



**J. KENNETH BLACKWELL**  
Ohio Secretary of State

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DIRECTIVE 2006-71  
October 2, 2006

To: ALL COUNTY BOARDS OF ELECTIONS  
Members, Directors & Deputy Directors

### **State Issues Advertising**

Ohio Const. Art. II, §1g and Art. XVI, §1; R.C. 7.101, 7.12, 3505.06(D)

Attached is a PDF file containing the state issues. The file includes:

- Issue 1: Ballot language, full text, explanation of, and arguments in support of and in opposition to, the referendum.
- Issues 2 through 4: Ballot language, full text, explanation of, and arguments in support of and in opposition to each proposed constitutional amendments.
- Issue 5: Ballot language, full text, explanations and arguments in support of and in opposition to, the proposed law.

You must publish all the material provided in the accompanying PDF file.

### **Printing Requirements**

The material must be printed in DISPLAY FORM and must meet the following specifications:

1. For each proposed constitutional amendment, there must be a headline entitled "Proposed Amendment to the Ohio Constitution." For the referendum and law proposed by initiative petitions, the advertisement shall contain a headline entitled "Referendum" or, when appropriate, "Proposed Law".
2. The headlines must be printed in no smaller than **30-point** type. On the attached copy, you will find the headlines preceding the ballot language.
3. The ballot language, explanation and arguments must be printed in no smaller than **10-point** type.
4. The full text of each proposed constitutional amendment, the law subject to the referendum and the proposed law must be printed in no smaller than **9-point** type.
5. The text must contain normal spaces and blanks to contribute to clarity and understanding.
6. The entire text must be enclosed by a black borderline corresponding to the type size of the ballot language (see paragraph 3 above), *i.e.*, no smaller than **10-point** type.
7. The text must be printed in newspapers published in the English language only.

**If your printer or vendor has any difficulty with the PDF format of the file,**

please contact Mark Christman at [mchristman@sos.state.oh.us](mailto:mchristman@sos.state.oh.us).

### Schedule for Advertising

The issues must be inserted once a week, for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county where a newspaper is published. Accordingly, the advertising must appear once during the weeks of *October 16, October 23, and October 30*.

### Reducing Advertising Costs

My office offers the following suggestions as ways to reduce advertising costs:

1. Discuss with newspapers advertising rates based upon total advertising column inches of all issues *combined*, rather than the size of individual issues.
2. Run advertisements on weekdays instead of Sunday, as the Sunday rates are the most expensive.
3. Ask for the *annual bulk contract rate* instead of the local advertising rate; most newspapers will not offer it automatically, so you will have to ask for it.
4. If the newspaper does not offer annual bulk contracts, ask if an *earned volume discount* schedule is available. This is a discount earned by an advertising client for using a certain amount of space within a given period of time. In this case, all three weekly inserts must be published and distributed within the same month.
5. Find newspapers that are owned by the same company or person.
6. You may wish to explore with your local newspaper the option of printing inserts containing the legal advertisement, as opposed to buying space in the newspaper itself. These inserts may be included in the local newspaper at a substantial cost saving as compared to normal advertising costs.
7. Some boards have found it beneficial to meet in person with newspaper representatives to discuss their advertising needs and to negotiate a price.
8. Another method to reduce costs that has been successful is to share advertising costs with other counties. Ohio Attorney General Opinion No. 91-59 addressed the question of whether counties may share the costs of advertising by using large metropolitan newspapers that are circulated in two or more counties. The Opinion does not, however, resolve the question of whether a newspaper is one of "general circulation" as required by the Ohio Constitution. This issue must be addressed on a case-by-case basis. Please refer such inquiries to the prosecuting attorney of your county.

### Reimbursement

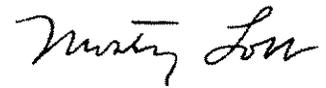
Please complete and return the accompanying Acknowledgment Receipt to this office by October 4.

- ◆ **No later than December 1**, all boards must submit to the Elections Division the enclosed **Reimbursement Form**, and a **copy of the actual invoice(s)** for the state issues legal advertising.
- ◆ The Secretary of State's Office cannot directly pay any newspaper or vendor.
- ◆ Reimbursement will be made for the costs of advertising only the five state issues.
- ◆ Boards of elections must continue to use available cost-saving methods, such as the use of inserts or sharing costs with other counties.

Discuss the status of state issues, which are currently subject to litigation with your county prosecutor.

If you have questions regarding this Directive, please call my Elections Division at 614-466-2585.

Sincerely,

A handwritten signature in black ink that reads "Monty Lobb". The signature is written in a cursive style with a large, stylized "M" and "L".

Monty Lobb  
Assistant Secretary of State

Attachment

**2006 State Issues Advertising:  
Acknowledgement Receipt**

BOARD OF ELECTIONS OF \_\_\_\_\_ COUNTY

**Please complete and return via FAX to  
Myra Hawkins at (614)752-4360,  
*no later than October 4, 2006.***

I acknowledge receipt of Directive 2006-71 and the PDF file containing the advertising copy for State Issues 1, 2, 3, 4 and 5, which are to be voted upon at the general election to be held November 7, 2006.

The issues will be published in a newspaper of general circulation once a week during the weeks of October 15, October 22 and October 29, 2006.

\_\_\_\_\_  
*Signature/Title of Director or Deputy Director*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
Telephone Number

**2006 State Issues Advertising:  
Reimbursement Receipt**

**BOARD OF ELECTIONS OF \_\_\_\_\_ COUNTY**

**Please attach a copy of the actual invoice(s) for your state issues advertising to this form.**

A. Total amount of invoice(s) for advertising directly in newspaper \$ \_\_\_\_\_

B. If advertising by inserts in newspaper:

1. Amount of invoice(s) for insert printing \$ \_\_\_\_\_

*and*

2. Amount of invoice(s) for insertion \$ \_\_\_\_\_

3. GRAND TOTAL of 1 and 2 above \$ \_\_\_\_\_

C. If your county will not incur any costs for state advertising because another county's newspaper of general circulation also covers your county; and the other county board of elections has agreed to contract for the additional copies for your county, please indicate the county and the name of the newspaper. Fax this receipt to Denise Sherrod at 614-752-4360 by the above deadline.

**Name of County** \_\_\_\_\_

**Name of Newspaper** \_\_\_\_\_

This office will NOT make any direct payment to your newspaper or vendor. A reimbursement check, payable to your county auditor, will be mailed to your office.

