(126th General Assembly)
(Amended Substitute Senate Bill Number 7)

AN ACT

To amend sections 2913.48, 3121.034, 3121.037, 4111.02, 4121.10, 4121.12, 4121.44, 4121.441, 4123.01, 4123.29, 4123.32, 4123.35, 4123.512, 4123.52, 4123.54, 4123.56, 4123.57, 4123.58, 4123.61, 4123.65, 4123.88, 5703.21, and 5747.18, to enact sections 3121.0311, 4121.131, 4121.444, 4123.271, and 4123.311 of the Revised Code to make various changes to the Workers' Compensation Law and the state minimum wage.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2913.48, 3121.034, 3121.037, 4111.02, 4121.10, 4121.12, 4121.44, 4121.441, 4123.01, 4123.29, 4123.32, 4123.35, 4123.512, 4123.52, 4123.54, 4123.56, 4123.57, 4123.58, 4123.61, 4123.65, 4123.88, 5703.21, and 5747.18 be amended and sections 3121.0311, 4121.131, 4121.444, 4123.271, and 4123.311 of the Revised Code be enacted to read as follows:

Sec. 2913.48. (A) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Receive workers' compensation benefits to which the person is not entitled;

(2) Make or present or cause to be made or presented a false or misleading statement with the purpose to secure payment for goods or services rendered under Chapter 4121., 4123., 4127., or 4131. of the Revised Code or to secure workers' compensation benefits;

(3) Alter, falsify, destroy, conceal, or remove any record or document that is necessary to fully establish the validity of any claim filed with, or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from, the bureau of workers' compensation, or a self-insuring employer under Chapter 4121., 4123., 4127., or 4131. of the Revised Code;

(4) Enter into an agreement or conspiracy to defraud the bureau or a self-insuring employer by making or presenting or causing to be made or

presented a false claim for workers' compensation benefits;

(5) Make or present or cause to be made or presented a false statement concerning manual codes, classification of employees, payroll, paid compensation, or number of personnel, when information of that nature is necessary to determine the actual workers' compensation premium or assessment owed to the bureau by an employer;

(6) Alter, forge, or create a workers' compensation certificate to falsely show current or correct workers' compensation coverage;

(7) Fail to secure or maintain workers' compensation coverage as required by Chapter 4123. of the Revised Code with the intent to defraud the bureau of workers' compensation.

(B) Whoever violates this section is guilty of workers' compensation fraud. Except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the value of ~~the~~ premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is five hundred dollars or more and is less than five thousand dollars, a violation of this section is a felony of the fifth degree. If the value of ~~the~~ premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is five thousand dollars or more and is less than one hundred thousand dollars, a violation of this section is a felony of the fourth degree. If the value of ~~the~~ premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is one hundred thousand dollars or more, a violation of this section is a felony of the third degree.

(C) Upon application of the governmental body that conducted the investigation and prosecution of a violation of this section, the court shall order the person who is convicted of the violation to pay the governmental body its costs of investigating and prosecuting the case. These costs are in addition to any other costs or penalty provided in the Revised Code or any other section of law.

(D) The remedies and penalties provided in this section are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this section.

(E) As used in this section:

(1) "False" means wholly or partially untrue or deceptive.

(2) "Goods" includes, but is not limited to, medical supplies, appliances, rehabilitative equipment, and any other apparatus or furnishing provided or

used in the care, treatment, or rehabilitation of a claimant for workers' compensation benefits.

(3) "Services" includes, but is not limited to, any service provided by any health care provider to a claimant for workers' compensation benefits and any and all services provided by the bureau as part of workers' compensation insurance coverage.

(4) "Claim" means any attempt to cause the bureau, an independent third party with whom the administrator or an employer contracts under section 4121.44 of the Revised Code, or a self-insuring employer to make payment or reimbursement for workers' compensation benefits.

(5) "Employment" means participating in any trade, occupation, business, service, or profession for substantial gainful remuneration.

(6) "Employer," "employee," and "self-insuring employer" have the same meanings as in section 4123.01 of the Revised Code.

(7) "Remuneration" includes, but is not limited to, wages, commissions, rebates, and any other reward or consideration.

(8) "Statement" includes, but is not limited to, any oral, written, electronic, electronic impulse, or magnetic communication notice, letter, memorandum, receipt for payment, invoice, account, financial statement, or bill for services; a diagnosis, prognosis, prescription, hospital, medical, or dental chart or other record; and a computer generated document.

(9) "Records" means any medical, professional, financial, or business record relating to the treatment or care of any person, to goods or services provided to any person, or to rates paid for goods or services provided to any person, or any record that the administrator of workers' compensation requires pursuant to rule.

(10) "Workers' compensation benefits" means any compensation or benefits payable under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

Sec. 3121.034. (A) ~~A~~ Except for deductions from lump sum payments made in accordance with section 3121.0311 of the Revised Code, a withholding or deduction requirement contained in a withholding or deduction notice described in section 3121.03 of the Revised Code has priority over any order of attachment, any order in aid of execution, and any other legal process issued under state law against the same earnings, payments, or account.

(B) When two or more withholding notices are received by a payor, the payor shall comply with all of the requirements contained in the notices to the extent that the total amount withheld from the obligor's income does not exceed the maximum amount permitted under section 303(b) of the

"Consumer Credit Protection Act," 15 U.S.C. 1673(b), withhold amounts in accordance with the allocation set forth in divisions (B)(1) and (2) of this section, notify each court or child support enforcement agency that issued one of the notices of the allocation, and give priority to amounts designated in each notice as current support in the following manner:

(1) If the total of the amounts designated in the notices as current support exceeds the amount available for withholding under section 303(b) of the "Consumer Credit Protection Act," 15 U.S.C. 1673(b), the payor shall allocate to each notice an amount for current support equal to the amount designated in that notice as current support multiplied by a fraction in which the numerator is the amount of income available for withholding and the denominator is the total amount designated in all of the notices as current support.

(2) If the total of the amounts designated in the notices as current support does not exceed the amount available for withholding under section 303(b) of the "Consumer Credit Protection Act," 15 U.S.C. 1673(b), the payor shall pay all of the amounts designated as current support in the notices and shall allocate to each notice an amount for past-due support equal to the amount designated in that notice as past-due support multiplied by a fraction in which the numerator is the amount of income remaining available for withholding after the payment of current support and the denominator is the total amount designated in all of the notices as past-due support.

