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Ohio Revised Code

Title [41] XLI LABOR AND INDUSTRY

Chapter 4123: WORKERS' COMPENSATION

4123.01 Workers' compensation definitions.

As used in this chapter:

(A)

(1) "Employee" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (xiii) The person's expenses are paid for by the other contracting party;
- (xiv) The person's tools and materials are furnished by the other contracting party;
- (xv) The person is provided with the facilities used to perform services;
- (xvi) The person does not realize a profit or suffer a loss as a result of the services provided;
- (xvii) The person is not performing services for a number of employers at the same time;
- (xviii) The person does not make the same services available to the general public;
- (xix) The other contracting party has a right to discharge the person;
- (xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.

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

(2) "Employee" does not mean:

- (a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;
- (b) Any officer of a family farm corporation;
- (c) An individual incorporated as a corporation; or
- (d) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the

administrator has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code.

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

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

(B) "Employer" means:

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

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

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

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

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

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

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

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

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

(E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the 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)(2) of this section.

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

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

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

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

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

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

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

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

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 08-01-2003; 11-05-2004; 2006 SB7 10-11-2006; 2008 SB334 09-11-2008

4123.02 Policemen and firemen excepted.

This chapter does not apply to policemen or firemen in municipal corporations where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds established and maintained by a municipal corporation, unless the amount of the pension funds provided by the municipal corporation through taxation and paid to the policemen or firemen is less than they would have received if the municipal corporation had no pension fund. In such event policemen and firemen shall receive the regular state compensation for policemen and firemen in municipal corporations where no pension funds have been created, less the sum received by the policemen or firemen from the pension funds provided by the municipal corporation through taxation. The sum paid from the pension fund shall be certified to the bureau of workers' compensation by the treasurer or other officer controlling the pension fund.

Effective Date: 11-03-1989

4123.021 State active duty defined.

As used in sections 4123.021 to 4123.024, inclusive, of the Revised Code:

"State active duty" means that status attaching to a member of the Ohio organized militia performing duty ordered by competent state authority, for which duty status injury and

occupational disease benefits are not otherwise provided by act of the congress of the United States or executive regulations of the United States.

Effective Date: 09-16-1963

4123.022 Employment status while on active duty.

Every member of the Ohio organized militia as defined in section 5923.01 of the Revised Code shall, when called to state active duty, be in the employment of the state for the purposes of sections 4123.01 to 4123.94, inclusive, and 4123.99 of the Revised Code.

Effective Date: 11-02-1959

4123.023 Benefits for members of organized militia.

For the purpose of determining benefits accruing under section 4123.57 of the Revised Code, a member of the Ohio organized militia shall qualify for maximum benefits provided for workers and employees under sections 4123.01 to 4123.60, inclusive, 4123.62 to 4123.94, inclusive, and 4123.99 of the Revised Code.

Effective Date: 11-02-1959

4123.024 Administrative and other costs to be paid from state insurance fund.

Sections 4123.021 to 4123.024 and 4123.031 to 4123.037 of the Revised Code shall be administered by the bureau of workers' compensation. Administrative and other costs, including awards of benefits and compensation, whether lump sum or recurring payments, shall be disbursed from the state insurance fund.

At the end of each six months of each fiscal year, the administrator of workers' compensation shall certify to the adjutant general the amounts paid for compensation and benefits for accidental injuries and death compensable pursuant to sections 4123.021 to 4123.024 and 4123.031 to 4123.037 of the Revised Code and for costs of administration.

Effective Date: 11-03-1989

4123.025 Benefits for one killed performing request or order of a duly authorized public official.

Any person, other than those covered by section 4123.03 of the Revised Code, who is injured, and the dependents of a deceased employee who is killed as the direct result of performing any act at the request or order of a duly authorized public official of the state, or any institution or agency thereof, or any political subdivision thereof, including a county, township, or municipal corporation, in time of emergency shall be entitled to all the benefits of Chapter 4123. of the Revised Code. Any payments made from the state insurance fund pursuant to this section shall be charged to the surplus fund as created by division (B) of section 4123.34 of the Revised Code, in order to encourage participation of all persons in times of emergency.

Effective Date: 11-16-1973

4123.026 Costs of post-exposure medical diagnostic services after peace officer, firefighter, or emergency medical worker's exposure to blood or other body fluid.

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

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

(2) A puncture in the skin;

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

(B) As used in this section:

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

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

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

Effective Date: 03-14-2003

4123.03 Employees performing special services for the state or a political subdivision.

If the state or any political subdivision thereof, including any county, township, municipal corporation, school district, and any institution or agency of the state, employs, enlists, recruits, solicits, or otherwise secures the services of any organization, association, or group of persons and the members thereof, including volunteer firemen, and auxiliary policemen and patrolmen, the individual members of which are not, by reason of such service, employees as defined in division (A)(1) of section 4123.01 of the Revised Code, or if the state or any political subdivision thereof desires to secure workers' compensation coverage in respect of any volunteer fireman, policeman, deputy sheriff, marshal or deputy marshal, constable, or other person in its service in the event of the injury, disease, or death of such person while engaged in activities called for by his position but not such as would entitle the person to compensation as an employee as so defined, subject to the limitations contained in section 4123.02 of the Revised Code, the state or the political subdivision may contract with the bureau of workers' compensation for coverage of such persons under this chapter, while in the performance of such service. The contract shall contain provisions for the determination of premiums, average weekly wages or their equivalent, the identity of the persons covered, and such other provisions as are necessary in each case to establish or define the risk and determine claims arising thereunder. Payment of premiums by the state or a political subdivision shall be made in the same manner as is provided with respect to workers' compensation premiums payable by the state or a political subdivision and at the times as provided by the contract. Upon execution of a contract, the persons covered thereby are entitled to the same benefits, payable from the public insurance fund, which are accorded to employees as defined in division (A) of section 4123.01 of the Revised Code.

For the purpose of statistical and like information, the bureau shall keep a separate record of the experience of the individual risks and groups of similar risks under such contracts.

Effective Date: 10-20-1993

4123.031 Emergency management worker definitions.

As used in sections 4123.031 to 4123.037 of the Revised Code:

(A) "Emergency management worker" means anyone who has been duly registered for service pursuant to section 5502.34 of the Revised Code, in connection with the development, maintenance, and operation of any state or local emergency management agency authorized by law and who has met the minimum requirements as set forth in sections 4123.031 to 4123.037 of the Revised Code, or who has been duly registered as an emergency management worker pursuant to section 5502.34 of the Revised Code during a disaster and the emergency thereby created.

(B) "Emergency management," "disaster," and "emergency" have the same meanings as in section 5502.21 of the Revised Code.

Effective Date: 10-29-1995

4123.032 Benefits for emergency management workers.

Every emergency management worker shall, with respect to the performance of his duties as such emergency management worker, be in the employment of the state or political subdivision for purposes of sections 4123.01 to 4123.94 of the Revised Code, and every emergency management worker or, in case of death, his dependents shall be entitled to the benefits payable on account of total disability, loss of member, or death as accorded by such sections to employees covered by its provisions. No payment for such disability, loss of member, or death shall be made unless a claim is filed within one year of the date of the accidental injury causing the total disability, loss of member, or death. If an injury claim is filed within the said one year period and the claimant subsequently dies, his dependents shall file any death claim based on such injury within six months after the death or be forever barred.

Effective Date: 09-29-1994

4123.033 Compensation for accidental injury while performing emergency management duties.

Any emergency management worker who suffers an accidental injury while performing emergency management duties, as defined herein, shall be compensated for any total disability or loss of member and his dependents shall be compensated for any death resulting from such

an injury on the same basis as provided for workers, employees, and their dependents under sections 4123.01 to 4123.94 of the Revised Code.

This section shall not apply in the case of any person who is otherwise entitled, under sections 4123.01 to 4123.94 of the Revised Code, to receive workers' compensation benefits for such accidental injury or death.

Effective Date: 09-29-1994

4123.034 Unpaid emergency management workers qualify for maximum benefits.

For the purpose of determining benefits accruing under section 4123.033 of the Revised Code, an emergency management worker who receives no monetary compensation for emergency management services rendered shall qualify for maximum benefits applicable with respect to accidental injury or death provided for workers and employees under sections 4123.01 to 4123.94 of the Revised Code in the fiscal year applicable.

Effective Date: 09-29-1994

4123.035 Finality of decision as to emergency management claimants.

The decision of the industrial commission as to all facts, except questions of dependency and whether the accident occurred in the course of claimant's emergency management service, is final and any emergency management worker or his dependents claiming benefits under sections 4123.031 to 4123.037 of the Revised Code is not entitled to any appeal from such decision.

Effective Date: 09-29-1994

4123.036 Participation in emergency management benefits.

(A) An emergency management worker, in order to be included under sections 4123.031 to 4123.037 of the Revised Code, and to participate in the benefits thereof, shall be duly registered by the state or local emergency management agency making the registration pursuant to section 5502.34 of the Revised Code.

(B) Such emergency management worker shall have subscribed either to the loyalty oath administered under the provisions of section 5502.34 of the Revised Code, or to the federal

form of the loyalty oath administered under the provisions of Public Law No. 268, 82nd Congress.

(C) At the time the accident or event occurs for which a claim is made under sections 4123.01 to 4123.94 of the Revised Code, the emergency management worker shall have been acting in good faith in performing an emergency management duty, function, or act in connection with the development, training, maintenance, or operation of an emergency management agency under expressed or constructive instruction or orders of a duly appointed director or an authorized staff member of the state or local emergency management agency charged with the authority and responsibility for issuing such instructions or orders. To implement this requirement, a permanent record of all meetings, drills, tests, and participation in emergency management activities and ceremonies as well as operations under disaster emergency conditions, shall be maintained, and it is a condition precedent to recovery that any claimant under the provisions of sections 4123.031 to 4123.037 of the Revised Code, shall furnish a certified copy of the permanent record attesting to the participation of said claimant or of the individual whose participation forms the basis for the claim in the respective emergency management activity during or as a result of which a claim for injury or death is made.

(D) The written registration of such worker and a copy of the loyalty oath duly subscribed shall be filed with the state, local, municipal, township, county, area, or other authorized emergency management agency and shall be available for inspection at all reasonable times and for use in providing basic data necessary or required under the regulations pertaining to the filing of claims for workers' compensation.

Effective Date: 10-29-1995

4123.037 Loyalty oath for emergency management workers.

(A) Sections 4123.01 to 4123.94 of the Revised Code shall inure to the benefit of those emergency management workers who have previously complied with the minimum requirements as set forth in sections 4123.031 to 4123.036 of the Revised Code, including those who have executed either the state form of the loyalty oath under section 5502.34 of the Revised Code or the federal form of oath administered under the provisions of Public Law No. 268, 82nd Congress, insofar as the federal loyalty oath is concerned.

(B) Any person who has executed the federal oath under the provisions of Public Law No. 268, 82nd Congress prior to September 29, 1955, is considered to have complied with the

requirements for the execution of loyalty oath as required under sections 5502.21 to 5502.51 of the Revised Code.

Effective Date: 10-29-1995

4123.038 Apprentice definitions.

As used in this section and section 4123.039 of the Revised Code:

(A) "Apprentice" and "apprenticeship agreement" have the meaning defined in section 4111.25 of the Revised Code.

(B) "Related and supplemental instructions" means training offered, conducted, supervised, or given under the sponsorship of any joint apprenticeship committee or other sponsoring organization to apprentices, which training is given in addition to the approved schedule of work experience through employment, and which is to be credited towards the minimum hours of related and supplemental instructions required by section 4139.01 of the Revised Code.

(C) "Pre-apprentice" means a person who receives formal classroom training designed to provide the person with the basic education, attitudes, skills, trade knowledge, and motivation necessary to enter a formal apprenticeship program.

(D) "Entry-level trainee" means a person who possesses experience that would qualify the person as a journeyman but for the existence of certain other disqualifying conditions and who receives on-the-job training accompanied by classroom instruction outside of normal working hours.

(E) "Journeyman trainee" means a person with journeyman status in a given trade who receives classroom and laboratory training for the purpose of broadening the person's skills and acquainting the person with new techniques and ideas in the trade.

Effective Date: 07-01-2000

4123.039 Eligibility for benefits of apprentices.

For the purposes of sections 4123.038 and 4123.039 of the Revised Code, every apprentice with respect to his related and supplemental instructions, and every pre-apprentice, entry-level trainee, or journeyman trainee shall be in the employment of whichever of the following desires to secure workers' compensation in respect to the apprentice:

(A) A joint apprenticeship committee;

(B) Any sponsoring organization offering, conducting, supervising, or giving training to apprentices.

If any joint apprenticeship committee, or any other sponsoring organization offering, conducting, supervising, or giving training to apprentices, pre-apprentices, entry-level trainees, or journeyman trainees desires to secure workers' compensation coverage for those persons in the event of their injury, disease, or death while engaged in related training activities, but not such as would entitle them to compensation as an employee as defined in division (A) of section 4123.01 of the Revised Code, any joint apprenticeship committee, or other sponsoring organization may contract with the bureau of workers' compensation for coverage of those persons under this chapter, while in the performance of the related training activities. The contract shall contain provisions for the determination of premiums, average weekly wages or their equivalent, the identity of the persons covered, and other provisions as are necessary in each case to establish or define the risk and determine claims arising thereunder. Upon execution of a contract, the persons covered thereby are entitled to the same benefits, payable from the state insurance fund, which are accorded to employees as defined in division (A) of section 4123.01 of the Revised Code.

Effective Date: 11-03-1989

4123.04 Application to intrastate, interstate and foreign commerce.

This chapter applies to employers and their employees engaged in intrastate commerce and also in interstate and foreign commerce, for whom a rule of liability or method of compensation has been or may be established by congress, only to the extent that their mutual connection with intrastate work may be and is clearly separable and distinguishable from interstate or foreign commerce, and then only when such employer and any of his employees working only in this state, with the approval of the bureau of workers' compensation, and so far as not forbidden by any act of congress, voluntarily accept the provisions of this chapter by filing written acceptances, which, when filed with and approved by the bureau, subject the acceptors irrevocably to this chapter to all intents and purposes as if they had been originally included in its terms, during the periods for which the premiums provided in this chapter have been paid. Payment of premium shall be on the basis of the payroll of the employees who accept.

Effective Date: 10-20-1993

4123.05 Rules.

The bureau of workers' compensation shall adopt rules to regulate and provide for the kind and character of notices, and the services thereof, in cases of injury, occupational disease, or death resulting from either, to employees, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, and to establish the right to benefits or compensation from the state insurance fund, the forms of application of those claiming to be entitled to benefits or compensation, and the method of making investigations, physical examinations, and inspections. Nothing in this section shall be interpreted as affecting or limiting the rule-making authority of the industrial commission under this chapter or Chapter 4121. of the Revised Code.

Effective Date: 10-20-1993

4123.06 Rules regarding fees.

The industrial commission shall adopt rules concerning the payment of attorney's fees and shall protect parties against unfair fees. The commission shall fix the amount of fees in the event of a controversy in respect thereto. The commission and the bureau of workers' compensation shall prominently display in all areas of an office which claimants frequent a notice to the effect that the commission has statutory authority to resolve fee disputes. The commission shall adopt rules designed to prevent the solicitation of employment in the prosecution or defense of claims and make and adopt reasonable rules designed to promote the orderly and expeditious submission, hearing, and determination of claims and may inquire into the amounts of fees charged employers or claimants by attorneys, agents, or representatives for services in matters before the commission.

The commission shall set reasonable standards for those attorneys, agents, or representatives who practice before the bureau, district or staff hearing officers, or the commission.

With respect to payment of fees to attorneys for services in securing an award under section 4123.64 of the Revised Code, the commission shall:

- (A) Approve, disapprove, or modify applications for lump sum payment for attorney's fees;
- (B) Allow payment of a reasonable fee after review of the application;

(C) Require the attorney to disclose all fees received in obtaining the award under which the fee is requested and certify that the client is liable for no further fee with respect to continuing compensation, except if a later dispute arises in the claim requiring additional services;

(D) Require such supporting evidence as the commission deems necessary to justify any such application.

The commission shall suspend from practice before the bureau, district or staff hearing officers, or the commission for such period of time as the commission determines, or reprimand, as the nature of the offense warrants, representatives of claimants or employers who violate any reasonable rule the commission adopts under authority of law. If the commission suspends or reprimands any person admitted to practice law, the commission shall notify the Ohio state bar association and the bar association of the community in which the person resides of the action taken by the commission.

Before a representative is suspended or reprimanded, the commission or a person directly interested in the results of the services of a representative shall file written charges against him stating distinctly the grounds of complaint, and a copy thereof certified by the secretary of the commission, shall be served upon the representative. After service, the representative shall be allowed a reasonable time to appear and make a defense, introduce evidence, and be heard either in person or by counsel, or both.

If the commission makes an order to suspend or reprimand a representative, the order may be reviewed on appeal on questions of law in the supreme court, which may affirm or modify the order of the commission or dismiss the complaint. Appeal proceedings shall be filed in the supreme court within forty days after the order of the commission.

The commission may readmit any person suspended upon its own motion or upon the written application of the person suspended.

The head of the legal department of the commission shall make the investigations contemplated by this section and enforce this section and the rules adopted by the commission pursuant to this section. The commission shall assign to the head of the legal department one of its employees to assist in the administration and supervision of this section and of the rules adopted under this section.

Effective Date: 10-29-1995

4123.07 Bureau to prepare and furnish application forms.

The administrator of the bureau of workers' compensation shall prepare and furnish blank forms of application for benefits or compensation from the state insurance fund, reports of injury, disability or occupational disease, notices to employers and employees, proofs of injury, disease, disability or death, proofs of medical attendance and hospital and nursing care, and proofs of employment and wage earnings, and other necessary blanks, and shall provide in his rules for their preparation and distribution so that they may be readily available and so prepared that the furnishing of information required of any person with respect to any aspect of a claim shall not be delayed by a requirement that information with respect to another aspect of such claim shall be furnished on the form by the same or another person. Insured employers shall keep on hand a sufficient supply of such blanks.

Effective Date: 01-17-1977

4123.08 Powers of officers in administrative proceedings.

Each member of the industrial commission, and its deputies, supervisors, directors, and secretaries, appointed by the commission, and employees of the bureau of workers' compensation designated by the administrator of workers' compensation, may for the purposes contemplated by this chapter, administer oaths, certify to official acts, take testimony or depositions, conduct hearings, inquiries, and investigations, issue subpoenas, and compel the attendance of witnesses and the production of books, accounts, papers, records, documents, evidence, and testimony.

Effective Date: 11-03-1989

4123.09 Depositions.

In claims filed before the industrial commission or the bureau of workers' compensation by injured employees and the dependents of killed employees on account of injury or death sustained by such employees in the course of their employment, the commission and bureau may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for the taking of depositions in civil actions in the court of common pleas.

Effective Date: 11-03-1989

4123.10 Industrial commission not bound by rules of evidence.

The industrial commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as provided in sections 4123.01 to 4123.94, inclusive, of the Revised Code, but may make an investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of such sections.

Effective Date: 11-02-1959

4123.11 Stenographer's copy received in evidence.

A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the industrial commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation or of a particular witness, or of a specific part of such testimony, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor as provided for transcript in courts of common pleas.

Effective Date: 10-01-1953

4123.12 Attachment proceeding to compel obedience.

In case any person fails to comply with an order of the industrial commission or subpoena issued by the commission or its secretary or the bureau of workers' compensation, or any of their inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or if any person refuses to permit an inspection, the probate judge of the county in which the person resides, on application of any member of the commission or its secretary or the bureau, or any inspector, or examiner appointed by the bureau, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify therein.

Effective Date: 11-03-1989

4123.13 Fees of officers and witnesses.

Each officer who serves a subpoena issued under section 4123.08 of the Revised Code shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the industrial commission or its secretary or district or staff hearing officers, the administrator of workers' compensation, or any inspector or examiner of the commission or administrator, shall receive the fees and mileage provided for under section 119.094 of the Revised Code, which shall be paid from the state insurance fund on the approval of any two members of the commission, if the witness is subpoenaed by the commission or its secretary, district or staff hearing officer, inspector, or examiner, or on the approval of the administrator, if the witness is subpoenaed by the administrator or the administrator's inspector or examiner. No witness subpoenaed at the instance of a party other than the persons listed in this section is entitled to compensation under this section unless the administrator or commission certifies that the witness's testimony was material to the matter investigated.

Effective Date: 10-20-1993; 2008 HB525 07-01-2009

4123.14 [Repealed].

Effective Date: 10-20-1993

4123.15 Recognized religious sect employer may apply for exemption.

(A) An employer who is a member of a recognized religious sect or division of a recognized religious sect and who is an adherent of established tenets or teachings of that sect or division by reason of which the employer is conscientiously opposed to benefits to employers and employees from any public or private insurance that makes payment in the event of death, disability, impairment, old age, or retirement or makes payments toward the cost of, or provides services in connection with the payment for, medical services, including the benefits from any insurance system established by the "Social Security Act," 42 U.S.C.A. 301, et seq., may apply to the administrator of workers' compensation to be excepted from payment of premiums and other charges assessed under this chapter and Chapter 4121. of the Revised Code with respect to, or if the employer is a self-insuring employer, from payment of direct compensation and benefits to and assessments required by this chapter and Chapter 4121. of the Revised Code on account of, an individual employee who meets the requirements of this section. The employer shall make an application on forms provided by the bureau of workers' compensation which forms may be those used by or similar to those used by the United States internal revenue service for the purpose of granting an exemption from payment of social security taxes under 26 U.S.C.A. 1402(g) of the Internal Revenue Code, and shall include a

written waiver signed by the individual employee to be excepted from all the benefits and compensation provided in this chapter and Chapter 4121. of the Revised Code.

The application also shall include affidavits signed by the employer and the individual employee that the employer and the individual employee are members of a recognized religious sect or division of a recognized religious sect and are adherents of established tenets or teaching of that sect or division by reason of which the employer and the individual employee are conscientiously opposed to benefits to employers and employees received from any public or private insurance that makes payments in the event of death, disability, impairment, old age, or retirement or makes payments toward the cost of, or provides services in connection with the payment for, medical services, including the benefits from any insurance system established by the "Social Security Act," 42 U.S.C.A. 301, et seq. If the individual is a minor, the guardian of the minor shall complete the waiver and affidavit required by this division.

(B) The administrator shall grant the waiver and exception to the employer for a particular individual employee if the administrator finds that the employer and the individual employee are members of a sect or division having the established tenets or teachings described in division (A) of this section, that it is the practice, and has been for a substantial number of years, for members of the sect or division of the sect to make provision for their dependent members which, in the administrator's judgment, is reasonable in view of their general level of hiring, and that the sect or division of the sect has been in existence at all times since December 31, 1950.

(C) A waiver and exception under division (B) of this section is effective on the date the administrator grants the waiver and exception. An employer who complies with this chapter and the employer's other employees, with respect to an individual employee for whom the administrator grants the waiver and exception, are entitled, as to that individual employee and as to all injuries and occupational diseases of the individual employee that occurred prior to the effective date of the waiver and exception, to the protections of sections 4123.74 and 4123.741 of the Revised Code. On and after the effective date of the waiver and exception, the employer is not liable for the payment of any premiums or other charges assessed under this chapter or Chapter 4121. of the Revised Code, or if the individual is a self-insuring employer, the employer is not liable for the payment of any compensation or benefits directly or other charges assessed under this chapter or Chapter 4121. of the Revised Code in regard to that individual employee, and is considered a complying employer under those chapters, and the employer and the employer's other employees are entitled to the protections of sections 4123.74 and 4123.741 of the Revised Code, as to that individual

employee, and as to injuries and occupational diseases of that individual employee that occur on and after the effective date of the waiver and exception.

(D) A waiver and exception granted in regard to a specific employer and individual employee are valid for all future years unless the administrator determines that the employer, individual employee, or sect or division ceases to meet the requirements of this section. If the administrator makes this determination, the employer is liable for the payment of premiums and other charges assessed under this chapter and Chapter 4121. of the Revised Code, or if the employer is a self-insuring employer, the employer is liable for the payment of compensation and benefits directly and other charges assessed under those chapters, in regard to the individual employee for all injuries and occupational diseases of that individual that occur on and after the date of the administrator's determination, and the individual employee is entitled to all of the benefits and compensation provided in those chapters for an injury or occupational disease that occurs on or after the date of the administrator's determination.

Effective Date: 08-01-2003

4123.151 [Repealed].

Effective Date: 11-02-1959

4123.16 [Repealed].

Effective Date: 10-05-1955

4123.17 Amended and Renumbered RC 4121.37.

Effective Date: 01-17-1977

4123.18 [Repealed].

Effective Date: 10-05-1955

4123.181 [Repealed].

Effective Date: 07-27-1979

4123.19 Expenditures to establish rate classes - salaries and compensation paid by warrant.

The bureau of workers' compensation may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section 4123.29 of the Revised Code.

The salaries and compensation of all of the actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants of the bureau, and all other expenses of the bureau, including the premium to be paid for the bond to be furnished by the treasurer of state pursuant to section 4123.42 of the Revised Code, shall be paid out of the workers' compensation fund pursuant to warrants signed by the administrator of workers' compensation.

Effective Date: 10-20-1993

4123.20 Publication and distribution of classifications, rates, and rules of procedure.

The administrator of workers' compensation shall make available electronically to the public, its classifications, rates, rules, and rules of procedure, and shall furnish the same to any person upon request.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 11-03-1989

4123.21 Injunction shall not issue suspending or restraining actions.

No injunction shall issue suspending or restraining any order, classification, or rate adopted by the industrial commission or the bureau of workers' compensation, or any action of the auditor of state, treasurer of state, attorney general, or the county auditor or county treasurer of any county, required to be taken by them or any of them by this chapter. This section does not effect any right or defense in any action brought by the commission, the bureau, or the state in pursuance of authority contained in this chapter.

Effective Date: 11-03-1989

4123.22 Annual report.

The administrator of workers' compensation shall prepare and publish annually a complete report of the bureau of workers' compensation's and the industrial commission's operations for the preceding year. The annual report shall be submitted to the governor and shall be made

available to all employees, employers, and the general public upon request. As a part of its annual report the bureau shall make a report for the preceding fiscal year of the number of awards made by the commission, a general statement of the causes of accidents leading to the injuries for which awards were made, a general statement of the causes of occupational diseases for which awards were made, and a detailed statement of the condition of its respective funds. In such report, he may bring to the attention of the governor the diseases arising out of and due to industrial processes as he believes should be made compensable as occupational diseases.

The bureau may collate general information as to the business transacted by the bureau and commission as in its judgment is desirable for distribution to employers and employees.

Effective Date: 11-03-1989

4123.23 Inspection of books, records, and payrolls.

All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the bureau of workers' compensation, or any of its traveling auditors, inspectors, or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as is necessary for the uses and purposes of the bureau in its administration of the law.

Refusal on the part of any employer to submit his books, records, and payrolls for the inspection of the bureau or any traveling auditor, inspector, or assistant presenting written authority from the bureau shall subject the employer to a forfeiture of one hundred dollars for each offense, to be collected by civil action in the name of the state, and paid into the state insurance fund.

Effective Date: 11-03-1989

4123.24 Payroll to be kept.

Every employer amenable to this chapter shall keep, preserve, and maintain complete records showing in detail all expenditures for payroll and the division of such expenditures into the various divisions and classifications of the employer's business. The records shall be preserved for at least five years after the respective times of the transactions upon which the records are based.

All books, records, papers, and documents reflecting upon the amount and the classifications of the payroll expenditures of an employer shall be kept available for inspection at any time by the bureau of workers' compensation or any of its assistants, agents, representatives, or employees. If an employer fails to keep, preserve, and maintain the records and other information reflecting upon payroll expenditures, fails to make the records and information available for inspection, or fails to furnish to the bureau or any of its assistants, agents, representatives, or employees, full and complete information in reference to expenditures for payroll when the information is requested, the bureau may determine the amount of premium due from the employer upon such information as is available to it, and its findings are prima-facie evidence of the amount of premium due from the employer.

Effective Date: 11-03-1989

4123.25 Misrepresentation as to amount or classification of payroll or amount of compensation paid.

(A) No employer shall knowingly misrepresent to the bureau of workers' compensation the amount or classification of payroll upon which the premium under this chapter is based. Whoever violates this division shall be liable to the state in an amount determined by the administrator of workers' compensation for not more than ten times the amount of the difference between the premium paid and the amount the employer should have paid. The liability to the state under this division may be enforced in a civil action in the name of the state, and all sums collected under this division shall be paid into the state insurance fund.

(B) No self-insuring employer shall knowingly misrepresent the amount of paid compensation paid by such employer for purposes of the assessments provided under this chapter and Chapter 4121. of the Revised Code as required by section 4123.35 of the Revised Code. Whoever violates this division is liable to the state in an amount determined by the self-insuring employers evaluation board pursuant to division (C) of section 4123.352 of the Revised Code or for an amount the board determines that is not more than ten times the amount of the difference between the assessment paid and the amount of the assessment that should have been paid. The liability to the state under this division may be enforced in a civil action in the name of the state and all sums collected under this division shall be paid into the self-insurance assessment fund created pursuant to division (K) of section 4123.35 of the Revised Code.

(C) The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules establishing criteria for determining both of the following:

(1) The amount of the penalty assessed against an employer for a violation of division (A) of this section;

(2) Acts or omissions that do not constitute a violation of division (A) or (B) of this section.

Effective Date: 07-11-2001; 2007 HB100 09-10-2007

4123.26 Annual statement by employer - forfeiture.

(A) Every employer shall keep records of, and furnish to the bureau of workers' compensation upon request, all information required by the administrator of workers' compensation to carry out this chapter.

(B) Except as otherwise provided in division (C) of this section, every private employer employing one or more employees regularly in the same business, or in or about the same establishment, shall submit a payroll report to the bureau . Until the policy year commencing July 1, 2015, a private employer shall submit the payroll report in January of each year. For a policy year commencing on or after July 1, 2015, the employer shall submit the payroll report on or before August fifteenth of each year unless otherwise specified by the administrator in rules the administrator adopts. The employer shall include all of the following information in the payroll report, as applicable:

(1) For payroll reports submitted prior to July 1, 2015, the number of employees employed during the preceding year from the first day of January through the thirty-first day of December who are localized in this state;

(2) For payroll reports submitted on or after July 1, 2015, the number of employees localized in this state employed during the preceding policy year from the first day of July through the thirtieth day of June;

(3) The number of such employees localized in this state employed at each kind of employment and the aggregate amount of wages paid to such employees;

(4)

(a) If an employer elects to secure other-states' coverage or limited other-states' coverage pursuant to section 4123.292 of the Revised Code through either the administrator, if the administrator elects to offer such coverage, or an other-states' insurer the information

required under divisions (B)(1) to (3) of this section and any additional information required by the administrator in rules the administrator adopts, with the advice and consent of the bureau of workers' compensation board of directors, to allow the employer to secure other-states' coverage or limited other-states' coverage.

(5)

(a) In accordance with the rules adopted by the administrator pursuant to division (C) of section 4123.32 of the Revised Code, if the employer employs employees who are covered under the federal "Longshore and Harbor Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., and under this chapter and Chapter 4121. of the Revised Code, both of the following amounts:

(i) The amount of wages the employer pays to those employees when the employees perform labor and provide services for which the employees are eligible to receive compensation and benefits under the federal "Longshore and Harbor Workers' Compensation Act";

(ii) The amount of wages the employer pays to those employees when the employees perform labor and provide services for which the employees are eligible to receive compensation and benefits under this chapter and Chapter 4121. of the Revised Code.

(b) The allocation of wages identified by the employer pursuant to divisions (B)(5)(a)(i) and (ii) of this section shall not be presumed to be an indication of the law under which an employee is eligible to receive compensation and benefits.

(C) Beginning August 1, 2015, each employer that is recognized by the administrator as a professional employer organization shall submit a monthly payroll report containing the number of employees employed during the preceding calendar month, the number of those employees employed at each kind of employment, and the aggregate amount of wages paid to those employees.

(D) An employer described in division (B) of this section shall submit the payroll report required under this section to the bureau on a form prescribed by the bureau. The bureau may require that the information required to be furnished be verified under oath . The bureau or any person employed by the bureau for that purpose, may examine, under oath, any employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which the employer is required to furnish to the bureau.

(E) No private employer shall fail to furnish to the bureau the payroll report required by this section, nor shall any employer fail to keep records of or furnish such other information as may be required by the bureau under this section.

(F) The administrator may adopt rules setting forth penalties for failure to submit the payroll report required by this section, including but not limited to exclusion from alternative rating plans and discount programs.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 11-03-1989; 2008 SB334 09-11-2008; 2008 HB562 09-22-2008

4123.27 Use of and access to information provided by employers.

Information contained in the payroll report provided for in section 4123.26 of the Revised Code, and such other information as may be furnished to the bureau of workers' compensation by employers in pursuance of that section, is for the exclusive use and information of the bureau in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the bureau is a party to the action or proceeding . The information contained in the payroll report may be tabulated and published by the bureau in statistical form for the use and information of other state departments and the public. No person in the employ of the bureau, except those who are authorized by the administrator of workers' compensation, shall divulge any information secured by the person while in the employ of the bureau in respect to the transactions, property, claim files, records, or papers of the bureau or in respect to the business or mechanical, chemical, or other industrial process of any company, firm, corporation, person, association, partnership, or public utility to any person other than the administrator or to the superior of such employee of the bureau.

Notwithstanding the restrictions imposed by this section, the governor, select or standing committees of the general assembly, the auditor of state, the attorney general, or their designees, pursuant to the authority granted in this chapter and Chapter 4121. of the Revised Code, may examine any records, claim files, or papers in possession of the industrial commission or the bureau. They also are bound by the privilege that attaches to these papers.