**Send form and invoice(s) to:**

Secretary of State J. Kenneth Blackwell  
Election Division - Attn: Denise Sherrod  
P. O. Box 2828  
Columbus, OH 43216

**Return to Secretary of State's Office no later than  
November 13, 2006.**

# Referendum

## 1 REFERENDUM ON AMENDED SUBSTITUTE SENATE BILL NO. 7

(Submitted by Referendum Petition)

**Shall certain measures from Amended Substitute Senate Bill No. 7 to reform Ohio's Workers' Compensation Law be approved?**

Amended Substitute Senate Bill No. 7 makes changes to Ohio's Workers' Compensation Law, including the following:

- Changes procedures for determining the amount of compensation that may be received for wage loss or permanent total disability.
- Allows workers' compensation and benefits to be awarded to a victim of sexual assault at the workplace.
- Prohibits certain prisoners from receiving workers' compensation and benefits while confined to a county jail and designates the Bureau of Workers' Compensation Special Investigation Department a criminal justice agency.
- Exempts the addresses and phone numbers of workers receiving workers' compensation and benefits from Ohio's Public Records Law and from public access, except to journalists.
- Allows employment in a sheltered workshop for injured workers with traumatic brain injuries even if a worker is receiving workers' compensation and benefits.
- Requires that workers demonstrate "substantial aggravation" of a pre-existing condition by certain objective criteria before workers' compensation and benefits may be awarded, specifies eligibility qualifications for permanent total disability compensation, and reduces the time frame for which claims may be brought.
- Improves the ability to settle workers' compensation claims under certain conditions, voids certain settlement agreements upon death, increases amounts available on specified attorneys' fees and changes rules of procedure related to certain appeals.
- Prevents the Workers' Compensation Oversight Commission from setting a different policy than requirements outlined in Ohio law regarding who may serve as investment managers.
- Allows self-insuring employers to pay compensation and benefits directly under certain conditions.

IF APPROVED, THESE AMENDMENTS  
AND ENACTMENTS WILL BE EFFECTIVE  
IMMEDIATELY.

A majority yes vote is necessary for passage.

### SHALL THE PROPOSED SECTIONS OF LAW BE APPROVED?

- YES (To approve the sections of law)  
 NO (To reject the sections of law)

### FULL TEXT OF THE SECTIONS OF LAW TO BE REFERRED

**Sections of law from Am. Sub. S. B. No. 7 to be referred to the electors for their approval or rejection:**

(Language added by the Act is underlined. Language deleted by the Act is indicated by a strikethrough.)

#### SECTION 1:

**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

### Explanation and Argument in Support of Issue 1

#### Vote YES On Issue 1

**Voting "YES" preserves the rights of injured workers so they are compensated quickly and fairly and promotes common-sense cost-saving reforms for employers.**

S.B. 7 was passed by a majority of Ohio's legislators who worked with employee rights advocates and Ohio's employers to ensure Ohio workers are protected if they are injured during work, while also preserving Ohio jobs with cost-saving changes for employers. Special interest groups who were unsuccessful in blocking the bill during the legislative process have led an effort to prevent enactment of this meaningful reform measure of the Workers' Compensation system. **Your "YES" vote will ensure these needed reforms become law.**

S.B. 7 increases protections against fraud in Ohio's Workers' Compensation system and does the following:

- Speeds up compensation for Ohio's injured workers
- Better protects women in the workplace
- Provides opportunities for job creation and job retention in Ohio

#### Voting "YES" will:

- ✓ Improve a system where injured workers receive needed care and return to work quickly;
- ✓ Fix current flaws in the system that result in costly waste, fraud and abuse;
- ✓ Stop those who prey on injured workers by protecting workers' privacy by removing their home addresses and telephone numbers from public record;
- ✓ For the first time, allow workers' compensation benefits if a woman is sexually assaulted while at work;
- ✓ Prohibit prisoners from continuing to collect Workers' Compensation benefits while in jail;
- ✓ Ensure more than \$100 million in savings to the system that protects injured workers and helps employers reinvest in their businesses so they may preserve and create Ohio jobs.

**Support injured workers. Preserve and Create jobs.**  
Vote "YES" on Issue 1.

Submitted by: State Representative Stephen Buehrer and State Senator Gary Cates.

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 pur-

### ARGUMENT AND EXPLANATION AGAINST ISSUE 1

#### Vote NO on Issue 1

Senate Bill 7 is a devious attack on injured workers' benefits in just another effort to pay for "Coingate" and other bad investment "kick-back" schemes on the backs of injured workers. Don't let them get away with taking your family's benefits. Vote **NO** to reject Senate Bill 7.

In 1997, lawmakers tried to pass a similar bill to benefit greedy corporations saying it was necessary to save businesses \$200 million per year. Less than 2 weeks after voters like yourself stood up and said **NO** to those take-aways, the truth was exposed when the BWC gave employers over **\$2 Billion** of injured workers' monies. Since then, the BWC has given employers refunds or credits of over **\$12 BILLION** of money earmarked for injured workers, their widows and orphans! Big business and greedy corporations lied to us then, and they are trying to lie to us again now. We voted against their greed in 1997 – we need to do it again this November.

#### ENOUGH IS ENOUGH!

Only the injured worker take-away provisions of this bill are being challenged. Be truthful with Ohio's families and tell them the benefits that Senate Bill 7 will eliminate:

- Cuts the time a claim remains open for the payment of compensation and medical benefits from 10 to 5 years.
- Reduces non-working wage loss compensation from 200 to 52 weeks.
- Reverses 5 separate Supreme Court Cases which ruled in favor of granting workers' rights and benefits.
- Discriminates against older workers or anyone who has had a previous injury by eliminating their ability to file a claim for a pre-existing condition unless the new injury **substantially** aggravates it.

**Protect yourself. Protect your family.  
Protect Ohio.**

#### Vote NO on Issue 1

Submitted by: Committee to Protect Injured Workers, Widows and Orphans, Lloyd C. Mahaffey, James W. Harris and Sarah Ogdahl

suant 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;

# Referendum

(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. 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 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. 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

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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. 4123.512.** (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, the claimant, and the employer 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 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. AH

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

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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) of this section may affect the employee's eligibility for compensation and benefits under this chapter and Chapter 4121. of the Revised Code.

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

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

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

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

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

(a) Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings;

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

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

(d) A report of use of alcohol or a controlled substance provided by a reliable and credible source;

(e) Repeated or flagrant violations of the safety or work rules of the employee's em-

ployer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.

(D) Nothing in this section shall be construed to affect the rights of an employer to test employees for alcohol or controlled substance abuse.

(E) For the purpose of this section, laboratories certified by the United States department of health and human services or laboratories that meet or exceed the standards of that department for laboratory certification shall be used for processing the test results of a qualifying chemical test.

(F) The written notice required by division (B) of this section shall be the same size or larger than the 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)(1) 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 or 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. 4123.58.** (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

# Referendum

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 claimant may file an application without an employer's signature in the following situations:

(1) The employer is no longer doing business in Ohio; ff;

(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 represen-

tative 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 ad-

dress 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.

**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. (Only the language contained in brackets in this section is being referred to the electors).

# Proposed Amendment to the Ohio Constitution

## 2 PROPOSED AMENDMENT TO THE OHIO CONSTITUTION (Proposed by Initiative Petition)

To adopt Section 34a of Article II of the Constitution of the State of Ohio.