Sec. 3121.037. (A) A withholding notice sent under section 3121.03 of the Revised Code shall contain all of the following:

(1) Notice of the amount to be withheld from the obligor's income and a statement that, notwithstanding that amount, the payor may not withhold an amount for support and other purposes, including the fee described in division (A)(11) of this section, that exceeds the maximum amounts permitted under section 303(b) of the "Consumer Credit Protection Act," 15 U.S.C. 1673(b);

(2) A statement that the payor is required to send the amount withheld to the office of child support immediately, but not later than seven business days, after the obligor is paid and is required to report to the agency the date the amount was withheld;

(3) A statement that the withholding is binding on the payor until further notice from the court or agency;

(4) A statement that if the payor is an employer, the payor is subject to a fine to be determined under the law of this state for discharging the obligor from employment, refusing to employ the obligor, or taking any disciplinary

action against the obligor because of the withholding requirement;

(5) A statement that, if the payor fails to withhold in accordance with the notice, the payor is liable for the accumulated amount the payor should have withheld from the obligor's income;

(6) A statement that, except for deductions from lump sum payments made in accordance with section 3121.0311 of the Revised Code, the withholding in accordance with the notice has priority over any other legal process under the law of this state against the same income;

(7) The date on which the notice was mailed and a statement that the payor is required to implement the withholding no later than fourteen business days following the date the notice was mailed or, if the payor is an employer, no later than the first pay period that occurs after fourteen business days following the date the notice was mailed, and is required to continue the withholding at the intervals specified in the notice.

(8) A requirement that the payor do the following:

(a) Promptly notify the child support enforcement agency administering the support order, in writing, within ten business days after the date of any situation that occurs in which the payor ceases to pay income to the obligor in an amount sufficient to comply with the order, including termination of employment, layoff of the obligor from employment, any leave of absence of the obligor from employment without pay, termination of workers' compensation benefits, or termination of any pension, annuity, allowance, or retirement benefit;

(b) Provide the agency with the obligor's last known address and, with respect to a court support order and if known, notify the agency of any new employer or income source and the name, address, and telephone number of the new employer or income source.

(9) A requirement that, if the payor is an employer, the payor do both of the following:

(a) Identify in the notice given under division (A)(8) of this section any types of benefits other than personal earnings the obligor is receiving or is eligible to receive as a benefit of employment or as a result of the obligor's termination of employment, including, but not limited to, unemployment compensation, workers' compensation benefits, severance pay, sick leave, lump sum payments of retirement benefits or contributions, and bonuses or profit-sharing payments or distributions, and the amount of the benefits;

(b) Include in the notice the obligor's last known address and telephone number, date of birth, social security number, and case number and, if known, the name and business address of any new employer of the obligor.

(10) ~~A~~ Subject to section 3121.0311 of the Revised Code, a requirement

that, no later than the earlier of forty-five days before a lump sum payment is to be made or, if the obligor's right to the lump sum payment is determined less than forty-five days before it is to be made, the date on which that determination is made, the payor notify the child support enforcement agency administering the support order of any lump sum payment of any kind of one hundred fifty dollars or more that is to be paid to the obligor, hold each lump sum payment of one hundred fifty dollars or more for thirty days after the date on which it would otherwise be paid to the obligor and, on order of the court or agency that issued the support order, pay all or a specified amount of the lump sum payment to the office of child support;

(11) A statement that, in addition to the amount withheld for support, the payor may withhold a fee from the obligor's income as a charge for its services in complying with the notice and a specification of the amount that may be withheld.

(B) A deduction notice sent under section 3121.03 of the Revised Code shall contain all of the following:

(1) Notice of the amount to be deducted from the obligor's account;

(2) A statement that the financial institution is required to send the amount deducted to the office of child support immediately, but not later than seven business days, after the date the last deduction was made and to report to the child support enforcement agency the date on which the amount was deducted;

(3) A statement that the deduction is binding on the financial institution until further notice from the court or agency;

(4) A statement that the deduction in accordance with the notice has priority over any other legal process under the law of this state against the same account;

(5) The date on which the notice was mailed and a statement that the financial institution is required to implement the deduction no later than fourteen business days following that date and to continue the deduction at the intervals specified in the notice;

(6) A requirement that the financial institution promptly notify the child support enforcement agency administering the support order, in writing, within ten days after the date of any termination of the account from which the deduction is being made and notify the agency, in writing, of the opening of a new account at that financial institution, the account number of the new account, the name of any other known financial institutions in which the obligor has any accounts, and the numbers of those accounts;

(7) A requirement that the financial institution include in all notices the

obligor's last known mailing address, last known residence address, and social security number;

(8) A statement that, in addition to the amount deducted for support, the financial institution may deduct a fee from the obligor's account as a charge for its services in complying with the notice and a specification of the amount that may be deducted.

Sec. 3121.0311. (A) If a lump sum payment referred to in division (A)(10) of section 3121.037 of the Revised Code consists of workers' compensation benefits and the obligor is represented by an attorney with respect to the obligor's workers' compensation claim, prior to issuing the notice to the child support enforcement agency required by that division, the administrator of workers' compensation, for claims involving state fund employers, or a self-insuring employer, for that employer's claims, shall notify the obligor and the obligor's attorney in writing that the obligor is subject to a support order and that the administrator or self-insuring employer, as appropriate, shall hold the lump sum payment for a period of thirty days after the administrator or self-insuring employer sends this written notice, pending receipt of the information referred to in division (B) of this section.

(B) The administrator or self-insuring employer, as appropriate, shall instruct the obligor's attorney in writing to file a copy of the fee agreement signed by the obligor, along with an affidavit signed by the attorney setting forth the amount of the attorney's fee with respect to the lump sum payment award to the obligor and the amount of all necessary expenses, along with documentation of those expenses, incurred by the attorney with respect to obtaining the lump sum award. The obligor's attorney shall file the fee agreement and attorney affidavit with the administrator or self-insuring employer, as appropriate, within thirty days after the date the administrator or self-insuring employer sends the notice required by division (A) of this section.

(C) Upon receipt of the fee agreement and attorney affidavit, the administrator or self-insuring employer, as appropriate, shall deduct from the lump sum payment the amount of the attorney's fee and necessary expenses and pay that amount directly to and solely in the name of the attorney within fourteen days after the fee agreement and attorney affidavit have been filed with the administrator or self-insuring employer.

(D) After deducting any attorney's fee and necessary expenses, if the lump sum payment is one hundred fifty dollars or more, the administrator or self-insuring employer, as appropriate, shall hold the balance of the lump sum award in accordance with division (A)(10) of section 3121.037 of the

Revised Code.

Sec. 4111.02. (A) Every employer and employers with less than one hundred fifty thousand dollars gross annual sales shall pay each of ~~his~~ the employer's employees at a wage rate of not less than ~~three dollars and eighty cents per hour~~ the wage rate specified in the "Fair Labor Standards Act," 29 U.S.C. 206, as now or hereafter amended, beginning on ~~September 25, 1990, and not less than four dollars and twenty-five cents an hour after March 31, 1991~~ the effective date of this amendment, except as otherwise provided in this section.

