 956

Section 2. That existing sections 2743.02, 2744.02, 957
4123.01, and 4123.511 of the Revised Code are hereby repealed. 958

Section 3. This act applies to claims arising on or after 959
the effective date of this act. 960