Except as provided in this section, every employer shall pay their employees a wage rate of not less than six dollars and eighty-five cents per hour beginning January 1, 2007. On the thirtieth day of each September, beginning in 2007, this state minimum wage rate shall be increased effective the first day of the following January by the rate of inflation for the twelve month period prior to that September according to the consumer price index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government rounded to the nearest five cents. Employees under the age of sixteen and employees of businesses with annual gross receipts of two hundred fifty thousand dollars or less for the preceding calendar year shall be paid a wage rate of not less than that established under the federal Fair Labor Standards Act or its successor law. This gross revenue figure shall be increased each year beginning January 1, 2008 by the change in the consumer price index or its successor index in the same manner as the required annual adjustment in the minimum wage rate set forth above rounded to the nearest one thousand dollars. An employer may pay an employee less than, but not less than half, the minimum wage rate required by this section if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the minimum wage rate for all hours worked. The provisions of this section shall not apply to employees of a solely family owned and operated business who are family members of an owner. The state may issue licenses to employers authorizing payment of a wage rate below that required by this section to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.

As used in this section: "employer," "employee,"

"employ," "person" and "independent contractor" have the same meanings as under the federal Fair Labor Standards Act or its successor law, except that "employer" shall also include the state and every political subdivision and "employee" shall not include an individual employed in or about the property of the employer or individual's residence on a casual basis. Only the exemptions set forth in this section shall apply to this section.

An employer shall at the time of hire provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes. An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date the employee was employed. Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request. An employee, person acting on behalf of one or more employees and/or any other interested party may file a complaint with the state for a violation of any provision of this section or any law or regulation implementing its provisions. Such complaint shall be promptly investigated and resolved by the state. The employee's name shall be kept confidential unless disclosure is necessary to resolution of a complaint and the employee consents to disclosure. The state may on its own initiative investigate an employer's compliance with this section and any law or regulation implementing its provisions. The employer shall make available to the state any records related to such investigation and other information required for enforcement of this section or any law or regulation implementing its provisions. No employer shall discharge or in any other manner discriminate or retaliate against an employee for exercising any right under this section or any law or regulation implementing its provisions or against any person for providing assistance to an employee or information regarding the same.

An action for equitable and monetary relief may be brought against an employer by the attorney general and/or an employee or person acting on behalf of an employee or all similarly situated employees in any court of

competent jurisdiction, including the common pleas court of an employee's county of residence, for any violation of this section or any law or regulation implementing its provisions within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after notification to the employee of final disposition by the state of a complaint for the same violation, whichever is later. There shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits. Where an employer is found by the state or a court to have violated any provision of this section, the employer shall within thirty days of the finding pay the employee back wages, damages, and the employee's costs and reasonable attorney's fees. Damages shall be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued. Payment under this paragraph shall not be stayed pending any appeal.

This section shall be liberally construed in favor of its purposes. Laws may be passed to implement its provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article XVIII of this constitution with respect to the same.

If any part of this section is held invalid, the remainder of the section shall not be affected by such holding and shall continue in full force and effect.

A majority yes vote is necessary for passage.

YES  
 NO

**SHALL THE PROPOSED AMENDMENT BE ADOPTED?**

### ARGUMENT AND EXPLANATION IN SUPPORT OF ISSUE 2

Vote **YES** on Issue 2 to restore the value of the minimum wage so hard working Ohioans are able to provide for themselves and their families. Raising the wage will encourage personal responsibility and lift many low-wage workers out of poverty.

**The real value of the federal minimum wage has reached a 50-year low** because it has not kept up with the rising cost of living. Today, a full-time worker at the current minimum wage of \$5.15 earns just \$206 per week, or \$10,712 per year, well below the poverty line for a family of three.

**We can do better.** The Ohio Minimum Wage Amendment would restore the value that the minimum wage has lost over time.

**The Amendment would raise Ohio's minimum wage from \$5.15 to \$6.85 per hour on January 1, 2007.** Each year afterwards, the minimum wage would increase if the cost of living rises, protecting Ohio's lowest paid workers from losing ground. It also provides enforcement measures, similar to the federal minimum wage law, so Ohioans can protect themselves against unscrupulous employers.

**The Amendment would raise wages for over 700,000 Ohio workers.** On average, these workers provide half of their families' weekly earnings. Nearly three-quarters of the workers who would benefit are adults over twenty. More than 250,000 Ohio children have a parent who will benefit.

Twenty-two other states have raised the minimum wage above the federal level and studies show that **raising the minimum wage substantially helps families while improving the overall economy.** Between 1997 and 2003, states with higher minimum wages had more overall job growth.

Ohioans have always valued hard work, but our minimum wage has not kept pace. We believe honest work deserves honest pay. **Vote YES on Issue 2 to restore the value of the minimum wage for hard working Ohioans.**

Prepared by: Ohioans for a Fair Minimum Wage, Hon. C. J. Prentiss, Pierrette M. Talley, Katrin Heins, and Gary L. Coles

### Explanation and Argument Against Issue 2

Vote **NO** on Issue 2 for these reasons:

- **It's a massive intrusion into your personal privacy.** Backers say the amendment is about the minimum wage, but read the fine print. It gives employees or any person acting on behalf of an employee the right to demand private salary records for all employees (not just hourly workers). This will give access to your private information, which could then become public. Disclosure of home addresses and other personal data will put you at risk of identity theft.
- **Records requirements are costly and open employers to harassment.** The amendment was drafted by anti-business activists who propose that all public and private employers – including state and local governments and homeowners – maintain decades worth of records while employees are working and three years afterward. This will cost millions of dollars, yet employers will have to provide these records without charge to any employee or employee representative who asks. Unhappy workers or activist organizations will have authority to make repeated, costly requests.
- **The amendment means a huge increase in the cost of government.** State and local governments will be saddled both with enforcing the amendment and meeting their own costly obligations as major employers. You'll foot the bill.
- **The amendment doesn't really help low-income Ohioans.** A higher minimum wage will trigger thousands of layoffs in lower-paying jobs – hurting, rather than helping, Ohioans who need higher wages the most. Better approaches are to increase the federal Earned Income Tax Credit and to improve job-development and training.
- **As part of the Constitution, the amendment cannot easily be changed to correct unintended consequences.** This amendment, which is hostile to both employers and employees, will damage Ohio's job climate. The legislature will be powerless to fix it.

VOTE NO ON ISSUE 2.

Submitted by Ohioans to Protect Personal Privacy

John C. Mahaney, Jr., Andrew Doehrel and Ty Pine

cept that "employer" shall also include the state and every political subdivision and "employee" shall not include an individual employed in or about the property of the employer or individual's residence on a casual basis. Only the exemptions set forth in this section shall apply to this section.

An employer shall at the time of hire provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes. An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date the employee was employed. Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request. An employee, person acting on behalf of one or more employees and/or any other interested party may file a complaint with the state for a violation of any provision of this section or any law or regulation implementing its provisions. Such complaint shall be promptly investigated and resolved by the state. The employee's name shall be kept confidential unless disclosure is necessary to resolution of a complaint and the employee consents to disclosure. The state may on its own initiative investigate an employer's compliance with this section and any law or regulation implementing its provisions. The employer shall make available to the state any records related to such investigation and other information required for enforcement of this section or any law or regulation implementing its provisions. No employer shall discharge or in any other manner discriminate or retaliate against an employee for exercising any right under this section or any law or regulation implementing its provisions or against any person for providing assistance to an employee or information regarding the same.