(B) ~~Students enrolled in cooperative vocational education programs approved by the state board of education may be employed at a learner wage rate equal to eighty per cent of the applicable minimum wage for a period not to exceed one hundred eighty days each year from the date of employment as a student in the vocational program.~~

~~(C)~~ Every employer shall pay each employee in agriculture at a wage rate not less than ~~three dollars and eighty cents per hour beginning on September 25, 1990, and four dollars and twenty-five cents per hour after March 31, 1991~~ the wage rate described in division (A) of this section. This provision does not apply to any employee employed in agriculture if the employee: (1)(a) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (b) commutes daily from ~~his~~ the employee's permanent residence to the farm on which ~~he~~ the employee is so employed, and (c) has been employed in agriculture less than thirteen weeks during the preceding calendar year, or (2)(a) is sixteen years of age or under, is employed as a hand harvest laborer, and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been paid on a piece rate basis in the region of employment, (b) is employed on the same farm as ~~his~~ the employee's parent or person standing in the place of ~~his~~ the employee's parent, and (c) is paid at the same piece rate as employees over age sixteen are paid on the same farm. Such employees shall be paid no less than ~~the amount specified in division (E) of this section~~ two dollars and eighty cents per hour.

~~(D)~~ (C) For any employee engaged in an occupation in which ~~he~~ the employee customarily and regularly receives ~~more than thirty dollars per month in~~ tips from patrons or others, the employer ~~may~~ shall pay ~~as a minimum fifty-five per cent of~~ the wage ~~prescribed in division (A) of this section beginning on September 25, 1990, and fifty per cent of such wage after March 31, 1991, if all the following occur: (1) the tips or gratuities are~~

~~proven gratuities as indicated by the employee's declaration for federal insurance contribution act purposes, (2) the employer can establish by his records that for each week where credit is taken, when adding tips received to wages paid, not less than the minimum rate prescribed in division (A) of this section was received by the employee, and (3) the employee was informed by the employer of the provisions of this division. No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum hourly wage as required by this division. Nothing prevents employees from entering into an agreement to divide tips or gratuities among themselves~~ rate specified for tipped employees in the "Fair Labor Standards Act," 29 U.S.C. 203, as now or hereafter amended.

~~(E) Notwithstanding the definition of "employer" in division (C) of section 4111.01 of the Revised Code that exempts certain employers from the operation of this chapter, every employer with less than one hundred fifty thousand dollars gross annual sales shall pay at least two dollars and fifty cents per hour in wages beginning on September 25, 1990, and two dollars and eighty cents per hour in wages after March 31, 1991, to all employees except for those employees who meet the requirements of division (D) of this section, in which event, the employer may pay the wage as specified in division (C) of this section for tipped employees.~~

~~(F) Any employer defined as an enterprise under division (s) of section 3 of the federal "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 203(s), that on March 31, 1990, was subject to division (a)(1) of section 6 of such act, 52 Stat. 1062, 29 U.S.C.A. 206 (a)(1), and that because of the amendment made by subsection (a) of section 3 of the federal "Fair Labor Standards Act Amendments of 1989," P.L. 101-157, is not subject to division (a)(1) of section (6)(a)(1), shall pay its employees:~~

~~(1) Not less than two dollars and eighty-two cents an hour beginning on September 25, 1990, except for those employees who meet the requirements of division (D) of this section, in which event the employer shall pay not less than one dollar and fifty-eight cents an hour and, after March 31, 1991, not less than the minimum wage in effect under section 3 of the federal "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 203 as that section existed on March 31, 1990; and~~

~~(2) In accordance with section 7 of the federal "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207.~~

~~(G) Any employer whose annual gross volume of sales made or business done is less than the dollar amounts specified in division (s) of section 3 of the federal "Fair Labor Standards Act of 1938," 52 Stat. 1060,~~

~~29 U.S.C.A. 203 (s), as that section existed on March 31, 1990, but whose gross annual sales is at least one hundred fifty thousand dollars, shall pay:~~

~~(1) Not less than three dollars and thirty-five cents an hour beginning on September 25, 1990, to all employees except for those employees who meet the requirements of division (D) of this section, in which event, the employer shall pay not less than two dollars and one cent an hour beginning on September 25, 1990; and~~

~~(2) In accordance with section 7 of the federal "Fair Labor Standards Act of 1938," 52 Stat. 1060U.S.C.A. 207.~~

Sec. 4121.10. The industrial commission shall be in continuous session and open for the transaction of business during all business hours of every day excepting Sundays and legal holidays. The sessions of the commission shall be open to the public and shall stand and be adjourned without further notice thereof on its record. All of the proceedings of the commission shall be shown on its record, which shall be a public record except as provided in section 4123.88 of the Revised Code, and all voting shall be had by calling the name of each member of the industrial commission by the executive director, and each member's vote shall be recorded on the record of proceedings as cast. The commission shall keep a separate record of its proceedings relative to claims coming before it for compensation for injured and the dependents of killed employees, which record shall contain its findings and the award in each such claim for compensation considered by it, and in all such claims the reasons for the allowance or rejection thereof shall be stated in said record.

Sec. 4121.12. (A) There is hereby created the workers' compensation oversight commission consisting of eleven members, of which members the governor shall appoint five with the advice and consent of the senate. Of the five members the governor appoints, two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employees, at least one of whom is representative of employees who are members of an employee organization; two shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representative of employers, one of whom represents self-insuring employers and one of whom has experience as an employer in compliance with section 4123.35 of the Revised Code other than a self-insuring employer, and one of those two representatives also shall represent employers whose employees are not members of an employee organization; and one shall represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either

predominantly representative of employees or of employers. The governor shall select the chairperson of the commission who shall serve as chairperson at the pleasure of the governor. No more than three members appointed by the governor shall belong to or be affiliated with the same political party.

Each of these five members shall have at least three years' experience in the field of insurance, finance, workers' compensation, law, accounting, actuarial, personnel, investments, or data processing, or in the management of an organization whose size is commensurate with that of the bureau of workers' compensation. At least one of these five members shall be an attorney licensed under Chapter 4705. of the Revised Code to practice law in this state.

(B) Of the initial appointments made to the commission, the governor shall appoint one member who represents employees to a term ending one year after September 1, 1995, one member who represents employers to a term ending two years after September 1, 1995, the member who represents the public to a term ending three years after September 1, 1995, one member who represents employees to a term ending four years after September 1, 1995, and one member who represents employers to a term ending five years after September 1, 1995. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of the member's appointment until the end of the term for which the member was appointed.