The administrator shall report to the director of job and family services or to the county director of job and family services the name, address, and social security number or other identification number of any person receiving workers' compensation whose name or social

security number or other identification number is the same as that of a person required by a court or child support enforcement agency to provide support payments to a recipient or participant of public assistance, as that term is defined in section 5101.181 of the Revised Code, and whose name is submitted to the administrator by the director under section 5101.36 of the Revised Code. The administrator also shall inform the director of the amount of workers' compensation paid to the person during such period as the director specifies.

Within fourteen days after receiving from the director of job and family services a list of the names and social security numbers of recipients or participants of public assistance pursuant to section 5101.181 of the Revised Code, the administrator shall inform the auditor of state of the name, current or most recent address, and social security number of each person receiving workers' compensation pursuant to this chapter whose name and social security number are the same as that of a person whose name or social security number was submitted by the director. The administrator also shall inform the auditor of state of the amount of workers' compensation paid to the person during such period as the director specifies.

The bureau and its employees, except for purposes of furnishing the auditor of state with information required by this section, shall preserve the confidentiality of recipients or participants of public assistance in compliance with section 5101.181 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 06-26-2003

4123.271 Administrator may request report of employer payments from tax commissioner.

The administrator of workers' compensation may furnish to the tax commissioner, on a quarterly basis, a list in a format approved by the tax commissioner containing the name and social security number or employer identification number of any employer, and may request that the tax commissioner, on a quarterly basis, report the total amount of compensation paid that the employer reported for the period for which the annual return is made pursuant to division (F)(3) of section 5747.07 of the Revised Code, for each employer contained on the administrator's list.

Upon receipt of this list and request, the tax commissioner shall provide to the administrator, in a format designed by the tax commissioner, information identifying any employer listed by the administrator who reported compensation paid to employees on the most recent return filed by the person pursuant to section 5747.07 of the Revised Code and the total amount of compensation paid that the employer reported for the period for which the annual return is made pursuant to division (F)(3) of section 5747.07 of the Revised Code.

Effective Date: 2006 SB7 06-30-2006

4123.28 Record of injuries and occupational diseases - report.

Every employer in this state shall keep a record of all injuries and occupational diseases, fatal or otherwise, received or contracted by his employees in the course of their employment and resulting in seven days or more of total disability. Within a week after acquiring knowledge of an injury or death therefrom, and in the event of occupational disease or death therefrom, within one week after acquiring knowledge of or diagnosis of or death from an occupational disease or of a report to the employer of the occupational disease or death, a report thereof shall be made in writing to the bureau of workers' compensation upon blanks to be procured from the bureau for that purpose. The report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address, nature and duration of occupation of the injured, disabled, or deceased employee and the time, the nature, and the cause of injury, occupational disease, or death, and such other information as is required by the bureau.

The employer shall give a copy of each report to the employee it concerns or his surviving dependents.

No employer shall refuse or neglect to make any report required by this section.

Each day that an employer fails to file a report required by this section constitutes an additional day within the time period given to a claimant by the applicable statute of limitations for the filing of a claim based on the injury or occupational disease, provided that a failure to file a report shall not extend the applicable statute of limitations for more than two additional years.

Effective Date: 11-03-1989

4123.29 Duties of administrator.

(A) The administrator of workers' compensation, subject to the approval of the bureau of workers' compensation board of directors, shall do all of the following:

(1) Classify occupations or industries with respect to their degree of hazard and determine the risks of the different classes according to the categories the national council on compensation insurance establishes that are applicable to employers in this state;

(2)

(a) Fix the rates of premium of the risks of the classes based upon the total payroll in each of the classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in this chapter and to maintain a state insurance fund from year to year. The administrator shall set the rates at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the administrator, is not an adequate measure for determining the premium to be paid for the degree of hazard, the administrator may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in this chapter reference is made to payroll or expenditure of wages with reference to fixing premiums, the reference shall be construed to have been made also to such other basis for fixing the rates of premium as the administrator may determine under this section.

(b) If an employer elects to obtain other-states' coverage, including limited other-states' coverage, pursuant to section 4123.292 of the Revised Code through the administrator, if the administrator elects to offer such coverage, calculate the employer's premium for the state insurance fund in the same manner as otherwise required under division (A) of this section and section 4123.34 of the Revised Code, except that the administrator may establish in rule an alternative calculation of the employer's premium to appropriately account for the expenditure of wages, payroll, or both attributable to the labor performed and services provided by that employer's employees when those employees performed labor and provided services in this state and in the other state or states for which the employer elects to secure other-states' coverage .

(c) If an employer elects to obtain other-states' coverage pursuant to section 4123.292 of the Revised Code through an other-states' insurer, calculate the employer's premium for the state insurance fund in the same manner as otherwise required under division (A) of this section and section 4123.34 of the Revised Code, except that when the administrator determines the expenditure of wages, payroll, or both upon which to base the employer's premium, the administrator shall use only the expenditure of wages, payroll, or both attributable to the labor

performed and services provided by that employer's employees when those employees performed labor and provided services in this state only and to which the other-states' coverage does not apply. The administrator may adopt rules setting forth the information that an employer electing to obtain other-states' coverage through an other-states' insurer shall report for purposes of determining the expenditure of wages, payroll, or both attributable to the labor performed and services provided in this state.

(d) The administrator in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set.

(3) Develop and make available to employers who are paying premiums to the state insurance fund alternative premium plans. Alternative premium plans shall include retrospective rating plans. The administrator may make available plans under which an advanced deposit may be applied against a specified deductible amount per claim.

(4)

(a) Offer to insure the obligations of employers under this chapter under a plan that groups, for rating purposes, employers, and pools the risk of the employers within the group provided that the employers meet all of the following conditions:

(i) All of the employers within the group are members of an organization that has been in existence for at least two years prior to the date of application for group coverage;

(ii) The organization was formed for purposes other than that of obtaining group workers' compensation under this division;

(iii) The employers' business in the organization is substantially similar such that the risks which are grouped are substantially homogeneous;

(iv) The group of employers consists of at least one hundred members or the aggregate workers' compensation premiums of the members, as determined by the administrator, are estimated to exceed one hundred fifty thousand dollars during the coverage period;

(v) The formation and operation of the group program in the organization will substantially improve accident prevention and claims handling for the employers in the group;

(vi) Each employer seeking to enroll in a group for workers' compensation coverage has an account in good standing with the bureau of workers' compensation . The administrator shall

adopt rules setting forth the criteria by which the administrator will determine whether an employer's account is in good standing.

(b) If an organization sponsors more than one employer group to participate in group plans established under this section, that organization may submit a single application that supplies all of the information necessary for each group of employers that the organization wishes to sponsor.

(c) In providing employer group plans under division (A)(4) of this section, the administrator shall consider an employer group as a single employing entity for purposes of group rating. No employer may be a member of more than one group for the purpose of obtaining workers' compensation coverage under this division.

(d) At the time the administrator revises premium rates pursuant to this section and section 4123.34 of the Revised Code, if the premium rate of an employer who participates in a group plan established under this section changes from the rate established for the previous year, the administrator, in addition to sending the invoice with the rate revision to that employer, shall send a copy of that invoice to the third-party administrator that administers the group plan for that employer's group.

(e) In providing employer group plans under division (A)(4) of this section, the administrator shall establish a program designed to mitigate the impact of a significant claim that would come into the experience of a private, state fund group-rated employer or a taxing district employer for the first time and be a contributing factor in that employer being excluded from a group-rated plan. The administrator shall establish eligibility criteria and requirements that such employers must satisfy in order to participate in this program. For purposes of this program, the administrator shall establish a discount on premium rates applicable to employers who qualify for the program.

(f) In no event shall division (A)(4) of this section be construed as granting to an employer status as a self-insuring employer.

(g) The administrator shall develop classifications of occupations or industries that are sufficiently distinct so as not to group employers in classifications that unfairly represent the risks of employment with the employer.

(5) Generally promote employer participation in the state insurance fund through the regular dissemination of information to all classes of employers describing the advantages and benefits

of opting to make premium payments to the fund. To that end, the administrator shall regularly make employers aware of the various workers' compensation premium packages developed and offered pursuant to this section.

(6) Make available to every employer who is paying premiums to the state insurance fund a program whereby the employer or the employer's agent pays to the claimant or on behalf of the claimant the first fifteen thousand dollars of a compensable workers' compensation medical-only claim filed by that claimant that is related to the same injury or occupational disease. No formal application is required; however, an employer must elect to participate by telephoning the bureau after July 1, 1995. Once an employer has elected to participate in the program, the employer will be responsible for all bills in all medical-only claims with a date of injury the same or later than the election date, unless the employer notifies the bureau within fourteen days of receipt of the notification of a claim being filed that it does not wish to pay the bills in that claim, or the employer notifies the bureau that the fifteen thousand dollar maximum has been paid, or the employer notifies the bureau of the last day of service on which it will be responsible for the bills in a particular medical-only claim. If an employer elects to enter the program, the administrator shall not reimburse the employer for such amounts paid and shall not charge the first fifteen thousand dollars of any medical-only claim paid by an employer to the employer's experience or otherwise use it in merit rating or determining the risks of any employer for the purpose of payment of premiums under this chapter. A certified health care provider shall extend to an employer who participates in this program the same rates for services rendered to an employee of that employer as the provider bills the administrator for the same type of medical claim processed by the bureau and shall not charge, assess, or otherwise attempt to collect from an employee any amount for covered services or supplies that is in excess of that rate. If an employer elects to enter the program and the employer fails to pay a bill for a medical-only claim included in the program, the employer shall be liable for that bill and the employee for whom the employer failed to pay the bill shall not be liable for that bill. The administrator shall adopt rules to implement and administer division (A)(6) of this section. Upon written request from the bureau, the employer shall provide documentation to the bureau of all medical-only bills that they are paying directly. Such requests from the bureau may not be made more frequently than on a semiannual basis. Failure to provide such documentation to the bureau within thirty days of receipt of the request may result in the employer's forfeiture of participation in the program for such injury. The provisions of this section shall not apply to claims in which an employer with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation or total disability.

(B) The administrator, with the advice and consent of the board, by rule, may do both of the following:

(1) Grant an employer who pays the employer's annual estimated premium in full prior to the start of the policy year for which the estimated premium is due, a discount as the administrator fixes from time to time;

(2) Levy a minimum annual administrative charge upon risks where premium reports develop a charge less than the administrator considers adequate to offset administrative costs of processing.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 128th General Assembly ch.9, HB 15, §101, eff. 6/30/2009 and 9/29/2009.

Effective Date: 09-01-1995; 2006 SB7 06-30-2006; 2007 HB100 09-10-2007; 2008 SB334 09-11-2008; 2008 HB79 01-06-2009

4123.291 Appeal from adjudicating committee decisions.

(A) An adjudicating committee appointed by the administrator of workers' compensation to hear any matter specified in divisions (B)(1) to (7) of this section shall hear the matter within sixty days of the date on which an employer files the request, protest, or petition. An employer desiring to file a request, protest, or petition regarding any matter specified in divisions (B)(1) to (7) of this section shall file the request, protest, or petition to the adjudicating committee on or before twenty-four months after the administrator sends notice of the determination about which the employer is filing the request, protest, or petition.

(B) An employer who is adversely affected by a decision of an adjudicating committee appointed by the administrator may appeal the decision of the committee to the administrator or the administrator's designee. The employer shall file the appeal in writing within thirty days after the employer receives the decision of the adjudicating committee. The administrator or the designee shall hear the appeal and hold a hearing, provided that the decision of the adjudicating committee relates to one of the following:

(1) An employer request for a waiver of a default in the payment of premiums pursuant to section 4123.37 of the Revised Code;

(2) An employer request for the settlement of liability as a noncomplying employer under section 4123.75 of the Revised Code;

(3) An employer petition objecting to an assessment made pursuant to section 4123.37 of the Revised Code and the rules adopted pursuant to that section;

(4) An employer request for the abatement of penalties assessed pursuant to section 4123.32 of the Revised Code and the rules adopted pursuant to that section;

(5) An employer protest relating to an audit finding or a determination of a manual classification, experience rating, or transfer or combination of risk experience;

(6) Any decision relating to any other risk premium matter under Chapters 4121., 4123., and 4131. of the Revised Code;

(7) An employer petition objecting to the amount of security required under division (D) of section 4125.05 of the Revised Code and the rules adopted pursuant to that section.

(C) The bureau of workers' compensation board of directors, based upon recommendations of the workers' compensation actuarial committee, shall establish the policy for all adjudicating committee procedures, including, but not limited to, specific criteria for manual premium rate adjustment.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 129th General Assembly File No. 179, SB 139, §1, eff. 3/22/2013.

Effective Date: 07-11-2001; 11-05-2004; 2007 HB100 09-10-2007

4123.292 Election to obtain other-states' coverage.

(A) Notwithstanding sections 4123.35 and 4123.82 of the Revised Code, an employer may elect to obtain other-states' coverage through an other-states' insurer or, if the administrator of workers' compensation elects to offer such coverage, through the administrator pursuant to division (B) of this section. An employer who elects to obtain other-states' coverage shall submit a written notice to the administrator stating that election on a form prescribed by the administrator and, if the employer elects to obtain that coverage through an other-states' insurer, the name of the other-states' insurer through whom the employer has obtained that coverage. If an employer fails to pay the employer's premium for other-states' coverage, the

administrator shall consider the employer to be noncompliant for the purposes of having other-states' coverage and the employer's premiums in this state for any and all noncompliant periods of time shall be calculated in the same manner as otherwise required under division (A) of section 4123.29 and section 4123.34 of the Revised Code, using both the wages reported in this state and the wages that the employer claimed would be reported to the other-states' insurer for securing coverage.

(B) The administrator may offer other-states' coverage to allow an employer who wishes to obtain other-states' coverage pursuant to this section and who elects to secure that coverage through the administrator for workers' compensation claims . If the administrator elects to secure a vehicle through which the administrator will provide other-states' coverage, the administrator shall follow the competitive bidding requirements specified in Chapter 125. of the Revised Code to select one or more other-states' insurers, and the administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall award a contract to provide other-states' coverage for employers located in this state to one or more other-states' insurers that are the lowest and best bidders.

(C)

Notwithstanding sections 4123.35 and 4123.82 of the Revised Code, the administrator may offer limited other-states' coverage to allow an employer who wishes to obtain limited other-states' coverage pursuant to this section. An employer who elects to obtain limited other-states' coverage shall submit a written notice to the administrator stating that election on a form prescribed by the administrator.

If the administrator elects to secure a vehicle through which the administrator will provide limited other-states' coverage, the administrator shall follow the competitive bidding requirements specified in Chapter 125. of the Revised Code to select one or more other-states' insurers and, with the advice and consent of the board, award a contract to provide limited other-states' coverage to the lowest and best bidders.

(D) If the administrator elects to offer other states' coverage or limited other-states' coverage, the administrator, with the advice and consent of the board, shall adopt rules to implement divisions (B) and (C) of this section.

(E)

The board and the individual members thereof, the administrator, and the bureau of workers' compensation shall not incur any obligation or liability if another state determines that the other-states' coverage or limited other-states' coverage provided under this section does not satisfy the requirements specified in that state's workers' compensation law for obtaining workers' compensation coverage in that state.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 2008 SB334 09-11-2008

4123.30 Public fund - private fund - contributions - disbursements.

Money contributed by the employers mentioned in division (B)(1) of section 4123.01 of the Revised Code constitutes the "public fund" and the money contributed by employers mentioned in division (B)(2) of such section constitutes the "private fund." Each such fund shall be collected, distributed, and its solvency maintained without regard to or reliance upon the other. Whenever in this chapter reference is made to the state insurance fund, the reference is to such two separate funds but such two separate funds and the net premiums contributed thereto by employers after adjustments and dividends, except for the amount thereof which is set aside for the investigation and prevention of industrial accidents and diseases pursuant to Section 35 of Article II, Ohio Constitution, any amounts set aside for actuarial services authorized or required by sections 4123.44 and 4123.47 of the Revised Code, and any amounts set aside to reinsure the liability of the respective insurance funds for the following payments, constitute a trust fund for the benefit of employers and employees mentioned in sections 4123.01, 4123.03, and 4123.73 of the Revised Code for the payment of compensation, medical services, examinations, recommendations and determinations, nursing and hospital services, medicine, rehabilitation, death benefits, funeral expenses, and like benefits for loss sustained on account of injury, disease, or death provided for by this chapter, and for no other purpose. This section does not prevent the deposit or investment of all such moneys intermingled for such purpose but such funds shall be separate and distinct for all other purposes, and the rights and duties created in this chapter shall be construed to have been made with respect to two separate funds and so as to maintain and continue such funds separately except for deposit or investment. Disbursements shall not be made on account of injury, disease, or death of employees of employers who contribute to one of such funds unless the moneys to the credit of such fund are sufficient therefor and no such disbursements shall be made for moneys or credits paid or credited to the other fund.

Effective Date: 10-20-1993

4123.31 Workers' compensation fund.

The moneys in the state treasury for the use of the bureau of workers' compensation and the industrial commission shall be known as the workers' compensation fund group. The moneys from each fund shall be disbursed respectively pursuant to vouchers approved by the administrator of workers' compensation or the administrator's designee, or by the chairperson of the commission or the chairperson's designee.

The bureau and the commission shall provide for the custody, safekeeping, and deposit of all moneys, checks, and drafts received by the bureau or commission or any employees or agents prior to paying the moneys, checks, and drafts to the treasurer of state as provided by section 113.08 of the Revised Code.

Effective Date: 08-01-2003

4123.311 Direct deposit of funds by electronic transfer - debit card access.

(A) The administrator of workers' compensation may do all of the following:

(1) Utilize direct deposit of funds by electronic transfer for all disbursements the administrator is authorized to pay under this chapter and Chapters 4121., 4127., and 4131. of the Revised Code;

(2) Require any payee to provide a written authorization designating a financial institution and an account number to which a payment made according to division (A)(1) of this section is to be credited, notwithstanding division (B) of section 9.37 of the Revised Code;

(3) Contract with an agent to do both of the following:

(a) Supply debit cards for claimants to access payments made to them pursuant to this chapter and Chapters 4121., 4127., and 4131. of the Revised Code;

(b) Credit the debit cards described in division (A)(3)(a) of this section with the amounts specified by the administrator pursuant to this chapter and Chapters 4121., 4127., and 4131. of the Revised Code by utilizing direct deposit of funds by electronic transfer.

(4) Enter into agreements with financial institutions to credit the debit cards described in division (A)(3)(a) of this section with the amounts specified by the administrator pursuant to

this chapter and Chapters 4121., 4127., and 4131. of the Revised Code by utilizing direct deposit of funds by electronic transfer.

(B) The administrator shall inform claimants about the administrator's utilization of direct deposit of funds by electronic transfer under this section and section 9.37 of the Revised Code, furnish debit cards to claimants as appropriate, and provide claimants with instructions regarding use of those debit cards.

(C) The administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules in accordance with Chapter 119. of the Revised Code regarding utilization of the direct deposit of funds by electronic transfer under this section and section 9.37 of the Revised Code.

Effective Date: 2006 SB7 06-30-2006; 2007 HB100 09-10-2007

4123.32 Rules for administering state insurance fund.

The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules with respect to the collection, maintenance, and disbursements of the state insurance fund including all of the following:

(A)

A rule providing for ascertaining the correctness of any employer's report of estimated or actual expenditure of wages and the determination and adjustment of proper premiums and the payment of those premiums by the employer ;

(B) Such special rules as the administrator considers necessary to safeguard the fund and that are just in the circumstances, covering the rates to be applied where one employer takes over the occupation or industry of another or where an employer first makes application for state insurance, and the administrator may require that if any employer transfers a business in whole or in part or otherwise reorganizes the business, the successor in interest shall assume, in proportion to the extent of the transfer, as determined by the administrator, the employer's account and shall continue the payment of all contributions due under this chapter;

(C) A rule providing that an employer who employs an employee covered under the federal "Longshore and Harbor Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., and this chapter and Chapter 4121. of the Revised Code shall be assessed a premium in accordance

with the expenditure of wages, payroll, or both attributable to only labor performed and services provided by such an employee when the employee performs labor and provides services for which the employee is not eligible to receive compensation and benefits under that federal act.

(D) A rule providing for all of the following:

(1) If an employer fails to file a report of the employer's actual payroll expenditures pursuant to section 4123.26 of the Revised Code for private employers or pursuant to section 4123.41 of the Revised Code for public employers, the premium and assessments due from the employer for the period shall be calculated based on the estimated payroll of the employer used in calculating the estimated premium due, increased by ten per cent;

(2) (a) If an employer fails to pay the premium or assessments when due for a policy year commencing prior to July 1, 2015, the administrator may add a late fee penalty of not more than thirty dollars to the premium plus an additional penalty amount as follows:

(i) For a premium from sixty-one to ninety days past due, the prime interest rate, multiplied by the premium due;

(ii) For a premium from ninety-one to one hundred twenty days past due, the prime interest rate plus two per cent, multiplied by the premium due;

(iii) For a premium from one hundred twenty-one to one hundred fifty days past due, the prime interest rate plus four per cent, multiplied by the premium due;

(iv) For a premium from one hundred fifty-one to one hundred eighty days past due, the prime interest rate plus six per cent, multiplied by the premium due;

(v) For a premium from one hundred eighty-one to two hundred ten days past due, the prime interest rate plus eight per cent, multiplied by the premium due;

(vi) For each additional thirty-day period or portion thereof that a premium remains past due after it has remained past due for more than two hundred ten days, the prime interest rate plus eight per cent, multiplied by the premium due.

(b) For purposes of division (D)(2)(a) of this section, "prime interest rate" means the average bank prime rate, and the administrator shall determine the prime interest rate in the same

manner as a county auditor determines the average bank prime rate under section 929.02 of the Revised Code.

(c) If an employer fails to pay the premium or assessments when due for a policy year commencing on or after July 1, 2015, the administrator may assess a penalty at the interest rate established by the state tax commissioner pursuant to section 5703.47 of the Revised Code.

(3) Notwithstanding the interest rates specified in division (D)(2)(a) or (c) of this section, at no time shall the additional penalty amount assessed under division (D)(2)(a) or (c) of this section exceed fifteen per cent of the premium due.

(4) If an employer recognized by the administrator as a professional employer organization fails to make a timely payment of premiums or assessments as required by section 4123.35 of the Revised Code, the administrator shall revoke the professional employer organization's registration pursuant to section 4125.06 of the Revised Code.

(5) An employer may appeal a late fee penalty or additional penalty to an adjudicating committee pursuant to section 4123.291 of the Revised Code.

(6) If the employer files an appropriate payroll report within the time provided by law, the employer shall not be in default and division (D)(2) of this section shall not apply if the employer pays the premiums within fifteen days after being first notified by the administrator of the amount due.

(7) Any deficiencies in the amounts of the premium security deposit paid by an employer prior to July 1, 2015, shall be subject to an interest charge of six per cent per annum from the date the premium obligation is incurred. In determining the interest due on deficiencies in premium security deposit payments, a charge in each case shall be made against the employer in an amount equal to interest at the rate of six per cent per annum on the premium security deposit due but remaining unpaid sixty days after notice by the administrator.

(8) Any interest charges or penalties provided for in divisions (D)(2) and (7) of this section shall be credited to the employer's account for rating purposes in the same manner as premiums.

(E) A rule providing that each employer, on the occasion of instituting coverage under this chapter for an effective date prior to July 1, 2015, shall submit a premium security deposit. The deposit shall be calculated equivalent to thirty per cent of the semiannual premium obligation of the employer based upon the employer's estimated expenditure for wages for the ensuing

six-month period plus thirty per cent of an additional adjustment period of two months but only up to a maximum of one thousand dollars and not less than ten dollars. The administrator shall review the security deposit of every employer who has submitted a deposit which is less than the one-thousand-dollar maximum. The administrator may require any such employer to submit additional money up to the maximum of one thousand dollars that, in the administrator's opinion, reflects the employer's current payroll expenditure for an eight-month period.

(F) A rule providing that each employer, on the occasion of instituting coverage under this chapter, shall submit an application fee and an application for coverage that completely provides all of the information required for the administrator to establish coverage for that employer, and that the employer's failure to pay the application fee or to provide all of the information requested on the application may be grounds for the administrator to deny coverage for that employer.

(G) A rule providing that, in addition to any other remedies permitted in this chapter, the administrator may discontinue an employer's coverage if the employer fails to pay the premium due on or before the premium's due date.

(H) A rule providing that if after a final adjudication it is determined that an employer has failed to pay an obligation, billing, account, or assessment that is greater than one thousand dollars on or before its due date, the administrator may discontinue the employer's coverage in addition to any other remedies permitted in this chapter, and that the administrator shall not discontinue an employer's coverage pursuant to this division prior to a final adjudication regarding the employer's failure to pay such obligation, billing, account, or assessment on or before its due date.

(I) As used in divisions (G) and (H) of this section:

(1) "Employer" has the same meaning as in section 4123.01 of the Revised Code except that "employer" does not include the state, a state hospital, or a state university or college.

(2) "State university or college" has the same meaning as in section 3345.12 of the Revised Code and also includes the Ohio agricultural research and development center and OSU extension.

(3) "State hospital" means the Ohio state university hospital and its ancillary facilities and the medical university of Ohio at Toledo hospital.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 03-14-2003; 2006 SB7 06-30-2006; 2007 HB100 09-10-2007; 2008 HB562 09-22-2008

4123.321 Disposition of insurance fund excess surplus.

The bureau of workers' compensation board of directors, based upon recommendations of the workers' compensation actuarial committee, shall adopt a rule with respect to the collection, maintenance, and disbursements of the state insurance fund providing that in the event there is developed as of any given rate revision date a surplus of earned premium over all losses that, in the judgment of the board, is larger than is necessary adequately to safeguard the solvency of the fund, the board may return such excess surplus to the subscribers to the fund in either the form of cash refunds or a reduction of premiums, regardless of when the premium obligations have accrued.

Effective Date: 2007 HB100 09-10-2007

4123.322 Rules for system of prospective payment of workers' compensation premiums.

(A) The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules establishing a prospective payment system, which shall include all of the following:

(1)

A requirement that upon an initial application for coverage, a private employer shall file with the application an estimate of the employer's payroll for the period the administrator determines pursuant to rules the administrator adopts, and shall pay the amount the administrator determines by rule in order to establish coverage for the employer as described in division (B)(12) of section 4121.121 of the Revised Code;

(2) A requirement that upon an initial application for coverage, a public employer, except for a state agency or state university or college, shall file with the application an estimate of the employer's payroll for the period the administrator determines pursuant to rules the administrator adopts, and shall pay the amount the administrator determines by rule in order

to establish coverage for the employer as described in division (B)(12) of section 4121.121 of the Revised Code;

(3) A requirement that an employer complete periodic payroll reports of actual expenditures for previous coverage periods for reconciliation with estimated payroll reports;

(4) The assessment of a penalty for late payroll reconciliation reports and for late payment of any reconciliation premium;

(5) The establishment of a transition period during which time the bureau shall determine the adequacy of existing premium security deposits of employers, the establishment of provisions for additional premium payments during that transition, the provision of a credit of those deposits toward the first premium due from an employer under the rules adopted under divisions (A)(1) to (4) of this section, and the establishment of penalties for late payment or failure to comply with the rules.

(B) For purposes of division (A) (3) of this section, an employer shall make timely payment of any premium owed when actual payroll expenditures exceeded estimated payroll, and the employer shall receive premium credit when the estimated payroll exceeded the actual payroll.

(C) For purposes of division (A) (4) of this section, if the employer's actual payroll substantially exceeds the estimated payroll, the administrator may assess additional penalties specified in rules the administrator adopts on the reconciliation premium.

(D) As used in this section, "state university or college" has the same meaning as in section 4123.32 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Added by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

4123.323 Payment due dates.

(A) Except as provided in division (B) of this section, a payment required under this chapter or Chapter 4121. of the Revised Code, including a payment due for purposes of continuing coverage, is due on the date specified in those chapters, unless otherwise provided in a rule adopted by the administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors.

(B) For purposes of collection referrals to the attorney general under section 131.02 of the Revised Code, a premium payment is due thirty days after the date upon which a private employer must submit the payroll report for the corresponding policy year pursuant to section 4123.26 of the Revised Code or the date upon which a public employer must submit the payroll report for the corresponding policy year pursuant to section 4123.41 of the Revised Code, as applicable.

Added by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

4123.33 Certificate of protection for period of less than one year.

Where, in the judgment of the administrator of workers' compensation, the circumstances justify or require a certificate entitling an employer to protection under this chapter for a period of less than one year, the administrator may, upon such conditions as are just and for such premium as the facts require, grant to the employer a certificate for the length of time the administrator designates in the certificate.

Effective Date: 10-20-1993

4123.34 Solvency of funds - premium rates.

It shall be the duty of the bureau of workers' compensation board of directors and the administrator of workers' compensation to safeguard and maintain the solvency of the state insurance fund and all other funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code. The administrator, in the exercise of the powers and discretion conferred upon the administrator in section 4123.29 of the Revised Code, shall fix and maintain, with the advice and consent of the board, for each class of occupation or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that the administrator authorizes to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees. In establishing rates, the administrator shall take into account the necessity of ensuring sufficient money is set aside in the premium payment security fund to cover any defaults in premium obligations. The administrator shall observe all of the following requirements in fixing the rates of premium for the risks of occupations or industries:

(A) The administrator shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries,

occupational disease, and death of employees thereof, and also keep an account of the money received from each individual employer and the amount of losses incurred against the state insurance fund on account of injuries, occupational disease, and death of the employees of the employer.

(B) A portion of the money paid into the state insurance fund shall be set aside for the creation of a surplus fund account within the state insurance fund. Any references in this chapter or in Chapter 4121., 4125., 4127., or 4131. of the Revised Code to the surplus fund, the surplus created in this division, the statutory surplus fund, or the statutory surplus of the state insurance fund are hereby deemed to be references to the surplus fund account. The administrator may transfer the portion of the state insurance fund to the surplus fund account as the administrator determines is necessary to satisfy the needs of the surplus fund account and to guarantee the solvency of the state insurance fund and the surplus fund account. In addition to all statutory authority under this chapter and Chapter 4121. of the Revised Code, the administrator has discretionary and contingency authority to make charges to the surplus fund account. The administrator shall account for all charges, whether statutory, discretionary, or contingency, that the administrator may make to the surplus fund account. A revision of basic rates shall be made annually on the first day of July.

Notwithstanding any provision of the law to the contrary, one hundred eighty days after the effective date on which self-insuring employers first may elect under division (D) of section 4121.66 of the Revised Code to directly pay for rehabilitation expenses, the administrator shall calculate the deficit, if any, in the portion of the surplus fund account that is used for reimbursement to self-insuring employers for all expenses other than handicapped reimbursement under section 4123.343 of the Revised Code. The administrator, from time to time, may determine whether the surplus fund account has such a deficit and may assess all self-insuring employers who participated in the portion of the surplus fund account during the accrual of the deficit and who during that time period have not made the election under division (D) of section 4121.66 of the Revised Code the amount the administrator determines necessary to reduce the deficit.

For policy years commencing prior to July 1, 2016, revisions of basic rates for private employers shall be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the administrator in the administration of this chapter, as shown by the accounts kept as provided in this section . For a policy year commencing on or after July 1, 2016, revisions of basic rates for private employers shall be in accordance with the oldest four of the last five policy years combined accident and

occupational disease experience of the administrator in the administration of this chapter, as shown by the accounts kept as provided in this section.

Revisions of basic rates for public employers shall be in accordance with the oldest four of the last five policy years of the combined accident and occupational disease experience of the administrator in the administration of this chapter, as shown by the accounts kept as provided in this section.

In revising basic rates, the administrator shall exclude the experience of employers that are no longer active if the administrator determines that the inclusion of those employers would have a significant negative impact on the remainder of the employers in a particular manual classification . The administrator shall adopt rules, with the advice and consent of the board, governing rate revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

(C) The administrator may apply that form of rating system that the administrator finds is best calculated to merit rate or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident and occupational disease experience, and may encourage and stimulate accident prevention. The administrator shall develop fixed and equitable rules controlling the rating system, which rules shall conserve to each risk the basic principles of workers' compensation insurance.

(D) The administrator, from the money paid into the state insurance fund, shall set aside into an account of the state insurance fund titled a premium payment security fund sufficient money to pay for any premiums due from an employer and uncollected .

The use of the moneys held by the premium payment security fund account is restricted to reimbursement to the state insurance fund of premiums due and uncollected .

(E) The administrator may grant discounts on premium rates for employers who meet either of the following requirements:

(1) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee or similar organization or make periodic safety inspections of the workplace.

(2) Successfully complete a loss prevention program prescribed by the superintendent of the division of safety and hygiene and conducted by the division or by any other person approved by the superintendent.

(F)

(1) In determining the premium rates for the construction industry the administrator shall calculate the employers' premiums based upon the actual remuneration construction industry employees receive from construction industry employers, provided that the amount of remuneration the administrator uses in calculating the premiums shall not exceed an average weekly wage equal to one hundred fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code.

(2) Division (F)(1) of this section shall not be construed as affecting the manner in which benefits to a claimant are awarded under this chapter.

(3) As used in division (F) of this section, "construction industry" includes any activity performed in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of any building, structure, highway, or bridge.

(G) The administrator shall not place a limit on the length of time that an employer may participate in the bureau of workers' compensation drug free workplace and workplace safety programs.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 128th General Assembly ch.179, HB 15, §101, eff. 6/30/2009 and 9/29/2009.

Effective Date: 06-30-1997; 2007 HB100 09-10-2007; 2008 SB334 09-11-2008

4123.341 Contributions toward payment of administrative costs and expenses.

The administrative costs of the industrial commission, the bureau of workers' compensation board of directors, and the bureau of workers' compensation shall be those costs and expenses that are incident to the discharge of the duties and performance of the activities of the industrial commission, the board, and the bureau under this chapter and Chapters 4121., 4125., 4127., 4131., and 4167. of the Revised Code, and all such costs shall be borne by the state and by other employers amenable to this chapter as follows:

(A) In addition to the contribution required of the state under sections 4123.39 and 4123.40 of the Revised Code, the state shall contribute the sum determined to be necessary under section 4123.342 of the Revised Code.