### FULL TEXT OF PROPOSED AMENDMENT

#### THE OHIO FAIR MINIMUM WAGE AMENDMENT

Be it Resolved by the People of the State of Ohio that Article II, Section 34a of the Ohio Constitution is hereby enacted as follows:

#### ARTICLE II, Section 34a

Except as provided in this section, every employer shall pay their employees a wage

rate of not less than six dollars and eighty-five cents per hour beginning January 1, 2007. On the thirtieth day of each September, beginning in 2007, this state minimum wage rate shall be increased effective the first day of the following January by the rate of inflation for the twelve month period prior to that September according to the consumer price index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government rounded to the nearest

five cents. Employees under the age of sixteen and employees of businesses with annual gross receipts of two hundred fifty thousand dollars or less for the preceding calendar year shall be paid a wage rate of not less than that established under the federal Fair Labor Standards Act or its successor law. This gross revenue figure shall be increased each year beginning January 1, 2008 by the change in the consumer price index or its successor index in the same manner as the required annual adjustment

in the minimum wage rate set forth above rounded to the nearest one thousand dollars. An employer may pay an employee less than, but not less than half, the minimum wage rate required by this section if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the minimum wage rate for all hours worked. The provisions of this section shall not apply to employees of a solely family owned and operated business

who are family members of an owner. The state may issue licenses to employers authorizing payment of a wage rate below that required by this section to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.

As used in this section: "employer," "employee," "employ," "person" and "independent contractor" have the same meanings as under the federal Fair Labor Standards Act or its successor law, ex-

# Proposed Amendment to the Ohio Constitution

An action for equitable and monetary relief may be brought against an employer by the attorney general and/or an employee or person acting on behalf of an employee or all similarly situated employees in any court of competent jurisdiction, including the common pleas court of an employee's county of residence, for any violation of this section or any law or regulation implementing its provisions

within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after notification to the employee of final disposition by the state of a complaint for the same violation, whichever is later. There shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain

such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits. Where an employer is found by the state or a court to have violated any provision of this section, the employer shall within thirty days of the finding pay the employee back wages, damages, and the em-

ployee's costs and reasonable attorney's fees. Damages shall be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued. Payment under this paragraph

shall not be stayed pending any appeal.

This section shall be liberally construed in favor of its purposes. Laws may be passed to implement its provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article

XVIII of this constitution with respect to the same.

If any part of this section is held invalid, the remainder of the section shall not be affected by such holding and shall continue in full force and effect.

## 3 PROPOSED AMENDMENT TO THE OHIO CONSTITUTION

(Proposed by Initiative Petition)

To adopt Section 12 of Article XV of the Constitution of the State of Ohio.

This amendment to the Constitution would:

- Permit up to 31,500 slot machines at seven horse racing tracks and at two Cleveland non-track locations.
- Permit expanded gaming in the four Cuyahoga County locations if approved by the county's voters.
- Distribute the revenues as follows:
  - 55% to the slot and casino owners and operators.
  - 30% to the Board of Regents for college scholarships and grants to eligible students and administration of the program.
  - The remaining revenues to be divided among local governments, race tracks for purse money, gambling addiction services, and
  - The administration of the Gaming Integrity Commission comprised of five members appointed by the governor and the majority legislative leaders.
- The moneys provided by this amendment are to supplement and not supplant existing and future constitutional obligations to post-secondary education and local governments.

A majority yes vote is necessary for passage.

YES **SHALL THE PROPOSED AMENDMENT BE ADOPTED?**  
 NO

### FULL TEXT OF AMENDMENT

Be it resolved by the people of the State of Ohio, that the Constitution of the State of Ohio be amended by adopting Section 12 of Article XV, to read as follows:

#### Section 12

"For the purpose of inspiring students to aspire to college at an early age, to improve students' academic preparation, and to make college affordable for students and their families, the Ohio Board of Regents shall award undergraduate higher education scholarships and tuition grants for United States citizens who are residents of this state commencing with the first high school class graduating two years following the approval of this amendment. Eligibility criteria for such scholarships and grants, and the amounts, shall be established solely by the Ohio Board of Regents. Such scholarships and grants shall include only the following:

(A) Individual learn and earn scholarship accounts for current and future students who, prior to enrolling in college, take core and advanced academic courses, participate in college readiness programs, assessment, and testing at any accredited public or non-public high school in this state, and contribute to public life through voluntary civic activity, and who attend any public or independent not-for-profit institution of higher education authorized by the Ohio Board of Regents and that has its principal office within this state.

(B) For the first twelve such high school graduating class-

es, uniform tuition grants, in an amount not to exceed the average undergraduate tuition charged by Ohio public universities, shall be awarded to the top five percent of students at each accredited public and non-public high school who attend any public or independent not-for-profit institution of higher education authorized by the Ohio Board of Regents and that has its principal office within this state. Such tuition grants shall be based solely on academic merit.

Notwithstanding any other provision of this Constitution, slot machines shall be permitted at the seven permitted commercial horse racing tracks, and at two locations each fronting on the existing main channel of the Cuyahoga River in the City of Cleveland, one on the west bank within the area generally known as the Nautica Entertainment Complex and with frontage of approximately 1,430 feet in length, extending 560 feet to the northwest and 870 feet to the southeast of the intersection of the center line of vacated Main Avenue and the Cuyahoga River, and one on the east bank within the area generally known as Tower City and starting at the northeast corner of West Third Street, where it meets the east bank of the Cuyahoga River and extending north and west along the east bank of the Cuyahoga River for not more than 1,700 feet and having a depth of not more than 460 feet from the east bank of the Cuyahoga River. The games authorized in this section shall be conducted only at the locations authorized herein, and, in the discretion of the facility owner, may be conducted twenty-four hours

each day. No more than three thousand five hundred such devices may be operated at any one facility, except that facilities located within the same county may, by agreement, provide for the transfer of such devices between such facilities, provided that no more than four thousand such devices may be operated at a facility not located at a permitted commercial horse racing track. Nothing in this section shall be interpreted to authorize live games associated with casinos, including, but not limited to roulette, card games, and dice games, except that such games may be conducted at the non-track facilities and at the facilities located at a permitted commercial horse racing track situated wholly or partially within Cuyahoga County if the voters of Cuyahoga County approve the conduct of such additional games by a majority vote. No such vote may be conducted prior to the fourth general election following the approval of this amendment.

Thirty percent of gross slot machine revenue shall be paid to the state and shall be used, without necessity of appropriation by the General Assembly, notwithstanding section 22 of Article II of the Ohio Constitution, solely for the scholarships and grants provided for in this section and the related administrative costs for administering such scholarships and grants.