The governor shall not appoint any person to more than two full terms of office on the commission. This restriction does not prevent the governor from appointing a person to fill a vacancy caused by the death, resignation, or removal of a commission member and also appointing that person twice to full terms on the commission, or from appointing a person previously appointed to fill less than a full term twice to full terms on the commission. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until a successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(C) In making appointments to the commission, the governor shall select the members from the list of names submitted by the workers' compensation oversight commission nominating committee pursuant to this division. Within fourteen days after the governor calls the initial meeting of

the nominating committee pursuant to division (C) of section 4121.123 of the Revised Code, the nominating committee shall submit to the governor, for the initial appointments, a list containing four separate names for each of the members on the commission. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list.

For the appointment of the member who is representative of employees who are members of an employee organization, both for initial appointments and for the filling of vacancies, the list of four names submitted by the nominating committee shall be comprised of four individuals who are members of the executive committee of the largest statewide labor federation.

Thereafter, within sixty days after a vacancy occurring as a result of the expiration of a term and within thirty days after other vacancies occurring on the commission, the nominating committee shall submit a list containing four names for each vacancy. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list. With respect to the filling of vacancies, the nominating committee shall provide the governor with a list of four individuals who are, in the judgment of the nominating committee, the most fully qualified to accede to membership on the commission. The nominating committee shall not include the name of an individual upon the list for the filling of vacancies if the appointment of that individual by the governor would result in more than three members of the commission belonging to or being affiliated with the same political party. The committee shall include on the list for the filling of vacancies only the names of attorneys admitted to practice law in this state if, to fulfill the requirement of division (A) of section 4121.12 of the Revised Code, the vacancy must be filled by an attorney.

In order for the name of an individual to be submitted to the governor under this division, the nominating committee shall approve the individual by an affirmative vote of a majority of its members.

(D) The commission shall also consist of two members, known as the investment expert members. One investment expert member shall be appointed by the treasurer of state and one investment expert member shall be jointly appointed by the speaker of the house of representatives and the president of the senate. Each investment expert member shall have the following qualifications:

(1) Be a resident of this state~~:~~;

(2) Within the three years immediately preceding the appointment, not have been employed by the bureau of workers' compensation or by any person, partnership, or corporation that has provided to the bureau services

of a financial or investment nature, including the management, analysis, supervision, or investment of assets;

(3) Have direct experience in the management, analysis, supervision, or investment of assets.

Terms of office of the investment expert members shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office for the date of the member's appointment until the end of the term for which the member was appointed. The president, speaker, and treasurer shall not appoint any person to more than two full terms of office on the commission. This restriction does not prevent the president, speaker, and treasurer from appointing a person to fill a vacancy caused by the death, resignation, or removal of a commission member and also appointing that person twice to full terms on the commission, or from appointing a person previously appointed to fill less than a full term twice to full terms on the commission. Any investment expert member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office until the end of that term. The member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

The investment expert members of the oversight commission shall vote only on investment matters.

(E) The remaining four members of the commission shall be the chairperson and ranking minority member of the standing committees of the house of representatives and of the senate to which legislation concerning this chapter and Chapters 4123., 4127., and 4131. of the Revised Code normally are referred, or a designee of the chairperson or ranking minority member, provided that the designee is a member of the standing committee. Legislative members shall serve during the session of the general assembly to which they are elected and for as long as they are members of the general assembly. Legislative members shall serve in an advisory capacity to the commission and shall have no voting rights on matters coming before the commission. Membership on the commission by legislative members shall not be deemed as holding a public office.

(F) All members of the commission shall receive their reasonable and necessary expenses pursuant to section 126.31 of the Revised Code while engaged in the performance of their duties as members. Members appointed by the governor and the investment expert members also shall receive an annual salary not to exceed eighteen thousand dollars payable on the

following basis:

(1) Except as provided in division (F)(2) of this section, a member shall receive two thousand dollars during a month in which the member attends one or more meetings of the commission and shall receive no payment during a month in which the member attends no meeting of the commission.

(2) A member may receive no more than the annual eighteen thousand dollar salary regardless of the number of meetings held by the commission during a year or the number of meetings in excess of nine within a year that the member attends.

The chairperson of the commission shall set the meeting dates of the commission as necessary to perform the duties of the commission under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code. The commission shall meet at least nine times during the period commencing on the first day of September and ending on the thirty-first day of August of the following year. The administrator of workers' compensation shall provide professional and clerical assistance to the commission, as the commission considers appropriate.

(G) The commission shall:

(1) Review progress of the bureau in meeting its cost and quality objectives and in complying with this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

(2) Issue an annual report on the cost and quality objectives of the bureau to the president of the senate, the speaker of the house of representatives, and the governor;

(3) Review all independent financial audits of the bureau. The administrator shall provide access to records of the bureau to facilitate the review required under this division.

(4) Study issues as requested by the administrator or the governor;

(5) Contract with an independent actuarial firm to assist the commission in making recommendations to the administrator regarding premium rates;

(6) Establish objectives, policies, and criteria for the administration of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines, and monitor the administrator's progress in implementing the objectives, policies, and criteria on a quarterly basis. <u>The commission shall not specify in the objectives, policies, and criteria that the administrator or employees of the bureau 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</u>

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. The commission shall review and publish the objectives, policies, and criteria no less than annually and shall make copies available to interested parties. The commission shall prohibit, on a prospective basis, any specific investment it finds to be contrary to its investment objectives, policies, and criteria.

The objectives, policies, and criteria adopted by the commission for the operation of the investment program shall prohibit investing assets of funds, directly or indirectly, in vehicles that target any of the following:

(a) Coins;

(b) Artwork;

(c) Horses;

(d) Jewelry or gems;

(e) Stamps;

(f) Antiques;

(g) Artifacts;

(h) Collectibles;

(i) Memorabilia;

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

(7) Specify in the objectives, policies, and criteria for the investment program that the administrator is permitted to invest in an investment class only if the commission, by a majority vote, opens that class. After the commission opens a class but prior to the administrator investing in that class, the commission shall adopt rules establishing due diligence standards for employees of the bureau to follow when investing in that class and shall establish policies and procedures to review and monitor the performance and value of each investment class. The commission shall submit a report annually on the performance and value of each investment class to the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives. The commission may vote to close any investment class.

(8) Advise and consent on all of the following:

(a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;

(b) The overall policy of the bureau of workers' compensation as set by the administrator;

(c) The duties and authority conferred upon the administrator pursuant to section 4121.37 of the Revised Code;

(d) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code;

(e) Rules the administrator submits to it pursuant to Chapter 4167. of the Revised Code regarding the public employment risk reduction program and the protection of public health care workers from exposure incidents.

As used in this division, "public health care worker" and "exposure incident" have the same meanings as in section 4167.25 of the Revised Code.