(B) The director of budget and management may allocate the state's share of contributions in the manner the director finds most equitably apportions the costs.

(C) The counties and taxing districts therein shall contribute such sum as may be required under section 4123.342 of the Revised Code.

(D) The private employers shall contribute the sum required under section 4123.342 of the Revised Code.

Amended by 129th General Assembly File No.39, SB 171, §1, eff. 6/30/2011.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 6/30/2011.

Effective Date: 09-01-1995; 2007 HB100 09-10-2007; 2008 HB79 01-06-2009

4123.342 Allocating costs.

(A) The administrator of workers' compensation shall allocate among counties and taxing districts therein as a class, the state and its instrumentalities as a class, private employers who are insured under the private fund as a class, and self-insuring employers as a class their fair shares of the administrative costs which are to be borne by such employers under division (D) of section 4123.341 of the Revised Code, separately allocating to each class those costs solely attributable to the activities of the industrial commission, and those costs solely attributable to the activities of the bureau of workers' compensation board of directors, and the bureau of workers' compensation in respect of the class, allocating to any combination of classes those costs attributable to the activities of the industrial commission, board, or bureau in respect of the classes, and allocating to all four classes those costs attributable to the activities of the industrial commission, board, and bureau in respect of all classes. The administrator shall separately calculate each employer's assessment in the class, except self-insuring employers, on the basis of the following three factors: payroll, paid compensation, and paid medical costs of the employer for those costs solely attributable to the activities of the board and the bureau. The administrator shall separately calculate each employer's assessment in the class, except self-insuring employers, on the basis of the following three factors: payroll, paid compensation, and paid medical costs of the employer for those costs solely attributable to the activities of the

industrial commission. The administrator shall separately calculate each self-insuring employer's assessment in accordance with section 4123.35 of the Revised Code for those costs solely attributable to the activities of the board and the bureau. The administrator shall separately calculate each self-insuring employer's assessment in accordance with section 4123.35 of the Revised Code for those costs solely attributable to the activities of the industrial commission. In a timely manner, the industrial commission shall provide to the administrator, the information necessary for the administrator to allocate and calculate, with the approval of the chairperson of the industrial commission, for each class of employer as described in this division, the costs solely attributable to the activities of the industrial commission.

(B) The administrator shall divide the administrative cost assessments collected by the administrator into two administrative assessment accounts within the state insurance fund. One of the administrative assessment accounts shall consist of the administrative cost assessment collected by the administrator for the industrial commission. One of the administrative assessment accounts shall consist of the administrative cost assessments collected by the administrator for the bureau and the board. The administrator may invest the administrative cost assessments in these accounts on behalf of the bureau, and the industrial commission as authorized in section 4123.44 of the Revised Code. In a timely manner, the administrator shall provide to the industrial commission the information and reports the commission deems necessary for the commission to monitor the receipts and the disbursements from the administrative assessment account for the industrial commission .

(C) **[As amended by 129th General Assembly File No. 28, HB 153]** The administrator or the administrator's designee shall transfer moneys as necessary from the administrative assessment account identified for the bureau and the board to the workers' compensation fund for the use of the bureau and the board. As necessary and upon the authorization of the industrial commission, the administrator or the administrator's designee shall transfer moneys from the administrative assessment account identified for the industrial commission to the industrial commission operating fund created under section 4121.021 of the Revised Code. To the extent that the moneys collected by the administrator in any fiscal biennium of the state equal the sum appropriated by the general assembly for administrative costs of the industrial commission, board, and bureau for the biennium , the moneys shall be paid into the workers' compensation fund and the industrial commission operating fund of the state, as appropriate, and any remainder shall be retained in those funds and applied to reduce the amount collected during the next biennium.

(C) [As amended by 129th General Assembly File No. 39, SB 171] The administrator or the administrator's designee shall transfer moneys as necessary from the administrative assessment account identified for the bureau and the board to the workers' compensation fund for the use of the bureau and the board. As necessary and upon the authorization of the industrial commission, the administrator or the administrator's designee shall transfer moneys from the administrative assessment account identified for the industrial commission to the industrial commission operating fund created under section 4121.021 of the Revised Code. To the extent that the moneys collected by the administrator in any fiscal biennium of the state equal the sum appropriated by the general assembly for administrative costs of the industrial commission, board, and bureau for the biennium, the moneys shall be paid into the workers' compensation fund or the industrial commission operating fund of the state, as appropriate, and any remainder shall be retained in those funds and applied to reduce the amount collected during the next biennium.

(D) Sections 4123.41, 4123.35, and 4123.37 of the Revised Code apply to the collection of assessments from public and private employers respectively, except that for boards of county hospital trustees that are self-insuring employers, only those provisions applicable to the collection of assessments for private employers apply.

Amended by 129th General Assembly File No. 39, SB 171, §1, eff. 6/30/2011.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 6/30/2011.

Effective Date: 08-01-2003; 2007 HB100 09-10-2007; 2008 HB79 01-06-2009

4123.343 Employing and retaining handicapped employees.

This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section, "handicapped employee" means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

(1) Epilepsy;

- (2) Diabetes;
- (3) Cardiac disease;
- (4) Arthritis;
- (5) Amputated foot, leg, arm, or hand;
- (6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally;
- (7) Residual disability from poliomyelitis;
- (8) Cerebral palsy;
- (9) Multiple sclerosis;
- (10) Parkinson's disease;
- (11) Cerebral vascular accident;
- (12) Tuberculosis;
- (13) Silicosis;
- (14) Psycho-neurotic disability following treatment in a recognized medical or mental institution;
- (15) Hemophilia;
- (16) Chronic osteomyelitis;
- (17) Ankylosis of joints;
- (18) Hyper insulinism;
- (19) Muscular dystrophies;
- (20) Arterio-sclerosis;

(21) Thrombo-phlebitis;

(22) Varicose veins;

(23) Cardiovascular, pulmonary, or respiratory diseases of a firefighter or police officer employed by a municipal corporation or township as a regular member of a lawfully constituted police department or fire department;

(24) Coal miners' pneumoconiosis, commonly referred to as "black lung disease";

(25) Disability with respect to which an individual has completed a rehabilitation program conducted pursuant to sections 4121.61 to 4121.69 of the Revised Code.

(B) Under the circumstances set forth in this section all or such portion as the administrator determines of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer. If the employer is a self-insuring employer, the proportion of such costs whether charged to the statutory surplus fund in whole or in part shall be by way of direct payment to such employee or the employee's dependents or by way of reimbursement to the self-insuring employer as the circumstances indicate. The provisions of this section apply only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division (B) of section 4123.57 of the Revised Code. The administrator shall adopt rules specifying the grounds upon which charges to the statutory surplus fund are to be made. The rules shall prohibit as a grounds any agreement between employer and claimant as to the merits of a claim and the amount of the charge.

(C) Any employer who has in its employ a handicapped employee is entitled, in the event the person is injured, to a determination under this section.

An employer shall file an application under this section for a determination with the bureau or commission in the same manner as other claims. An application only may be made in cases where a handicapped employee or a handicapped employee's dependents claim or is receiving an award of compensation as a result of an injury or occupational disease occurring or contracted on or after the date on which division (A) of this section first included the handicap of such employee.

(D) The circumstances under and the manner in which an apportionment under this section shall be made are:

(1) Whenever a handicapped employee is injured or disabled or dies as the result of an injury or occupational disease sustained in the course of and arising out of a handicapped employee's employment in this state and the administrator awards compensation therefor and when it appears to the satisfaction of the administrator that the injury or occupational disease or the death resulting therefrom would not have occurred but for the pre-existing physical or mental impairment of the handicapped employee, all compensation and benefits payable on account of the disability or death shall be paid from the surplus fund.

(2) Whenever a handicapped employee is injured or disabled or dies as a result of an injury or occupational disease and the administrator finds that the injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting disability or death was caused at least in part through aggravation of the employee's pre-existing disability, the administrator shall determine in a manner that is equitable and reasonable and based upon medical evidence the amount of disability or proportion of the cost of the death award that is attributable to the employee's pre-existing disability and the amount found shall be charged to the statutory surplus fund.

(E) The benefits and provisions of this section apply only to employers who have complied with this chapter either through insurance with the state fund or as a self-insuring employer.

(F) No employer shall in any year receive credit under this section in an amount greater than the premium the employer paid if a state fund employer or greater than the employer's assessments if a self-insuring employer.

(G) Self-insuring employers may, for all claims made after January 1, 1987, for compensation and benefits under this section, pay the compensation and benefits directly to the employee or the employee's dependents. If such an employer chooses to pay compensation and benefits directly, the employer shall receive no money or credit from the surplus fund for the payment under this section, nor shall the employer be required to pay any amounts into the surplus fund that otherwise would be assessed for handicapped reimbursements for claims made after January 1, 1987. Where a self-insuring employer elects to pay for compensation and benefits pursuant to this section, the employer shall assume responsibility for compensation and benefits arising out of claims made prior to January 1, 1987, and shall not be required to pay any amounts into the surplus fund and may not receive any money or credit from that fund on account of this section. The election made under this division is irrevocable.

(H) An order issued by the administrator pursuant to this section is appealable under section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Effective Date: 08-06-1999

4123.35 Payment of premiums by employers.

(A) Except as provided in this section, and until the policy year commencing July 1, 2015, every private employer and every publicly owned utility shall pay semiannually in the months of January and July into the state insurance fund the amount of annual premium the administrator of workers' compensation fixes for the employment or occupation of the employer, the amount of which premium to be paid by each employer to be determined by the classifications, rules, and rates made and published by the administrator. The employer shall pay semiannually a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator .

Except as otherwise provided in this section, for a policy year commencing on or after July 1, 2015, every private employer and every publicly owned utility shall pay annually in the month of June immediately preceding the policy year into the state insurance fund the amount of estimated annual premium the administrator fixes for the employment or occupation of the employer, the amount of which estimated premium to be paid by each employer to be determined by the classifications, rules, and rates made and published by the administrator. The employer shall pay a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator. Upon receipt of the payroll report required by division (B) of section 4123.26 of the Revised Code, the administrator shall adjust the premium and assessments charged to each employer for the difference between estimated gross payrolls and actual gross payrolls, and any balance due to the administrator shall be immediately paid by the employer. Any balance due the employer shall be credited to the employer's account.

For a policy year commencing on or after July 1, 2015, each employer that is recognized by the administrator as a professional employer organization shall pay monthly into the state insurance fund the amount of premium the administrator fixes for the employer for the prior month based on the actual payroll of the employer reported pursuant to division (C) of section 4123.26 of the Revised Code.

A receipt certifying that payment has been made shall be issued to the employer by the bureau of workers' compensation. The receipt is prima-facie evidence of the payment of the premium . The administrator shall provide each employer written proof of workers' compensation coverage as is required in section 4123.83 of the Revised Code. Proper posting of the notice constitutes the employer's compliance with the notice requirement mandated in section 4123.83 of the Revised Code.

The bureau shall verify with the secretary of state the existence of all corporations and organizations making application for workers' compensation coverage and shall require every such application to include the employer's federal identification number.

A private employer who has contracted with a subcontractor is liable for the unpaid premium due from any subcontractor with respect to that part of the payroll of the subcontractor that is for work performed pursuant to the contract with the employer.

Division (A) of this section providing for the payment of premiums semiannually does not apply to any employer who was a subscriber to the state insurance fund prior to January 1, 1914, or, until July 1, 2015, who may first become a subscriber to the fund in any month other than January or July. Instead, the semiannual premiums shall be paid by those employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. After July 1, 2015, an employer who first becomes a subscriber to the fund on any day other than the first day of July shall pay premiums according to rules adopted by the administrator, with the advice and consent of the bureau of workers' compensation board of directors, for the remainder of the policy year for which the coverage is effective.

The administrator, with the advice and consent of the board, shall adopt rules to permit employers to make periodic payments of the premium and assessment due under this division. The rules shall include provisions for the assessment of interest charges, where appropriate, and for the assessment of penalties when an employer fails to make timely premium payments. The administrator, in the rules the administrator adopts, may set an administrative fee for these periodic payments. An employer who timely pays the amounts due under this division is entitled to all of the benefits and protections of this chapter. Upon receipt of payment, the bureau shall issue a receipt to the employer certifying that payment has been made, which receipt is prima-facie evidence of payment. Workers' compensation coverage under this chapter continues uninterrupted upon timely receipt of payment under this division.

Every public employer, except public employers that are self-insuring employers under this section, shall comply with sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in regard to the contribution of moneys to the public insurance fund.

(B) Employers who will abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge employers who apply for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application.

All employers granted status as self-insuring employers shall demonstrate sufficient financial and administrative ability to assure that all obligations under this section are promptly met. The administrator shall deny the privilege where the employer is unable to demonstrate the employer's ability to promptly meet all the obligations imposed on the employer by this section.

(1) The administrator shall consider, but is not limited to, the following factors, where applicable, in determining the employer's ability to meet all of the obligations imposed on the employer by this section:

(a) The employer employs a minimum of five hundred employees in this state;

(b) The employer has operated in this state for a minimum of two years, provided that an employer who has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in this state that has operated for at least two years in this state, also shall qualify;

(c) Where the employer previously contributed to the state insurance fund or is a successor employer as defined by bureau rules, the amount of the buyout, as defined by bureau rules;

(d) The sufficiency of the employer's assets located in this state to insure the employer's solvency in paying compensation directly;

(e) The financial records, documents, and data, certified by a certified public accountant, necessary to provide the employer's full financial disclosure. The records, documents, and data include, but are not limited to, balance sheets and profit and loss history for the current year and previous four years.

(f) The employer's organizational plan for the administration of the workers' compensation law;

(g) The employer's proposed plan to inform employees of the change from a state fund insurer to a self-insuring employer, the procedures the employer will follow as a self-insuring employer, and the employees' rights to compensation and benefits; and

(h) The employer has either an account in a financial institution in this state, or if the employer maintains an account with a financial institution outside this state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the employer clearly indicates that payment will be honored by a financial institution in this state.

The administrator may waive the requirements of divisions (B)(1)(a) and (b) of this section and the requirement of division (B)(1)(e) of this section that the financial records, documents, and data be certified by a certified public accountant. The administrator shall adopt rules establishing the criteria that an employer shall meet in order for the administrator to waive the requirements of divisions (B)(1)(a), (b), and (e) of this section. Such rules may require additional security of that employer pursuant to division (E) of section 4123.351 of the Revised Code.

The administrator shall not grant the status of self-insuring employer to the state, except that the administrator may grant the status of self-insuring employer to a state institution of higher education, including its hospitals, that meets the requirements of division (B)(2) of this section.

(2) When considering the application of a public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, the administrator shall verify that the public employer satisfies all of the following requirements as the requirements apply to that public employer:

(a) For the two-year period preceding application under this section, the public employer has maintained an unvoted debt capacity equal to at least two times the amount of the current

annual premium established by the administrator under this chapter for that public employer for the year immediately preceding the year in which the public employer makes application under this section.

(b) For each of the two fiscal years preceding application under this section, the unreserved and undesignated year-end fund balance in the public employer's general fund is equal to at least five per cent of the public employer's general fund revenues for the fiscal year computed in accordance with generally accepted accounting principles.

(c) For the five-year period preceding application under this section, the public employer, to the extent applicable, has complied fully with the continuing disclosure requirements established in rules adopted by the United States securities and exchange commission under 17 C.F.R. 240.15c 2-12.

(d) For the five-year period preceding application under this section, the public employer has not had its local government fund distribution withheld on account of the public employer being indebted or otherwise obligated to the state.

(e) For the five-year period preceding application under this section, the public employer has not been under a fiscal watch or fiscal emergency pursuant to section 118.023, 118.04, or 3316.03 of the Revised Code.

(f) For the public employer's fiscal year preceding application under this section, the public employer has obtained an annual financial audit as required under section 117.10 of the Revised Code, which has been released by the auditor of state within seven months after the end of the public employer's fiscal year.

(g) On the date of application, the public employer holds a debt rating of Aa3 or higher according to Moody's investors service, inc., or a comparable rating by an independent rating agency similar to Moody's investors service, inc.

(h) The public employer agrees to generate an annual accumulating book reserve in its financial statements reflecting an actuarially generated reserve adequate to pay projected claims under this chapter for the applicable period of time, as determined by the administrator.

(i) For a public employer that is a hospital, the public employer shall submit audited financial statements showing the hospital's overall liquidity characteristics, and the administrator shall

determine, on an individual basis, whether the public employer satisfies liquidity standards equivalent to the liquidity standards of other public employers.

(j) Any additional criteria that the administrator adopts by rule pursuant to division (E) of this section.

The administrator may adopt rules establishing the criteria that a public employer shall satisfy in order for the administrator to waive any of the requirements listed in divisions (B)(2)(a) to (j) of this section. The rules may require additional security from that employer pursuant to division (E) of section 4123.351 of the Revised Code. The administrator shall not waive any of the requirements listed in divisions (B)(2)(a) to (j) of this section for a public employer who does not satisfy the criteria established in the rules the administrator adopts.

(C) A board of county commissioners described in division (G) of section 4123.01 of the Revised Code, as an employer, that will abide by the rules of the administrator and that may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and that does not desire to insure the payment thereof or indemnify itself against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge a board of county commissioners described in division (G) of section 4123.01 of the Revised Code that applies for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application. All employers granted such status shall demonstrate sufficient financial and administrative ability to assure that all obligations under this section are promptly met. The administrator shall deny the privilege where the employer is unable to demonstrate the employer's ability to promptly meet all the obligations imposed on the employer by this section. The administrator shall consider, but is not limited to, the following factors, where applicable, in determining the employer's ability to meet all of the obligations imposed on the board as an employer by this section:

(1) The board as an employer employs a minimum of five hundred employees in this state;

(2) The board has operated in this state for a minimum of two years;

(3) Where the board previously contributed to the state insurance fund or is a successor employer as defined by bureau rules, the amount of the buyout, as defined by bureau rules;

(4) The sufficiency of the board's assets located in this state to insure the board's solvency in paying compensation directly;

(5) The financial records, documents, and data, certified by a certified public accountant, necessary to provide the board's full financial disclosure. The records, documents, and data include, but are not limited to, balance sheets and profit and loss history for the current year and previous four years.

(6) The board's organizational plan for the administration of the workers' compensation law;

(7) The board's proposed plan to inform employees of the proposed self-insurance, the procedures the board will follow as a self-insuring employer, and the employees' rights to compensation and benefits;

(8) The board has either an account in a financial institution in this state, or if the board maintains an account with a financial institution outside this state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the board clearly indicates that payment will be honored by a financial institution in this state;

(9) The board shall provide the administrator a surety bond in an amount equal to one hundred twenty-five per cent of the projected losses as determined by the administrator.

(D) The administrator shall require a surety bond from all self-insuring employers, issued pursuant to section 4123.351 of the Revised Code, that is sufficient to compel, or secure to injured employees, or to the dependents of employees killed, the payment of compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to the fund, except when an employee of the employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of the members as the result of any injury sustained in the course of and arising out of the employee's employment, the compensation to be paid by the self-insuring employer is limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the bureau out of the surplus created by section 4123.34 of the Revised Code.

(E) In addition to the requirements of this section, the administrator shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify a finding of fact by the administrator as to granting the status of a self-insuring employer, which rules shall be general in their application, one of which rules shall provide that all self-insuring employers shall pay into the state insurance fund such amounts as are required to be credited to the surplus fund in division (B) of section 4123.34 of the Revised Code. The administrator may adopt rules establishing requirements in addition to the requirements described in division (B)(2) of this section that a public employer shall meet in order to qualify for self-insuring status.

Employers shall secure directly from the bureau central offices application forms upon which the bureau shall stamp a designating number. Prior to submission of an application, an employer shall make available to the bureau, and the bureau shall review, the information described in division (B)(1) of this section, and public employers shall make available, and the bureau shall review, the information necessary to verify whether the public employer meets the requirements listed in division (B)(2) of this section. An employer shall file the completed application forms with an application fee, which shall cover the costs of processing the application, as established by the administrator, by rule, with the bureau at least ninety days prior to the effective date of the employer's new status as a self-insuring employer. The application form is not deemed complete until all the required information is attached thereto. The bureau shall only accept applications that contain the required information.

(F) The bureau shall review completed applications within a reasonable time. If the bureau determines to grant an employer the status as a self-insuring employer, the bureau shall issue a statement, containing its findings of fact, that is prepared by the bureau and signed by the administrator. If the bureau determines not to grant the status as a self-insuring employer, the bureau shall notify the employer of the determination and require the employer to continue to pay its full premium into the state insurance fund. The administrator also shall adopt rules establishing a minimum level of performance as a criterion for granting and maintaining the status as a self-insuring employer and fixing time limits beyond which failure of the self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim.

(G) The administrator shall adopt rules setting forth procedures for auditing the program of self-insuring employers. The bureau shall conduct the audit upon a random basis or whenever the bureau has grounds for believing that a self-insuring employer is not in full compliance with bureau rules or this chapter.

The administrator shall monitor the programs conducted by self-insuring employers, to ensure compliance with bureau requirements and for that purpose, shall develop and issue to self-insuring employers standardized forms for use by the self-insuring employer in all aspects of the self-insuring employers' direct compensation program and for reporting of information to the bureau.

The bureau shall receive and transmit to the self-insuring employer all complaints concerning any self-insuring employer. In the case of a complaint against a self-insuring employer, the administrator shall handle the complaint through the self-insurance division of the bureau. The bureau shall maintain a file by employer of all complaints received that relate to the employer. The bureau shall evaluate each complaint and take appropriate action.

The administrator shall adopt as a rule a prohibition against any self-insuring employer from harassing, dismissing, or otherwise disciplining any employee making a complaint, which rule shall provide for a financial penalty to be levied by the administrator payable by the offending self-insuring employer.

(H) For the purpose of making determinations as to whether to grant status as a self-insuring employer, the administrator may subscribe to and pay for a credit reporting service that offers financial and other business information about individual employers. The costs in connection with the bureau's subscription or individual reports from the service about an applicant may be included in the application fee charged employers under this section.

(I) The administrator, notwithstanding other provisions of this chapter, may permit a self-insuring employer to resume payment of premiums to the state insurance fund with appropriate credit modifications to the employer's basic premium rate as such rate is determined pursuant to section 4123.29 of the Revised Code.

(J) On the first day of July of each year, the administrator shall calculate separately each self-insuring employer's assessments for the safety and hygiene fund, administrative costs pursuant to section 4123.342 of the Revised Code, and for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is not used for handicapped reimbursement, on the basis of the paid compensation attributable to the individual self-insuring employer according to the following calculation:

(1) The total assessment against all self-insuring employers as a class for each fund and for the administrative costs for the year that the assessment is being made, as determined by the

administrator, divided by the total amount of paid compensation for the previous calendar year attributable to all amenable self-insuring employers;

(2) Multiply the quotient in division (J)(1) of this section by the total amount of paid compensation for the previous calendar year that is attributable to the individual self-insuring employer for whom the assessment is being determined. Each self-insuring employer shall pay the assessment that results from this calculation, unless the assessment resulting from this calculation falls below a minimum assessment, which minimum assessment the administrator shall determine on the first day of July of each year with the advice and consent of the bureau of workers' compensation board of directors, in which event, the self-insuring employer shall pay the minimum assessment.

In determining the total amount due for the total assessment against all self-insuring employers as a class for each fund and the administrative assessment, the administrator shall reduce proportionately the total for each fund and assessment by the amount of money in the self-insurance assessment fund as of the date of the computation of the assessment.

The administrator shall calculate the assessment for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is used for handicapped reimbursement in the same manner as set forth in divisions (J)(1) and (2) of this section except that the administrator shall calculate the total assessment for this portion of the surplus fund only on the basis of those self-insuring employers that retain participation in the handicapped reimbursement program and the individual self-insuring employer's proportion of paid compensation shall be calculated only for those self-insuring employers who retain participation in the handicapped reimbursement program. The administrator, as the administrator determines appropriate, may determine the total assessment for the handicapped portion of the surplus fund in accordance with sound actuarial principles.

The administrator shall calculate the assessment for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that under division (D) of section 4121.66 of the Revised Code is used for rehabilitation costs in the same manner as set forth in divisions (J)(1) and (2) of this section, except that the administrator shall calculate the total assessment for this portion of the surplus fund only on the basis of those self-insuring employers who have not made the election to make payments directly under division (D) of section 4121.66 of the Revised Code and an individual self-insuring employer's proportion of paid compensation only for those self-insuring employers who have not made that election.

The administrator shall calculate the assessment for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is used for reimbursement to a self-insuring employer under division (H) of section 4123.512 of the Revised Code in the same manner as set forth in divisions (J)(1) and (2) of this section except that the administrator shall calculate the total assessment for this portion of the surplus fund only on the basis of those self-insuring employers that retain participation in reimbursement to the self-insuring employer under division (H) of section 4123.512 of the Revised Code and the individual self-insuring employer's proportion of paid compensation shall be calculated only for those self-insuring employers who retain participation in reimbursement to the self-insuring employer under division (H) of section 4123.512 of the Revised Code.

An employer who no longer is a self-insuring employer in this state or who no longer is operating in this state, shall continue to pay assessments for administrative costs and for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is not used for handicapped reimbursement, based upon paid compensation attributable to claims that occurred while the employer was a self-insuring employer within this state.

(K) There is hereby created in the state treasury the self-insurance assessment fund. All investment earnings of the fund shall be deposited in the fund. The administrator shall use the money in the self-insurance assessment fund only for administrative costs as specified in section 4123.341 of the Revised Code.

(L) Every self-insuring employer shall certify, in affidavit form subject to the penalty for perjury, to the bureau the amount of the self-insuring employer's paid compensation for the previous calendar year. In reporting paid compensation paid for the previous year, a self-insuring employer shall exclude from the total amount of paid compensation any reimbursement the self-insuring employer receives in the previous calendar year from the surplus fund pursuant to section 4123.512 of the Revised Code for any paid compensation. The self-insuring employer also shall exclude from the paid compensation reported any amount recovered under section 4123.931 of the Revised Code and any amount that is determined not to have been payable to or on behalf of a claimant in any final administrative or judicial proceeding. The self-insuring employer shall exclude such amounts from the paid compensation reported in the reporting period subsequent to the date the determination is made. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, that provide for all of the following:

(1) Establishing the date by which self-insuring employers must submit such information and the amount of the assessments provided for in division (J) of this section for employers who have been granted self-insuring status within the last calendar year;

(2) If an employer fails to pay the assessment when due, the administrator may add a late fee penalty of not more than five hundred dollars to the assessment plus an additional penalty amount as follows:

(a) For an assessment from sixty-one to ninety days past due, the prime interest rate, multiplied by the assessment due;

(b) For an assessment from ninety-one to one hundred twenty days past due, the prime interest rate plus two per cent, multiplied by the assessment due;

(c) For an assessment from one hundred twenty-one to one hundred fifty days past due, the prime interest rate plus four per cent, multiplied by the assessment due;

(d) For an assessment from one hundred fifty-one to one hundred eighty days past due, the prime interest rate plus six per cent, multiplied by the assessment due;

(e) For an assessment from one hundred eighty-one to two hundred ten days past due, the prime interest rate plus eight per cent, multiplied by the assessment due;

(f) For each additional thirty-day period or portion thereof that an assessment remains past due after it has remained past due for more than two hundred ten days, the prime interest rate plus eight per cent, multiplied by the assessment due.

(3) An employer may appeal a late fee penalty and penalty assessment to the administrator.

For purposes of division (L)(2) of this section, "prime interest rate" means the average bank prime rate, and the administrator shall determine the prime interest rate in the same manner as a county auditor determines the average bank prime rate under section 929.02 of the Revised Code.

The administrator shall include any assessment and penalties that remain unpaid for previous assessment periods in the calculation and collection of any assessments due under this division or division (J) of this section.

(M) As used in this section, "paid compensation" means all amounts paid by a self-insuring employer for living maintenance benefits, all amounts for compensation paid pursuant to sections 4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and 4123.64 of the Revised Code, all amounts paid as wages in lieu of such compensation, all amounts paid in lieu of such compensation under a nonoccupational accident and sickness program fully funded by the self-insuring employer, and all amounts paid by a self-insuring employer for a violation of a specific safety standard pursuant to Section 35 of Article II, Ohio Constitution and section 4121.47 of the Revised Code.

(N) Should any section of this chapter or Chapter 4121. of the Revised Code providing for self-insuring employers' assessments based upon compensation paid be declared unconstitutional by a final decision of any court, then that section of the Revised Code declared unconstitutional shall revert back to the section in existence prior to November 3, 1989, providing for assessments based upon payroll.

(O) The administrator may grant a self-insuring employer the privilege to self-insure a construction project entered into by the self-insuring employer that is scheduled for completion within six years after the date the project begins, and the total cost of which is estimated to exceed one hundred million dollars or, for employers described in division (R) of this section, if the construction project is estimated to exceed twenty-five million dollars. The administrator may waive such cost and time criteria and grant a self-insuring employer the privilege to self-insure a construction project regardless of the time needed to complete the construction project and provided that the cost of the construction project is estimated to exceed fifty million dollars. A self-insuring employer who desires to self-insure a construction project shall submit to the administrator an application listing the dates the construction project is scheduled to begin and end, the estimated cost of the construction project, the contractors and subcontractors whose employees are to be self-insured by the self-insuring employer, the provisions of a safety program that is specifically designed for the construction project, and a statement as to whether a collective bargaining agreement governing the rights, duties, and obligations of each of the parties to the agreement with respect to the construction project exists between the self-insuring employer and a labor organization.

A self-insuring employer may apply to self-insure the employees of either of the following:

(1) All contractors and subcontractors who perform labor or work or provide materials for the construction project;

(2) All contractors and, at the administrator's discretion, a substantial number of all the subcontractors who perform labor or work or provide materials for the construction project.

Upon approval of the application, the administrator shall mail a certificate granting the privilege to self-insure the construction project to the self-insuring employer. The certificate shall contain the name of the self-insuring employer and the name, address, and telephone number of the self-insuring employer's representatives who are responsible for administering workers' compensation claims for the construction project. The self-insuring employer shall post the certificate in a conspicuous place at the site of the construction project.

The administrator shall maintain a record of the contractors and subcontractors whose employees are covered under the certificate issued to the self-insured employer. A self-insuring employer immediately shall notify the administrator when any contractor or subcontractor is added or eliminated from inclusion under the certificate.

Upon approval of the application, the self-insuring employer is responsible for the administration and payment of all claims under this chapter and Chapter 4121. of the Revised Code for the employees of the contractor and subcontractors covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the construction project, or who contract an occupational disease in the course of employment on the construction project. For purposes of this chapter and Chapter 4121. of the Revised Code, a claim that is administered and paid in accordance with this division is considered a claim against the self-insuring employer listed in the certificate. A contractor or subcontractor included under the certificate shall report to the self-insuring employer listed in the certificate, all claims that arise under this chapter and Chapter 4121. of the Revised Code in connection with the construction project for which the certificate is issued.

A self-insuring employer who complies with this division is entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the employees of the contractors and subcontractors covered under a certificate issued under this division for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those employees' employment on that construction project, as if the employees were employees of the self-insuring employer, provided that the self-insuring employer also complies with this section. No employee of the contractors and subcontractors covered under a certificate issued under this division shall be considered the employee of the self-insuring employer listed in that certificate for any purposes other than this chapter and Chapter 4121. of the Revised Code. Nothing in this division gives a self-insuring employer authority to control the

means, manner, or method of employment of the employees of the contractors and subcontractors covered under a certificate issued under this division.

The contractors and subcontractors included under a certificate issued under this division are entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the contractor's or subcontractor's employees who are employed on the construction project which is the subject of the certificate, for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those employees' employment on that construction project.

The contractors and subcontractors included under a certificate issued under this division shall identify in their payroll records the employees who are considered the employees of the self-insuring employer listed in that certificate for purposes of this chapter and Chapter 4121. of the Revised Code, and the amount that those employees earned for employment on the construction project that is the subject of that certificate. Notwithstanding any provision to the contrary under this chapter and Chapter 4121. of the Revised Code, the administrator shall exclude the payroll that is reported for employees who are considered the employees of the self-insuring employer listed in that certificate, and that the employees earned for employment on the construction project that is the subject of that certificate, when determining those contractors' or subcontractors' premiums or assessments required under this chapter and Chapter 4121. of the Revised Code. A self-insuring employer issued a certificate under this division shall include in the amount of paid compensation it reports pursuant to division (L) of this section, the amount of paid compensation the self-insuring employer paid pursuant to this division for the previous calendar year.

Nothing in this division shall be construed as altering the rights of employees under this chapter and Chapter 4121. of the Revised Code as those rights existed prior to September 17, 1996. Nothing in this division shall be construed as altering the rights devolved under sections 2305.31 and 4123.82 of the Revised Code as those rights existed prior to September 17, 1996.

As used in this division, "privilege to self-insure a construction project" means privilege to pay individually compensation, and to furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees.

(P) A self-insuring employer whose application is granted under division (O) of this section shall designate a safety professional to be responsible for the administration and enforcement of the

safety program that is specifically designed for the construction project that is the subject of the application.

A self-insuring employer whose application is granted under division (O) of this section shall employ an ombudsperson for the construction project that is the subject of the application. The ombudsperson shall have experience in workers' compensation or the construction industry, or both. The ombudsperson shall perform all of the following duties:

- (1) Communicate with and provide information to employees who are injured in the course of, or whose injury arises out of employment on the construction project, or who contract an occupational disease in the course of employment on the construction project;
- (2) Investigate the status of a claim upon the request of an employee to do so;
- (3) Provide information to claimants, third party administrators, employers, and other persons to assist those persons in protecting their rights under this chapter and Chapter 4121. of the Revised Code.