In addition to the forgoing

amount, an additional one percent of gross slot machine revenue shall be paid to the state to pay for gambling addiction services; an additional six-tenths of one percent of gross slot machine revenue shall be paid to the municipality or township in which each facility is located; an additional three percent of gross slot machine revenue shall be divided equally and paid to the county in which each facility is located and the county seat of that county, which proceeds shall be expended for economic development projects; an additional eight-tenths of one percent of gross slot machine revenue shall be paid to the county in which the non-track facilities are located, which proceeds shall be expended for economic development projects; an additional four tenths of one-percent of gross slot machine revenue shall be divided equally and paid to a county that has a population of at least seven hundred and fifty thousand persons and not more than one permitted commercial horse racing track, and the county seat of such county, which proceeds shall be expended for economic development projects; and an additional two and four-tenths percent of gross slot machine revenue shall be paid

### ARGUMENT AND EXPLANATION LEARN AND EARN INITIATIVE

A "yes" vote on Issue 3 would provide thousands of Ohio's hard-working high school students with scholarships to Ohio's colleges and universities. All students will be eligible to earn these scholarships, which would be funded from the proceeds of expanded gambling—slot machines—at the seven commercial horse racing tracks, and at two carefully specified locations in Cleveland's entertainment district. Issue 3 would also provide new funds for economic development and job creation for communities throughout Ohio.

Unlike the proceeds from the lottery, Learn and Earn scholarship funds would be free from control of politicians who now simply reduce education's general revenue funds by the amount of lottery proceeds. Issue 3 expressly prohibits the reduction of such funds by providing that the money generated for scholarships and local communities' economic development will supplement, not supplant, monies currently appropriated for these purposes. The scholarship monies will be placed in individual accounts for Ohio's primary and secondary school students under the direct control of the Ohio Board of Regents. The legislature will be powerless to divert this money for politicians' pet projects.

Under Issue 3, the locations and number of slot machines would be strictly limited, and would be regulated by the new Gaming Integrity Commission, which will operate without general revenue tax dollars.

Each year, Ohioans spend billions of dollars on gaming entertainment in neighboring states and Canada. This amendment will help keep that money in Ohio for the benefit of Ohio and its children. Money now spent by Ohioans on gaming in Indiana, Michigan, West Virginia, and Canada (and soon, Pennsylvania), benefits the residents of those places. The money spent by Ohioans on this form of entertainment should benefit Ohioans, not out-of-state interests.

Vote Yes for Ohio's Children. Vote yes on Issue 3.

Submitted by: Ohio Learn and Earn Committee, J. Gregg Haight, David L. Hopcraft and Linda J. Siefkas

### ARGUMENT AND EXPLANATION AGAINST ISSUE 3

PROTECT OHIO CHILDREN AND FAMILIES -- VOTE "NO" on ISSUE 3

*Please Vote NO on the Learn and Earn Casino Gambling Amendment.* This dishonest plan, filled with loopholes, will not deliver the benefits promised. A handful of casino developers want to use your Constitution for their personal gain, but it will ruin lives.

Why so many are voting NO on Issue 3:

- Learn and Earn Casinos will create at least **109,000 NEW gambling addicts**, ruining the lives of hundreds of thousands of families.
- **Remember the Lottery?** It didn't save Ohio public schools. Learn and Earn Casinos are a bad deal for students, parents, and colleges.
- Learn and Earn creates a **private monopoly** for a handful of casino owners. Gambling proceeds are exempted from state and local taxes.
- Learn and Earn Casinos will place **NO money in the Ohio General Revenue Fund- not one dollar for the State Treasury.**
- Issue 3 will not stop Ohioans from traveling to gamble but **will grant licenses to out-of state operators and drain more dollars from Ohio.**
- Ohio casinos will drain **\$2 billion from the local economy costing Ohio jobs.**
- Learn and Earn **LOOPHOLES** will leave thousands of students without scholarships. There are no guarantees on how much scholarships will be worth or when they will be paid. Only the top 5% of students will qualify for tuition grants which disappear after 12 years.
- Learn and Earn will push Ohio into a Class III gambling state **making it easier for tribal casinos to open in Ohio.**
- **Community leaders, elected officials and many Ohio newspapers are urging a "NO" vote on Learn and Earn's gambling casinos.**

**Don't gamble away Ohio's future. Protect Ohio's families and children. Vote NO on ISSUE 3.**

The Vote NO Casinos Committee  
State Auditor Betty Montgomery, Co-Chair  
David Zanotti, President, The Ohio Roundtable, Co-Chair

to the state for distribution to all other counties pursuant to the local government revenue assistance fund, which proceeds shall be expended for economic development or capital improvement projects. In addition to the foregoing amounts, an additional six percent of gross slot machine revenue at facilities located at each permitted commercial horse racing track shall be used by those tracks for purse money. In the event that devices are transferred between facilities located at permitted commercial horse racing tracks as provided in this section, the transferee facility shall distribute equally the amount of funds this section provides for purse money between the transferor and transferee tracks. An additional six percent of gross slot machine revenue at non-track facilities shall be deposited into the Ohio simulcast horse racing purse fund for distribution as provided by law. The proceeds of any additional games, if authorized by voters pursuant to this section, shall be distributed in the same manner as the proceeds from the operation of slot machines. No other fees or taxes may be applied to or levied against gross slot machine revenue or the amounts wagered or the proceeds of the other games authorized by

this section.

The amounts paid to the state pursuant to this section do not diminish the General Assembly's constitutional obligations. The moneys expended hereunder on scholarships and grants shall supplement, not supplant, monies appropriated for post-secondary educational programs and purposes prior to or after the approval of this amendment. The monies distributed to counties, townships, and municipalities hereunder shall supplement, not supplant, monies appropriated for those counties, townships, and municipalities prior to or after the approval of this amendment. The amounts paid to the state or any county, township, or municipality pursuant to this section shall not be subject to any tax or expenditure limitation. With the exception of the foregoing six-tenths of one percent that is paid to the municipality or township in which a facility is located, and notwithstanding the requirements, limitations, or prohibitions of Article VIII, or of Sections 5, 6, and 11 of Article XII of the Ohio Constitution, all of the monies distributed to counties and municipalities in which a facility at which slot machines are permitted shall be, and any of the mon-

# Proposed Amendment to the Ohio Constitution

ies distributed to any other counties, townships, and municipalities may be, expended for or in support of, and be applied to any of the revitalization purposes under Section 2o of Article VIII, research and development purposes and development of sites and facilities in Ohio for and in support of industry, commerce, distribution, and research and development purposes under Section 2p of Article VIII, and any other economic development purposes authorized in Section 13 of Article VIII of the Ohio Constitution.

There is hereby created the Gaming Integrity Commission which shall regulate all gaming authorized by this section, which shall determine all voting issues by majority vote, and which shall consist of five members. Three members of the Gaming Integrity Commission shall be appointed by the governor, no more than two of whom shall be members of the same political party.

One member of the Gaming Integrity Commission shall be appointed by the speaker of the house of representatives, and one member shall be appointed by the president of the senate, provided that the members appointed by the legislative leaders shall not be members of the same political party. The reasonably-estimated cost of operating the Gaming Integrity Commission shall be paid from the forgoing amounts to be paid to the counties, townships, and municipalities prior to the distribution to those counties, townships, and municipalities, provided that no more than one percent of gross slot machine revenue may be subtracted from the foregoing amounts to pay the reasonably-estimated cost of operating the Gaming Integrity Commission. Each facility authorized to conduct games pursuant to this section shall pay as a licensing fee an equal share of the reasonably-estimated cost of establishing the Gaming Integrity

Commission. Each facility which may be authorized pursuant to this section to conduct live games associated with casinos shall pay an additional licensing fee in the amount of fifteen million dollars, which amount shall be divided equally and paid to the county in which each such facility is located and the county seat of that county, and which amount is payable upon the initial opening of the facility regardless of whether such additional games are eventually authorized, and which amount shall be expended for economic development or capital improvement projects. No other licensing fees shall be imposed upon any of the facilities authorized to conduct games pursuant to this section.