(9) Perform all duties required under section 4121.125 of the Revised Code.

(H) The office of a member of the commission who is convicted of or pleads guilty to a felony, a theft offense as defined in section 2913.01 of the Revised Code, or a violation of section 102.02, 102.03, 102.04, 2921.02, 2921.11, 2921.13, 2921.31, 2921.41, 2921.42, 2921.43, or 2921.44 of the Revised Code shall be deemed vacant. The vacancy shall be filled in the same manner as the original appointment. A person who has pleaded guilty to or been convicted of an offense of that nature is ineligible to be a member of the commission. A member who receives a bill of indictment for any of the offenses specified in this section shall be automatically suspended from the commission pending resolution of the criminal matter.

(I) As used in this section, "employee organization" means any labor or bona fide organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms and other conditions of employment.

Sec. 4121.131. The bureau of workers' compensation special investigation department is a criminal justice agency in investigating reported violations of law relating to workers' compensation, and as such may apply for access to the computerized databases administered by the national crime information center or the law enforcement automated data system in Ohio and to other computerized databases administered for the purpose of making criminal justice information accessible to state and criminal justice agencies.

Sec. 4121.44. (A) The administrator of workers' compensation shall oversee the implementation of the Ohio workers' compensation qualified

health plan system as established under section 4121.442 of the Revised Code.

(B) The administrator shall direct the implementation of the health partnership program administered by the bureau as set forth in section 4121.441 of the Revised Code. To implement the health partnership program, the bureau:

(1) Shall certify one or more external vendors, which shall be known as "managed care organizations," to provide medical management and cost containment services in the health partnership program for a period of two years beginning on the date of certification, consistent with the standards established under this section;

(2) May recertify external vendors for additional periods of two years; and

(3) May integrate the certified vendors with bureau staff and existing bureau services for purposes of operation and training to allow the bureau to assume operation of the health partnership program at the conclusion of the certification periods set forth in division (B)(1) or (2) of this section.

(C) Any vendor selected shall demonstrate all of the following:

(1) Arrangements and reimbursement agreements with a substantial number of the medical, professional and pharmacy providers currently being utilized by claimants.

(2) Ability to accept a common format of medical bill data in an electronic fashion from any provider who wishes to submit medical bill data in that form.

(3) A computer system able to handle the volume of medical bills and willingness to customize that system to the bureau's needs and to be operated by the vendor's staff, bureau staff, or some combination of both staffs.

(4) A prescription drug system where pharmacies on a statewide basis have access to the eligibility and pricing, at a discounted rate, of all prescription drugs.

(5) A tracking system to record all telephone calls from claimants and providers regarding the status of submitted medical bills so as to be able to track each inquiry.

(6) Data processing capacity to absorb all of the bureau's medical bill processing or at least that part of the processing which the bureau arranges to delegate.

(7) Capacity to store, retrieve, array, simulate, and model in a relational mode all of the detailed medical bill data so that analysis can be performed in a variety of ways and so that the bureau and its governing authority can

make informed decisions.

(8) Wide variety of software programs which translate medical terminology into standard codes, and which reveal if a provider is manipulating the procedures codes, commonly called "unbundling."

(9) Necessary professional staff to conduct, at a minimum, authorizations for treatment, medical necessity, utilization review, concurrent review, post-utilization review, and have the attendant computer system which supports such activity and measures the outcomes and the savings.

(10) Management experience and flexibility to be able to react quickly to the needs of the bureau in the case of required change in federal or state requirements.

(D)(1) Information contained in a vendor's application for certification in the health partnership program, and other information furnished to the bureau by a vendor for purposes of obtaining certification or to comply with performance and financial auditing requirements established by the administrator, 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 or be used in any court in any proceeding pending therein, unless the bureau is a party to the action or proceeding, but the information may be tabulated and published by the bureau in statistical form for the use and information of other state departments and the public. No employee of the bureau, except as otherwise authorized by the administrator, shall divulge any information secured by the employee while in the employ of the bureau in respect to a vendor's application for certification or in respect to the business or other trade processes of any vendor to any person other than the administrator or to the employee's superior.

(2) Notwithstanding the restrictions imposed by division (D)(1) of this section, the governor, members of select or standing committees of the senate or house of representatives, the auditor of state, the attorney general, or their designees, pursuant to the authority granted in this chapter and Chapter 4123. of the Revised Code, may examine any vendor application or other information furnished to the bureau by the vendor. None of those individuals shall divulge any information secured in the exercise of that authority in respect to a vendor's application for certification or in respect to the business or other trade processes of any vendor to any person.

(E) On and after January 1, 2001, a vendor shall not be any insurance company holding a certificate of authority issued pursuant to Title XXXIX of the Revised Code or any health insuring corporation holding a certificate of authority under Chapter 1751. of the Revised Code.

(F) The administrator may limit freedom of choice of health care provider or supplier by requiring, beginning with the period set forth in division (B)(1) or (2) of this section, that claimants shall pay an appropriate out-of-plan copayment for selecting a medical provider not within the health partnership program as provided for in this section.

(G) The administrator, six months prior to the expiration of the bureau's certification or recertification of the vendor or vendors as set forth in division (B)(1) or (2) of this section, may certify and provide evidence to the governor, the speaker of the house of representatives, and the president of the senate that the existing bureau staff is able to match or exceed the performance and outcomes of the external vendor or vendors and that the bureau should be permitted to internally administer the health partnership program upon the expiration of the certification or recertification as set forth in division (B)(1) or (2) of this section.

(H) The administrator shall establish and operate a bureau of workers' compensation health care data program. The administrator shall develop reporting requirements from all employees, employers and medical providers, medical vendors, and plans that participate in the workers' compensation system. The administrator shall do all of the following:

(1) Utilize the collected data to measure and perform comparison analyses of costs, quality, appropriateness of medical care, and effectiveness of medical care delivered by all components of the workers' compensation system.

(2) Compile data to support activities of the selected vendor or vendors and to measure the outcomes and savings of the health partnership program.

(3) Publish and report compiled data to the governor, the speaker of the house of representatives, and the president of the senate on the first day of each January and July, the measures of outcomes and savings of the health partnership program ~~and the qualified health plan system~~. The administrator shall protect the confidentiality of all proprietary pricing data.

(I) Any rehabilitation facility the bureau operates is eligible for inclusion in the Ohio workers' compensation qualified health plan system or the health partnership program under the same terms as other providers within health care plans or the program.

(J) In areas outside the state or within the state where no qualified health plan or an inadequate number of providers within the health partnership program exist, the administrator shall permit employees to use a nonplan or nonprogram health care provider and shall pay the provider for the services or supplies provided to or on behalf of an employee for an injury or occupational disease that is compensable under this chapter or Chapter

4123., 4127., or 4131. of the Revised Code on a fee schedule the administrator adopts.