A self-insuring employer whose application is granted under division (O) of this section shall post the name of the safety professional and the ombudsperson and instructions for contacting the safety professional and the ombudsperson in a conspicuous place at the site of the construction project.

(Q) The administrator may consider all of the following when deciding whether to grant a self-insuring employer the privilege to self-insure a construction project as provided under division (O) of this section:

- (1) Whether the self-insuring employer has an organizational plan for the administration of the workers' compensation law;
- (2) Whether the safety program that is specifically designed for the construction project provides for the safety of employees employed on the construction project, is applicable to all contractors and subcontractors who perform labor or work or provide materials for the construction project, and has as a component, a safety training program that complies with standards adopted pursuant to the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing management and employee involvement;

(3) Whether granting the privilege to self-insure the construction project will reduce the costs of the construction project;

(4) Whether the self-insuring employer has employed an ombudsperson as required under division (P) of this section;

(5) Whether the self-insuring employer has sufficient surety to secure the payment of claims for which the self-insuring employer would be responsible pursuant to the granting of the privilege to self-insure a construction project under division (O) of this section.

(R) As used in divisions (O), (P), and (Q), "self-insuring employer" includes the following employers, whether or not they have been granted the status of being a self-insuring employer under division (B) of this section:

(1) A state institution of higher education;

(2) A school district;

(3) A county school financing district;

(4) An educational service center;

(5) A community school established under Chapter 3314. of the Revised Code;

(6) A municipal power agency as defined in section 3734.058 of the Revised Code.

(S) As used in this section:

(1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy;

(2) "State institution of higher education" means the state universities listed in section 3345.011 of the Revised Code, community colleges created pursuant to Chapter 3354. of the Revised Code, university branches created pursuant to Chapter 3355. of the Revised Code, technical colleges created pursuant to Chapter 3357. of the Revised Code, and state community colleges created pursuant to Chapter 3358. of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No.39, SB 171, §1, eff. 6/30/2011.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 6/30/2011.

Amended by 129th General Assembly File No.16, HB 123, §101, eff. 7/29/2011.

Amended by 128th General Assembly ch.16, HB 15, §101, eff. 9/29/2009.

Effective Date: 04-09-2003; 10-13-2004; 2006 SB7 06-30-2006; 2007 HB100 09-10-2007; 2008 HB79 01-06-2009

4123.351 Self-insuring employers' guaranty fund.

(A) The administrator of workers' compensation shall require every self-insuring employer, including any self-insuring employer that is indemnified by a captive insurance company granted a certificate of authority under Chapter 3694. of the Revised Code, to pay a contribution, calculated under this section, to the self-insuring employers' guaranty fund established pursuant to this section. The fund shall provide for payment of compensation and benefits to employees of the self-insuring employer in order to cover any default in payment by that employer.

(B) The bureau of workers' compensation shall operate the self-insuring employers' guaranty fund for self-insuring employers. The administrator annually shall establish the contributions due from self-insuring employers for the fund at rates as low as possible but such as will assure sufficient moneys to guarantee the payment of any claims against the fund. The bureau's operation of the fund is not subject to sections 3929.10 to 3929.18 of the Revised Code or to regulation by the superintendent of insurance.

(C) If a self-insuring employer defaults, the bureau shall recover the amounts paid as a result of the default from the self-insuring employers' guaranty fund. If a self-insuring employer defaults and is in compliance with this section for the payment of contributions to the fund, such self-insuring employer is entitled to the immunity conferred by section 4123.74 of the Revised Code for any claim arising during any period the employer is in compliance with this section.

(D)

(1) There is hereby established a self-insuring employers' guaranty fund, which shall be in the custody of the treasurer of state and which shall be separate from the other funds established and administered pursuant to this chapter. The fund shall consist of contributions and other payments made by self-insuring employers under this section. All investment earnings of the fund shall be credited to the fund. The bureau shall make disbursements from the fund pursuant to this section.

(2) The administrator has the same powers to invest any of the surplus or reserve belonging to the fund as are delegated to the administrator under section 4123.44 of the Revised Code with respect to the state insurance fund. The administrator shall apply interest earned solely to the reduction of assessments for contributions from self-insuring employers and to the payments required due to defaults.

(3) If the bureau of workers' compensation board of directors determines that reinsurance of the risks of the fund is necessary to assure solvency of the fund, the board may:

(a) Enter into contracts for the purchase of reinsurance coverage of the risks of the fund with any company or agency authorized by law to issue contracts of reinsurance;

(b) Require the administrator to pay the cost of reinsurance from the fund;

(c) Include the costs of reinsurance as a liability and estimated liability of the fund.

(E) The administrator, with the advice and consent of the board, may adopt rules pursuant to Chapter 119. of the Revised Code for the implementation of this section, including a rule, notwithstanding division (C) of this section, requiring self-insuring employers to provide security in addition to the contribution to the self-insuring employers' guaranty fund required by this section. The additional security required by the rule, as the administrator determines appropriate, shall be sufficient and adequate to provide for financial assurance to meet the obligations of self-insuring employers under this chapter and Chapter 4121. of the Revised Code.

(F) The purchase of coverage under this section by self-insuring employers is valid notwithstanding the prohibitions contained in division (A) of section 4123.82 of the Revised Code and is in addition to the indemnity contracts that self-insuring employers may purchase pursuant to division (B) of section 4123.82 of the Revised Code.

(G) The administrator, on behalf of the self-insuring employers' guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer or other liable person all amounts the administrator has paid or reasonably expects to pay from the fund on account of the defaulting self-insuring employer.

(H) The assessments for contributions, the administration of the self-insuring employers' guaranty fund, the investment of the money in the fund, and the payment of liabilities incurred by the fund do not create any liability upon the state.

Except for a gross abuse of discretion, neither the board, nor the individual members thereof, nor the administrator shall incur any obligation or liability respecting the assessments for contributions, the administration of the self-insuring employers' guaranty fund, the investment of the fund, or the payment of liabilities therefrom.

Amended by 130th General Assembly File No. TBD, HB 117, §1, eff. 9/17/2014.

Effective Date: 09-01-1995; 2007 HB100 09-10-2007

4123.352 Self-insuring employers evaluation board.

(A) There is hereby created the self-insuring employers evaluation board consisting of three members. The member of the industrial commission representing the public shall be a member of the self-insuring employers evaluation board and shall serve, ex officio, as chairman. The governor shall appoint the remaining two members with the advice and consent of the senate. One member shall be a member of the Ohio self-insurance association and one member shall be a representative of labor. Not more than two of the three members of the board may be of the same political party.

Of the two members originally appointed by the governor pursuant to this section, one shall serve an initial term of two years and one an initial term of four years. Thereafter, terms of office of the two members are for four years, each term ending on the same date as the original date of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A vacancy in an unexpired term shall be filled in the same manner as the original appointment. The governor may remove any member pursuant to section 3.05 of the Revised Code.

The board member who also is a member of the commission shall receive no additional compensation but shall be reimbursed for actual and necessary expenses in the performance of his duties. The two remaining members of the board shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code and actual and necessary expenses incurred in the performance of their duties.

For administrative purposes, the board is a part of the bureau of workers' compensation, and the bureau shall furnish the board with necessary office space, staff, and supplies. The board shall meet as required by the administrator of workers' compensation.

(B) In addition to the grounds listed in section 4123.35 of the Revised Code pertaining to criteria for being granted the status as a self-insuring employer, the grounds upon which the administrator may revoke or refuse to renew the status includes failure to comply with any rules or orders of the administrator or to pay contributions to the self-insuring employers' guaranty fund established by section 4123.351 of the Revised Code, continued failure to file medical reports bearing upon the injury of the claimant, and failure to pay compensation or benefits in accordance with law in a timely manner. A deficiency in any of the grounds listed in this division is sufficient to justify the administrator's revocation or refusal to renew the employer's status as a self-insuring employer. The administrator need not revoke or refuse to renew an employer's status as a self-insuring employer if adequate corrective action is taken by the employer pursuant to division (C) of this section.

(C) The administrator shall refer to the board all complaints or allegations of misconduct against a self-insuring employer or questions as to whether a self-insuring employer continues to meet minimum standards. The board shall investigate and may order the employer to take corrective action in accordance with the schedule the board fixes. The board's determination in this regard need not be made by formal hearing but shall be issued in written form and contain the signature of at least two board members. If the board determines, after a hearing conducted pursuant to Chapter 119. of the Revised Code and the rules of the bureau, that the employer has failed to correct the deficiencies within the time fixed by the board or is otherwise in violation of this chapter, the board shall recommend to the administrator revocation of an employer's status as a self-insuring employer or such other penalty which may include, but is not limited to, probation, or a civil penalty not to exceed ten thousand dollars for each failure. A board recommendation to revoke an employer's status as a self-insuring employer shall be by unanimous vote. A recommendation for any other penalty shall be by majority vote. Where the board makes recommendations to the administrator for disciplining a self-insuring employer, the administrator promptly and fully shall implement the recommendations.

Effective Date: 10-20-1993

4123.353 Public employer granted self-insuring employer status.

(A) A public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, who is granted the status of self-insuring employer pursuant to section 4123.35 of the Revised Code shall do all of the following:

(1) Reserve funds as necessary, in accordance with sound and prudent actuarial judgment, to cover the costs the public employer may potentially incur to remain in compliance with this chapter and Chapter 4121. of the Revised Code;

(2) Include all activity under this chapter and Chapter 4121. of the Revised Code in a single fund on the public employer's accounting records;

(3) Within ninety days after the last day of each fiscal year, prepare and maintain a report of the reserved funds described in division (A)(1) of this section and disbursements made from those reserved funds

(B) A public employer who is subject to division (A) of this section shall make the reports required by that division available for inspection by the administrator of workers' compensation and any other person at all reasonable times during regular business hours.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 03-12-2001

4123.36 Covering default when account uncollectible.

Whenever an employer fails to pay a premium due and the administrator of workers' compensation determines the employer's account to be uncollectible, the administrator shall cover the default by transfer of money from the premium payment security fund account to the state insurance fund. Thereafter, the employer shall be considered a noncomplying employer under this chapter and shall not be entitled to the benefits and protection of this chapter .

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 11-03-1989

4123.37 Failure to pay premiums by amenable employer.

In this section "amenable employer" has the same meaning as "employer" as defined in division (I) of section 4123.32 of the Revised Code.

If the administrator of workers' compensation finds that any person, firm, or private corporation, including any public service corporation, is, or has been at any time after January 1, 1923, an amenable employer and has not complied with section 4123.35 of the Revised Code the administrator shall determine the period during which the person, firm, or corporation was an amenable employer and shall forthwith give notice of the determination to the employer. Within twenty days thereafter the employer shall furnish the bureau with the payroll covering the period included in the determination and, if the employer is an amenable employer at the time of the determination, shall pay into the state insurance fund the amount of premium and assessments applicable to such payroll. If the administrator determines that the employer is an amenable employer prior to the policy year commencing July 1, 2015, the administrator may require the employer to pay a premium security deposit.

If the employer does not furnish the payroll and pay the applicable premium, assessments, and, if applicable, the premium security deposit within the twenty days, the administrator shall forthwith make an assessment of the amounts due from the employer for the period the administrator determined the employer to be an amenable employer if the employer is an amenable employer at the time of the determination, basing the assessment upon the information in the possession of the administrator.

The administrator shall give to the employer assessed written notice of the assessment. The notice shall be mailed to the employer at the employer's residence or usual place of business by certified mail. Unless the employer to whom the notice of assessment is directed files with the bureau within twenty days after receipt thereof, a petition in writing, verified under oath by the employer, or the employer's authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reason for the objections, the assessment shall become conclusive and the amount thereof shall be due and payable from the employer so assessed to the state insurance fund. When a petition objecting to an assessment is filed the bureau shall assign a time and place for the hearing of the same and shall notify the petitioner thereof by certified mail. When an employer files a petition the assessment made by the administrator shall become due and payable ten days after notice of the finding made at the hearing has been sent by certified mail to the party assessed. An appeal

may be taken from any finding to the court of common pleas of Franklin county upon the execution by the party assessed of a bond to the state in double the amount found due and ordered paid by the bureau conditioned that the party will pay any judgment and costs rendered against it for the premium.

When no petition objecting to an assessment is filed or when a finding is made affirming or modifying an assessment after hearing, a certified copy of the assessment as affirmed or modified may be filed by the administrator in the office of the clerk of the court of common pleas in any county in which the employer has property or in which the employer has a place of business. The clerk, immediately upon the filing of the assessment, shall enter a judgment for the state against the employer in the amount shown on the assessment. The judgment may be filed by the clerk in a loose leaf book entitled "special judgments for state insurance fund." The judgment shall bear the same rate of interest, have the same effect as other judgments, and be given the same preference allowed by law on other judgments rendered for claims for taxes. An assessment or judgment under this section shall not be a bar to the adjustment of the employer's account upon the employer furnishing the employer's payroll records to the bureau.

The administrator, for good cause shown, may waive a default in the payment of premium where the default is of less than sixty days' duration, and upon payment by the employer of the premium for the period, the employer and the employer's employees are entitled to all of the benefits and immunities provided by this chapter.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 11-03-1989; 2007 HB100 09-10-2007; 2008 HB562 09-22-2008

4123.38 Contributions to public insurance fund.

Every employer mentioned in division (B)(1) of section 4123.01 of the Revised Code, except for boards of county hospital trustees that are self-insurers under section 4123.35 of the Revised Code, shall contribute to the public insurance fund the amount of money determined by the administrator of workers' compensation, and the manner of determining contributions and the classifications of employers is as provided in sections 4123.39 to 4123.41 and 4123.48 of the Revised Code.

Effective Date: 12-01-1992

4123.39 Contributions by state and subdivisions.

The administrator of workers' compensation shall determine the amount of money to be contributed under section 4123.38 of the Revised Code by the state itself and each county and each taxing district within each county. In fixing the amount of contribution to be made by the county, for such county and for the taxing districts therein, the administrator shall classify counties and other taxing districts into such groups as will equitably determine the contributions in accordance with the relative degree of hazard, and also merit rate such individual counties, taxing districts, or groups of taxing districts in accordance with their individual accident experience so as ultimately to provide for each taxing subdivision contributing an amount sufficient to meet its individual obligations and to maintain a solvent public insurance fund.

The administrator shall classify hospitals owned by a political subdivision or subdivisions as a group and merit rate each individual hospital according to its individual accident experience as provided in the rules of the administrator.

A children's home or other such public institution, or any other public activity maintained and operated by two or more counties or parts of counties, shall be considered as a county for the purpose of this chapter.

The contribution to the state insurance fund of the state and its departments, agencies, and instrumentalities shall be paid from appropriations made by the general assembly for that purpose.

The administrator shall develop and make available to counties and taxing districts and the district activities and institutions mentioned in this section a plan that groups, for rating purposes, counties, districts, and such activities and institutions of similar size and risk, and pools the risks of those counties, districts, activities, and institutions within the group. In no event shall this be construed as granting to such counties, districts, activities, or institutions status as self-insuring employers.

Effective Date: 10-20-1993

4123.391 Remedies for learn to earn participants.

(A) For purposes of this section, "learn to earn program" has the same meaning as in section 4141.293 of the Revised Code.

(B) Solely for the purpose of providing compensation and benefits as set forth in this section, a participant in a learn to earn program is an employee of the department, and not an employee of the entity conducting the training.

(C) A learn to earn program participant who suffers an injury or contracts an occupational disease in the course of and arising out of participation in the learn to earn program is entitled to compensation and benefits under this chapter.

(D)

(1) This chapter is the exclusive remedy for a learn to earn program participant or the participant's dependents resulting from the participant's injury or occupational disease received in the course of and arising out of the participant's participation in the program. Pursuant to section 4123.74 of the Revised Code, neither the department nor the designated worksite training provider shall be liable to respond in damages at common law or by statute for any injury, occupational disease, or bodily condition suffered or contracted by a participant in the course of or arising out of participation in the program.

(2) Notwithstanding division (D)(1) of this section, a participant or the participant's dependents do not waive any cause of action for an intentional tort under section 2745.01 of the Revised Code against the department or the designated worksite training provider.

(E) The department may include a learn to earn program participant in its department workers' compensation coverage, or may establish a separate workers' compensation coverage policy with the bureau of workers' compensation upon the terms and conditions for insurance to be established by the bureau consistent with insurance principles, as is equitable in the view of degree and hazard.

Added by 129th General Assembly File No.128, SB 316, §101.01, eff. 9/24/2012.

Effective Date: 07-01-1985

4123.40 Estimating state's contribution.

On or before the first day of July of every year, the administrator of workers' compensation shall estimate the gross payroll of all state employers for the succeeding biennium or fiscal year.

The administrator shall determine and certify for the office of budget and management that rate or rates which, when applied to the gross payroll estimate, will produce an amount equal to the estimated cost of awards or claim payments to be made during the like fiscal period, as determined by the administrator.

The rate certified shall be applied and made a part of the gross payroll calculation for the period for which the foregoing estimates have been made, in conformity with section 125.21 of the Revised Code. The amounts collected shall be remitted to the bureau of workers' compensation as provided in section 125.21 of the Revised Code.

If the historical amounts remitted to the bureau are greater or less than historical awards or claim payments , the difference shall be returned to the state employer or recovered by the bureau in a manner determined by the administrator .

In fixing the amount of contribution to be made by the state and each of its departments, agencies, and instrumentalities, the administrator shall classify departments, agencies, and instrumentalities into such groups as will equitably determine the contributions in accordance with their expected individual accident experience so that the state and its departments, agencies, and instrumentalities contribute an amount sufficient to meet individual obligations and the obligations of the participants in total.

Moneys collected from state employers shall not be used to pay compensation or other benefits attributable to service of persons as employees of counties or taxing districts therein, nor shall moneys collected from counties and taxing districts therein be used to pay compensation or other benefits attributable to service of persons as employees of the state.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 09-16-1998

4123.401 Estimated number of state employees.

On or before the first day of November preceding each biennium, the officer or employee of each state department, division, subdivision, bureau, commission, or any other state agency required to submit a budget request to the director of budget and management for any biennium shall provide the bureau of workers' compensation with the estimated number of employees of the state department, division, subdivision, bureau, commission, or other state agency for the ensuing biennium along with the estimated payroll of personal services.

Effective Date: 11-03-1989

4123.402 Department of administrative services - powers and duties.

The department of administrative services shall act as employer for workers' compensation claims arising under this chapter and Chapters 4121., 4127., and 4131. of the Revised Code for all state agencies, offices, institutions, boards, or commissions except for public colleges and universities. The department shall review, process, certify or contest, and administer workers' compensation claims for each state agency, office, institution, board, and commission, except for a public college or university, unless otherwise agreed to between the department and a state agency, office, institution, board, or commission.

The department may enter into a contract with one or more third party administrators for claims management of a state agency, office, institution, board, or commission, except for a public college or university, for workers' compensation claims and for claims covered by the occupational injury leave program adopted pursuant to section 124.381 of the Revised Code.

Effective Date: 09-29-1997

4123.41 Annual payments by county, taxing district and institution to public insurance fund.

(A)

(1) For policy years that begin prior to January 1, 2016, by the first day of January of each year, the bureau of workers' compensation shall furnish to the county auditor of each county and the chief fiscal officer of each taxing district in a county and of each district activity and institution mentioned in section 4123.39 of the Revised Code forms containing the premium rates applicable to the county, district, district activity, or institution as an employer, on which to report the amount of money expended by the county, district, district activity, or institution during the previous twelve calendar months for the services of employees under this chapter.

Each county auditor and each fiscal officer of a district, district activity, and institution shall calculate on the form it receives from the bureau under division (A) of this section the premium due as its proper contribution to the public insurance fund and issue a warrant in favor of the bureau for the amount due from the county, district, district activity, or institution to the public insurance fund.

(2) For a policy year commencing on or after January 1, 2016, by the first day of November of each year, the bureau shall furnish to the county auditor of each county and the chief fiscal

officer of each taxing district in a county and of each district activity and institution mentioned in section 4123.39 of the Revised Code forms showing the estimated premium due from the county, district, district activity, or institution for the forthcoming policy year.

After the conclusion of each policy year, the county auditor of each county and the chief fiscal officer of each taxing district in a county and of each district activity and institution mentioned in section 4123.39 of the Revised Code shall, on or before the fifteenth day of February immediately following the conclusion of the policy year, report the amount of money expended by the county, district, district activity, or institution during the policy year for the services of employees under this chapter. The bureau shall adjust the premium and assessments charged to the employer for the difference between estimated gross payrolls and actual gross payrolls, and the employer immediately shall pay any balance due to the bureau. Any balance due the employer shall be credited to the employer's account.

The administrator may adopt rules setting forth penalties for failure to submit the report of money expended as required by this division, including, but not limited to, exclusion from alternative rating plans and discount programs.

(B)

(1) Except as otherwise provided in division (B) of this section, payments due under this section shall be made according to the following schedule:

(a) For payments of premium and assessments due for a policy year that commences on or before January 1, 2014:

(i) On or before the fifteenth day of May immediately following the conclusion of the policy year, no less than forty-five per cent of the annual amount due for the policy year;

(ii) On or before the first day of September immediately following the conclusion of the policy year, no less than the total amount due for the policy year.

(b) For the policy year commencing January 1, 2015:

(i) On or before the fifteenth day of May immediately following the conclusion of the policy year, no less than fifty per cent of the annual amount due for the policy year;

(ii) On or before the first day of September immediately following the conclusion of the policy year, no less than the total amount due for the policy year.

(c) For the policy year commencing January 1, 2016:

(i) On or before the fifteenth day of May in that policy year, no less than fifty per cent of the annual premium estimated by the bureau.

(ii) On or before the first day of September in that policy year, no less than the total amount of annual premium estimated by the bureau.

(d) For a policy year commencing on or after January 1, 2017, the total amount of annual premium estimated by the bureau on or before the thirty-first day of December immediately preceding the start of the policy year.

(2) The administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules to permit employers to make periodic payments of the premium and assessments due under this section. The rules shall include provisions for the assessment of interest charges, if appropriate, and for the assessment of penalties when an employer fails to make timely premium payments. The administrator may adopt rules to establish an administrative fee for those periodic payments.

(C) The legislative body of any county, district, district activity, or institution may reimburse the fund from which the workers' compensation payments are made by transferring to the fund from any other fund of the county, district, district activity, or institution, the proportionate amount of the payments that should be chargeable to the fund, whether the fund is derived from taxation or otherwise. The proportionate amount of the payments chargeable to the fund may be based on payroll, relative exposure, relative loss experience, or any combination of these factors, as determined by the legislative body.

(1) The workers' compensation program payments of any county, district, district activity, or institution may include all payments required by any bureau of workers' compensation rating plan.

(2) The workers' compensation program payments of any county, district, district activity, or institution, except for a county board of developmental disabilities, a board of alcohol, drug addiction, and mental health services, a board of mental health services, and a board of alcohol and drug addiction services, also may include any of the following:

(a) Direct administrative costs incurred in the management of the county, district, district activity, or institution's workers' compensation program;

(b) Indirect costs that are necessary and reasonable for the proper and efficient administration of the workers' compensation program as documented in a cost allocation plan. The indirect cost plan shall conform to the United States office of management and budget circular A-87 "cost principles for state and local governments," 2 C.F.R. 225, as most recently amended on May 10, 2004. The plan shall not authorize payment from the fund of any general government expense required to carry out the overall governmental responsibilities.

(3) Within sixty days before a legislative body changes the method used for calculating the proportionate amount of the payments chargeable to the fund, it shall notify, consult with, and give information supporting the change to any elected official affected by the change. A transfer made pursuant to division (B)(2) of this section is not subject to section 5705.16 of the Revised Code.

(D) Any county board of developmental disabilities, board of alcohol, drug addiction, and mental health services, board of mental health services, or board of alcohol and drug addiction services whose workers' compensation payments, on or before September 28, 2012, includes costs referred to in division (C)(2) of this section may continue to do so on and after September 28, 2012.

(E) The bureau may investigate the correctness of the information provided by the county auditor and chief fiscal officer under division (A) of this section, and if the bureau determines at any time that the county, district, district activity, or institution has not reported the correct information, the administrator of workers' compensation may make deductions or additions as the facts warrant and take those facts into consideration in determining the current or future contributions to be made by the county, district, district activity, or institution. If the county, district, district activity, or institution does not furnish the report in the time required by this section, the administrator may fix the amount of contribution the county, district, district activity, or institution must make and certify that amount for payment.

(F) For payments of premium and assessments for a policy year prior to the policy year commencing January 1, 2015, the administrator shall provide a discount to any county, district, district activity, or institution that pays its total amount due to the public insurance fund on or before the fifteenth day of May of each year as its proper contribution for premiums. The administrator shall base the discount provided under this division on the savings generated by the early payment to the public insurance fund. The administrator may provide the discount through a refund to the county, district, district activity, or institution or an offset against the

future contributions due to the public insurance fund from the county, district, district activity, or institution.

(G) The administrator may impose an interest penalty for late payment of any amount due from a county, district, district activity, and institution at the interest rate established by the state tax commissioner pursuant to section 5703.47 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.141, HB 509, §1, eff. 9/28/2012.

Effective Date: 09-26-2003

4123.411 Levying assessments for disabled workers' relief fund.

(A) For the purpose of carrying out sections 4123.412 to 4123.418 of the Revised Code, the administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall levy an assessment against all employers at a rate not to exceed ten cents per one hundred dollars of payroll, such rate to be determined annually for each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount the administrator estimates to be necessary to carry out such sections for the period for which the assessment is levied. In the event the amount produced by the assessment is not sufficient to carry out such sections the additional amount necessary shall be provided from the income produced as a result of investments made pursuant to section 4123.44 of the Revised Code.

Assessments shall be levied according to the following schedule:

(1) For private fund employers, except self-insuring employers :

(a) For policy years commencing prior to July 1, 2015, in January and July of each year upon gross payrolls of the preceding six months;

(b) For policy years commencing on or after July 1, 2015, in the month of June immediately preceding each policy year upon gross payrolls estimated for that policy year.

(2) For counties and taxing district employers therein, except county hospitals that are self-insuring employers :

(a) For policy years commencing prior to January 1, 2016, in January of each year upon gross payrolls of the preceding twelve months;

(b) For policy years commencing on or after January 1, 2016, in the month of December immediately preceding each policy year upon gross payrolls estimated for that policy year.

(3) For the state as an employer--in January, April, July, and October of each year upon gross payrolls of the preceding three months or at other intervals as the administrator establishes.

After the completion of each policy year that commences on or after July 1, 2015, for private fund employers or that commences on or after January 1, 2016, for counties and taxing district employers therein, the assessments levied under this section shall be adjusted for the difference between estimated gross payrolls and actual gross payrolls reported by the employer on the payroll report submitted by a private employer pursuant to section 4123.26 of the Revised Code, or, for a public employer, submitted pursuant to section 4123.41 of the Revised Code.

Amounts assessed in accordance with this section shall be collected from each employer as prescribed in rules the administrator adopts.

The moneys derived from the assessment provided for in this section shall be credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall establish by rule classifications of employers within divisions (A)(1) to (3) of this section and shall determine rates for each class so as to fairly apportion the costs of carrying out sections 4123.412 to 4123.418 of the Revised Code.

(B) For all injuries and disabilities occurring on or after January 1, 1987, the administrator, for the purposes of carrying out sections 4123.412 to 4123.418 of the Revised Code, shall levy an assessment against all employers at a rate per one hundred dollars of payroll, such rate to be determined annually for each classification of employer in each employer group listed in divisions (A)(1) to (3) of this section, which will produce an amount no greater than the amount the administrator estimates to be necessary to carry out such sections for the period for which the assessment is levied. The administrator annually shall establish the contributions due from employers for the disabled workers' relief fund at rates as low as possible but that will assure sufficient moneys to guarantee the payment of any claims against that fund.

Amounts assessed in accordance with this division shall be billed at the same time premiums are billed and credited to the disabled workers' relief fund created by section 4123.412 of the Revised Code. The administrator shall determine the rates for each class in the same manner as the administrator fixes the rates for premiums pursuant to section 4123.29 of the Revised Code.

(C) For a self-insuring employer, the bureau of workers' compensation shall pay to employees who are participants regardless of the date of injury, any amounts due to the participants under section 4123.414 of the Revised Code and shall bill the self-insuring employer, semiannually, for all amounts paid to a participant.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 09-01-1995; 2007 HB100 09-10-2007

4123.412 Disabled workers' relief fund.

For the relief of persons who are permanently and totally disabled as the result of injury or disease sustained in the course of their employment and who are receiving workers' compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to the Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code, there is hereby created a separate fund to be known as the disabled workers' relief fund, which fund shall consist of the sums that are from time to time appropriated by the general assembly and made available to the order of the bureau of workers' compensation to carry out the objects and purposes of sections 4123.412 to 4123.418 of the Revised Code. The fund shall be in the custody of the treasurer of the state. Disbursements from the fund shall be made by the bureau to those persons entitled to participate therein and in amounts to each participant as is provided in section 4123.414 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

Effective Date: 10-20-1993

4123.413 Eligibility for participation in fund.

To be eligible to participate in said fund, a participant must be permanently and totally disabled and be receiving workers' compensation payments, the total of which, when combined with

disability benefits received pursuant to The Social Security Act is less than three hundred forty-two dollars per month adjusted annually as provided in division (B) of section 4123.62 of the Revised Code.

Effective Date: 08-22-1986

4123.414 Receiving payments from fund.

Each person determined eligible, pursuant to section 4123.413 of the Revised Code, to participate in the disabled workers' relief fund is entitled to receive payments, without application, from the fund of a monthly amount equal to the lesser of the difference between three hundred forty-two dollars, adjusted annually pursuant to division (B) of section 4123.62 of the Revised Code, and:

(1) The amount he is receiving per month as the disability monthly benefits award pursuant to The Social Security Act; or

(2) The amount he is receiving monthly under the workers' compensation laws for permanent and total disability. In determining such difference, a participant shall be considered as receiving the amount of such participant's compensation which shall have been commuted under the provisions of section 4123.64 of the Revised Code. Such payments shall be made monthly during the period in which such participant is permanently and totally disabled.

Effective Date: 08-22-1986

4123.415 Payments made to show source of funds.

Payments to a participant may be made from the disabled workers' relief fund by separate check or may be made from said fund and from the state insurance fund by one check, but each such check on two funds shall be so written as to show plainly the payments made from each fund. No disbursement shall be made from the state insurance fund on account of any provision of sections 4123.412 to 4123.415 of the Revised Code.

Effective Date: 01-17-1977

4123.416 List of names and addresses of person receiving compensation.

The administrator of workers' compensation shall promptly require of each employer who has elected to pay compensation direct under the provisions of section 4123.35 of the Revised

Code a verified list of the names and addresses of all persons to whom the employer is paying workers' compensation on account of permanent and total disability and the evidence respecting such persons as the administrator reasonably deems necessary to determine the eligibility of any such person to participate in the disabled workers' relief fund. The superintendent of insurance shall promptly require of each insurance company which is organized or licensed to do business in this state and which has at any time written workers' compensation insurance in this state a like verified list and like evidence respecting persons to whom the insurance companies are paying workers' compensation under the Ohio workers' compensation laws and contracts of insurance in respect thereof; and the superintendent of insurance shall promptly transmit all such lists and evidence to the bureau of workers' compensation. Any person claiming the right to participate in the fund may file his application therefor with the bureau and shall be accorded a hearing thereon.

Effective Date: 11-03-1989

4123.417 Investigation and determination of right of persons to participate in disabled workers' relief fund.

In the investigation and determination of the right of persons to participate in the disabled workers' relief fund, the administrator of workers' compensation shall have and exercise all the powers that he possesses under this chapter and Chapter 4121. of the Revised Code. An order issued by the administrator relative to an individual's right to participate in the disabled workers' relief fund is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code. No attorney, representative, or agent of any claimant or participant is entitled to charge or receive a fee or compensation or gratuity in any form for representing or assisting or pretending to represent or assist any person to become a participant in the fund.

Effective Date: 10-20-1993

4123.418 Bureau employees.

The administrator of workers' compensation shall employ employees as is necessary to the discharge of the administrator's duties and responsibilities hereunder. The salaries and expenses of the employees shall be paid by the treasurer of the state from the fund created by section 4123.412 of the Revised Code as provided in section 4123.42 of the Revised Code.

Effective Date: 09-29-1997

4123.419 Establishing assessment rate.

The assessment rate established pursuant to section 4123.411 of the Revised Code, subject to the limits set forth in that section, shall be adequate to provide the amounts estimated as necessary by the administrator of workers' compensation to carry out the provisions of sections 4123.412 to 4123.418 of the Revised Code, and in addition to provide moneys to reimburse the general revenue fund for moneys appropriated by Section 2 of H.B. No. 1131 of the 103rd general assembly or by the 104th and succeeding general assemblies for disabled workers' relief. When the additional moneys are available in whole or part for the purpose of making the reimbursement, the director of budget and management shall certify the amount to the bureau of workers' compensation which shall thereupon cause the moneys to be paid to the general revenue fund from the disabled workers' relief fund except that any amounts due because of the state's obligation as an employer pursuant to section 4123.411 of the Revised Code and not paid to the disabled workers' relief fund shall be deducted from any such reimbursement.

Effective Date: 11-03-1989

4123.42 Custodian of state insurance fund.

The treasurer of state shall be custodian of the state insurance fund, the occupational disease fund, and the safety and hygiene fund. The treasurer shall pay disbursements from the funds upon warrants drawn by the bureau of workers' compensation and signed by the administrator of workers' compensation. The warrants may bear the facsimile signature of the administrator printed thereon, or the facsimile signature printed thereon of the employee of the bureau charged with the duty of keeping the account of the funds and with the preparation of warrants for the payment of compensation to the persons entitled thereto.