The General Assembly shall pass laws within six months of the effective date of this amendment to facilitate the operation of this amendment. If the General Assembly fails

to pass such laws within six months of the effective date of this amendment, or the members of the Gaming Integrity Commission have not been appointed as provided in this section, the games authorized in this section may be conducted on and after that date under the supervision of the Lottery Commission, which shall retain such supervisory authority until the General Assembly has passed laws to facilitate the operation of this amendment and the members of the Gaming Integrity Commission have been appointed as provided in this section.

For purposes of this section, "slot machines" shall include any mechanical, electrical, or other device or machine which, upon insertion of a coin, token, or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, by reason of the application of the element of chance, makes individual prize de-

terminations for individual participants in cash, premiums, merchandise, tokens, or any thing of value, whether the payoff is made automatically from the machine or in any other manner. The slot machines authorized by this section may be linked by their operators with other such devices located at the facilities authorized by this section for the purpose of providing prizes based in whole or in part upon the play of such connected devices at the same or other authorized facilities.

For purposes of this section "permitted commercial horse racing track" means any place, track, or enclosure where a permit holder conducted live horse racing for profit at a racing meeting during the two calendar years prior to the approval of this amendment, and which continues to conduct live horse racing for profit following the approval of this amendment, and includes facilities on premises contigu-

ous to, or separated only by a roadway from, those places, tracks, or enclosures, provided that a permit holder that currently conducts racing meetings on public land may relocate the facility authorized in this section if that permit holder relocates its permitted commercial horse racing track within the same county as provided by law.

For purposes of this section, "gross slot machine revenue" means the total of wagers received by a slot machine minus the total of: (1) cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine; (2) cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine; and (3) any personal property distributed to a patron as the result of playing a slot machine, excluding travel expenses, food, refreshments, lodging, or services."

## 4 PROPOSED AMENDMENT TO THE OHIO CONSTITUTION (Proposed by Initiative Petition)

To adopt Section 12 of Article XV of the Constitution of the State of Ohio.

This proposed amendment would prohibit smoking in enclosed areas except tobacco stores, private residences or nonpublic facilities, separate smoking areas in restaurants, most bars, bingo and bowling facilities, separated areas of hotels and nursing homes, and race tracks. The amendment would invalidate retroactively any ordinance or local law in effect, and would prohibit the future adoption of any ordinance or local law to the extent such ordinance or law prohibited smoking or tobacco products in anyplace exempted by the amendment.

A majority yes vote is necessary for passage.

YES **SHALL THE PROPOSED AMENDMENT BE ADOPTED?**  
 NO

### FULL TEXT OF AMENDMENT

Be it resolved by the people of the State of Ohio, that Article XV, Section 12 to the Ohio Constitution

"Section 12. The General Assembly shall pass laws to limit or prohibit smoking of tobacco or tobacco products in all enclosed, public areas of this state except that no law shall prohibit smoking and/or the use of tobacco or tobacco products in any of the following:

(A) any retail establishment that holds itself out as being devoted primarily to the on-site sale of tobacco, tobacco products, and tobacco product accessories and derives not less than fifty percent of its total gross sales from the on-site sale of tobacco, tobacco products, and tobacco product accessories;

(B) any private residence or privately owned facility that is not open to the public;

(C) any separate smoking area within an eating establishment that designates an area within the premises that is completely separated from the rest of the premises by walls or doors in which smoking is permitted;

(D) any establishment that sells intoxicating liquor for on-premises consumption

in which the annual revenue produced by the sale of food does not exceed sixty percent of total annual sales;

(E) any public area where bingo or bowling is played;

(F) any designated areas of any facility leased or rented to the public on a temporary basis for residential use including, but not limited to a hotel, motel, adult day care facility, nursing home or rehabilitation center, provided that smoking is permitted only in separate portions of the premises;

(G) any facility or business establishment from which minors are prohibited;

(H) any place, track or enclosure where an authorized permit holder conducts live or satellite horse racing.

This amendment supersedes and renders invalid any ordinance or local law in existence as of the date of this amendment to the extent such ordinance or law prohibits smoking and/or the use of tobacco or tobacco products in an establishment or place exempted by the language set forth in Section 12. The amendment also would prevent such laws or ordinances from taking effect in the future.

### Explanation and Argument For Smoke Less Ohio

The Smoke Less Ohio proposal on the November ballot is a constitutional amendment to ban smoking in 90% of Ohio businesses.

This is a reasonable approach to meeting the needs of Ohioans to protect non-smokers from secondhand smoke. We are proposing an effective smoking ban to keep smoke out of 90% of all the businesses in Ohio.

Smoke Less is a common sense approach that protects both non-smokers and individual rights. Smoke Less protects the rights of individuals and businesses to make their own personal choices about smoking in very limited locations. Smoke Less provides exceptions for places where there are no minor children or where a total ban would threaten the health of the business. Bars are the main exception. Bowling alleys, bingo locations, and completely separate, enclosed areas in restaurants are the others.

Smoke Less has proposed that the Ohio smoking ban be a constitutional amendment. That will be a dependable, permanent solution, so Ohioans know clearly where smoking is or is not allowed. Business owners can make a decision about whether to become entirely smoke-free or to participate in the allowed exceptions. If decided by statute, our smoking laws will be subject to constant change, and voters could be asked to decide the same question over and over again.

Smoke Less is a common sense smoking ban for Ohio.

Jacob Evans  
President  
Smoke Less Ohio

### ARGUMENT AND EXPLANATION AGAINST ISSUE 4

**Don't Be Fooled by Tobacco Companies  
Vote NO on the Pro-Smoking Constitutional Amendment**

Vote No on Issue 4 to keep secondhand smoke out of restaurants and other public places.

RJ Reynolds and other tobacco companies are proposing and funding a pro-smoking constitutional amendment. Smoke Less Ohio would **keep smoke** in restaurants and other public places and put customers and workers at risk from secondhand smoke, a proven health hazard.

The American Cancer Society, American Heart Association, American Lung Association, doctors, hospitals, and every Ohio public health organization **oppose** Smoke Less Ohio because it would:

- **DENY YOUR RIGHT** to breathe smoke-free air in public places.
- **KEEP** smoke in restaurants and bowling alleys, exposing children, the elderly and those with health problems to secondhand smoke.
- **OVERTURN** smoke-free laws in 21 cities across Ohio including Columbus and make it unconstitutional for lawmakers to enact future clean indoor air ordinances.

The U.S. Surgeon General confirmed that secondhand smoke causes cancer, heart disease and lung disease. He also confirmed that separate smoking sections like those proposed by Smoke Less Ohio do not protect health.