(K) No health care provider, whether certified or not, shall charge, assess, or otherwise attempt to collect from an employee, employer, a managed care organization, or the bureau any amount for covered services or supplies that is in excess of the allowed amount paid by a managed care organization, the bureau, or a qualified health plan.

(L) The administrator shall permit any employer or group of employers who agree to abide by the rules adopted under this section and sections 4121.441 and 4121.442 of the Revised Code to provide services or supplies to or on behalf of an employee for an injury or occupational disease that is compensable under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code through qualified health plans of the Ohio workers' compensation qualified health plan system pursuant to section 4121.442 of the Revised Code or through the health partnership program pursuant to section 4121.441 of the Revised Code. No amount paid under the qualified health plan system pursuant to section 4121.442 of the Revised Code by an employer who is a state fund employer shall be charged to the employer's experience or otherwise be used in merit-rating or determining the risk of that employer for the purpose of the payment of premiums under this chapter, and if the employer is a self-insuring employer, the employer shall not include that amount in the paid compensation the employer reports under section 4123.35 of the Revised Code.

Sec. 4121.441. (A) The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, shall adopt rules under Chapter 119. of the Revised Code for the health care partnership program administered by the bureau of workers' compensation to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease that is compensable under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code.

The rules shall include, but are not limited to, the following:

(1) Procedures for the resolution of medical disputes between an employer and an employee, an employee and a provider, or an employer and a provider, prior to an appeal under section 4123.511 of the Revised Code~~;~~. Rules the administrator adopts pursuant to division (A)(1) of this section may specify that the resolution procedures shall not be used to resolve disputes concerning medical services rendered that have been approved through standard treatment guidelines, pathways, or presumptive authorization guidelines.

(2) Prohibitions against discrimination against any category of health care providers;

(3) Procedures for reporting injuries to employers and the bureau by providers;

(4) Appropriate financial incentives to reduce service cost and insure proper system utilization without sacrificing the quality of service;

(5) Adequate methods of peer review, utilization review, quality assurance, and dispute resolution to prevent, and provide sanctions for, inappropriate, excessive or not medically necessary treatment;

(6) A timely and accurate method of collection of necessary information regarding medical and health care service and supply costs, quality, and utilization to enable the administrator to determine the effectiveness of the program;

(7) Provisions for necessary emergency medical treatment for an injury or occupational disease provided by a health care provider who is not part of the program;

(8) Discounted pricing for all in-patient and out-patient medical services, all professional services, and all pharmaceutical services;

(9) Provisions for provider referrals, pre-admission and post-admission approvals, second surgical opinions, and other cost management techniques;

(10) Antifraud mechanisms;

(11) Standards and criteria for the bureau to utilize in certifying or recertifying a health care provider or a vendor for participation in the health partnership program;

(12) Standards and criteria for the bureau to utilize in penalizing or decertifying a health care provider or a vendor from participation in the health partnership program.

(B) The administrator shall implement the health partnership program according to the rules the administrator adopts under this section for the provision and payment of medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease that is compensable under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code.

Sec. 4121.444. (A) No person, health care provider, managed care organization, or owner of a health care provider or managed care organization shall obtain or attempt to obtain payments by deception under Chapter 4121., 4123., 4127., or 4131. of the Revised Code to which the person, health care provider, managed care organization, or owner is not entitled under rules of the bureau of workers' compensation adopted pursuant to sections 4121.441 and 4121.442 of the Revised Code.

(B) Any person, health care provider, managed care organization, or owner that violates division (A) of this section is liable, in addition to any other penalties provided by law, for all of the following penalties:

(1) Payment of interest on the amount of the excess payments at the maximum interest rate allowable for real estate mortgages under section 1343.01 of the Revised Code. The interest shall be calculated from the date the payment was made to the person, owner, health care provider, or managed care organization through the date upon which repayment is made to the bureau or the self-insuring employer.

(2) Payment of an amount equal to three times the amount of any excess payments;

(3) Payment of a sum of not less than five thousand dollars and not more than ten thousand dollars for each act of deception;

(4) All reasonable and necessary expenses that the court determines have been incurred by the bureau or the self-insuring employer in the enforcement of this section.

All moneys collected by the bureau pursuant to this section shall be deposited into the state insurance fund created in section 4123.30 of the Revised Code. All moneys collected by a self-insuring employer pursuant to this section shall be awarded to the self-insuring employer.

(C)(1) In addition to the monetary penalties provided in division (B) of this section and except as provided in division (C)(3) of this section, the administrator may terminate any agreement between the bureau and a person or a health care provider or managed care organization or its owner and cease reimbursement to that person, provider, organization, or owner for services rendered if any of the following apply:

(a) The person, health care provider, managed care organization, or its owner, or an officer, authorized agent, associate, manager, or employee of a person, provider, or organization is convicted of or pleads guilty to a violation of sections 2913.48 or 2923.31 to 2923.36 of the Revised Code or any other criminal offense related to the delivery of or billing for health care benefits.

(b) There exists an entry of judgment against the person, health care provider, managed care organization, or its owner, or an officer, authorized agent, associate, manager, or employee of a person, provider, or organization and proof of the specific intent of the person, health care provider, managed care organization, or owner to defraud, in a civil action brought pursuant to this section.

(c) There exists an entry of judgment against the person, health care provider, managed care organization, or its owner, or an officer, authorized

agent, associate, manager, or employee of a person, provider, or organization in a civil action brought pursuant to sections 2923.31 to 2923.36 of the Revised Code.

(2) No person, health care provider, or managed care organization that has had its agreement with and reimbursement from the bureau terminated by the administrator pursuant to division (C)(1) of this section, or an owner, officer, authorized agent, associate, manager, or employee of that person, health care provider, or managed care organization shall do either of the following:

(a) Directly provide services to any other bureau provider or have an ownership interest in a provider of services that furnishes services to any other bureau provider;

(b) Arrange for, render, or order services for claimants during the period that the agreement of the person, health care provider, managed care organization, or its owner is terminated as described in division (C)(1) of this section;

(3) The administrator shall not terminate the agreement or reimbursement if the person, health care provider, managed care organization, or owner demonstrates that the person, provider, organization, or owner did not directly or indirectly sanction the action of the authorized agent, associate, manager, or employee that resulted in the conviction, plea of guilty, or entry of judgment as described in division (C)(1) of this section.