The treasurer of state shall give a separate and additional bond, in the amount fixed by the governor and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund. The bond shall be deposited with the secretary of state and kept in his office. The bureau shall pay the premium on the bond.

Effective Date: 10-20-1993

4123.43 Deposit of funds not required for immediate use.

The treasurer of state may deposit any portion of the state insurance fund not needed for immediate use in the same manner as and subject to all the laws with respect to the deposit of

state funds by the treasurer of state. All interest earned by such portion of the state insurance fund as is deposited under this section shall be collected by the treasurer of state and placed to the credit of such fund.

Effective Date: 10-01-1953

4123.44 Investment of surplus or reserve of state insurance fund.

The members of the bureau of workers' compensation board of directors, the administrator of workers' compensation, and the bureau of workers' compensation chief investment officer are the trustees of the state insurance fund. The administrator, in accordance with sections 4121.126 and 4121.127 of the Revised Code and the investment policy approved by the board pursuant to section 4121.12 of the Revised Code, and in consultation with the bureau of workers' compensation chief investment officer, may invest any of the surplus or reserve belonging to the state insurance fund. The administrator and the bureau of workers' compensation chief investment officer shall not deviate from the investment policy approved by the board without the approval of the workers' compensation investment committee and the board.

The administrator shall not invest in any type of investment specified in divisions (B)(1) to (10) of section 4123.442 of the Revised Code.

The administrator and other fiduciaries shall discharge their duties with respect to the funds with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the assets of the funds so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

To facilitate investment of the funds, the administrator may establish a partnership, trust, limited liability company, corporation, including a corporation exempt from taxation under the Internal Revenue Code, 100 Stat. 2085, 26 U.S.C. 1, as amended, or any other legal entity authorized to transact business in this state.

When reporting on the performance of investments, the administrator shall comply with the performance presentation standards established by the association for investment management and research.

All investments shall be purchased at current market prices and the evidences of title to the investments shall be placed in the custody of the treasurer of state, who is hereby designated as custodian, or in the custody of the treasurer of state's authorized agent. Evidences of title of the investments so purchased may be deposited by the treasurer of state for safekeeping with an authorized agent selected by the treasurer of state who is a qualified trustee under section 135.18 of the Revised Code. The treasurer of state or the agent shall collect the principal, dividends, distributions, and interest as they become due and payable and place them when collected into the state insurance fund.

The treasurer of state shall pay for investments purchased by the administrator on receipt of written or electronic instructions from the administrator or the administrator's designated agent authorizing the purchase, and pending receipt of the evidence of title of the investment by the treasurer of state or the treasurer of state's authorized agent. The administrator may sell investments held by the administrator, and the treasurer of state or the treasurer of state's authorized agent shall accept payment from the purchaser and deliver evidence of title of the investment to the purchaser, on receipt of written or electronic instructions from the administrator or the administrator's designated agent authorizing the sale, and pending receipt of the moneys for the investments. The amount received shall be placed in the state insurance fund. The administrator and the treasurer of state may enter into agreements to establish procedures for the purchase and sale of investments under this division and the custody of the investments.

No purchase or sale of any investment shall be made under this section, except as authorized by the administrator.

Any statement of financial position distributed by the administrator shall include the fair value, as of the statement date, of all investments held by the administrator under this section.

When in the judgment of the administrator it is necessary to provide available funds for the payment of compensation or benefits under this chapter, the administrator may borrow money from any available source and pledge as security a sufficient amount of bonds or other securities in which the state insurance fund is invested. The aggregate unpaid amount of loans existing at any one time for money so borrowed shall not exceed ten million dollars. The bonds or other securities so pledged as security for such loans to the administrator shall be the sole security for the payment of the principal and interest of any such loan. The administrator shall not be personally liable for the payment of the principal or the interest of any such loan. No such loan shall be made for a longer period of time than one year. Such loans may be renewed

but no one renewal shall be for a period in excess of one year. Such loans shall bear such rate of interest as the administrator determines and in negotiating the loans, the administrator shall endeavor to secure as favorable interest rates and terms as circumstances will permit.

The treasurer of state may deliver to the person or governmental agency making such loan, the bonds or other securities which are to be pledged by the administrator as security for such loan, upon receipt by the treasurer of state of an order of the administrator authorizing such loan. Upon payment of any such loan by the administrator, the bonds or other securities pledged as security therefor shall be returned to the treasurer of state as custodian of such bonds.

The administrator may pledge with the treasurer of state such amount of bonds or other securities in which the state insurance fund is invested as is reasonably necessary as security for any certificates issued, or paid out, by the treasurer of state upon any warrants drawn by the administrator.

The administrator may secure investment information services, consulting services, and other like services to facilitate investment of the surplus and reserve belonging to the state insurance fund. The administrator shall pay the expense of securing such services from the state insurance fund.

Effective Date: 03-07-1997; 09-29-2005; 2007 HB100 09-10-2007

4123.441 Chief investment adviser for bureau - duties.

(A) The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors shall employ a person or designate an employee of the bureau of workers' compensation who is designated as a chartered financial analyst by the CFA institute and who is licensed by the division of securities in the department of commerce as a bureau of workers' compensation chief investment officer to be the chief investment officer for the bureau of workers' compensation. After ninety days after September 29, 2005, the bureau of workers' compensation may not employ a bureau of workers' compensation chief investment officer, as defined in section 1707.01 of the Revised Code, who does not hold a valid bureau of workers' compensation chief investment officer license issued by the division of securities in the department of commerce. The board shall notify the division of securities of the department of commerce in writing of its designation and of any change in its designation within ten calendar days after the designation or change.

(B) The bureau of workers' compensation chief investment officer shall reasonably supervise employees of the bureau who handle investment of assets of funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code with a view toward preventing violations of Chapter 1707. of the Revised Code, the "Commodity Exchange Act," 42 Stat. 998, 7 U.S.C. 1, the "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, and the rules and regulations adopted under those statutes. This duty of reasonable supervision shall include the adoption, implementation, and enforcement of written policies and procedures reasonably designed to prevent employees of the bureau who handle investment of assets of the funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code, from misusing material, nonpublic information in violation of those laws, rules, and regulations.

For purposes of this division, no bureau of workers' compensation chief investment officer shall be considered to have failed to satisfy the officer's duty of reasonable supervision if the officer has done all of the following:

(1) Adopted and implemented written procedures, and a system for applying the procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by employees handling investments of assets of the funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code;

(2) Reasonably discharged the duties and obligations incumbent on the bureau of workers' compensation chief investment officer by reason of the established procedures and the system for applying the procedures when the officer had no reasonable cause to believe that there was a failure to comply with the procedures and systems;

(3) Reviewed, at least annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

(C) The bureau of workers' compensation chief investment officer shall establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions executed on behalf of the bureau.

Effective Date: 09-29-2005; 2007 HB100 09-10-2007

4123.442 Development of investment policy - duties of committee.

When developing the investment policy for the investment of the assets of the funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code, the workers' compensation investment committee shall do all of the following:

(A) Specify the asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines;

(B) Prohibit investing the assets of those funds, directly or indirectly, in vehicles that target any of the following:

(1) Coins;

(2) Artwork;

(3) Horses;

(4) Jewelry or gems;

(5) Stamps;

(6) Antiques;

(7) Artifacts;

(8) Collectibles;

(9) Memorabilia;

(10) Similar unregulated investments that are not commonly part of an institutional portfolio, that lack liquidity, and that lack readily determinable valuation.

(C) Specify that the administrator of workers' compensation may invest in an investment class only if the bureau of workers' compensation board of directors, by a majority vote, opens that class;

(D) Prohibit investing the assets of those funds in any class of investments the board, by majority vote, closed, or any specific investment in which the board prohibits the administrator from investing;

(E) Not specify in the investment policy that the administrator or employees of the bureau of workers' compensation are prohibited from conducting business with an investment management firm, any investment management professional associated with that firm, any third party solicitor associated with that firm, or any political action committee controlled by that firm or controlled by an investment management professional of that firm based on criteria that are more restrictive than the restrictions described in divisions (Y) and (Z) of section 3517.13 of the Revised Code.

Effective Date: 2007 HB100 09-10-2007

4123.443 Rental payments for leased buildings.

Rental payments by the bureau of workers' compensation or the industrial commission to or for the benefit of the state insurance fund for each building owned by the bureau that was constructed or acquired as an investment in productive real estate, shall be made pursuant to a lease agreement for a term that shall not exceed two years. Beginning July 1, 1991, the rental payments to be made under each such lease agreement shall include the amount needed to amortize the construction or acquisition costs for the building over a period not to exceed twenty-five years, and, until such costs are amortized, an amount representing return on investment to the state insurance fund determined by multiplying the unamortized acquisition or construction costs of the building by a rate that is not more than three per cent below the rate determined by the tax commissioner under division (B) of section 5703.47 of the Revised Code.

Effective Date: 04-10-1991

4123.444 Duties of administrator regarding investment manager contracts.

(A) As used in this section and section 4123.445 of the Revised Code:

(1) "Bureau of workers' compensation funds" means any fund specified in Chapter 4121., 4123., 4127., or 4131. of the Revised Code that the administrator of workers' compensation has the authority to invest, in accordance with the administrator's investment authority under section 4123.44 of the Revised Code.

(2) "Investment manager" means any person with whom the administrator of workers' compensation contracts pursuant to section 4123.44 of the Revised Code to facilitate the investment of assets of bureau of workers' compensation funds.

(3) "Business entity" means any person with whom an investment manager contracts for the investment of assets of bureau of workers' compensation funds.

(4) "Financial or investment crime" means any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities, as set forth in Chapters 2909., 2911., 2913., 2915., 2921., 2923., and 2925. of the Revised Code or other law of this state, or the laws of any other state or the United States that are substantially equivalent to those offenses.

(B)

(1) Before entering into a contract with an investment manager to invest bureau of workers' compensation funds, the administrator shall do both of the following:

(a) Request from any investment manager with whom the administrator wishes to contract for those investments a list of all employees who will be investing assets of bureau of workers' compensation funds. The list shall specify each employee's state of residence for the five years prior to the date of the administrator's request.

(b) Request that the superintendent of the bureau of criminal investigation and identification conduct a criminal records check in accordance with this section and section 109.579 of the Revised Code with respect to every employee the investment manager names in that list.

(2) After an investment manager enters into a contract with the administrator to invest bureau of workers' compensation funds and before an investment manager enters into a contract with a business entity to facilitate those investments, the investment manager shall request from any business entity with whom the investment manager wishes to contract to make those investments a list of all employees who will be investing assets of the bureau of workers' compensation funds. The list shall specify each employee's state of residence for the five years prior to the investment manager's request. The investment manager shall forward to the administrator the list received from the business entity. The administrator shall request the superintendent to conduct a criminal records check in accordance with this section and section 109.579 of the Revised Code with respect to every employee the business entity names in that list. Upon receipt of the results of the criminal records check, the administrator shall advise the investment manager whether the results were favorable or unfavorable.

(3) If, after a contract has been entered into between the administrator and an investment manager or between an investment manager and a business entity for the investment of assets of bureau of workers' compensation funds, the investment manager or business entity wishes to have an employee who was not the subject of a criminal records check under division (B)(1) or (B)(2) of this section invest assets of the bureau of workers' compensation funds, that employee shall be the subject of a criminal records check pursuant to this section and section 109.579 of the Revised Code prior to handling the investment of assets of those funds. The investment manager shall submit to the administrator the name of that employee along with the employee's state of residence for the five years prior to the date in which the administrator requests the criminal records check. The administrator shall request that the superintendent conduct a criminal records check on that employee pursuant to this section and section 109.579 of the Revised Code.

(C)

(1) If an employee who is the subject of a criminal records check pursuant to division (B) of this section has not been a resident of this state for the five-year period immediately prior to the time the criminal records check is requested or does not provide evidence that within that five-year period the superintendent has requested information about the employee from the federal bureau of investigation in a criminal records check, the administrator shall request that the superintendent obtain information from the federal bureau of investigation as a part of the criminal records check for the employee. If the employee has been a resident of this state for at least that five-year period, the administrator may, but is not required to, request that the superintendent request and include in the criminal records check information about that employee from the federal bureau of investigation.

(2) The administrator shall provide to an investment manager a copy of the form prescribed pursuant to division (C)(1) of section 109.579 of the Revised Code and a standard impression sheet for each employee for whom a criminal records check must be performed, to obtain fingerprint impressions as prescribed pursuant to division (C)(2) of section 109.579 of the Revised Code. The investment manager shall obtain the completed form and impression sheet either directly from each employee or from a business entity and shall forward the completed form and sheet to the administrator, who shall forward these forms and sheets to the superintendent.

(3) Any employee who receives a copy of the form and the impression sheet pursuant to division (C)(2) of this section and who is requested to complete the form and provide a set of

fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall complete the impression sheets in the manner prescribed in division (C)(2) of section 109.579 of the Revised Code.

(D) For each criminal records check the administrator requests under this section, at the time the administrator makes a request the administrator shall pay to the superintendent the fee the superintendent prescribes pursuant to division (E) of section 109.579 of the Revised Code.

Effective Date: 09-29-2005; 03-30-2006

4123.445 Contract with investment manager convicted of financial crime prohibited.

(A) The administrator of workers' compensation shall not enter into a contract with an investment manager for the investment of assets of the bureau of workers' compensation funds if any employee of that investment manager who will be investing assets of bureau of workers' compensation funds has been convicted of or pleaded guilty to a financial or investment crime.

(B) An investment manager who has entered into a contract with the bureau of workers' compensation for the investment of assets of bureau of workers' compensation funds shall not contract with a business entity for the investment of those assets if any employee of that business manager who will be investing assets of bureau of workers' compensation funds has been convicted of or pleaded guilty to a financial or investment crime.

(C) The administrator shall not enter into a contract with an investment manager who refuses to submit the list of the investment manager's employees required under division (B) of section 4123.444 of the Revised Code. An investment manager shall not enter into a contract with a business entity who refuses to submit the list of the business entity's employees required under division (B) of section 4123.444 of the Revised Code.

(D) If, after a contract has been awarded to an investment manager or business entity for the investment of assets of bureau of workers' compensation funds, the investment manager or business entity discovers that an employee who is handling the investment of those assets has been convicted of or pleaded guilty to a financial or investment crime, the investment manager or business entity immediately shall notify the administrator.

Effective Date: 09-29-2005

4123.446 Report regarding minority and women's business enterprises.

(A) As used in this section:

(1) "Minority business enterprise" has the meaning defined in section 122.71 of the Revised Code.

(2) "Women's business enterprise" means a business, or a partnership, corporation, limited liability company, or joint venture of any kind, that is owned and controlled by women who are United States citizens and residents of this state.

(B) The administrator of workers' compensation shall submit annually to the governor and to the general assembly (under section 101.68 of the Revised Code) a report containing the following information:

(1) The name of each investment manager that is a minority business enterprise or a women's business enterprise with which the administrator contracts;

(2) The amount of assets managed by investment managers that are minority business enterprises or women's business enterprises, expressed as a percentage of assets managed by investment managers with which the administrator has contracted;

(3) Efforts by the administrator to increase utilization of investment managers that are minority business enterprises or women's business enterprises.

Added by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

4123.45 Printing or lithographing of bonds - denomination - compliance by taxing authorities.

All bonds of any taxing district of this state purchased by the administrator of workers' compensation shall be printed or lithographed upon paper of the size required by the administrator. Interest coupons on the bonds shall be attached to the bonds in a manner required by the administrator. The principal and interest of the bonds shall be payable at the office of the treasurer of state.

The bonds shall be of the denomination required by the administrator in his resolution to purchase, or the administrator may in his resolution to purchase require that all bonds of any series of bonds purchased by him from any taxing district shall be consolidated and issued as one bond, the principal amount of which shall be equal to the aggregate amount of all the bonds of the series, which principal together with the interest thereon shall be payable in installments evidenced by and payable upon the surrender of combined principal and interest

coupons attached thereto, which coupons shall each separately state the amounts of principal and interest included therein.

The proper officers of each taxing district issuing bonds are hereby authorized and required without additional procedure or legislation on their part to comply with this chapter, except that the proper accounting officer of the taxing district and the secretary of its sinking fund shall make and keep a detailed record of any changes required by the administrator. The administrator shall not change the date of maturity of any part of the principal or interest of any bond issue, nor shall he require a bond of any issue to be of a larger denomination, nor any partial payment of principal to be of greater amount than the aggregate amount of the issue falling due at any date.

Effective Date: 11-03-1989

4123.452 No compensation for injury sustained in ridesharing arrangement.

As used in this section, "ridesharing arrangement" means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of a volunteer driver and includes ridesharing arrangements known as carpools, vanpools, and buspools.

No compensation shall be allowed under this chapter for any employee injured while participating in a ridesharing arrangement between his place of residence and place of employment or termini near such places. Any injury occurring while an employee is voluntarily participating in a ridesharing arrangement is not considered occurring in the course of employment.

Effective Date: 07-01-1982

4123.46 Payments from state insurance fund.

(A)

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

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

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

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

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

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

Effective Date: 09-30-1998

4123.47 Actuarial analysis of fund; audits of effectiveness of administration - retention of actuary.

(A) The administrator of workers' compensation shall have an actuarial analysis of the state insurance fund and all other funds specified in this chapter and Chapters 4121., 4127., and

4131. of the Revised Code made at least once each year. The analysis shall be made and certified by recognized , credentialed property or casualty actuaries who shall be selected by the bureau of workers' compensation board of directors. The expense of the analysis shall be paid from the state insurance fund. The administrator shall make copies of the analysis available to the workers' compensation audit committee at no charge and to the public at cost.

(B) The auditor of state annually shall conduct an audit of the administration of this chapter by the industrial commission and the bureau of workers' compensation and the safety and hygiene fund. The cost of the audit shall be charged to the administrative costs of the bureau as defined in section 4123.341 of the Revised Code. The audit shall include audits of all fiscal activities, claims processing and handling, and employer premium collections. The auditor shall prepare a report of the audit together with recommendations and transmit copies of the report to the industrial commission, the board, the administrator, the governor, and to the general assembly. The auditor shall make copies of the report available to the public at cost.

(C) The administrator may retain the services of a recognized actuary on a consulting basis for the purpose of evaluating the actuarial soundness of premium rates and classifications and all other matters involving the administration of the state insurance fund. The expense of services provided by the actuary shall be paid from the state insurance fund.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 09-01-1995; 09-29-2005; 2007 HB100 09-10-2007

4123.48 Individual accounts to be kept by bureau - default in payment.

The bureau of workers' compensation shall keep, for the state and each county, taxing district, district activity, and institution, an individual account showing the amount of money paid into the public insurance fund and the amount of losses incurred against the fund. When any default is made in the payment of the sums required to be contributed to the public insurance fund, or when any official fails to perform any act required to be performed by him in reference to the making of payments, the administrator of workers' compensation shall institute the proper proceedings in court to compel such payment.

Effective Date: 12-01-1992

4123.49 [Repealed].

Effective Date: 12-01-1992

4123.50 Failure to comply with law.

(A) Each member of a firm, and the president, secretary, general manager, or managing agent of each private corporation, including any public service corporation mentioned in section 4123.01 of the Revised Code or publicly owned utility, shall cause the firm or corporation to comply with section 4123.35 of the Revised Code and, for self-insuring employers, to comply with the assessment based upon paid compensation provisions of this chapter and Chapter 4121. of the Revised Code. No person mentioned in section 4123.01 of the Revised Code and no member of the firms and no officer of the corporations or publicly owned utilities referred to in this section shall fail to comply with section 4123.35 of the Revised Code and, for self-insuring employers, to comply with the assessment based upon paid compensation provisions of this chapter and Chapter 4121. of the Revised Code. All fines collected for a violation of this section shall be paid to the general fund of the political subdivision where the case is prosecuted.

(B) The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules governing treatment of employers found in violation of division (A) of this section. The rules shall cover enforcement and prosecution procedures and methods and grounds for settlement of liability of a noncomplying employer.

Effective Date: 09-01-1995; 2007 HB100 09-10-2007

4123.51 Place for filing claims or appeals - required statement.

The administrator of workers' compensation shall by published notices and other appropriate means endeavor to cause claims to be filed in the service office of the bureau of workers' compensation from which the investigation and determination of the claim may be made most expeditiously. A claim or appeal under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code may be filed with any office of the bureau of workers' compensation or the industrial commission, within the required statutory period, and is considered received for the purpose of processing the claims or appeals.

The administrator, on the form an employee or an individual acting on behalf of the employee files with the administrator or a self-insuring employer to initiate a claim under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code, shall include a statement that is substantially similar to the following statement in bold font and set apart from all other text in the form:

"By signing this form, I elect to only receive compensation, benefits, or both that are provided for in this claim under Ohio's workers' compensation laws. I understand and I hereby waive and release my right to receive compensation and benefits under the workers' compensation laws of another state for the injury or occupational disease, or the death resulting from an injury or occupational disease, for which I am filing this claim. I have not received compensation and benefits under the workers' compensation laws of another state for this claim, and I will not file and have not filed a claim in another state for the injury or occupational disease or death resulting from an injury or occupational disease for which I am filing this claim."

Effective Date: 10-20-1993; 2008 SB334 09-11-2008

4123.511 Notice of receipt of claim.

(A) Within seven days after receipt of any claim under this chapter, the bureau of workers' compensation shall notify the claimant and the employer of the claimant of the receipt of the claim and of the facts alleged therein. If the bureau receives from a person other than the claimant written or facsimile information or information communicated verbally over the telephone indicating that an injury or occupational disease has occurred or been contracted which may be compensable under this chapter, the bureau shall notify the employee and the employer of the information. If the information is provided verbally over the telephone, the person providing the information shall provide written verification of the information to the bureau according to division (E) of section 4123.84 of the Revised Code. The receipt of the information in writing or facsimile, or if initially by telephone, the subsequent written verification, and the notice by the bureau shall be considered an application for compensation under section 4123.84 or 4123.85 of the Revised Code, provided that the conditions of division (E) of section 4123.84 of the Revised Code apply to information provided verbally over the telephone. Upon receipt of a claim, the bureau shall advise the claimant of the claim number assigned and the claimant's right to representation in the processing of a claim or to elect no representation. If the bureau determines that a claim is determined to be a compensable lost-time claim, the bureau shall notify the claimant and the employer of the availability of rehabilitation services. No bureau or industrial commission employee shall directly or indirectly convey any information in derogation of this right. This section shall in no way abrogate the bureau's responsibility to aid and assist a claimant in the filing of a claim and to advise the claimant of the claimant's rights under the law.

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

The bureau shall investigate the facts concerning an injury or occupational disease and ascertain such facts in whatever manner is most appropriate and may obtain statements of the employee, employer, attending physician, and witnesses in whatever manner is most appropriate.

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

(B)

(1) Except as provided in division (B)(2) of this section, in claims other than those in which the employer is a self-insuring employer, if the administrator determines under division (A) of this section that a claimant is or is not entitled to an award of compensation or benefits, the administrator shall issue an order no later than twenty-eight days after the sending of the notice under division (A) of this section, granting or denying the payment of the compensation or benefits, or both as is appropriate to the claimant. Notwithstanding the time limitation specified in this division for the issuance of an order, if a medical examination of the claimant is required by statute, the administrator promptly shall schedule the claimant for that examination and shall issue an order no later than twenty-eight days after receipt of the 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 claims, the commission shall refer the claim to an appropriate district hearing officer according to rules the commission adopts under section 4121.36 of the Revised Code. The district hearing officer shall notify the parties and their respective representatives of the time and place of the hearing.

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

(D) Upon the timely filing of an appeal of the order of the district hearing officer issued under division (C) of this section, the commission shall refer the claim file to an appropriate staff hearing officer according to its rules adopted under section 4121.36 of the Revised Code. The staff hearing officer shall hold a hearing within forty-five days after the filing of an appeal under this division and issue a decision within seven days after holding the hearing under this division. The staff hearing officer shall notify the parties and their respective representatives in writing of the staff hearing officer's order. Any party may appeal an order issued under this division

pursuant to division (E) of this section within fourteen days after receipt of the order under this division.

(E) Upon the filing of a timely appeal of the order of the staff hearing officer issued under division (D) of this section, the commission or a designated staff hearing officer, on behalf of the commission, shall determine whether the commission will hear the appeal. If the commission or the designated staff hearing officer decides to hear the appeal, the commission or the designated staff hearing officer shall notify the parties and their respective representatives in writing of the time and place of the hearing. The commission shall hold the hearing within forty-five days after the filing of the notice of appeal and, within seven days after the conclusion of the hearing, the commission shall issue its order affirming, modifying, or reversing the order issued under division (D) of this section. The commission shall notify the parties and their respective representatives in writing of the order. If the commission or the designated staff hearing officer determines not to hear the appeal, within fourteen days after the expiration of the period in which an appeal of the order of the staff hearing officer may be filed as provided in division (D) of this section, the commission or the designated staff hearing officer shall issue an order to that effect and notify the parties and their respective representatives in writing of that order.

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

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

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

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

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

(3) The administrator is a party and may appear and participate at all administrative proceedings on behalf of the state insurance fund. However, in cases in which the employer is

represented, the administrator shall neither present arguments nor introduce testimony that is cumulative to that presented or introduced by the employer or the employer's representative. The administrator may file an appeal under this section on behalf of the state insurance fund; however, except in cases arising under section 4123.343 of the Revised Code, the administrator only may appeal questions of law or issues of fraud when the employer appears in person or by representative.

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

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

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

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

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

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

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

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

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

(K) Upon the final administrative or judicial determination under this section or section 4123.512 of the Revised Code of an appeal of an order to pay compensation, if a claimant is found to have received compensation pursuant to a prior order which is reversed upon subsequent appeal, the claimant's employer, if a self-insuring employer, or the bureau, shall withhold from any amount to which the claimant becomes entitled pursuant to any claim, past, present, or future, under Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the amount of previously paid compensation to the claimant which, due to reversal upon appeal, the claimant is not entitled, pursuant to the following criteria:

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

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

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

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

The administrator and self-insuring employers, as appropriate, are subject to the repayment schedule of this division only with respect to an order to pay compensation that was properly paid under a previous order, but which is subsequently reversed upon an administrative or judicial appeal. The administrator and self-insuring employers are not subject to, but may utilize, the repayment schedule of this division, or any other lawful means, to collect payment of compensation made to a person who was not entitled to the compensation due to fraud as determined by the administrator or the industrial commission.

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

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

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

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

As used in this division:

(1) "Emergency" means any occasion or instance for which the governor of Ohio or the president of the United States publicly declares an emergency and orders state or federal assistance to save lives and protect property, the public health and safety, or to lessen or avert the threat of a catastrophe.

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

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 128th General Assembly ch.9, HB 16, §101, eff. 9/29/2009.

Effective Date: 06-14-2000; 06-21-2005; 2007 HB100 09-10-2007

4123.512 Appeal to court.

(A) The claimant or the employer may appeal an order of the industrial commission made under division (E) of section 4123.511 of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, or in which the contract of employment was made if the exposure occurred outside the state. If no common pleas court has jurisdiction for the purposes of an

appeal by the use of the jurisdictional requirements described in this division, the appellant may use the venue provisions in the Rules of Civil Procedure to vest jurisdiction in a court. If the claim is for an occupational disease, the appeal shall be to the court of common pleas of the county in which the exposure which caused the disease occurred. Like appeal may be taken from an order of a staff hearing officer made under division (D) of section 4123.511 of the Revised Code from which the commission has refused to hear an appeal. The appellant shall file the notice of appeal with a court of common pleas within sixty days after the date of the receipt of the order appealed from or the date of receipt of the order of the commission refusing to hear an appeal of a staff hearing officer's decision under division (D) of section 4123.511 of the Revised Code. The filing of the notice of the appeal with the court is the only act required to perfect the appeal.

If an action has been commenced in a court of a county other than a court of a county having jurisdiction over the action, the court, upon notice by any party or upon its own motion, shall transfer the action to a court of a county having jurisdiction.

Notwithstanding anything to the contrary in this section, if the commission determines under section 4123.522 of the Revised Code that an employee, employer, or their respective representatives have not received written notice of an order or decision which is appealable to a court under this section and which grants relief pursuant to section 4123.522 of the Revised Code, the party granted the relief has sixty days from receipt of the order under section 4123.522 of the Revised Code to file a notice of appeal under this section.

(B) The notice of appeal shall state the names of the administrator of workers' compensation, the claimant, and the employer ; the number of the claim ; the date of the order appealed from ; and the fact that the appellant appeals therefrom.

The administrator , the claimant, and the employer shall be parties to the appeal and the court, upon the application of the commission, shall make the commission a party. The party filing the appeal shall serve a copy of the notice of appeal on the administrator at the central office of the bureau of workers' compensation in Columbus. The administrator shall notify the employer that if the employer fails to become an active party to the appeal, then the administrator may act on behalf of the employer and the results of the appeal could have an adverse effect upon the employer's premium rates.

(C) The attorney general or one or more of the attorney general's assistants or special counsel designated by the attorney general shall represent the administrator and the commission. In the event the attorney general or the attorney general's designated assistants or special

counsel are absent, the administrator or the commission shall select one or more of the attorneys in the employ of the administrator or the commission as the administrator's attorney or the commission's attorney in the appeal. Any attorney so employed shall continue the representation during the entire period of the appeal and in all hearings thereof except where the continued representation becomes impractical.

(D) Upon receipt of notice of appeal, the clerk of courts shall provide notice to all parties who are appellees and to the commission.

The claimant shall, within thirty days after the filing of the notice of appeal, file a petition containing a statement of facts in ordinary and concise language showing a cause of action to participate or to continue to participate in the fund and setting forth the basis for the jurisdiction of the court over the action. Further pleadings shall be had in accordance with the Rules of Civil Procedure, provided that service of summons on such petition shall not be required and provided that the claimant may not dismiss the complaint without the employer's consent if the employer is the party that filed the notice of appeal to court pursuant to this section. The clerk of the court shall, upon receipt thereof, transmit by certified mail a copy thereof to each party named in the notice of appeal other than the claimant. Any party may file with the clerk prior to the trial of the action a deposition of any physician taken in accordance with the provisions of the Revised Code, which deposition may be read in the trial of the action even though the physician is a resident of or subject to service in the county in which the trial is had. The bureau of workers' compensation shall pay the cost of the stenographic deposition filed in court and of copies of the stenographic deposition for each party from the surplus fund and charge the costs thereof against the unsuccessful party if the claimant's right to participate or continue to participate is finally sustained or established in the appeal. In the event the deposition is taken and filed, the physician whose deposition is taken is not required to respond to any subpoena issued in the trial of the action. The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of the action.

(E) The court shall certify its decision to the commission and the certificate shall be entered in the records of the court. Appeals from the judgment are governed by the law applicable to the appeal of civil actions.

(F) The cost of any legal proceedings authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge, based upon the effort expended, in the event the claimant's right to participate or to continue to participate in the fund is established

upon the final determination of an appeal, shall be taxed against the employer or the commission if the commission or the administrator rather than the employer contested the right of the claimant to participate in the fund. The attorney's fee shall not exceed forty-two hundred dollars.

(G) If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate in the fund, the commission and the administrator shall thereafter proceed in the matter of the claim as if the judgment were the decision of the commission, subject to the power of modification provided by section 4123.52 of the Revised Code.

(H)

(1) An appeal from an order issued under division (E) of section 4123.511 of the Revised Code or any action filed in court in a case in which an award of compensation or medical benefits has been made shall not stay the payment of compensation or medical benefits under the award, or payment for subsequent periods of total disability or medical benefits during the pendency of the appeal. If, in a final administrative or judicial action, it is determined that payments of compensation or benefits, or both, made to or on behalf of a claimant should not have been made, the amount thereof shall be charged to the surplus fund account under division (B) of section 4123.34 of the Revised Code. In the event the employer is a state risk, the amount shall not be charged to the employer's experience, and the administrator shall adjust the employer's account accordingly. In the event the employer is a self-insuring employer, the self-insuring employer shall deduct the amount from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code. If an employer is a state risk and has paid an assessment for a violation of a specific safety requirement, and, in a final administrative or judicial action, it is determined that the employer did not violate the specific safety requirement, the administrator shall reimburse the employer from the surplus fund account under division (B) of section 4123.34 of the Revised Code for the amount of the assessment the employer paid for the violation.

(2)

(a) Notwithstanding a final determination that payments of benefits made to or on behalf of a claimant should not have been made, the administrator or self-insuring employer shall award payment of medical or vocational rehabilitation services submitted for payment after the date of the final determination if all of the following apply:

(i) The services were approved and were rendered by the provider in good faith prior to the date of the final determination.

(ii) The services were payable under division (I) of section 4123.511 of the Revised Code prior to the date of the final determination.

(iii) The request for payment is submitted within the time limit set forth in section 4123.52 of the Revised Code.

(b) Payments made under division (H)(1) of this section shall be charged to the surplus fund account under division (B) of section 4123.34 of the Revised Code. If the employer of the employee who is the subject of a claim described in division (H)(2)(a) of this section is a state fund employer, the payments made under that division shall not be charged to the employer's experience. If that employer is a self-insuring employer, the self-insuring employer shall deduct the amount from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code.

(c) Division (H)(2) of this section shall apply only to a claim under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code arising on or after July 29, 2011.

(3) A self-insuring employer may elect to pay compensation and benefits under this section directly to an employee or an employee's dependents by filing an application with the bureau of workers' compensation not more than one hundred eighty days and not less than ninety days before the first day of the employer's next six-month coverage period. If the self-insuring employer timely files the application, the application is effective on the first day of the employer's next six-month coverage period, provided that the administrator shall compute the employer's assessment for the surplus fund account due with respect to the period during which that application was filed without regard to the filing of the application. On and after the effective date of the employer's election, the self-insuring employer shall pay directly to an employee or to an employee's dependents compensation and benefits under this section regardless of the date of the injury or occupational disease, and the employer shall receive no money or credits from the surplus fund account on account of those payments and shall not be required to pay any amounts into the surplus fund account on account of this section. The election made under this division is irrevocable.