Smoke Less Ohio would make it unconstitutional to protect more than half a million hospitality workers and their customers from exposure to secondhand smoke. No worker should have to choose between earning a living and protecting his or her health.

Smoke Less Ohio alters the Constitution to protect the tobacco industry's bottom line. Lawmakers and voters could only change the Smoke Less Ohio proposal through another constitutional amendment—a costly and lengthy process.

Smoke Less Ohio would create different rules for similar businesses and make a level playing field for all Ohio businesses impossible.

**Smoke Less Ohio FAILS to protect the workers and citizens of Ohio from secondhand smoke.  
Vote NO on Issue 4**

Submitted by:  
James M. Sudimack, M.D., President, Ohio State Medical Association

# Proposed Law

5

## PROPOSED LAW

(Proposed by Initiative Petition)

To enact Chapter 3794. of the Ohio Revised Code to restrict smoking in places of employment and most places open to the public.

The proposed law would:

- Prohibit smoking in public places and places of employment;
- Exempt from the smoking restrictions certain locations, including private residences (except during the hours that the residence operates as a place of business involving non-residents of the private residence), designated smoking rooms in hotels, motels, and other lodging facilities; designated smoking areas for nursing home residents; retail tobacco stores, outdoor patios, private clubs, and family-owned and operated places of business;
- Authorize a uniform statewide minimum standard to protect workers and the public from secondhand tobacco smoke;
- Allow for the declaration of an establishment, facility, or outdoor area as nonsmoking;
- Require the posting of "No Smoking" signs, and the removal of all ashtrays and similar receptacles from any area where smoking is prohibited;
- Specify the duties of the department of health to enforce the smoking restrictions
- Create in the state treasury the "smoke free indoor air fund;"
- Provide for the enforcement of the smoking restrictions and for the imposition of civil fines upon anyone who violates the smoking restrictions.

A majority yes vote is necessary for passage.

YES **SHALL THE PROPOSED**  
 NO **LAW BE ADOPTED?**

### TEXT OF PROPOSED LAW

Be it Enacted by the People of the State of Ohio.

#### Section 1.

##### 3794.01 Definitions.

As used in this chapter:

(A) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.

(B) "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence.

(C) "Place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees.

(D) "Employee" means a person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer for compensation or for no compensation.

(E) "Employer" means the state or any individual, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.

(F) "Enclosed Area" means an area with a roof or other overhead covering of any

kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.

(G) "Proprietor" means an employer, owner, manager, operator, liquor permit holder, or person in charge or control of a public place or place of employment.

(H) "Retail tobacco store" means a retail establishment that derives more than eighty percent of its gross revenue from the sale of cigars, cigarettes, pipes, or other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or of any establishment with a liquor permit or of any restaurant.

(I) "Outdoor patio" means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead covering regardless of the number of walls or other side coverings.

##### 3794.02 Smoking Prohibitions.

(A) No proprietor of a public place or place of employment, except as permitted in section 3794.03 of this chapter, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.

(B) A proprietor of a public place or place of employment shall ensure that tobacco smoke does not enter any area in which smoking is prohibited under this chapter through entrances, windows, ventilation systems, or other means.

(C) No person or employer

### ARGUMENT AND EXPLANATION IN SUPPORT OF ISSUE 5

#### VOTE YES ON ISSUE 5

Protect your right to breathe smoke-free air inside all restaurants, public places and workplaces.

#### Secondhand Smoke Kills

The U.S. Surgeon General reports that:

- Secondhand smoke causes cancer, heart disease, and lung disease in nonsmokers.
- There is no safe level of exposure.
- The only way to protect health is to eliminate smoking inside public places.
- Separate smoking sections do not protect health.
- Smoke-free policies do not harm business.

For these reasons, the American Cancer Society, American Heart Association, and American Lung Association have joined with doctors, hospitals and every major health organization in Ohio to urge a **YES vote on Issue 5.**

#### What the SmokeFree Workplace Act will do:

- Eliminate secondhand smoke in all public places and workplaces
- Offer equal protection against secondhand smoke to all workers and customers
- Create one fair, level playing field for all businesses

Studies show nonsmokers inhale the equivalent of one and a half cigarettes just by sitting in a *restaurant's non-smoking section* for two hours. This state law allows children, the elderly, and those with health problems to enjoy restaurants and other public places without jeopardizing their health.

Simply asking smokers to step outside public places will protect the health of the nonsmokers around them and allow all Ohioans to enjoy their favorite places together.

#### What the SmokeFree Workplace Act will not do:

- SmokeFreeOhio does NOT amend the Constitution.
- The law does NOT prohibit smoking in private residences, vehicles, or outdoors.

Twenty-one Ohio communities and 14 states have strong, successful smoke-free laws in place. The time has come to vote to stop this preventable health hazard and improve the health of all Ohio residents.

**Vote YES on Issue 5 so Ohio can breathe smoke-free!**

Submitted by SmokeFreeOhio, Donald McClure, Susan Jagers, and Tracy Sabetta

shall discharge, refuse to hire, or in any manner retaliate against an individual for exercising any right, including reporting a violation, or performing any obligation under this chapter.

(D) No person shall refuse to immediately discontinue smoking in a public place, place of employment, or establishment, facility or outdoor area declared nonsmoking under section 3794.05 of this chapter when requested to do so by the proprietor or any employee of an employer of the public place, place of employment or establishment, facility or outdoor area.

(E) Lack of intent to violate a provision of this chapter shall not be a defense to a violation.

##### 3794.03 Areas where smoking is not regulated by this chapter.

The following shall be exempt from the provisions of this chapter:

(A) Private residences, except during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present.

(B) Rooms for sleeping in hotels, motels and other lodging facilities designated as smoking rooms; provided, however, that not more than twenty percent of sleeping rooms may be so designated.

(C) Family-owned and operated places of employment in which all employees are related to the owner, but only if the enclosed areas of the place of employment are not open to the public, are in a free standing structure occupied solely by the place of employment, and smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.

(D) Any nursing home, as defined in section 3721.10(A) of the Revised Code, but only to the extent necessary to comply with section 3721.13(A)(18) of the Revised Code. If indoor smoking area is provided by a nursing home for residents of the nursing home, the designated indoor smoking area shall be separately enclosed and separately ventilated so that tobacco smoke does not enter, through entrances, windows, ventilation systems, or other means, any areas where smoking is otherwise prohibited under this chapter. Only residents of the nursing home may utilize the designated indoor smoking area for smoking. A nursing home may designate specific times when the indoor smoking area may be

### Explanation and Argument Against SmokeFree

The SmokeFree Ohio proposal on the November ballot is a near total ban on smoking across the state. It is an unreasonable approach that creates an unnecessary intrusion on the rights of individuals and business owners to make their own decisions.

SmokeFree does not allow exceptions for adult-only businesses and virtually criminalizes smokers with potential citations and fines. It is important to realize that given free choice, many restaurants, hotels and other places that serve families are making "no smoking" rules on their own. Since most Ohioans don't smoke, we can rely on traditional American freedoms to decide this issue in the marketplace, as we have always done.