(4) Nothing in division (C) of this section prohibits an owner, officer, authorized agent, associate, manager, or employee of a person, health care provider, or managed care organization from entering into an agreement with the bureau if the provider, organization, owner, officer, authorized agent, associate, manager, or employee demonstrates absence of knowledge of the action of the person, health care provider, or managed care organization with which that individual or organization was formerly associated that resulted in a conviction, plea of guilty, or entry of judgment as described in division (C)(1) of this section.

(D) The attorney general may bring an action on behalf of the state and a self-insuring employer may bring an action on its own behalf to enforce this section in any court of competent jurisdiction. The attorney general may settle or compromise any action brought under this section with the approval of the administrator.

Notwithstanding any other law providing a shorter period of limitations, the attorney general or a self-insuring employer may bring an action to enforce this section at any time within six years after the conduct in violation of this section terminates.

(E) The availability of remedies under this section and sections 2913.48 and 2923.31 to 2923.36 of the Revised Code for recovering benefits paid on behalf of claimants for medical assistance does not limit the authority of the bureau or a self-insuring employer to recover excess payments made to an owner, health care provider, managed care organization, or person under state and federal law.

(F) As used in this section:

(1) "Deception" means acting with actual knowledge in order to deceive another or cause another to be deceived by means of any of the following:

(a) A false or misleading representation;

(b) The withholding of information;

(c) The preventing of another from acquiring information;

(d) Any other conduct, act, or omission that creates, confirms, or perpetuates a false impression as to a fact, the law, the value of something, or a person's state of mind.

(2) "Owner" means any person having at least a five per cent ownership interest in a health care provider or managed care organization.

Sec. 4123.01. 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 as defined in section 4125.01 of the Revised Code, 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) "Public employer" means an employer as defined in division (B)(1) of this section.

(I) "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.

Sec. 4123.271. 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.

Sec. 4123.29. (A) The administrator of workers' compensation, subject to the approval of the workers' compensation oversight commission, 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) 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.

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) 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:

(a) 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;

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

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

(d) 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 expected to exceed one hundred fifty thousand dollars during the coverage period;

(e) 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;

(f) Each employer seeking to enroll in a group for workers' compensation coverage has an industrial insurance account in good standing with the bureau of workers' compensation such that at the time the agreement is processed no outstanding premiums, penalties, or assessments are due from any of the employers.

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 retrospective rating. No employer may be a member of more than one group for the purpose of obtaining workers' compensation coverage under this division.

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 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.

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

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 ~~his~~ the employer's agent pays to the claimant or on behalf of the claimant the first ~~one~~ five thousand dollars of a compensable workers' compensation medical-only claim filed by that claimant that is related to the same injury or occupational disease. 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 ~~one~~ five 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. 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.

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

(1) Grant an employer who makes ~~his~~ the employer's semiannual premium payment at least one month prior to the last day on which the payment may be made without penalty, a discount as the administrator fixes from time to time;

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

Sec. 4123.311. (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 workers' compensation oversight commission, 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.

Sec. 4123.32. The administrator of workers' compensation, with the advice and consent of the workers' compensation oversight commission, 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 that in the event there is developed as of any given rate revision date a surplus of earned premium over all losses which, in the judgment of the administrator, is larger than is necessary adequately to safeguard the solvency of the fund, the administrator may return such excess surplus to the subscriber to the fund in either the form of cash refunds or a reduction of premiums, regardless of when the premium obligations have accrued;

(B) A rule providing that the premium security deposit collected from any employer entitles the employer to the benefits of this chapter for the remainder of the six months and also for an additional adjustment period of two months, and, thereafter, if the employer pays the premium due at the close of any six-month period, coverage shall be extended for an additional eight-month period beginning from the end of the six-month period for which the employer pays the premium due;

(C) 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 for or during any period less than eight months and notwithstanding any payment or determination of premium made when exceptional conditions or circumstances in the judgment of the administrator justify the action;

(D) 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;

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

(1) If, within two months immediately after the expiration of the six-month period, an employer fails to file a report of the employer's actual payroll expenditures for the period, the premium found to be due from the employer for the period shall be increased in an amount equal to one per cent of the premium, but the increase shall not be less than three nor more than fifteen dollars;

(2) The premium determined by the administrator to be due from an employer shall be payable on or before the end of the coverage period established by the premium security deposit, or within the time specified by the administrator if the period for which the advance premium has been paid is less than eight months. If an employer fails to pay the premium when due, ~~an amount equal to three per cent of the premium shall be added to the premium. If the failure to pay continues for more than one month, the premium shall be increased further in an amount equal to two per cent of the premium for each additional month or part of a month, but the total of all additional amounts shall not exceed twelve per cent of the premium. If~~ the administrator may add a late fee penalty of not more than thirty dollars to the premium plus an additional penalty amount as follows:

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

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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.

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

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

For purposes of division (E) 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.

(5) If the employer files an appropriate payroll report, within the time provided by law or within the time specified by the administrator if the period for which the employer paid an estimated premium is less than eight months, the employer shall not be in default and division (E)(2) of this section ~~4123.32 of the Revised Code~~ shall not apply if the employer pays the premiums within fifteen days after being first notified by the administrator of the amount due.

~~(3)~~(6) Any deficiencies in the amounts of the premium security deposit paid by an employer for any period 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.

~~(4)~~(7) Any interest charges or penalties provided for in divisions (E)(2) and ~~(3)~~(6) of this section shall be credited to the employer's account for rating purposes in the same manner as premiums.

(F) A rule providing that each employer, on the occasion of instituting coverage under this chapter, 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.

Sec. 4123.35. (A) Except as provided in this section, every employer mentioned in division (B)(2) of section 4123.01 of the Revised Code, 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, and a receipt or certificate certifying that payment has been made, along with a written notice as is required in section 4123.54 of the Revised Code, shall be mailed immediately to the employer by the bureau of workers' compensation. The receipt or certificate is prima-facie evidence of the payment of the premium, and the proper posting of the notice constitutes the employer's compliance with the notice requirement mandated in section 4123.54 of the Revised Code.

The bureau of workers' compensation 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.

An employer as defined in division (B)(2) of section 4123.01 of the Revised Code 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 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.

The administrator shall adopt rules to permit employers to make periodic payments of the semiannual premium 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. 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 immediately shall mail a receipt or certificate 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 requirement of division (B)(1)(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, excluding 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 shall not approve 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 publicly owned utility, who does not satisfy all of the requirements listed in division (B)(2) of this section.

(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 workers' compensation oversight commission, 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, ~~establishing~~ 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 this division, "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 ~~remains~~ 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.

(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.

Sec. 4123.512. (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 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 of workers' compensation, 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 of workers' compensation~~ 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 ~~twenty-five~~ 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) 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 has been made shall not stay the payment of compensation under the award or payment of compensation for subsequent periods of total disability 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 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. 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. ~~All~~

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 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 on account of those payments and shall not be required to pay any amounts into the surplus fund on account of this section. The election made under this division is irrevocable.