(l) All actions and proceedings under this section which are the subject of an appeal to the court of common pleas or the court of appeals shall be preferred over all other civil actions except election causes, irrespective of position on the calendar.

This section applies to all decisions of the commission or the administrator on November 2, 1959, and all claims filed thereafter are governed by sections 4123.511 and 4123.512 of the Revised Code.

Any action pending in common pleas court or any other court on January 1, 1986, under this section is governed by former sections 4123.514, 4123.515, 4123.516, and 4123.519 and section 4123.522 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 129th General Assembly File No. 16, HB 123, §101, eff. 7/29/2011.

Effective Date: 08-06-1999; 2006 SB7 10-11-2006; 2007 HB100 09-10-2007

4123.513 to 4123.516 [Repealed].

Effective Date: 10-20-1993

4123.517, 4123.518 [Repealed].

Effective Date: 10-29-1993

4123.519 Amended and Renumbered RC 4123.512.

Effective Date: 10-20-1993

4123.52 Continuing jurisdiction of commission.

(A) The jurisdiction of the industrial commission and the authority of the administrator of workers' compensation over each case is continuing, and the commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified. No modification or change nor any finding or award in respect of any claim shall be made with respect to disability, compensation, dependency, or benefits, after five years from the date of injury in the absence of the payment of medical benefits under this chapter or in the absence of payment of compensation under section 4123.57, 4123.58, or division (A) or (B) of section 4123.56 of the Revised Code or wages in lieu of compensation in a manner so as to satisfy the requirements of section 4123.84 of the Revised Code, in which event the modification, change, finding, or award shall be made within five years from the date of the last payment of compensation or from the date of death, nor unless written notice of claim for the specific part or parts of the body injured or disabled has been given as provided in

section 4123.84 or 4123.85 of the Revised Code. The commission shall not make any modification, change, finding, or award which shall award compensation for a back period in excess of two years prior to the date of filing application therefor.

(B) Notwithstanding division (A) of this section, and except as otherwise provided in a rule that shall be adopted by the administrator, with the advice and consent of the bureau of workers' compensation board of directors, neither the administrator nor the commission shall make any finding or award for payment of medical or vocational rehabilitation services submitted for payment more than one year after the date the services were rendered or more than one year after the date the services became payable under division (I) of section 4123.511 of the Revised Code, whichever is later. No medical or vocational rehabilitation provider shall bill a claimant for services rendered if the administrator or commission is prohibited from making that payment under this division.

(C) Division (B) of this section does not apply to requests made by the centers for medicare and medicaid services in the United States department of health and human services for reimbursement of conditional payments made pursuant to section 1395y(b)(2) of title 42, United States Code (commonly known as the "Medicare Secondary Payer Act").

(D) This section does not affect the right of a claimant to compensation accruing subsequent to the filing of any such application, provided the application is filed within the time limit provided in this section.

(E) This section does not deprive the commission of its continuing jurisdiction to determine the questions raised by any application for modification of award which has been filed with the commission after June 1, 1932, and prior to the expiration of the applicable period but in respect to which no award has been granted or denied during the applicable period.

(F) The commission may, by general rules, provide for the destruction of files of cases in which no further action may be taken.

(G) The commission and administrator of workers' compensation each may, by general rules, provide for the retention and destruction of all other records in their possession or under their control pursuant to section 121.211 and sections 149.34 to 149.36 of the Revised Code. The bureau of workers' compensation may purchase or rent required equipment for the document retention media, as determined necessary to preserve the records. Photographs, microphotographs, microfilm, films, or other direct document retention media, when properly identified, have the same effect as the original record and may be offered in like manner and

may be received as evidence in proceedings before the industrial commission, staff hearing officers, and district hearing officers, and in any court where the original record could have been introduced.

Amended by 129th General Assembly File No.16, HB 123, §101, eff. 7/29/2011.

Effective Date: 06-14-2000; 2006 SB7 10-11-2006

4123.521 Appeal for purpose of delay or other vexatious reason and without reasonable ground.

In the case of an appeal by the employer to the industrial commission or to a court of common pleas, if upon deciding such appeal the commission or the court shall find that the employer appealed for the purpose of delay or other vexatious reason and without reasonable ground, the commission or the court may assess against the employer such sum not exceeding seven hundred and fifty dollars and not exceeding ten per cent of the total amount of the award in question as may be reasonable in the circumstances.

The sums assessed under this section shall be paid to the claimant.

Effective Date: 10-05-1955

4123.522 Right to receive written notice of action.

The employee, employer, and their respective representatives are entitled to written notice of any hearing, determination, order, award, or decision under this chapter and the administrator of workers' compensation and his representative are entitled to like notice for orders issued under divisions (C) and (D) of section 4123.511 and section 4123.512 of the Revised Code. An employee, employer, or the administrator is deemed not to have received notice until the notice is received from the industrial commission or its district or staff hearing officers, the administrator, or the bureau of workers' compensation by both the employee and his representative of record, both the employer and his representative of record, and by both the administrator and his representative.

If any person to whom a notice is mailed fails to receive the notice and the commission, upon hearing, determines that the failure was due to cause beyond the control and without the fault or neglect of such person or his representative and that such person or his representative did not have actual knowledge of the import of the information contained in the notice, such person may take the action afforded to such person within twenty-one days after the receipt of

the notice of such determination of the commission. Delivery of the notice to the address of the person or his representative is prima-facie evidence of receipt of the notice by the person.

Effective Date: 10-20-1993

4123.53 Medical examinations - vocational evaluation or questionnaire.

(A) The administrator of workers' compensation or the industrial commission may require any employee claiming the right to receive compensation to submit to a medical examination, vocational evaluation, or vocational questionnaire at any time, and from time to time, at a place reasonably convenient for the employee, and as provided by the rules of the commission or the administrator of workers' compensation. A claimant required by the commission or administrator to submit to a medical examination or vocational evaluation, at a point outside of the place of permanent or temporary residence of the claimant, as provided in this section, is entitled to have paid to the claimant by the bureau of workers' compensation the necessary and actual expenses on account of the attendance for the medical examination or vocational evaluation after approval of the expense statement by the bureau. Under extraordinary circumstances and with the unanimous approval of the commission, if the commission requires the medical examination or vocational evaluation, or with the approval of the administrator, if the administrator requires the medical examination or vocational evaluation, the bureau shall pay an injured or diseased employee the necessary, actual, and authorized expenses of treatment at a point outside the place of permanent or temporary residence of the claimant.

(B) When an employee initially receives temporary total disability compensation pursuant to section 4123.56 of the Revised Code for a consecutive ninety-day period, the administrator shall refer the employee to the bureau medical section for a medical examination to determine the employee's continued entitlement to such compensation, the employee's rehabilitation potential, and the appropriateness of the medical treatment the employee is receiving. The bureau medical section shall conduct the examination not later than thirty days following the end of the initial ninety-day period. If the medical examiner, upon an initial or any subsequent examination recommended by the medical examiner under this division, determines that the employee is temporarily and totally impaired, the medical examiner shall recommend a date when the employee should be reexamined. Upon the issuance of the medical examination report containing a recommendation for reexamination, the administrator shall schedule an examination and, if at the date of reexamination the employee is receiving temporary total disability compensation, the employee shall be examined. The administrator shall adopt a rule,

pursuant to Chapter 119. of the Revised Code, permitting employers to waive the administrator's scheduling of any such examinations.

(C) If an employee refuses to submit to any medical examination or vocational evaluation scheduled pursuant to this section or obstructs the same, or refuses to complete and submit to the bureau or commission a vocational questionnaire within thirty days after the bureau or commission mails the request to complete and submit the questionnaire the employee's right to have his or her claim for compensation considered, if the claim is pending before the bureau or commission, or to receive any payment for compensation theretofore granted, is suspended during the period of the refusal or obstruction. Notwithstanding this section, an employee's failure to submit to a medical examination or vocational evaluation, or to complete and submit a vocational questionnaire, shall not result in the dismissal of the employee's claim.

(D) Medical examinations scheduled under this section do not limit medical examinations provided for in other provisions of this chapter or Chapter 4121. of the Revised Code.

Effective Date: 10-01-1996

4123.54 Compensation in case of injury or death - agreement if work performed in another state.

(A) Except as otherwise provided in divisions (I) and (K) of this section, every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not:

(1) Purposely self-inflicted; or

(2) Caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, is entitled to receive, either directly from the employee's self-insuring employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, the compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital services and medicines, and the amount of funeral expenses in case of death, as are provided by this chapter.

(B) For the purpose of this section, provided that an employer has posted written notice to employees that the results of, or the employee's refusal to submit to, any chemical test described under this division may affect the employee's eligibility for compensation and benefits pursuant to this chapter and Chapter 4121. of the Revised Code, there is a rebuttable presumption that an employee is intoxicated or under the influence of a controlled substance not prescribed by the employee's physician and that being intoxicated or under the influence of a controlled substance not prescribed by the employee's physician is the proximate cause of an injury under either of the following conditions:

(1) When any one or more of the following is true:

(a) The employee, through a qualifying chemical test administered within eight hours of an injury, is determined to have an alcohol concentration level equal to or in excess of the levels established in divisions (A)(1)(b) to (i) of section 4511.19 of the Revised Code;

(b) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels in an enzyme multiplied immunoassay technique screening test and above the levels established in division (B)(1)(c) of this section in a gas chromatography mass spectrometry test:

(i) For amphetamines, one thousand nanograms per milliliter of urine;

(ii) For cannabinoids, fifty nanograms per milliliter of urine;

(iii) For cocaine, including crack cocaine, three hundred nanograms per milliliter of urine;

(iv) For opiates, two thousand nanograms per milliliter of urine;

(v) For phencyclidine, twenty-five nanograms per milliliter of urine.

(c) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels by a gas chromatography mass spectrometry test:

(i) For amphetamines, five hundred nanograms per milliliter of urine;

(ii) For cannabinoids, fifteen nanograms per milliliter of urine;

(iii) For cocaine, including crack cocaine, one hundred fifty nanograms per milliliter of urine;

(iv) For opiates, two thousand nanograms per milliliter of urine;

(v) For phencyclidine, twenty-five nanograms per milliliter of urine.

(d) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have barbiturates, benzodiazepines, methadone, or propoxyphene in the employee's system that tests above levels established by laboratories certified by the United States department of health and human services.

(2) When the employee refuses to submit to a requested chemical test, on the condition that that employee is or was given notice that the refusal to submit to any chemical test described in division (B)(1) of this section may affect the employee's eligibility for compensation and benefits under this chapter and Chapter 4121. of the Revised Code.

(C)

(1) For purposes of division (B) of this section, a chemical test is a qualifying chemical test if it is administered to an employee after an injury under at least one of the following conditions:

(a) When the employee's employer had reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician;

(b) At the request of a police officer pursuant to section 4511.191 of the Revised Code, and not at the request of the employee's employer;

(c) At the request of a licensed physician who is not employed by the employee's employer, and not at the request of the employee's employer.

(2) As used in division (C)(1)(a) of this section, "reasonable cause" means, but is not limited to, evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on, but are not limited to, any of the following:

(a) Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of

alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings;

(b) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness, or recurrent accidents, that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors;

(c) The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;

(d) A report of use of alcohol or a controlled substance provided by a reliable and credible source;

(e) Repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.

(D) Nothing in this section shall be construed to affect the rights of an employer to test employees for alcohol or controlled substance abuse.

(E) For the purpose of this section, laboratories certified by the United States department of health and human services or laboratories that meet or exceed the standards of that department for laboratory certification shall be used for processing the test results of a qualifying chemical test.

(F) The written notice required by division (B) of this section shall be the same size or larger than the proof of workers' compensation coverage furnished by the bureau of workers' compensation and shall be posted by the employer in the same location as the proof of workers' compensation coverage or the certificate of self-insurance.

(G) If a condition that pre-existed an injury is substantially aggravated by the injury, and that substantial aggravation is documented by objective diagnostic findings, objective clinical findings, or objective test results, no compensation or benefits are payable because of the pre-existing condition once that condition has returned to a level that would have existed without the injury.

(H)

(1) Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment without regard to the place where the injury was sustained or the disease contracted. If an employer and an employee enter into an agreement under this division, the fact that the employer and the employee entered into that agreement shall not be construed to change the status of an employee whose continued employment is subject to the will of the employer or the employee, unless the agreement contains a provision that expressly changes that status.

(2) If an employee or the employee's dependents receive an award of compensation or benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for the same injury, occupational disease, or death for which the employee or the employee's dependents previously pursued or otherwise elected to accept workers' compensation benefits and received a decision on the merits as defined in section 4123.542 of the Revised Code under the laws of another state or recovered damages under the laws of another state, the claim shall be disallowed and the administrator or any self-insuring employer, by any lawful means, may collect from the employee or the employee's dependents any of the following:

(i) The amount of compensation or benefits paid to or on behalf of the employee or the employee's dependents by the administrator or a self-insuring employer pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that award;

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

(3) If an employee or the employee's dependents receive an award of compensation or benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code and subsequently pursue or otherwise elect to accept workers' compensation benefits or damages under the laws of another state for the same injury, occupational disease, or death the claim under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code shall be disallowed. The administrator or a self-insuring employer, by any lawful means, may collect from the employee or the employee's dependents or other-states' insurer any of the following:

(i) The amount of compensation or benefits paid to or on behalf of the employee or the employee's dependents by the administrator or the self-insuring employer pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that award;

(ii) Any interest, costs, and attorney's fees the administrator or the self-insuring employer incurs in collecting that payment ;

(iii) Any costs incurred by an employer in contesting or responding to any claim filed by the employee or the employee's dependents for the same injury, occupational disease, or death that was filed after the original claim for which the employee or the employee's dependents received a decision on the merits as described in section 4123.542 of the Revised Code.

(4) If the employee's employer pays premiums into the state insurance fund, the administrator shall not charge the amount of compensation or benefits the administrator collects pursuant to division (H)(2) or (3) of this section to the employer's experience. If the administrator collects any costs incurred by an employer in contesting or responding to any claim pursuant to division (H)(2) or (3) of this section, the administrator shall forward the amount collected to that employer. If the employee's employer is a self-insuring employer, the self-insuring employer shall deduct the amount of compensation or benefits the self-insuring employer collects pursuant to this division from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code.

(5) If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the employee and the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state, and the rights of the employee and the employee's dependents under the laws of the other state are the exclusive remedy against the employer on account of the injury, disease, or death.

(6) An employee, or the dependent of an employee, who elects to receive compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for a claim may not receive compensation and benefits under the workers' compensation laws of any state other than this state for that same claim. For each claim submitted by or on behalf of an employee, the administrator or, if the employee is employed by a self-insuring employer, the self-insuring employer, shall request the employee or the employee's dependent to sign an election that affirms the employee's or employee's dependent's acceptance of electing to receive compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that claim that also affirmatively waives and releases the employee's or the employee's dependent's right to file for and receive compensation and benefits under the laws of any state other than this state for that claim. The employee or employee's dependent shall sign the election form within twenty-eight days after the administrator or self-insuring employer submits the request or the administrator or self-insuring employer shall dismiss that claim .

In the event a workers' compensation claim has been filed in another jurisdiction on behalf of an employee or the dependents of an employee, and the employee or dependents subsequently elect to receive compensation, benefits, or both under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code, the employee or dependent shall withdraw or refuse acceptance of the workers' compensation claim filed in the other jurisdiction in order to pursue compensation or benefits under the laws of this state. If the employee or dependents were awarded workers' compensation benefits or had recovered damages under the laws of the other state, any compensation and benefits awarded under this chapter or Chapters 4121., 4127., or 4131. of the Revised Code shall be paid only to the extent to which those payments exceed the amounts paid under the laws of the other state. If the employee or dependent fails to withdraw or to refuse acceptance of the workers' compensation claim in the other jurisdiction within twenty-eight days after a request made by the administrator or a self-insuring employer, the administrator or self-insuring employer shall dismiss the employee's or employee's dependents' claim made in this state.

(I) If an employee who is covered under the federal "Longshore and Harbor Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., is injured or contracts an occupational disease or dies as a result of an injury or occupational disease, and if that employee's or that employee's dependents' claim for compensation or benefits for that injury, occupational disease, or death is subject to the jurisdiction of that act, the employee or the employee's dependents are not entitled to apply for and shall not receive compensation or benefits under this chapter and Chapter 4121. of the Revised Code. The rights of such an employee and the employee's dependents under the federal "Longshore and Harbor Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., are the exclusive remedy against the employer for that injury, occupational disease, or death.

(J) Compensation or benefits are not payable to a claimant during the period of confinement of the claimant in any state or federal correctional institution, or in any county jail in lieu of incarceration in a state or federal correctional institution, whether in this or any other state for conviction of violation of any state or federal criminal law.

(K) An employer, upon the approval of the administrator, may provide for workers' compensation coverage for the employer's employees who are professional athletes and coaches by submitting to the administrator proof of coverage under a league policy issued under the laws of another state under either of the following circumstances:

(1) The employer administers the payroll and workers' compensation insurance for a professional sports team subject to a collective bargaining agreement, and the collective bargaining agreement provides for the uniform administration of workers' compensation benefits and compensation for professional athletes.

(2) The employer is a professional sports league, or is a member team of a professional sports league, and all of the following apply:

(a) The professional sports league operates as a single entity, whereby all of the players and coaches of the sports league are employees of the sports league and not of the individual member teams.

(b) The professional sports league at all times maintains workers' compensation insurance that provides coverage for the players and coaches of the sports league.

(c) Each individual member team of the professional sports league, pursuant to the organizational or operating documents of the sports league, is obligated to the sports league to

pay to the sports league any workers' compensation claims that are not covered by the workers' compensation insurance maintained by the sports league.

If the administrator approves the employer's proof of coverage submitted under division (K) of this section, a professional athlete or coach who is an employee of the employer and the dependents of the professional athlete or coach are not entitled to apply for and shall not receive compensation or benefits under this chapter and Chapter 4121. of the Revised Code. The rights of such an athlete or coach and the dependents of such an athlete or coach under the laws of the state where the policy was issued are the exclusive remedy against the employer for the athlete or coach if the athlete or coach suffers an injury or contracts an occupational disease in the course of employment, or for the dependents of the athlete or the coach if the athlete or coach is killed as a result of an injury or dies as a result of an occupational disease, regardless of the location where the injury was suffered or the occupational disease was contracted.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 04-10-2001; 09-23-2004; 10-13-2004; 2006 SB7 10-11-2006; 2008 SB334 09-11-2008; 2008 HB562 09-22-2008

4123.541 Reduction of benefits in proportion to benefits received under other act or program.

In the event that any person who is entitled to receive benefits for total disability, loss of member, or death through the application of section 4123.033 of the Revised Code, receives, in connection with the injury giving rise to such entitlement, benefits under an act of congress or federal program providing benefits for civil defense workers and their survivors, the benefits payable hereunder, shall be reduced in proportion to the benefits received under such other act or program.

Effective Date: 09-29-1955

4123.542 Successful claimant not to file duplicative claim.

An employee or the dependents of an employee who receive a decision on the merits of a claim for compensation or benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code shall not file a claim for the same injury, occupational disease, or death in another

state under the workers' compensation laws of that state. Except as otherwise provided in division (H) of section 4123.54 of the Revised Code, an employee or the employee's dependents who receive a decision on the merits of a claim for compensation or benefits under the workers' compensation laws of another state shall not file a claim for compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for the same injury, occupational disease, or death.

As used in this section, "a decision on the merits" means a decision determined or adjudicated for compensability of a claim and not on jurisdictional grounds.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 2008 SB334 09-11-2008

4123.55 No compensation for first week after injury.

No compensation shall be allowed for the first week after an injury is received or occupational disease contracted and no compensation shall be allowed for the first week of total disability, whenever it may occur, unless and until the employee is totally disabled for a continuous period of two weeks or more, in which event compensation for the first week of total disability, whenever it has occurred, shall be paid, in addition to any other weekly benefits which are due, immediately following the second week of total disability. There shall be no waiting period in connection with the disbursements provided by section 4123.66 of the Revised Code.

Effective Date: 01-01-1979

4123.56 Compensation in case of temporary disability.

(A) Except as provided in division (D) of this section, in the case of temporary disability, an employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage so long as such disability is total, not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, and not less than a minimum amount of compensation which is equal to thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code unless the employee's wage is less than thirty-three and one-third per cent of the minimum statewide average weekly wage, in which event the employee shall receive compensation equal to the employee's full wages; provided that for the first twelve weeks of total disability the employee shall receive seventy-

two per cent of the employee's full weekly wage, but not to exceed a maximum amount of weekly compensation which is equal to the lesser of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code or one hundred per cent of the employee's net take-home weekly wage. In the case of a self-insuring employer, payments shall be for a duration based upon the medical reports of the attending physician. If the employer disputes the attending physician's report, payments may be terminated only upon application and hearing by a district hearing officer pursuant to division (C) of section 4123.511 of the Revised Code. Payments shall continue pending the determination of the matter, however payment shall not be made for the period when any employee has returned to work, when an employee's treating physician has made a written statement that the employee is capable of returning to the employee's former position of employment, when work within the physical capabilities of the employee is made available by the employer or another employer, or when the employee has reached the maximum medical improvement. Where the employee is capable of work activity, but the employee's employer is unable to offer the employee any employment, the employee shall register with the director of job and family services, who shall assist the employee in finding suitable employment. The termination of temporary total disability, whether by order or otherwise, does not preclude the commencement of temporary total disability at another point in time if the employee again becomes temporarily totally disabled.

After two hundred weeks of temporary total disability benefits, the medical section of the bureau of workers' compensation shall schedule the claimant for an examination for an evaluation to determine whether or not the temporary disability has become permanent. A self-insuring employer shall notify the bureau immediately after payment of two hundred weeks of temporary total disability and request that the bureau schedule the claimant for such an examination.

When the employee is awarded compensation for temporary total disability for a period for which the employee has received benefits under Chapter 4141. of the Revised Code, the bureau shall pay an amount equal to the amount received from the award to the director of job and family services and the director shall credit the amount to the accounts of the employers to whose accounts the payment of benefits was charged or is chargeable to the extent it was charged or is chargeable.

If any compensation under this section has been paid for the same period or periods for which temporary nonoccupational accident and sickness insurance is or has been paid pursuant to an insurance policy or program to which the employer has made the entire contribution or

payment for providing insurance or under a nonoccupational accident and sickness program fully funded by the employer, compensation paid under this section for the period or periods shall be paid only to the extent by which the payment or payments exceeds the amount of the nonoccupational insurance or program paid or payable. Offset of the compensation shall be made only upon the prior order of the bureau or industrial commission or agreement of the claimant.

As used in this division, "net take-home weekly wage" means the amount obtained by dividing an employee's total remuneration, as defined in section 4141.01 of the Revised Code, paid to or earned by the employee during the first four of the last five completed calendar quarters which immediately precede the first day of the employee's entitlement to benefits under this division, by the number of weeks during which the employee was paid or earned remuneration during those four quarters, less the amount of local, state, and federal income taxes deducted for each such week.

(B)

(1) If an employee in a claim allowed under this chapter suffers a wage loss as a result of returning to employment other than the employee's former position of employment due to an injury or occupational disease, the employee shall receive compensation at sixty-six and two-thirds per cent of the difference between the employee's average weekly wage and the employee's present earnings not to exceed the statewide average weekly wage. The payments may continue for up to a maximum of two hundred weeks, but the payments shall be reduced by the corresponding number of weeks in which the employee receives payments pursuant to division (B) of section 4121.67 Of the Revised Code.

(2) If an employee in a claim allowed under this chapter suffers a wage loss as a result of being unable to find employment consistent with the employee's disability resulting from the employee's injury or occupational disease, the employee shall receive compensation at sixty-six and two-thirds per cent of the difference between the employee's average weekly wage and the employee's present earnings, not to exceed the statewide average weekly wage. The payments may continue for up to a maximum of fifty-two weeks. The first twenty-six weeks of payments under division (B)(2) of this section shall be in addition to the maximum of two hundred weeks of payments allowed under division (B)(1) of this section. If an employee in a claim allowed under this chapter receives compensation under division (B)(2) of this section in excess of twenty-six weeks, the number of weeks of compensation allowable under division

(B)(1) of this section shall be reduced by the corresponding number of weeks in excess of twenty-six, and up to fifty-two, that is allowable under division (B)(1) of this section.

(3) The number of weeks of wage loss payable to an employee under divisions (B)(1) and (2) of this section shall not exceed two hundred and twenty-six weeks in the aggregate.

(C) In the event an employee of a professional sports franchise domiciled in this state is disabled as the result of an injury or occupational disease, the total amount of payments made under a contract of hire or collective bargaining agreement to the employee during a period of disability is deemed an advanced payment of compensation payable under sections 4123.56 to 4123.58 of the Revised Code. The employer shall be reimbursed the total amount of the advanced payments out of any award of compensation made pursuant to sections 4123.56 to 4123.58 of the Revised Code.

(D) If an employee receives temporary total disability benefits pursuant to division (A) of this section and social security retirement benefits pursuant to the "Social Security Act," the weekly benefit amount under division (A) of this section shall not exceed sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code.

Effective Date: 07-01-2000; 2006 SB7 10-11-2006

4123.57 Partial disability compensation.

Partial disability compensation shall be paid as follows.

Except as provided in this section, not earlier than twenty-six weeks after the date of termination of the latest period of payments under section 4123.56 of the Revised Code, or not earlier than twenty-six weeks after the date of the injury or contraction of an occupational disease in the absence of payments under section 4123.56 of the Revised Code, the employee may file an application with the bureau of workers' compensation for the determination of the percentage of the employee's permanent partial disability resulting from an injury or occupational disease.

Whenever the application is filed, the bureau shall send a copy of the application to the employee's employer or the employer's representative and shall schedule the employee for a medical examination by the bureau medical section. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives.

Thereafter, the administrator of workers' compensation shall review the employee's claim file and make a tentative order as the evidence before the administrator at the time of the making of the order warrants. If the administrator determines that there is a conflict of evidence, the administrator shall send the application, along with the claimant's file, to the district hearing officer who shall set the application for a hearing.

The administrator shall notify the employee, the employer, and their representatives, in writing, of the tentative order and of the parties' right to request a hearing. Unless the employee, the employer, or their representative notifies the administrator, in writing, of an objection to the tentative order within twenty days after receipt of the notice thereof, the tentative order shall go into effect and the employee shall receive the compensation provided in the order. In no event shall there be a reconsideration of a tentative order issued under this division.

If the employee, the employer, or their representatives timely notify the administrator of an objection to the tentative order, the matter shall be referred to a district hearing officer who shall set the application for hearing with written notices to all interested persons. Upon referral to a district hearing officer, the employer may obtain a medical examination of the employee, pursuant to rules of the industrial commission.

(A) The district hearing officer, upon the application, shall determine the percentage of the employee's permanent disability, except as is subject to division (B) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage, for the number of weeks which equals the percentage of two hundred weeks. Except on application for reconsideration, review, or modification, which is filed within ten days after the date of receipt of the decision of the district hearing officer, in no instance shall the former award be modified unless it is found from medical or clinical findings that the condition of the claimant resulting from the injury has so progressed as to have increased the percentage of permanent partial disability. A staff hearing officer shall hear an application for reconsideration filed and the staff hearing officer's decision is final. An employee may file an application for a subsequent determination of the percentage of the employee's permanent disability. If such an application is filed, the bureau shall send a copy of the application to the employer or the employer's representative. No sooner than sixty

days from the date of the mailing of the application to the employer or the employer's representative, the administrator shall review the application. The administrator may require a medical examination or medical review of the employee. The administrator shall issue a tentative order based upon the evidence before the administrator, provided that if the administrator requires a medical examination or medical review, the administrator shall not issue the tentative order until the completion of the examination or review.

The employer may obtain a medical examination of the employee and may submit medical evidence at any stage of the process up to a hearing before the district hearing officer, pursuant to rules of the commission. The administrator shall notify the employee, the employer, and their representatives, in writing, of the nature and amount of any tentative order issued on an application requesting a subsequent determination of the percentage of an employee's permanent disability. An employee, employer, or their representatives may object to the tentative order within twenty days after the receipt of the notice thereof. If no timely objection is made, the tentative order shall go into effect. In no event shall there be a reconsideration of a tentative order issued under this division. If an objection is timely made, the application for a subsequent determination shall be referred to a district hearing officer who shall set the application for a hearing with written notice to all interested persons. No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted for review by the district hearing officer unless supported by substantial evidence of new and changed circumstances developing since the time of the hearing on the original or last determination.

No award shall be made under this division based upon a percentage of disability which, when taken with all other percentages of permanent disability, exceeds one hundred per cent. If the percentage of the permanent disability of the employee equals or exceeds ninety per cent, compensation for permanent partial disability shall be paid for two hundred weeks.

Compensation payable under this division accrues and is payable to the employee from the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or the date of the diagnosis of the occupational disease.

When an award under this division has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee, and if there are no children surviving, then to other dependents as the administrator determines.

(B) For purposes of this division, "payable per week" means the seven-consecutive-day period in which compensation is paid in installments according to the schedule associated with the applicable injury as set forth in this division.

Compensation paid in weekly installments according to the schedule described in this division may only be commuted to one or more lump sum payments pursuant to the procedure set forth in section 4123.64 of the Revised Code.

In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall be paid in installments according to the following schedule:

For the loss of a first finger, commonly known as a thumb, sixty weeks.

For the loss of a second finger, commonly called index finger, thirty-five weeks.

For the loss of a third finger, thirty weeks.

For the loss of a fourth finger, twenty weeks.

For the loss of a fifth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one-third of the finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two-thirds of the finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either useless, the same number of weeks apply to the members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers by amputation or ankylosis and the nature of the claimant's employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or disability resulting from the loss of fingers, or loss of use of fingers, exceeds the normal handicap or disability resulting from the loss of fingers, or loss of use of fingers, the administrator may take that fact into consideration and increase the award of compensation accordingly, but the award made shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

For the loss of one of the toes other than the great toe, ten weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two-thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one-half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the administrator shall make an award of compensation as it deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of ten thousand dollars. For the purpose of making the award, it is not material whether the employee is gainfully employed in any occupation or trade at the time of the administrator's determination.

When an award under this division has been made prior to the death of an employee all unpaid installments accrued or to accrue under the provisions of the award shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to the employee's death, the administrator shall make an award in accordance with this division for the loss which shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

(C) Compensation for partial impairment under divisions (A) and (B) of this section is in addition to the compensation paid the employee pursuant to section 4123.56 of the Revised Code. A claimant may receive compensation under divisions (A) and (B) of this section.

In all cases arising under division (B) of this section, if it is determined by any one of the following: (1) the amputee clinic at University hospital, Ohio state university; (2) the opportunities for Ohioans with disabilities agency; (3) an amputee clinic or prescribing physician approved by the administrator or the administrator's designee, that an injured or disabled employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether the appliance or its repair will be serviceable in the vocational rehabilitation of the injured employee, and regardless of whether the employee has returned to or can ever again

return to any gainful employment, the bureau shall pay the cost of the artificial appliance or its repair out of the surplus created by division (B) of section 4123.34 of the Revised Code.

In those cases where an opportunities for Ohioans with disabilities agency recommendation that an injured or disabled employee is in need of an artificial appliance would conflict with their state plan, adopted pursuant to the "Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the administrator or the administrator's designee or the bureau may obtain a recommendation from an amputee clinic or prescribing physician that they determine appropriate.

(D) If an employee of a state fund employer makes application for a finding and the administrator finds that the employee has contracted silicosis as defined in division (X), or coal miners' pneumoconiosis as defined in division (Y), or asbestosis as defined in division (AA) of section 4123.68 of the Revised Code, and that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust, asbestos, or coal dust and if the employee, after the finding, has changed or shall change the employee's occupation to an occupation in which the exposure to silica dust, asbestos, or coal dust is substantially decreased, the administrator shall allow to the employee an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of one hundred weeks immediately following the expiration of the period of thirty weeks, the employee shall receive sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such employee is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the employee is employed in an occupation in which the exposure to silica dust, asbestos, or coal dust is not substantially less than the exposure in the occupation in which the employee was formerly employed or for any period during which the employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis, asbestosis, or coal miners' pneumoconiosis. An award for change of occupation for a coal miner who has contracted coal miners' pneumoconiosis may be granted under this division even though the coal miner continues employment with the same employer, so long as the coal miner's employment subsequent to the change is such that the coal miner's exposure to coal dust is substantially decreased and a change of occupation is certified by the claimant as permanent. The administrator may accord to the employee medical and other benefits in accordance with section 4123.66 of the Revised Code.

(E) If a firefighter or police officer makes application for a finding and the administrator finds that the firefighter or police officer has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of the firefighter's or police officer's occupation is medically advisable in order to decrease substantially further exposure to smoke, toxic gases, chemical fumes, and other toxic vapors, and if the firefighter, or police officer, after the finding, has changed or changes occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the administrator shall allow to the firefighter or police officer an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of the period of thirty weeks the administrator shall allow the firefighter or police officer sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such firefighter or police officer is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the firefighter or police officer is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which the firefighter or police officer was formerly employed or for any period during which the firefighter or police officer may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The administrator may accord to the firefighter or police officer medical and other benefits in accordance with section 4123.66 of the Revised Code.