Ohio should take reasonable action to protect nonsmokers in public places. It is important to protect families from second-hand smoke, but we should use common sense to make the rules, so both health and individual freedoms are protected.

SmokeFree is an unreasonable, intrusive approach that will create more problems than it solves.

Jacob Evans  
President  
Smoke Less Ohio

used for such purpose. No employee of a nursing shall be required to accompany a resident into a designated indoor smoking area or perform services in such area when being used for smoking.

(E) Retail tobacco stores as defined in section 3794.01(H) of this chapter in operation prior to the effective date of this section. The retail tobacco store shall annually file with the department of health by January thirty first an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after the effective date of this section or any existing retail tobacco store that relocates to another location after the effective date of this section may only qualify for this exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.

(F) Outdoor patios as defined in Section 3794.01(I) of this chapter. All outdoor patios shall be physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter.

(G) Private clubs as defined in section 4301.01(B)(13) of the Revised Code, provided all of the following apply: the club has no employees; the club is organized as a not for profit entity; only members of the club are present in the club's building; no persons under the age of eighteen are present in the club's building; the club is located in a freestanding structure occupied solely by the club; smoke from the club does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter; and, if the club serves alcohol, it holds a valid D4 liquor permit.

##### 3794.04 Construction; other applicable laws.

Because medical studies have conclusively shown that exposure to secondhand smoke from tobacco causes illness and disease, including lung cancer, heart disease, and respiratory illness, smoking in the workplace is a statewide concern and, therefore, it is in the best interests of public health that smoking of tobacco products be prohibited in public places and places of employment and that there be a uniform statewide minimum standard to protect workers and the public from the health hazards associated with exposure to secondhand smoke from tobacco.

The provisions of this chapter shall be liberally construed so as to further its purposes of protecting public health and the health of employees and shall prevail over any less restrictive state or local laws or regulations. Nothing in this chapter shall be construed to permit smoking where it is otherwise restricted by other laws or regulations.

##### 3794.05 Declaration of establishment as non-smoking.

Notwithstanding any other provision of this chapter, the owner, manager, operator, or other person in charge or control of an establishment, facility, or outdoor area which does not otherwise qualify as a public place or place of employment may declare such establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place declared nonsmoking under this section where a sign conforming to the requirements of section 3794.06 is posted.

##### 3794.06 Posting of signs; prohibition of ashtrays; responsibilities of proprietors.

In addition to the prohibitions contained in section 3794.02 of this chapter, the proprietor of a public place or place of employment shall comply with the following requirements:

(A) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, including at each entrance to the public place or place of employment. Signs shall

## Proposed Law

be of sufficient size to be clearly legible to a person of normal vision throughout the areas they are intended to mark. All signs shall contain a telephone number for reporting violations.

(B) All ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this chapter.

### 3794.07 Duties of the Department of Health.

This chapter shall be enforced by the department of health and its designees. The director of health shall within six months of the effective date of this section:

(A) Promulgate rules in accordance with Chapter 119 of the Revised Code to implement and enforce all provisions of this chapter;

(B) Promulgate rules in accordance with Chapter 119 of the Revised Code to prescribe a schedule of fines for violations of this chapter designed to foster compliance

with the provisions of this chapter. The amount of a fine for a violation of 3794.02 (A) and (B) shall not be less than one hundred dollars and the maximum for a violation shall be twenty five hundred dollars. The amount of a fine for a violation of 3794.02 (D) shall be up to a maximum of one hundred dollars per violation. Each day of a violation shall constitute a separate violation. The schedule of fines that apply to a proprietor shall be progressive based on the number of prior violations by the proprietor. Violations which occurred more than two years prior to a subsequent violation shall not be considered if there has been no finding of a violation in the intervening time period. The fine schedule shall set forth specific factors that may be considered to decrease or waive the amount of a fine that otherwise would apply. Fines shall be doubled for intentional violations;

(C) Promulgate rules in accordance with Chapter 119 of the Revised Code to

prescribe a procedure for providing a proprietor or individual written notice of a report of a violation and the opportunity to present in writing any statement or evidence to contest the report, and prescribing procedures for making findings whether a proprietor or individual violated a provision of this chapter and for imposing fines for violations;

(D) Establish a system for receiving reports of violations of the provisions of this chapter from any member of the public, including, but not limited to, by mail and one or more e-mail addresses and toll free telephone numbers exclusively for such purpose. A person shall not be required to disclose his or her identity in order to report a violation;

(E) Inform proprietors of public places and places of employment of the requirements of this chapter and how to comply with its provisions, including, but not limited to, by providing printed and other materials and a toll

free telephone number and e-mail address exclusively for such purposes; and

(F) Design and implement a program to educate the public regarding the provisions of this chapter, including, but not limited to, through the establishment of an internet website and how a violation may be reported.

### 3794.08 Smoke Free Indoor Air Fund.

There is hereby created in the state treasury the smoke free indoor air fund. All fines collected pursuant to this chapter and any grant, contribution, or other moneys received by the department of health for the purposes of this chapter shall be credited to the smoke free indoor air fund and used solely for the purposes of this chapter.

### 3794.09 Enforcement; Penalties.

(A) Upon the receipt of a first report that a proprietor of a public place or place of employment or an individual has violated any provision of

this chapter, the department of health or its designee shall investigate the report and, if it concludes that there was a violation, issue a warning letter to the proprietor or individual.

(B) Upon a report of a second or subsequent violation of any provision of this chapter by a proprietor of a public place or place of employment or an individual, the department of health or its designee shall investigate the report. If the director of health or director's designee concludes, based on all of the information before him or her, that there was a violation, he or she shall impose a civil fine upon the proprietor or individual in accordance with the schedule of fines required to be promulgated under section 3794.07 of this chapter.

(C) Any proprietor or individual against whom a finding of a violation is made under this chapter may appeal the finding to the Franklin County Court of Common Pleas. Such appeal shall be

governed by the provisions of section 119.12 of the Revised Code.

(D) The director of health may institute an action in the court of common pleas seeking an order in equity against a proprietor or individual that has repeatedly violated the provisions of this chapter or fails to comply with its provisions.

### Section 2. Severability.

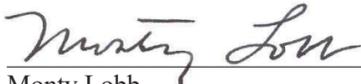
If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid by a court, that invalidity shall not affect the other provisions of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

### OFFICE OF THE SECRETARY OF STATE OF OHIO

I, Monty Lobb, Assistant Secretary of State, do hereby certify the foregoing constitutes the full text of the following:

1. The sections of law subject to the referendum on Amended Substitute Senate Bill 7 of the 126th General Assembly proposed by petition and filed with the secretary of state;
2. The full text of three constitutional amendments proposed by petition for the November, 2006 General Election and filed with the secretary of state;
3. The full text of the initiated statute proposed by petition for the November, 2006 General Election and filed with the secretary of state;
4. The ballot language certified by the Ohio Ballot Board for the five preceding proposals;
5. The official explanations and arguments submitted to the secretary of state by proponents and opponents of the five preceding proposals.

In testimony thereof, I have hereunto subscribed my name at Columbus, OH this 2nd day of October, 2006.



Monty Lobb  
Assistant Secretary of State