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.

Sec. 4123.52. 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 ~~six~~ five years from the date of injury in the absence of the payment of medical benefits under this chapter~~, in which event the modification, change, finding, or award shall be made within six years after the payment of medical benefits,~~ 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 ~~ten~~ 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~~, and the~~. 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. 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.

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.

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

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.

Sec. 4123.54. (A) 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)~~(3)~~(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) <u>of this section</u> 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 then the certificate of premium payment notice furnished by the bureau of workers' compensation and shall be posted by the employer in the same location as the certificate of premium payment notice 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) 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 any employee or the employee's dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or the employee's dependents by the bureau.

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.

~~(H)~~(I) 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.

Sec. 4123.56. (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) ~~Where~~ (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 ~~or as a result of being unable to find employment consistent with the claimant's physical capabilities~~ 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 ~~loss~~ and the employee's present earnings not to exceed the statewide average weekly wage ~~for a period not to exceed two hundred weeks~~. 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.

Sec. 4123.57. Partial disability compensation shall be paid as follows.

Except as provided in this section, not earlier than ~~forty~~ 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 ~~forty~~ 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) 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 continue during the periods provided in the following schedule:

For the loss of a first finger, commonly known as a thumb, sixty weeks.

For the loss of a ~~first~~ second finger, commonly called index finger, thirty-five weeks.

For the loss of a ~~second~~ third finger, thirty weeks.

For the loss of a ~~third~~ fourth finger, twenty weeks.

For the loss of a ~~fourth~~ 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 ~~five~~ 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 rehabilitation services commission; (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 a rehabilitation services commission 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.

Sec. 4123.58. (A) In cases of permanent total disability, the employee shall receive an award to continue until ~~his~~ the employee's death in the amount of sixty-six and two-thirds per cent of ~~his~~ 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 ~~he~~ the employee shall receive compensation in an amount equal to ~~his~~ 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) ~~The loss or loss of~~ 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~~, constitutes total and permanent disability, to be compensated according to this section. Compensation~~; 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.

Sec. 4123.61. 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 ~~him~~ 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.

Sec. 4123.65. (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 ~~provided that the agreement need not be signed by the employer if the~~. 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~~. If~~;

(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.

Sec. 4123.88. (A) No person shall orally or in writing, directly or indirectly, or through any agent or other person fraudulently hold ~~himself~~ the person's self out or represent ~~himself~~ the person's self or ~~his~~ 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. ~~No~~

(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 a journalist, the commission or the bureau shall disclose to the journalist 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) A journalist is permitted to request the information described in

division (D)(1) of this section for multiple workers or dependents in one written request.

(3) A journalist shall include all of the following in the written request:

(a) The journalist's name, title, and signature;

(b) The name and title of the journalist'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 a journalist under division (D) of this section.

(E) As used in this section, "journalist" has the same meaning as in division (B)(5) of section 149.43 of the Revised Code.

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to that chapter, the objective of which is to express an opinion on a financial report or statement prepared or issued pursuant to division (A)(7) or (9) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the audit. Any information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state solely for purposes of an audit of the department.

(C) Division (A) of this section does not prohibit any of the following:

(1) Divulging information contained in applications, complaints, and related documents filed with the department under section 5715.27 of the Revised Code or in applications filed with the department under section 5715.39 of the Revised Code;

(2) Providing information to the office of child support within the department of job and family services pursuant to section 3125.43 of the Revised Code;

(3) Disclosing to the board of motor vehicle collision repair registration any information in the possession of the department that is necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number under section 4775.07 of the Revised Code;

(4) Providing information to the administrator of workers' compensation pursuant to ~~section~~ sections 4123.271 and 4123.591 of the Revised Code;

(5) Providing to the attorney general information the department obtains under division (J) of section 1346.01 of the Revised Code;

(6) Permitting properly authorized officers, employees, or agents of a municipal corporation from inspecting reports or information pursuant to rules adopted under section 5745.16 of the Revised Code;

(7) Providing information regarding the name, account number, or business address of a holder of a vendor's license issued pursuant to section 5739.17 of the Revised Code, a holder of a direct payment permit issued pursuant to section 5739.031 of the Revised Code, or a seller having a use tax account maintained pursuant to section 5741.17 of the Revised Code, or information regarding the active or inactive status of a vendor's license, direct payment permit, or seller's use tax account;

(8) Releasing invoices or invoice information furnished under section 4301.433 of the Revised Code pursuant to that section;

(9) Providing to a county auditor notices or documents concerning or affecting the taxable value of property in the county auditor's county. Unless authorized by law to disclose documents so provided, the county auditor shall not disclose such documents.

Sec. 5747.18. The tax commissioner shall enforce and administer this chapter. In addition to any other powers conferred upon the commissioner by law, the commissioner may:

(A) Prescribe all forms required to be filed pursuant to this chapter;

(B) Adopt such rules as the commissioner finds necessary to carry out this chapter;

(C) Appoint and employ such personnel as are necessary to carry out the

duties imposed upon the commissioner by this chapter.

Any information gained as the result of returns, investigations, hearings, or verifications required or authorized by this chapter is confidential, and no person shall disclose such information, except for official purposes, or as provided by section 3125.43, 4123.271, 4123.591, 4507.023, or 5101.182, division (B) of section 5703.21 of the Revised Code, or in accordance with a proper judicial order. The tax commissioner may furnish the internal revenue service with copies of returns or reports filed and may furnish the officer of a municipal corporation charged with the duty of enforcing a tax subject to Chapter 718. of the Revised Code with the names, addresses, and identification numbers of taxpayers who may be subject to such tax. A municipal corporation shall use this information for tax collection purposes only. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to individual taxpayers.

SECTION 2. That existing sections 2913.48, 3121.034, 3121.037, 4111.02, 4121.10, 4121.12, 4121.44, 4121.441, 4123.01, 4123.29, 4123.32, 4123.35, 4123.512, 4123.52, 4123.54, 4123.56, 4123.57, 4123.58, 4123.61, 4123.65, 4123.88, 5703.21, and 5747.18 of the Revised Code are hereby repealed.

SECTION 3. This act applies to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code arising on and after the effective date of this act, except that division (H) of section 4123.512 as amended by this act also applies to claims that are pending on the effective date of this act.

SECTION 4. The Workers' Compensation Oversight Commission shall establish new objectives, policies, and criteria for the investment program of the Bureau of Workers' Compensation, in accordance with section 4121.12 of the Revised Code, as amended by this act, not later than August 1, 2006.

SECTION 5. Section 4123.54 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 163 and Sub. H.B. 223 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

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Secretary of State.

File No. _____ Effective Date _____