(F) An order issued under this section is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 08-06-1999; 2006 SB7 10-11-2006

4123.571 Prior claims.

In connection with the procedural and remedial rights of employees, all claims which have accrued prior to the effective date of this act, whether or not an application for claim has been

filed, or whether or not jurisdiction has been established or whether or not an application for an award under divisions (A), (B), (C), or (D) of section 4123.57 of the Revised Code has been filed shall be governed by the provisions of 4123.57 of the Revised Code, as amended by this act.

Effective Date: 11-02-1959

4123.58 Compensation for permanent total disability.

(A) In cases of permanent total disability, the employee shall receive an award to continue until the employee's death in the amount of sixty-six and two-thirds per cent of the employee's average weekly wage, but, except as otherwise provided in division (B) of this section, not more than a maximum amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code in effect on the date of injury or on the date the disability due to the occupational disease begins, nor not less than a minimum amount of weekly compensation which is equal to fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code in effect on the date of injury or on the date the disability due to the occupational disease begins, unless the employee's average weekly wage is less than fifty per cent of the statewide average weekly wage at the time of the injury, in which event the employee shall receive compensation in an amount equal to the employee's average weekly wage.

(B) In the event the weekly workers' compensation amount when combined with disability benefits received pursuant to the Social Security Act is less than the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, then the maximum amount of weekly compensation shall be the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code. At any time that social security disability benefits terminate or are reduced, the workers' compensation award shall be recomputed to pay the maximum amount permitted under this division.

(C) Permanent total disability shall be compensated according to this section only when at least one of the following applies to the claimant:

(1) The claimant has lost, or lost the use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof; however, the loss or loss of use of one limb does not constitute the loss or loss of use of two body parts;

(2) The impairment resulting from the employee's injury or occupational disease prevents the employee from engaging in sustained remunerative employment utilizing the employment skills that the employee has or may reasonably be expected to develop.

(D) Permanent total disability shall not be compensated when the reason the employee is unable to engage in sustained remunerative employment is due to any of the following reasons, whether individually or in combination:

(1) Impairments of the employee that are not the result of an allowed injury or occupational disease;

(2) Solely the employee's age or aging;

(3) The employee retired or otherwise voluntarily abandoned the workforce for reasons unrelated to the allowed injury or occupational disease.

(4) The employee has not engaged in educational or rehabilitative efforts to enhance the employee's employability, unless such efforts are determined to be in vain.

(E) Compensation payable under this section for permanent total disability is in addition to benefits payable under division (B) of section 4123.57 of the Revised Code.

(F) If an employee is awarded compensation for permanent total disability under this section because the employee sustained a traumatic brain injury, the employee is entitled to that compensation regardless of the employee's employment in a sheltered workshop subsequent to the award, on the condition that the employee does not receive income, compensation, or remuneration from that employment in excess of two thousand dollars in any calendar quarter. As used in this division, "sheltered workshop" means a state agency or nonprofit organization established to carry out a program of rehabilitation for handicapped individuals or to provide these individuals with remunerative employment or other occupational rehabilitating activity.

Effective Date: 10-20-1993; 2006 SB7 10-11-2006

4123.59 Benefits in case of death - dependency.

In case an injury to or an occupational disease contracted by an employee causes his death, benefits shall be in the amount and to the persons following:

(A) If there are no dependents, the disbursements from the state insurance fund is limited to the expenses provided for in section 4123.66 of the Revised Code.

(B) If there are wholly dependent persons at the time of the death, the weekly payment is sixty-six and two-thirds per cent of the average weekly wage, but not to exceed a maximum aggregate amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, and not in any event less than a minimum amount of weekly compensation which is equal to fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, regardless of the average weekly wage; provided however, that if the death is due to injury received or occupational disease first diagnosed after January 1, 1976, the weekly payment is sixty-six and two-thirds per cent of the average weekly wage but not to exceed a maximum aggregate amount of weekly compensation which is equal to the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code; provided that when any claimant is receiving total disability compensation at the time of death the wholly dependent person is eligible for the maximum compensation provided for in this section. Where there is more than one person who is wholly dependent at the time of the death of the employee, the administrator of workers' compensation shall promptly apportion the weekly amount of compensation payable under this section among the dependent persons as provided in division (D) of this section.

(1) The payment as provided in this section shall continue from the date of death of an injured or disabled employee until the death or remarriage of such dependent spouse. If the dependent spouse remarries, an amount equal to two years of compensation benefits at the weekly amount determined to be applicable to and being paid to the dependent spouse shall be paid in a lump sum to such spouse and no further compensation shall be paid to such spouse.

(2) That portion of the payment provided in division (B) of this section applicable to wholly dependent persons other than a spouse shall continue from the date of death of an injured or disabled employee to a dependent as of the date of death, other than a spouse, at the weekly amount determined to be applicable and being paid to such dependent other than a spouse, until he:

(a) Reaches eighteen years of age;

(b) If pursuing a full time educational program while enrolled in an accredited educational institution and program, reaches twenty-five years of age;

(c) If mentally or physically incapacitated from having any earnings, is no longer so incapacitated.

(C) If there are partly dependent persons at the time of the death the weekly payment is sixty-six and two-thirds per cent of the employee's average weekly wage, not to exceed sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, and shall continue for such time as the administrator in each case determines.

(D) The following persons are presumed to be wholly dependent for their support upon a deceased employee:

(1) A surviving spouse who was living with the employee at the time of death or a surviving spouse who was separated from the employee at the time of death because of the aggression of the employee;

(2) A child under the age of eighteen years, or twenty-five years if pursuing a full-time educational program while enrolled in an accredited educational institution and program, or over said age if physically or mentally incapacitated from earning, upon only the one parent who is contributing more than one-half of the support for such child and with whom he is living at the time of the death of such parent, or for whose maintenance such parent was legally liable at the time of his death.

It is presumed that there is sufficient dependency to entitle a surviving natural parent or surviving natural parents, share and share alike, with whom the decedent was living at the time of his death, to a total minimum award of three thousand dollars.

The administrator may take into consideration any circumstances which, at the time of the death of the decedent, clearly indicate prospective dependency on the part of the claimant and potential support on the part of the decedent. No person shall be considered a prospective dependent unless such person is a member of the family of the deceased employee and bears to him the relation of surviving spouse, lineal descendant, ancestor, or brother or sister. The total award for any or all prospective dependency to all such claimants, except to a natural parent or natural parents of the deceased, shall not exceed three thousand dollars to be apportioned among them as the administrator orders.

In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in

the death of such employee, but no person shall be considered as dependent unless such person is a member of the family of the deceased employee, or bears to him the relation of surviving spouse, lineal descendant, ancestor, or brother or sister.

(E) An order issued by the administrator under this section is appealable pursuant to sections 4123.511 to 4123.512 of the Revised Code.

Effective Date: 10-20-1993

4123.591 Providing list of person receiving spousal death benefit to tax commissioner.

The administrator of workers' compensation may furnish quarterly, to the tax commissioner, in a format approved by the tax commissioner, a list containing the name and social security number of any person receiving spousal death benefits. Upon receipt of this list, the commissioner shall return to the administrator, in a format designed by the commissioner, information identifying any person listed by the administrator who, as reported on the most recent return filed by the person under section 5747.08 of the Revised Code, filed under the status "married filing joint return," or "married filing separately."

Effective Date: 08-06-1999

4123.60 Persons eligible for death benefits - limitations.

Benefits in case of death shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as the administrator of workers' compensation determines. The administrator may apportion the benefits among the dependents in such manner as he deems just and equitable. Payment to a dependent subsequent in right may be made, if the administrator deems it proper, and operates to discharge all other claims therefor. The dependents or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the administrator.

In all cases of death where the dependents are a surviving spouse and one or more children, it is sufficient for the surviving spouse to apply to the administrator on behalf of the spouse and minor children. In cases where all the dependents are minors, a guardian or next friend of such minor dependents shall apply.

In all cases where an award had been made on account of temporary, or permanent partial, or total disability, in which there remains an unpaid balance, representing payments accrued and

due to the decedent at the time of his death, the administrator may, after satisfactory proof has been made warranting such action, award or pay any unpaid balance of such award to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the administrator determines in accordance with the circumstances in each such case. If the decedent would have been lawfully entitled to have applied for an award at the time of his death the administrator may, after satisfactory proof to warrant an award and payment, award and pay an amount, not exceeding the compensation which the decedent might have received, but for his death, for the period prior to the date of his death, to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the administrator determines in accordance with the circumstances in each such case, but such payments may be made only in cases in which application for compensation was made in the manner required by this chapter, during the lifetime of such injured or disabled person, or within one year after the death of such injured or disabled person.

An order issued by the administrator under this section is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Effective Date: 10-20-1993

4123.61 Basis for computation of benefits.

The average weekly wage of an injured employee at the time of the injury or at the time disability due to the occupational disease begins is the basis upon which to compute benefits.

In cases of temporary total disability the compensation for the first twelve weeks for which compensation is payable shall be based on the full weekly wage of the claimant at the time of the injury or at the time of the disability due to occupational disease begins; when a factory, mine, or other place of employment is working short time in order to divide work among the employees, the bureau of workers' compensation shall take that fact into consideration when determining the wage for the first twelve weeks of temporary total disability.

Compensation for all further temporary total disability shall be based as provided for permanent disability claims.

In death, permanent total disability claims, permanent partial disability claims, and impairment of earnings claims, the claimant's or the decedent's average weekly wage for the year preceding

the injury or the date the disability due to the occupational disease begins is the weekly wage upon which compensation shall be based. In ascertaining the average weekly wage for the year previous to the injury, or the date the disability due to the occupational disease begins any period of unemployment due to sickness, industrial depression, strike, lockout, or other cause beyond the employee's control shall be eliminated.

In cases where there are special circumstances under which the average weekly wage cannot justly be determined by applying this section, the administrator of workers' compensation, in determining the average weekly wage in such cases, shall use such method as will enable the administrator to do substantial justice to the claimants, provided that the administrator shall not recalculate the claimant's average weekly wage for awards for permanent total disability solely for the reason that the claimant continued working and the claimant's wages increased following the injury.

Effective Date: 10-20-1993; 2006 SB7 10-11-2006

4123.62 Consideration of expected wage increases.

(A) If it is established that an injured or disabled employee was of such age and experience when injured or disabled as that under natural conditions an injured or disabled employee's wages would be expected to increase, the administrator of workers' compensation may consider that fact in arriving at an injured or disabled employee's average weekly wage.

(B) On each first day of January, the current maximum monthly benefit amounts provided in sections 4123.412, 4123.413, and 4123.414 of the Revised Code in injury cases shall be adjusted based on the United States department of labor's national consumer price index. The percentage increase in the cost of living using the index figure for the first day of September of the preceding year and the first day of September of the year preceding that year shall be applied to the maximums in effect on the preceding thirty-first day of December to obtain the increase in the cost of living during that year.

In determining the increase in the maximum benefits for any year after 1972, the base shall be the national consumer price index on the first day of September of the preceding year. The increase in the index for the applicable twelve-month period shall be determined and shall be divided by the base used. The resulting percentage shall be applied to the existing maximums to arrive at the new maximums.

(C) Effective January 1, 1974, and each first day of January thereafter, the current maximum weekly benefit amounts provided in sections 4123.56, 4123.58, and 4123.59, and division (B) of section 4123.57 of the Revised Code shall be adjusted based on the increase or decrease in the statewide average weekly wage.

"Statewide average weekly wage" means the average weekly earnings of all workers in Ohio employment subject to Chapter 4141. of the Revised Code as determined as of the first day of September for the four full calendar quarters preceding the first day of July of each year, by the director of job and family services.

The statewide average weekly wage to be used for the determination of compensation for any employee who sustains an injury, or death, or who contracts an occupational disease during the subsequent calendar year beginning with the first day of January, shall be the statewide average weekly wage so determined as of the prior first day of September adjusted to the next higher even multiple of one dollar.

Any change in benefit amounts is effective with respect to injuries sustained, occupational diseases contracted, and deaths occurring during the calendar year for which adjustment is made.

In determining the change in the maximum benefits for any year after 1978, the base shall be the statewide average weekly wage on the first day of September of the preceding year.

Effective Date: 07-01-2000

4123.63 Service-connected injury.

If a person in active service in the armed forces of the United States at any time during a period of war as defined in the "Veterans' Pension and Readjustment Assistance Act of 1967," 81 Stat. 181, 38 U.S.C. 101 or the period beginning May 1, 1940, and ending December 7, 1941, sustained an injury or suffered a disease while in such service, and if the person is thereafter injured or suffers an occupational disease in the course of and arising out of his employment in this state, and the industrial commission or the bureau of workers' compensation awards compensation therefor, it shall determine what part, if any, of the compensation is attributable to the injury or disease which the person sustained or suffered while in the service and what part of the compensation is attributable to the injury or occupational disease sustained or suffered in the course of and arising out of his employment in this state. That part of the compensation attributable to the injury or disease sustained or suffered while in the service

shall be paid out of the statutory surplus of the state insurance fund created under section 4123.34 of the Revised Code, and shall not be merit rated or otherwise treated as part of the accident or occupational disease experience of the employer of the employee. That part of the compensation attributable to the injury or occupational disease sustained or suffered in the course of and arising out of his employment in this state shall be merit rated and treated as part of the accident or occupational disease experience of the employer of the employee, and shall be paid out of the state insurance fund, unless the employer is a self-insuring employer as provided for in section 4123.35 of the Revised Code, in which case payment shall be made by the self-insuring employer. In such case the administrator of workers' compensation may order the employer to pay the employee the full amount of compensation awarded the employee by the commission or the bureau, and in such event it shall order the employer reimbursed out of the statutory surplus of the state insurance fund for that part of the compensation paid which the commission or bureau determines to be attributable to the injury or disease sustained or suffered in the service. Nothing in this section is applicable in connection with any award of compensation made by the commission or bureau to an employee of an employer who has neither contributed to the state insurance fund nor elected to pay compensation directly under section 4123.35 of the Revised Code.

The records of any agency of the United States authorized to keep or preserve the records of service of persons in active service in the armed forces of the United States at any time during a period of war as defined in the "Veterans' Pension and Readjustment Assistance Act of 1967," 81 Stat. 181, 38 U.S.C. 101 or the period beginning May 1, 1940, and ending December 7, 1941, or to determine the fact of injury or disease of the person sustained or suffered while in service, when made available to the commission and the bureau in such manner and form as it deems proper, shall be deemed by the commission and the bureau to establish prima facie the facts of the service and the fact as to whether or not the person sustained or suffered an injury or disease while in the service, and if so, the nature thereof, and the prima-facie establishment may be deemed by the commission and the bureau to be overcome only upon clear and convincing evidence to the contrary.

The administrator may accept and credit to the statutory surplus of the state insurance fund any sum of money that may at any time be contributed to or made available to the state by the United States under any act of congress, or otherwise, to which the state is, or may become, entitled by reason of any payments made to employees out of the statutory surplus in accordance with this chapter.

Effective Date: 11-03-1989

4123.64 Commutation to lump sum.

(A) The administrator of workers' compensation, under special circumstances, and when the same is deemed advisable for the purpose of rendering the injured or disabled employee financial relief or for the purpose of furthering his rehabilitation, may commute payments of compensation or benefits to one or more lump-sum payments.

(B) The administrator shall adopt rules which set forth the policy for awarding lump sum payments. The rules shall:

(1) Enumerate the allowable purposes for payments and the conditions for making such awards;

(2) Enumerate the maximum reduction in compensation allowable;

(3) Enumerate the documentation necessary to award a lump-sum payment;

(4) Require that all checks include the claimant as a payee, except where the check is for the payment of attorney's fees in accordance with section 4123.06 of the Revised Code, in which case the attorney shall be named as the only payee on the check;

(5) Require a fully completed and current application including notary and seal; and

(6) Specify procedures to make a claimant aware of the reduction in amount of compensation which will occur.

(C) An order of the administrator issued under this section is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Effective Date: 10-20-1993

4123.65 Application for approval of final settlement.

(A) A state fund employer or the employee of such an employer may file an application with the administrator of workers' compensation for approval of a final settlement of a claim under this chapter. The application shall include the settlement agreement, and except as otherwise specified in this division, be signed by the claimant and employer, and clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable and that the

parties agree to the terms of the settlement agreement. A claimant may file an application without an employer's signature in the following situations:

- (1) The employer is no longer doing business in Ohio;
- (2) The claim no longer is in the employer's industrial accident or occupational disease experience as provided in division (B) of section 4123.34 of the Revised Code and the claimant no longer is employed with that employer;
- (3) The employer has failed to comply with section 4123.35 of the Revised Code.

If a claimant files an application without an employer's signature, and the employer still is doing business in this state, the administrator shall send written notice of the application to the employer immediately upon receipt of the application. If the employer fails to respond to the notice within thirty days after the notice is sent, the application need not contain the employer's signature.

If a state fund employer or an employee of such an employer has not filed an application for a final settlement under this division, the administrator may file an application on behalf of the employer or the employee, provided that the administrator gives notice of the filing to the employer and the employee and to the representative of record of the employer and of the employee immediately upon the filing. An application filed by the administrator shall contain all of the information and signatures required of an employer or an employee who files an application under this division. Every self-insuring employer that enters into a final settlement agreement with an employee shall mail, within seven days of executing the agreement, a copy of the agreement to the administrator and the employee's representative. The administrator shall place the agreement into the claimant's file.

(B) Except as provided in divisions (C) and (D) of this section, a settlement agreed to under this section is binding upon all parties thereto and as to items, injuries, and occupational diseases to which the settlement applies.

(C) No settlement agreed to under division (A) of this section or agreed to by a self-insuring employer and the self-insuring employer's employee shall take effect until thirty days after the administrator approves the settlement for state fund employees and employers, or after the self-insuring employer and employee sign the final settlement agreement. During the thirty-day period, the employer, employee, or administrator, for state fund settlements, and the employer or employee, for self-insuring settlements, may withdraw consent to the settlement

by an employer providing written notice to the employer's employee and the administrator or by an employee providing written notice to the employee's employer and the administrator, or by the administrator providing written notice to the state fund employer and employee. If an employee dies during the thirty-day waiting period following the approval of a settlement, the settlement can be voided by any party for good cause shown.

(D) At the time of agreement to any final settlement agreement under division (A) of this section or agreement between a self-insuring employer and the self-insuring employer's employee, the administrator, for state fund settlements, and the self-insuring employer, for self-insuring settlements, immediately shall send a copy of the agreement to the industrial commission who shall assign the matter to a staff hearing officer. The staff hearing officer shall determine, within the time limitations specified in division (C) of this section, whether the settlement agreement is or is not a gross miscarriage of justice. If the staff hearing officer determines within that time period that the settlement agreement is clearly unfair, the staff hearing officer shall issue an order disapproving the settlement agreement. If the staff hearing officer determines that the settlement agreement is not clearly unfair or fails to act within those time limits, the settlement agreement is approved.

(E) A settlement entered into under this section may pertain to one or more claims of a claimant, or one or more parts of a claim, or the compensation or benefits pertaining to either, or any combination thereof, provided that nothing in this section shall be interpreted to require a claimant to enter into a settlement agreement for every claim that has been filed with the bureau of workers' compensation by that claimant under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

(F) A settlement entered into under this section is not appealable under section 4123.511 or 4123.512 of the Revised Code.

Effective Date: 10-01-1996; 2006 SB7 10-11-2006

4123.651 Employer initiating medical examinations.

(A) The employer of a claimant who is injured or disabled in the course of his employment may require, without the approval of the administrator or the industrial commission, that the claimant be examined by a physician of the employer's choice one time upon any issue asserted by the employee or a physician of the employee's choice or which is to be considered by the commission. Any further requests for medical examinations shall be made to the commission

which shall consider and rule on the request. The employer shall pay the cost of any examinations initiated by the employer.

(B) The bureau of workers' compensation shall prepare a form for the release of medical information, records, and reports relative to the issues necessary for the administration of a claim under this chapter. The claimant promptly shall provide a current signed release of the information, records, and reports when requested by the employer. The employer promptly shall provide copies of all medical information, records, and reports to the bureau and to the claimant or his representative upon request.

(C) If, without good cause, an employee refuses to submit to any examination scheduled under this section or refuses to release or execute a release for any medical information, record, or report that is required to be released under this section and involves an issue pertinent to the condition alleged in the claim, his right to have his claim for compensation or benefits considered, if his claim is pending before the administrator, commission, or a district or staff hearing officer, or to receive any payment for compensation or benefits previously granted, is suspended during the period of refusal.

(D) No bureau or commission employee shall alter any medical report obtained from a health care provider the bureau or commission has selected or cause or request the health care provider to alter or change a report. The bureau and commission shall make any request for clarification of a health care provider's report in writing and shall provide a copy of the request to the affected parties and their representatives at the time of making the request.

Effective Date: 10-20-1993

4123.66 Making additional payments for medical or funeral expenses.

(A) In addition to the compensation provided for in this chapter, the administrator of workers' compensation shall disburse and pay from the state insurance fund the amounts for medical, nurse, and hospital services and medicine as the administrator deems proper and, in case death ensues from the injury or occupational disease, the administrator shall disburse and pay from the fund reasonable funeral expenses in an amount not to exceed fifty-five hundred dollars. The bureau of workers' compensation shall reimburse anyone, whether dependent, volunteer, or otherwise, who pays the funeral expenses of any employee whose death ensues from any injury or occupational disease as provided in this section. The administrator may adopt rules, with the advice and consent of the bureau of workers' compensation board of directors, with respect to furnishing medical, nurse, and hospital service and medicine to injured or disabled

employees entitled thereto, and for the payment therefor. In case an injury or industrial accident that injures an employee also causes damage to the employee's eyeglasses, artificial teeth or other denture, or hearing aid, or in the event an injury or occupational disease makes it necessary or advisable to replace, repair, or adjust the same, the bureau shall disburse and pay a reasonable amount to repair or replace the same.

(B) The administrator, in the rules the administrator adopts pursuant to division (A) of this section, may adopt rules specifying the circumstances under which the bureau may make immediate payment for the first fill of prescription drugs for medical conditions identified in an application for compensation or benefits under section 4123.84 or 4123.85 of the Revised Code that occurs prior to the date the administrator issues an initial determination order under division (B) of section 4123.511 of the Revised Code. If the claim is ultimately disallowed in a final administrative or judicial order, and if the employer is a state fund employer who pays assessments into the surplus fund account created under section 4123.34 of the Revised Code, the payments for medical services made pursuant to this division for the first fill of prescription drugs shall be charged to and paid from the surplus fund account and not charged through the state insurance fund to the employer against whom the claim was filed.

(C)

(1) If an employer or a welfare plan has provided to or on behalf of an employee any benefits or compensation for an injury or occupational disease and that injury or occupational disease is determined compensable under this chapter, the employer or a welfare plan may request that the administrator reimburse the employer or welfare plan for the amount the employer or welfare plan paid to or on behalf of the employee in compensation or benefits. The administrator shall reimburse the employer or welfare plan for the compensation and benefits paid if, at the time the employer or welfare plan provides the benefits or compensation to or on behalf of employee, the injury or occupational disease had not been determined to be compensable under this chapter and if the employee was not receiving compensation or benefits under this chapter for that injury or occupational disease. The administrator shall reimburse the employer or welfare plan in the amount that the administrator would have paid to or on behalf of the employee under this chapter if the injury or occupational disease originally would have been determined compensable under this chapter. If the employer is a merit-rated employer, the administrator shall adjust the amount of premium next due from the employer according to the amount the administrator pays the employer. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, to implement this division.

(2) As used in this division, "welfare plan" has the same meaning as in division (1) of 29 U.S.C.A. 1002.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 04-09-2003; 2007 HB100 09-10-2007

4123.67 Compensation exempt from attachment or execution.

Except as otherwise provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to the employees or their dependents. In all cases where property of an employer is placed in the hands of an assignee, receiver, or trustee, claims arising under any award or finding of the industrial commission or bureau of workers' compensation, pursuant to this chapter, including claims for premiums, and any judgment recovered thereon shall first be paid out of the trust fund in preference to all other claims, except claims for taxes and the cost of administration, and with the same preference given to claims for taxes.

Effective Date: 03-22-2001

4123.68 Schedule of compensable occupational diseases.

Every employee who is disabled because of the contraction of an occupational disease or the dependent of an employee whose death is caused by an occupational disease, is entitled to the compensation provided by sections 4123.55 to 4123.59 and 4123.66 of the Revised Code subject to the modifications relating to occupational diseases contained in this chapter. An order of the administrator issued under this section is appealable pursuant to sections 4123.511 and 4123.512 of the Revised Code.

The following diseases are occupational diseases and compensable as such when contracted by an employee in the course of the employment in which such employee was engaged and due to the nature of any process described in this section. A disease which meets the definition of an occupational disease is compensable pursuant to this chapter though it is not specifically listed in this section.

SCHEDULE

Description of disease or injury and description of process:

- (A) Anthrax: Handling of wool, hair, bristles, hides, and skins.
- (B) Glanders: Care of any equine animal suffering from glanders; handling carcass of such animal.
- (C) Lead poisoning: Any industrial process involving the use of lead or its preparations or compounds.
- (D) Mercury poisoning: Any industrial process involving the use of mercury or its preparations or compounds.
- (E) Phosphorous poisoning: Any industrial process involving the use of phosphorous or its preparations or compounds.
- (F) Arsenic poisoning: Any industrial process involving the use of arsenic or its preparations or compounds.
- (G) Poisoning by benzol or by nitro-derivatives and amido-derivatives of benzol (dinitro-benzol, anilin, and others): Any industrial process involving the use of benzol or nitro-derivatives or amido-derivatives of benzol or its preparations or compounds.
- (H) Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products: Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.
- (I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.
- (J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.
- (K) Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, or vapors: Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases, or vapors.
- (L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds: Handling or industrial use of carbon, pitch, or tarry compounds.

(M) Compressed air illness: Any industrial process carried on in compressed air.

(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.

(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.

(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.

(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.

(R) Tenosynovitis and prepatellar bursitis: Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

(S) Chrome ulceration of the skin or nasal passages: Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.

(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.

(U) Sulphur dioxide poisoning: Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.

(V) Berylliosis: Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

This chapter does not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from berylliosis unless the employee has been subjected to injurious exposure to beryllium dust or fumes in his employment in this state preceding his disablement and only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability commencing within eight years

after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Before awarding compensation for partial or total disability or death due to berylliosis, the administrator of workers' compensation shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of the disability, the nature of the disability, whether permanent or temporary, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the administrator requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the administrator, or in the event that a claimant for compensation for death due to berylliosis fails to produce necessary consents and permits, after notice from the administrator, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(W) Cardiovascular, pulmonary, or respiratory diseases incurred by fire fighters or police officers following exposure to heat, smoke, toxic gases, chemical fumes and other toxic substances: Any cardiovascular, pulmonary, or respiratory disease of a fire fighter or police officer caused or induced by the cumulative effect of exposure to heat, the inhalation of smoke, toxic gases, chemical fumes and other toxic substances in the performance of his duty constitutes a presumption, which may be refuted by affirmative evidence, that such occurred in the course of and arising out of his employment. For the purpose of this section, "fire fighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

This chapter does not entitle a fire fighter, or police officer, or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular, pulmonary, or respiratory disease, unless the fire fighter or police officer has been subject to injurious exposure to heat, smoke, toxic gases, chemical fumes, and other toxic substances in his employment in this state preceding his disablement, some portion of which has been after January 1, 1967, except as provided in division (E) of section 4123.57 of the Revised Code.

Compensation on account of cardiovascular, pulmonary, or respiratory diseases of fire fighters and police officers is payable only in the event of temporary total disability, permanent total disability, or death, in accordance with section 4123.56, 4123.58, or 4123.59 of the Revised Code. Medical, hospital, and nursing expenses are payable in accordance with this chapter. Compensation, medical, hospital, and nursing expenses are payable only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

This chapter does not entitle a fire fighter or police officer, or his dependents, to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular, pulmonary, or respiratory disease in the event of failure or omission on the part of the fire fighter or police officer truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the administrator shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A fire fighter or police officer shall submit to such examinations, including clinical and x-ray examinations, as the administrator requires. In the event that a fire fighter or police officer refuses to submit to examinations, including clinical and x-ray examinations, after notice from the administrator, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the administrator, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialists and the expenses of examination and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(X) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

(Y) Coal miners' pneumoconiosis: Coal miners' pneumoconiosis, commonly referred to as "black lung disease," resulting from working in the coal mine industry and due to exposure to the

breathing of coal dust, and demonstrated by x-ray examination, biopsy, autopsy or other medical or clinical tests.

This chapter does not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, asbestosis, or coal miners' pneumoconiosis unless the employee has been subject to injurious exposure to silica dust (silicon dioxide), asbestos, or coal dust in his employment in this state preceding his disablement, some portion of which has been after October 12, 1945, except as provided in division (E) of section 4123.57 of the Revised Code.

Compensation on account of silicosis, asbestosis, or coal miners' pneumoconiosis are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with sections 4123.56, 4123.58, and 4123.59 of the Revised Code. Medical, hospital, and nursing expenses are payable in accordance with this chapter. Compensation, medical, hospital, and nursing expenses are payable only in the event of such disability or death resulting within eight years after the last injurious exposure; provided that such eight-year limitation does not apply to disability or death occurring after January 1, 1976, and further provided that such eight-year limitation does not apply to any asbestosis cases. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

This chapter does not entitle an employee or his dependents to compensation, medical, hospital and nursing expenses, or payment of funeral expenses for disability or death due to silicosis, asbestosis, or coal miners' pneumoconiosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death due to silicosis, asbestosis, or coal miners' pneumoconiosis, the administrator shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the administrator requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the administrator, or in the event that a claimant for compensation for death due to silicosis, asbestosis, or coal miners' pneumoconiosis fails to produce necessary consents and permits, after notice from the commission, so that such

autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as a part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(Z) Radiation illness: Any industrial process involving the use of radioactive materials.

Claims for compensation and benefits due to radiation illness are payable only in the event death or disability occurred within eight years after the last injurious exposure provided that such eight-year limitation does not apply to disability or death from exposure occurring after January 1, 1976. In the event of death following continuous disability which commenced within eight years of the last injurious exposure the requirement of death within eight years after the last injurious exposure does not apply.

(AA) Asbestosis: Asbestosis means a disease caused by inhalation or ingestion of asbestos, demonstrated by x-ray examination, biopsy, autopsy, or other objective medical or clinical tests.

All conditions, restrictions, limitations, and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis or coal miners' pneumoconiosis apply to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposures to dust.

The refusal to produce the necessary consents and permits for autopsy examination and testing shall not result in forfeiture of compensation provided the administrator finds that such refusal was the result of bona fide religious convictions or teachings to which the claimant for compensation adhered prior to the death of the decedent.

Effective Date: 10-20-1993

4123.69 Persons entitled to benefits.

Every employee mentioned in section 4123.68 of the Revised Code and the dependents and the employer or employers of such employee shall be entitled to all the rights, benefits, and immunities and shall be subject to all the liabilities, penalties, and regulations provided for injured employees and their employers by this chapter.

The administrator of workers' compensation shall have all of the powers, authority, and duties with respect to the collection, administration, and disbursement of the state occupational disease fund as are provided for in this chapter, providing for the collection, administration, and disbursement of the state insurance fund for the compensation of injured employees.

Effective Date: 11-03-1989

4123.70 Preexisting disease.

No compensation shall be awarded on account of disability or death from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, willfully and falsely represented himself as not having previously suffered from such disease. Compensation shall not be awarded on account of both injury and disease, except when the disability is caused by a disease and an injury, in which event the administrator of workers' compensation may apportion the payment of compensation provided for in sections 4123.56 to 4123.59 of the Revised Code between the funds as in his judgment seems just and proper.

If an employee is suffering from both occupational disease and an injury, and the administrator can determine which is causing his disability, the administrator shall pay compensation therefor from the proper fund.

Compensation for loss sustained on account of occupational disease by an employee mentioned in division (A)(1) of section 4123.01 of the Revised Code, or the dependents of such employee, shall be paid from the fund provided for in sections 4123.38 to 4123.41 and 4123.48 of the Revised Code.

Compensation for loss sustained on account of a disease by an employee mentioned in division (A)(2) of section 4123.01 of the Revised Code, or the dependents of the employee, shall be paid from the occupational disease fund or by the employer of the employee, if the employer is a self-insuring employer.

Effective Date: 10-20-1993

4123.71 Time for report of physician.

Every physician in this state attending on or called in to visit a patient whom he believes to be suffering from an occupational disease as defined in section 4123.68 of the Revised Code shall,

within forty-eight hours from the time of making such diagnosis, send to the bureau of workers' compensation a report stating:

- (A) Name, address, and occupation of patient;
- (B) Name and address of business in which employed;
- (C) Nature of disease;
- (D) Name and address of employer of patient;
- (E) Such other information as is reasonably required by the bureau.

The reports shall be made on blanks to be furnished by the bureau. The mailing of the report within the time stated, in a stamped envelope addressed to the office of the bureau is a compliance with this section.

Reports made under this section shall not be evidence of the facts therein stated in any action arising out of a disease therein reported.

The bureau shall, within twenty-four hours after the receipt of the report, send a copy thereof to the employer of the patient named in the report.

Effective Date: 11-03-1989

4123.72 Failure to make report.

No physician practicing in this state shall neglect or refuse to make and transmit to the bureau of workers' compensation the report provided for in section 4123.71 of the Revised Code. The administrator of workers' compensation shall cause the penal provisions for a violation of this section to be enforced.

Effective Date: 11-03-1989

4123.73 Participation by employers of less than three persons.

Any employer who employs less than three employees regularly in the same business, or in or about the same establishment, who pays into the state insurance fund the premiums provided by this chapter, is not liable to respond in damages at common law or by statute, for injuries or death of any such employees, wherever occurring, during the period covered by such

premiums, provided the injured employee has remained in his service with notice, as provided in section 4123.83 of the Revised Code, that his employer has paid such premiums into the state insurance fund. The continuation in the service of such employer with such notice shall be deemed a waiver by the employee of his right of action.

Any person who employs one or more individuals who are not employees as defined in section 4123.01 of the Revised Code, who pays into the state insurance fund the premiums provided by this chapter, is not liable to respond in damages at common law or by statute for injuries or death of any such individuals, wherever occurring, during the period covered by such premiums, provided the injured individual has remained in the service of such person with notice that his employer has paid such premiums into the state insurance fund. The continuation in the service of such employer with such notice, as provided in section 4123.83 of the Revised Code, shall be deemed a waiver by the individual of his right of action.

Effective Date: 10-20-1993

4123.74 Immunity of employer.

Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval the employer is a self-insuring employer, whether or not such injury, occupational disease, bodily condition, or death is compensable under this chapter.

Effective Date: 10-20-1993

4123.741 Immunity of fellow employees.

No employee of any employer, as defined in division (B) of section 4123.01 of the Revised Code, shall be liable to respond in damages at common law or by statute for any injury or occupational disease, received or contracted by any other employee of such employer in the course of and arising out of the latter employee's employment, or for any death resulting from such injury or occupational disease, on the condition that such injury, occupational disease, or death is found to be compensable under sections 4123.01 to 4123.94, inclusive, of the Revised Code.

Effective Date: 10-01-1963

4123.75 Remedy of employee against noncomplying employer.

Any employee whose employer has failed to comply with section 4123.35 of the Revised Code, who has been injured or has suffered an occupational disease in the course of his employment, which was not purposely self-inflicted, or his dependents in case death has ensued, may file his application with the industrial commission or the bureau of workers' compensation for compensation and the administrator of workers' compensation shall determine the application for compensation in like manner as in other claims and shall make an award to the claimant as he would be entitled to receive if the employer had complied with section 4123.35 of the Revised Code. Payment of the claim shall be made promptly from the statutory surplus fund. Payment shall not bar any action under section 4123.77 of the Revised Code. If a recovery is made in an action under section 4123.77 of the Revised Code any funds paid from the state insurance fund under this section shall be repaid by the claimant. The administrator shall institute proceedings to recover from the employer any moneys paid from the surplus fund and to secure the employer's payment of the award. The employer shall pay the award in the manner and amount fixed thereby or shall furnish to the bureau a bond, in an amount and with sureties as the bureau requires, to pay the employee the award in the manner and amount fixed thereby.

An order of the administrator issued under this section is appealable pursuant to sections 4123.511 and 4123.512 of the Revised Code. In the event payments are made to a claimant which should not have been made under the final decision in the appeal of the claim, the amount of the payments shall be charged to the surplus fund created under division (B) of section 4123.34 of the Revised Code. In the event recovery is made from the noncomplying employer, the sums that are recovered shall be paid into the surplus fund.

If the employer fails to pay the compensation to the person entitled thereto, or fails to furnish the bond, within a period of ten days after notification of the award, the award constitutes a liquidated claim for damages against the employer in the amount ascertained and fixed by the administrator or commission, and the administrator shall certify the same to the attorney general who shall forthwith institute a civil action against the employer in the name of the state for the collection of the award. In the action it is sufficient for the plaintiff to set forth a copy of the record of proceedings of the commission or bureau relative to the claims certified by the administrator to the attorney general and to state that there is due to plaintiff on account of the finding and award of the commission or bureau a specified sum which plaintiff claims with

interest. A certified copy of the record of proceedings in the claim shall be attached to the complaint and constitutes prima-facie evidence of the truth of the facts therein contained. Further proceedings shall be as provided in the Rules of Civil Procedure. As soon as the issues are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order for trial. The cause of action provided in this section and the cause of action provided by section 4123.37 of the Revised Code may be joined in one action against an employer, and the amount of any premium paid or recovered from the employer for the period not exceeding six months during which the injury or disease, or injury or disease resulting in death, occurred shall be credited against the amount of any judgment for compensation recovered pursuant to this section. The amount recovered in the action from the employer shall be paid into the surplus fund created under division (B) of section 4123.34 of the Revised Code up to the amount paid out of the surplus fund and the balance into the state insurance fund. Any employee of a self-insuring employer, in the event of the failure of his employer to pay the compensation or furnish the medical, surgical, nursing, and hospital services and attention or funeral expenses, may file his application with the commission or the bureau for the purpose of having the amount of the compensation and the medical, surgical, nursing, and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the bureau and with like effect as provided in this section.

The administrator shall adopt and publish rules governing the procedure before the bureau and commission provided in this section and shall prescribe the form of notices and the manner of serving the same in all claims for compensation arising under this section. Any suit, action, proceeding, or award brought or made against any employer under this section may be compromised by the administrator, or the suit, action, or proceeding may be prosecuted to final judgment as in the administrator's discretion may best subserve the interests of the state insurance fund.

A final judgment against the employer recovered in the manner provided in this section entitles the claimant to the compensation provided in this chapter for the injury, occupational disease, or death and the compensation shall be paid from the surplus fund created by section 4123.34 of the Revised Code, and any sum recovered on account of the judgment shall be paid to the bureau and credited to the fund the administrator designates.

Effective Date: 10-20-1993

4123.751 Service on nonresident employer.

Any nonresident person, firm, or corporation of this state who engages in any activity or maintains any establishment in this state so as to be an employer, as defined in division (B) of section 4123.01 of the Revised Code, or any resident of this state, being an employer as so defined, who has engaged in any such activity or maintained any such establishment in this state, who subsequently becomes a nonresident or conceals his whereabouts, or, after due diligence, whose whereabouts cannot be ascertained and no forwarding address can be found, shall, by engagement in the activity or by maintenance of the establishment, make and constitute the secretary of state his agent for the service of process in any proceeding before the bureau of workers' compensation or the industrial commission or in any civil suit resulting therefrom, against the employer, arising out of or by reason of any injury or occupational disease as defined in this chapter, occurring within this state and involving employment in the activity or within the maintenance of the establishment.

Effective Date: 11-03-1989

4123.752 Manner of service.

Service of process under section 4123.751 of the Revised Code shall be served by the officer to whom the same shall be directed or by the sheriff of Franklin county, who may be deputized for such purposes by the officer to whom the service is directed, upon the secretary of state by leaving at his office, at least fifteen days before the return day of such process, a true and attested copy thereof, and by sending to the defendant, by registered mail, postage prepaid at least fifteen days before the return day of such process, a like true and attested copy thereof, with an endorsement thereon of the service upon the secretary of state, addressed to such defendant at his last known address. The registered mail return receipt shall be attached to and made a part of the return of service of such process.

Effective Date: 10-13-1953

4123.753 Service fee.

An officer serving the process under sections 4123.751 and 4123.752 of the Revised Code upon the secretary of state shall pay to such secretary at the time of service a fee of two dollars, which fee shall be taxed as costs in the case. The secretary of state shall keep a record of such process and the day and hour of the service thereof upon him.

Effective Date: 10-13-1953

4123.754 Continuance.

A court in which an action is pending pursuant to service of process under sections 4123.751 and 4123.752 of the Revised Code may order such continuance as may be necessary to afford the defendant reasonable opportunity to appear and defend the action.

Effective Date: 10-13-1953

4123.755 Applicability to residents who become nonresidents.

Sections 4123.751 to 4123.754, inclusive, of the Revised Code shall be construed to extend the right of service of process upon nonresidents and upon residents who subsequently become nonresidents or who conceal their whereabouts or, after due diligence, whose whereabouts cannot be ascertained and no forwarding address can be found, and shall not be construed as limiting any provisions for the service or process now or hereafter existing.

Effective Date: 10-13-1953

4123.756 Death of employer prior to commencement of civil action.

In the event an employer, under the purview of sections 4123.751 to 4123.755 of the Revised Code, has died prior to the commencement of any civil suit or proceeding before the bureau of workers' compensation or industrial commission, such sections shall likewise apply to any executor or administrator of the employer, and the employer shall be deemed to have constituted the secretary of state as his agent for such purpose, and the agency shall not terminate by reason of the death of the employer.

Effective Date: 11-03-1989

4123.76 Claim against noncomplying employer a lien.

When an application for compensation or benefits or an application for further compensation or benefits is filed with the industrial commission or the bureau of workers' compensation under section 4123.75 of the Revised Code against an employer who has not complied with section 4123.35 of the Revised Code, the bureau shall make and file for record in the office of the county recorder in the counties where the employer's property is located, an affidavit showing the date on which the application was filed with the commission or the bureau, the name and address of the employer against whom it was filed, and the fact that the employer had not complied with section 4123.35 of the Revised Code. The county recorder shall accept and file the affidavit and record and index the affidavit in the official record. A copy of the application or other bureau record documenting the claim shall be filed with the affidavit. A

copy of the affidavit shall be served upon the employer by the bureau. The affidavit constitutes a valid lien from the time of filing, in favor of the bureau, upon the real property and personal property of the employer located within the county. The administrator of workers' compensation shall have the lien canceled of record after the employer has paid to the claimant or to the bureau the amount of the compensation or benefits which has been ordered paid to the claimant, or when the application has finally been denied after the claimant has exhausted the remedies provided by law in such cases, or when the employer has filed a bond in the amount and with surety as the administrator approves conditioned on the payment of all sums ordered paid to the claimant. The recorder shall make no charge for the services provided by this section to be performed by the recorder.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Effective Date: 08-06-1999

4123.77 Common law defenses denied to noncomplying employers.

Employers mentioned in division (B)(2) of section 4123.01 of the Revised Code, who fail to comply with section 4123.35 of the Revised Code are not entitled to the benefits of sections 4123.01 to 4123.94, inclusive, of the Revised Code, during the period of such noncompliance, but are liable to their employees for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect, or default of the employer, or any of the employer's officers, agents, or employees, and also to the personal representatives of such employees where death results from such injuries, and in such action the defendant shall not avail himself or itself of the following common law defenses:

- (A) The defense of the fellow servant rule;
- (B) The defense of the assumption of risk;
- (C) The defense of contributory negligence.

Such employers are subject to sections 4123.37 and 4123.75 of the Revised Code.

Effective Date: 10-01-1953

4123.78 Recording of certificate of noncompliance.

If any employer fails to comply with section 4123.35 of the Revised Code in accordance with the rules of the administrator of workers' compensation, the administrator shall file with the county recorder of any counties in which the employer's property is located, its certificate of the amount of premium due from the employer, and that amount shall be a lien from the date of filing against the real property and personal property of the employer within the county in which the certificate is filed. The county recorder shall record and index the certificate in the official record. The county recorder shall make no charge for the services provided by this section to be performed by the county recorder.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Effective Date: 11-03-1989

4123.79 Party may enjoin operation of noncomplying employer - construction contractor or subcontractor.

(A) Any interested party may enjoin the further operation of an employer subject to this chapter who has failed to pay the employer's premium to the workers' compensation fund as prescribed in this chapter. The procedure to obtain an injunction is governed by Chapter 2727. of the Revised Code and the right to such relief is in addition to the rights described in section 2727.02 of the Revised Code.

(B)

(1) No construction contractor or subcontractor who, on the date of entering into a construction contract has not been in compliance with section 4123.35 of the Revised Code for a minimum of nine consecutive months, may bring an action to enforce rights arising from that construction contract.

(2) Nothing in this section shall require the surety of a contractor or subcontractor described in division (B)(1) of this section to make payment of any workers' compensation obligation of that contractor or subcontractor or affect the surety's rights in the event that the contractor or subcontractor is in default or is declared by an obligee to be in default of its contractual obligations.

(C) As used in this section:

(1) "Interested party" means any of the following:

(a) An employer who is in compliance with section 4123.35 of the Revised Code and who is not a self-insuring employer;

(b) The attorney general;

(c) The administrator of workers' compensation.

(2) "Construction contract" means any oral or written agreement involving any activity in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of any building, structure, highway, or bridge.

Effective Date: 09-17-1996

4123.80 Agreement to waive rights void - exceptions.

No agreement by an employee to waive an employee's rights to compensation under this chapter is valid, except that:

(A) An employee who is blind may waive the compensation that may become due to the employee for injury or disability in cases where the injury or disability may be directly caused by or due to the employee's blindness. The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, may adopt and enforce rules governing the employment of such persons and the inspection of their places of employment.

(B) An employee may waive the employee's rights to compensation or benefits as authorized pursuant to division (C)(3) of section 4123.01 or section 4123.15 of the Revised Code.

No agreement by an employee to pay any portion of the premium paid by the employee's employer into the state insurance fund is valid.

Effective Date: 08-01-2003; 2007 HB100 09-10-2007

4123.81 Prohibition against deduction for premium.

No employer shall deduct any portion of the premium paid by such employer into the state insurance fund from the wages or salary of any employee entitled to the benefits of sections 4123.01 to 4123.94, inclusive, of the Revised Code.

Effective Date: 10-01-1953

4123.82 Contracts indemnifying or insuring employer void.

(A) All contracts and agreements are void which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workers or their dependents for death, injury, or occupational disease occasioned in the course of the workers' employment, or which provide that the insurer shall pay the compensation, or which indemnify the employer against damages when the injury, disease, or death arises from the failure to comply with any lawful requirement for the protection of the lives, health, and safety of employees, or when the same is occasioned by the willful act of the employer or any of the employer's officers or agents, or by which it is agreed that the insurer shall pay any such damages. No license or authority to enter into any such agreements or issue any such policies of insurance shall be granted or issued by any public authority in this state. Any corporation organized or admitted under the laws of this state to transact liability insurance as defined in section 3929.01 of the Revised Code may by amendment of its articles of incorporation or by original articles of incorporation, provide therein for the authority and purpose to make insurance in states, territories, districts, and counties, other than the state of Ohio, and in the state of Ohio in respect of contracts permitted by division (B) of this section, indemnifying employers against loss or liability for payment of compensation to workers and employees and their dependents for death, injury, or occupational disease occasioned in the course of the employment and to insure and indemnify employers against loss, expense, and liability by risk of bodily injury or death by accident, disability, sickness, or disease suffered by workers and employees for which the employer may be liable or has assumed liability.

(B) Notwithstanding division (A) of this section:

(1) No contract because of that division is void which undertakes to indemnify a self-insuring employer against all or part of such employer's loss in excess of at least fifty thousand dollars from any one disaster or event arising out of the employer's liability under this chapter, but no insurance corporation shall, directly or indirectly, represent an employer in the settlement, adjudication, determination, allowance, or payment of claims. The superintendent of insurance shall enforce this prohibition by such disciplinary orders directed against the offending insurance corporation as the superintendent of insurance deems appropriate in the circumstances and the administrator of workers' compensation shall enforce this prohibition by such disciplinary orders directed against the offending employer as the administrator deems appropriate in the circumstances, which orders may include revocation of the insurance

corporation's right to enter into indemnity contracts and revocation of the employer's status as a self-insuring employer.

(2) The administrator may enter into a contract of indemnity with any such employer upon such terms, payment of such premium, and for such amount and form of indemnity as the administrator determines and the bureau of workers' compensation board of directors may procure reinsurance of the liability of the public and private funds under this chapter, or any part of the liability in respect of either or both of the funds, upon such terms and premiums or other payments from the fund or funds as the administrator deems prudent in the maintenance of a solvent fund or funds from year to year. When making the finding of fact which the administrator is required by section 4123.35 of the Revised Code to make with respect to the financial ability of an employer, no contract of indemnity, or the ability of the employer to procure such a contract, shall be considered as increasing the financial ability of the employer.

(C) Nothing in this section shall be construed to prohibit the administrator or an other-states' insurer from providing to employers in this state other-states' coverage or limited other-states' coverage in accordance with section 4123.292 of the Revised Code.

(D) Notwithstanding any other section of the Revised Code, but subject to division (A) of this section, the superintendent of insurance shall have the sole authority to regulate any insurance products, except for the bureau of workers' compensation and those products offered by the bureau, that indemnify or insure employers against workers' compensation losses in this state or that are sold to employers in this state.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Amended by 128th General Assemblych.127, HB 15, §101, eff. 6/30/2009.

Effective Date: 10-20-1993; 2007 HB100 09-10-2007; 2008 SB334 09-11-2008

4123.83 Posting of notice by employer.

Each employer paying premiums into the state insurance fund or electing directly to pay compensation to the employer's injured employees or the dependents of the employer's killed employees as provided in section 4123.35 of the Revised Code, shall post conspicuously in the employer's place or places of employment notices, which shall be furnished at least annually by the bureau of workers' compensation . The notice shall state that it is proof of workers' compensation coverage, or that the employer has complied with section 4123.35 of the Revised

Code and has been authorized by the administrator of workers' compensation directly to compensate employees or dependents, and the date of the authorization. The notice shall indicate that coverage is contingent on continued payment of premiums and assessments due. The notice, when posted, constitutes sufficient notice to the employer's employees of the fact that the employer carries workers' compensation coverage or that the employer has complied with the elective provisions of section 4123.35 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 493, §1, eff. 9/17/2014.

Effective Date: 08-06-1999

4123.84 Claims for injury or death barred after two years - exceptions.

(A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:

(1) Written or facsimile notice of the specific part or parts of the body claimed to have been injured has been made to the industrial commission or the bureau of workers' compensation;

(2) The employer, with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation for total disability;

(3) In the event the employer is a self-insuring employer, one of the following has occurred:

(a) Written or facsimile notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau or the employer has furnished treatment by a licensed physician in the employ of an employer, provided, however, that the furnishing of such treatment shall not constitute a recognition of a claim as compensable, but shall do no more than satisfy the requirements of this section;

(b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code.

(4) Written or facsimile notice of death has been given to the commission or bureau.

(B) The bureau shall provide printed notices quoting in full division (A) of this section, and every self-insuring employer who shall post and maintain at all times one or more of the notices in conspicuous places in the workshop or places of employment.

(C) The commission has continuing jurisdiction as set forth in section 4123.52 of the Revised Code over a claim which meets the requirement of this section, including jurisdiction to award compensation or benefits for loss or impairment of bodily functions developing in a part or parts of the body not specified pursuant to division (A)(1) of this section, if the commission finds that the loss or impairment of bodily functions was due to and a result of or a residual of the injury to one of the parts of the body set forth in the written notice filed pursuant to division (A)(1) of this section.

(D) Any claim pending before the administrator, the commission, or a court on December 11, 1967, in which the remedy is affected by this section is governed by this section.

(E) Notwithstanding the requirement that the notice required to be given to the bureau, commission, or employer under this section is to be in writing or facsimile, the bureau may accept, assign a claim number, and process a claim when notice is provided verbally over the telephone. Immediately upon receipt of notice provided verbally over the telephone, the bureau shall send a written or facsimile notice to the employer of the bureau's receipt of the verbal notice. Within fifteen days after receipt of the bureau's written or facsimile notice, the employer may in writing or facsimile either verify or not verify the verbal notice. If the bureau does not receive the written or facsimile notification from the employer or receives a written or facsimile notification verifying the verbal notice within such time period, the claim is validly filed and such verbal notice tolls the statute of limitations in regard to the claim filed and is considered to meet the requirements of written or facsimile notice required by this section.

(F) As used in division (A)(3)(b) of this section, "benefits" means payments by a self-insuring employer to, or on behalf of, an employee for a hospital bill, a medical bill to a licensed physician or hospital, or an orthopedic or prosthetic device.

Effective Date: 06-14-2000

4123.85 Claims for compensation or benefits in cases of occupational diseases.

In all cases of occupational disease, or death resulting from occupational disease, claims for compensation or benefits are forever barred unless, within two years after the disability due to the disease began, or within such longer period as does not exceed six months after diagnosis of the occupational disease by a licensed physician or within two years after death occurs, application is made to the industrial commission or the bureau of workers' compensation or to the employer if he is a self-insuring employer.

Effective Date: 10-20-1993

4123.86, 4123.87 [Repealed].

Effective Date: 01-01-1974

4123.88 False representation or solicitation of authority.

(A) No person shall orally or in writing, directly or indirectly, or through any agent or other person fraudulently hold the person's self out or represent the person's self or any of the person's partners or associates as authorized by a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or matter in connection therewith before the bureau of workers' compensation or the industrial commission or its district or staff hearing officers. No person shall directly or indirectly solicit authority, or pay or give anything of value to another person to solicit authority, or accept or receive pay or anything of value from another person for soliciting authority, from a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or appeal which is or may be filed with the bureau or commission. No person shall, without prior authority from the bureau, a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto. No person shall forge an authorization for the purpose of examining or cause another person to examine any such file. No district or staff hearing officer or other employee of the bureau or commission, notwithstanding the provisions of section 4123.27 of the Revised Code, shall divulge any information in respect of any claim or appeal which is or may be filed with a district or staff hearing officer, the bureau, or commission to any person other than members of the commission or to the superior of the employee except upon authorization of the administrator of workers' compensation or a member of the commission or upon authorization of the claimant or employer.

(B) The records described or referred to in division (A) of this section are not public records as defined in division (A)(1) of section 149.43 of the Revised Code. Any information directly or indirectly identifying the address or telephone number of a claimant, regardless of whether the claimant's claim is active or closed, is not a public record. No person shall solicit or obtain any such information from any such employee without first having obtained an authorization therefor as provided in this section.

(C) Except as otherwise specified in division (D) of this section, information kept by the commission or the bureau pursuant to this section is for the exclusive use and information of

the commission and the bureau in the discharge of their official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein, unless the commission or the bureau is a party to the action or proceeding. The information, however, may be tabulated and published by the commission or the bureau in statistical form for the use and information of other state agencies and the public.

(D)

(1) Upon receiving a written request made and signed by an individual whose primary occupation is as a journalist, the commission or the bureau shall disclose to the individual the address or addresses and telephone number or numbers of claimants, regardless of whether their claims are active or closed, and the dependents of those claimants.

(2) An individual described in division (D)(1) of this section is permitted to request the information described in that division for multiple workers or dependents in one written request.

(3) An individual described in division (D)(1) of this section shall include all of the following in the written request:

(a) The individual's name, title, and signature;

(b) The name and title of the individual's employer;

(c) A statement that the disclosure of the information sought is in the public interest.

(4) Neither the commission nor the bureau may inquire as to the specific public interest served by the disclosure of information requested by an individual under division (D) of this section.

(E) As used in this section, "journalist" has the same meaning as in division (B)(9) of section 149.43 of the Revised Code.

Effective Date: 10-29-1995; 2006 SB7 10-11-2006; 2006 HB9 09-29-2007; 2008 SB334 09-11-2008

4123.89 Minor is sui juris - additional award for violation.

For the purpose of this chapter, a minor is sui juris, and no other person shall have any cause of action or right to compensation for an injury to the minor employee, but in the event of the

award of a lump sum of compensation to the minor employee, the sum shall be paid to the legally appointed guardian of the minor or in accordance with section 2111.05 of the Revised Code.

When it is found upon hearing by the industrial commission that an injury, occupational disease, or death of a minor working in employment which is prohibited by any law enacted by the general assembly was directly caused by a hazard of such prohibited employment, the commission shall assess an additional award of one hundred per cent of the maximum award established by law, to the amount of the compensation that may be awarded on account of such injury, occupational disease, or death, and paid in like manner as other awards. If the compensation is paid from the state fund, the premium of the employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of the additional award.

Effective Date: 10-20-1993

4123.90 Discrimination against alien dependents unlawful.

The bureau of workers' compensation, industrial commission, or any other body constituted by the statutes of this state, or any court of this state, in awarding compensation to the dependents of employees, or others killed in Ohio, shall not make any discrimination against the widows, children, or other dependents who reside in a foreign country. The bureau, commission, or any other board or court, in determining the amount of compensation to be paid to the dependents of killed employees, shall pay to the alien dependents residing in foreign countries the same benefits as to those dependents residing in this state.

No employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee filed a claim or instituted, pursued or testified in any proceedings under the workers' compensation act for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer. Any such employee may file an action in the common pleas court of the county of such employment in which the relief which may be granted shall be limited to reinstatement with back pay, if the action is based upon discharge, or an award for wages lost if based upon demotion, reassignment, or punitive action taken, offset by earnings subsequent to discharge, demotion, reassignment, or punitive action taken, and payments received pursuant to section 4123.56 and Chapter 4141. of the Revised Code plus reasonable attorney fees. The action shall be forever barred unless filed within one hundred eighty days immediately following the discharge, demotion, reassignment, or punitive action taken, and no action may be instituted or

maintained unless the employer has received written notice of a claimed violation of this paragraph within the ninety days immediately following the discharge, demotion, reassignment, or punitive action taken.

Effective Date: 11-03-1989

4123.91 Information from consular officials.

When the dependents of killed employees reside in a foreign country, the consul general, consul, vice-consul, or consular agent, accredited by the county wherein the dependents of the killed employee reside to the consular district within which the killed employee lived at the time of his decease, shall furnish the necessary information regarding the dependents of killed employees so that the bureau of workers' compensation may transmit to the dependents the funds provided for in this chapter.

Effective Date: 11-03-1989

4123.92 Attorney general, prosecuting attorney - prosecution and defense of actions.

Upon the request of the industrial commission or the administrator of workers' compensation, the attorney general, or under the attorney general's direction the prosecuting attorney of any county in cases arising within the county, shall institute and prosecute the necessary actions or proceedings for the enforcement of this chapter, or for the recovery of any money due the state insurance fund, or any penalty, and shall defend in like manner all suits, actions, or proceedings brought against the administrator, the bureau of workers' compensation board of directors, industrial commission, or the members of the board, or industrial commission in their official capacity.

Effective Date: 09-01-1995; 2007 HB100 09-10-2007

4123.93 Subrogation definitions.

As used in sections 4123.93 and 4123.931 of the Revised Code:

(A) "Claimant" means a person who is eligible to receive compensation, medical benefits, or death benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(B) "Statutory subrogee" means the administrator of workers' compensation, a self-insuring employer, or an employer that contracts for the direct payment of medical services pursuant to division (P) of section 4121.44 of the Revised Code.

(C) "Third party" means an individual, private insurer, public or private entity, or public or private program that is or may be liable to make payments to a person without regard to any statutory duty contained in this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(D) "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid to or on behalf of the claimant by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(E) "Net amount recovered" means the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus the attorney's fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. "Net amount recovered" does not include any punitive damages that may be awarded by a judge or jury.

(F) "Uncompensated damages" means the claimant's demonstrated or proven damages minus the statutory subrogee's subrogation interest.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 04-09-2003

4123.931 Statutory subrogee subrogated to rights of claimant against third party.

(A) The payment of compensation or benefits pursuant to this chapter or Chapter 4121., 4127., or 4131., of the Revised Code creates a right of recovery in favor of a statutory subrogee against a third party, and the statutory subrogee is subrogated to the rights of a claimant against that third party. The net amount recovered is subject to a statutory subrogee's right of recovery.

(B) If a claimant, statutory subrogee, and third party settle or attempt to settle a claimant's claim against a third party, the claimant shall receive an amount equal to the uncompensated damages divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered, and the statutory subrogee shall receive an amount equal to the subrogation interest divided by the sum of the subrogation interest plus the

uncompensated damages, multiplied by the net amount recovered, except that the net amount recovered may instead be divided and paid on a more fair and reasonable basis that is agreed to by the claimant and statutory subrogee. If while attempting to settle, the claimant and statutory subrogee cannot agree to the allocation of the net amount recovered, the claimant and statutory subrogee may file a request with the administrator of workers' compensation for a conference to be conducted by a designee appointed by the administrator, or the claimant and statutory subrogee may agree to utilize any other binding or non-binding alternative dispute resolution process.

The claimant and statutory subrogee shall pay equal shares of the fees and expenses of utilizing an alternative dispute resolution process, unless they agree to pay those fees and expenses in another manner. The administrator shall not assess any fees to a claimant or statutory subrogee for a conference conducted by the administrator's designee.

(C) If a claimant and statutory subrogee request that a conference be conducted by the administrator's designee pursuant to division (B) of this section, both of the following apply:

(1) The administrator's designee shall schedule a conference on or before sixty days after the date that the claimant and statutory subrogee filed a request for the conference.

(2) The determination made by the administrator's designee is not subject to Chapter 119. of the Revised Code.

(D) When a claimant's action against a third party proceeds to trial and damages are awarded, both of the following apply:

(1) The claimant shall receive an amount equal to the uncompensated damages divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered, and the statutory subrogee shall receive an amount equal to the subrogation interest divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered.

(2) The court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories that specify the following:

(a) The total amount of the compensatory damages;

(b) The portion of the compensatory damages specified pursuant to division (D)(2)(a) of this section that represents economic loss;

(c) The portion of the compensatory damages specified pursuant to division (D)(2)(a) of this section that represents noneconomic loss.

(E)

(1) After a claimant and statutory subrogee know the net amount recovered, and after the means for dividing it has been determined under division (B) or (D) of this section, a claimant may establish an interest-bearing trust account for the full amount of the subrogation interest that represents estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, reduced to present value, from which the claimant shall make reimbursement payments to the statutory subrogee for the future payments of compensation, medical benefits, rehabilitation costs, or death benefits. If the workers' compensation claim associated with the subrogation interest is settled, or if the claimant dies, or if any other circumstance occurs that would preclude any future payments of compensation, medical benefits, rehabilitation costs, and death benefits by the statutory subrogee, any amount remaining in the trust account after final reimbursement is paid to the statutory subrogee for all payments made by the statutory subrogee before the ending of future payments shall be paid to the claimant or the claimant's estate.

(2) A claimant may use interest that accrues on the trust account to pay the expenses of establishing and maintaining the trust account, and all remaining interest shall be credited to the trust account.

(3) If a claimant establishes a trust account, the statutory subrogee shall provide payment notices to the claimant on or before the thirtieth day of June and the thirty-first day of December every year listing the total amount that the statutory subrogee has paid for compensation, medical benefits, rehabilitation costs, or death benefits during the half of the year preceding the notice. The claimant shall make reimbursement payments to the statutory subrogee from the trust account on or before the thirty-first day of July every year for a notice provided by the thirtieth day of June, and on or before the thirty-first day of January every year for a notice provided by the thirty-first day of December. The claimant's reimbursement payment shall be in an amount that equals the total amount listed on the notice the claimant receives from the statutory subrogee.

(F) If a claimant does not establish a trust account as described in division (E)(1) of this section, the claimant shall pay to the statutory subrogee, on or before thirty days after receipt of funds from the third party, the full amount of the subrogation interest that represents estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits.

(G) A claimant shall notify a statutory subrogee and the attorney general of the identity of all third parties against whom the claimant has or may have a right of recovery, except that when the statutory subrogee is a self-insuring employer, the claimant need not notify the attorney general. No settlement, compromise, judgment, award, or other recovery in any action or claim by a claimant shall be final unless the claimant provides the statutory subrogee and, when required, the attorney general, with prior notice and a reasonable opportunity to assert its subrogation rights. If a statutory subrogee and, when required, the attorney general are not given that notice, or if a settlement or compromise excludes any amount paid by the statutory subrogee, the third party and the claimant shall be jointly and severally liable to pay the statutory subrogee the full amount of the subrogation interest.

(H) The right of subrogation under this chapter is automatic, regardless of whether a statutory subrogee is joined as a party in an action by a claimant against a third party. A statutory subrogee may assert its subrogation rights through correspondence with the claimant and the third party or their legal representatives. A statutory subrogee may institute and pursue legal proceedings against a third party either by itself or in conjunction with a claimant. If a statutory subrogee institutes legal proceedings against a third party, the statutory subrogee shall provide notice of that fact to the claimant. If the statutory subrogee joins the claimant as a necessary party, or if the claimant elects to participate in the proceedings as a party, the claimant may present the claimant's case first if the matter proceeds to trial. If a claimant disputes the validity or amount of an asserted subrogation interest, the claimant shall join the statutory subrogee as a necessary party to the action against the third party.

(I) The statutory subrogation right of recovery applies to, but is not limited to, all of the following:

(1) Amounts recoverable from a claimant's insurer in connection with underinsured or uninsured motorist coverage, notwithstanding any limitation contained in Chapter 3937. of the Revised Code;

(2) Amounts that a claimant would be entitled to recover from a political subdivision, notwithstanding any limitations contained in Chapter 2744. of the Revised Code;

(3) Amounts recoverable from an intentional tort action.

(J) If a claimant's claim against a third party is for wrongful death or the claim involves any minor beneficiaries, amounts allocated under this section are subject to the approval of probate court.

(K) The administrator shall deposit any money collected under this section into the public fund or the private fund of the state insurance fund, as appropriate. If a self-insuring employer collects money under this section of the Revised Code, the self-insuring employer shall deduct the amount collected, in the year collected, from the amount of paid compensation the self-insured employer is required to report under section 4123.35 of the Revised Code.

Effective Date: 04-09-2003

4123.94 Preference of judgments.

All judgments obtained in any action prosecuted by the administrator of workers' compensation or by the state under the authority of this chapter shall have the same preference against the assets of the employer as is allowed by law on judgments rendered for claims for taxes.

Effective Date: 11-03-1989

4123.95 Liberal construction of chapter.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees.

Effective Date: 11-02-1959

4123.96 Solicitation of claims prohibited.

No person who solicits claims or who causes claims to be solicited shall be allowed to practice, or represent parties, before the industrial commission or the bureau of workers' compensation.

Effective Date: 01-17-1977

4123.99 Penalty.

(A) Whoever violates section 4123.27 or 4123.28 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates section 4123.50 of the Revised Code is guilty of a minor misdemeanor. Whoever purposely violates such section is guilty of a misdemeanor of the second degree.

(C) Whoever violates section 4123.81 of the Revised Code is guilty of a minor misdemeanor.

(D) Whoever violates section 4123.88 of the Revised Code is guilty of a misdemeanor of the second degree.

(E) Whoever violates section 4123.417 of the Revised Code is guilty of a misdemeanor of the second degree, and the persons who shall have paid a fee, compensation, or gratuity as prohibited by section 4123.417 of the Revised Code may recover by civil action three times the amount thereof, together with a reasonable attorney's fee, from the person to whom the sum was paid or given.

Effective Date: 10-20-1993