

AN ACT

To amend sections 111.15, 124.11, 141.02, 145.01, 145.30, 718.01, 1751.54, 3319.13, 3319.14, 3923.381, 3923.382, 4117.01, 4141.01, 4506.02, 4911.04, 5101.312, 5903.01, 5903.99, 5911.011, 5911.03, 5911.04, 5911.08, 5913.01, 5913.02, 5913.021, 5913.03, 5913.04, 5913.05, 5913.051, 5913.06, 5913.07, 5913.08, 5913.09, 5913.10, 5913.17, 5919.01, 5919.02, 5919.04, 5919.071, 5919.09, 5919.12, 5919.13, 5919.14, 5919.15, 5919.16, 5919.17, 5919.22, 5919.25, 5919.28, 5919.29, 5919.30, 5919.32, 5919.33, 5920.10, 5921.09, 5923.01, 5923.02, 5923.03, 5923.05, 5923.09, 5923.10, 5923.21, 5923.28, and 5924.15, to enact new sections 124.29 and 5903.02 and section 5919.35, and to repeal sections 124.28, 124.29, 5903.02, 5903.03, 5903.04, 5903.05, 5903.09, 5913.013, 5913.11, 5917.01, 5917.02, 5917.03, 5917.04, 5917.05, 5917.06, 5917.99, 5919.20, 5923.051, and 5923.35 of the Revised Code to exempt more clearly Reserve and Ohio National Guard pay and allowances from municipal taxation; to give statutory effect to the federal exemption for military vehicles from the state Commercial Driver's License Law; to conform more closely to federal regulations state law governing the Ohio National Guard and the state military; to repeal the state Military Census Law; to make other changes in the law governing the Ohio military; and to declare an emergency.

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

SECTION 1. That sections 111.15, 124.11, 141.02, 145.01, 145.30, 718.01, 1751.54, 3319.13, 3319.14, 3923.381, 3923.382, 4117.01, 4141.01, 4506.02, 4911.04, 5101.312, 5903.01, 5903.99, 5911.011, 5911.03, 5911.04, 5911.08, 5913.01, 5913.02, 5913.021, 5913.03, 5913.04, 5913.05, 5913.051, 5913.06, 5913.07, 5913.08, 5913.09, 5913.10, 5913.17, 5919.01, 5919.02, 5919.04, 5919.071, 5919.09, 5919.12, 5919.13, 5919.14, 5919.15, 5919.16, 5919.17, 5919.22, 5919.25, 5919.28, 5919.29, 5919.30, 5919.32, 5919.33, 5920.10, 5921.09, 5923.01, 5923.02, 5923.03, 5923.05, 5923.09, 5923.10, 5923.21, 5923.28, and 5924.15 be amended and that new sections 124.29 and 5903.02 and section 5919.35 of the Revised Code be enacted to read as follows:

Sec. 111.15. (A) As used in this section:

(1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule. "Rule" does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code, any order respecting the duties of employees, any finding, any determination of a question of law or fact in a matter presented to an agency, or any rule promulgated pursuant to Chapter 119., section 4141.14, division (C)(1) or (2) of section 5117.02, or section 5703.14 of the Revised Code. "Rule" includes any amendment or rescission of a rule.

(2) "Agency" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the adjutant general's department, or any court.

(3) "Internal management rule" means any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

(4) "Substantive revision" has the same meaning as in division (J) of section 119.01 of the Revised Code.

(B)(1) Any rule, other than a rule of an emergency nature, adopted by any agency pursuant to this section shall be effective on the tenth day after the day on which the rule in final form and in compliance with division (B)(3) of this section is filed as follows:

(a) Two certified copies of the rule shall be filed with both the secretary of state and the director of the legislative service commission;

(b) Two certified copies of the rule shall be filed with the joint committee on agency rule review. Division (B)(1)(b) of this section does not apply to any rule to which division (D) of this section does not apply.

An agency that adopts or amends a rule that is subject to division (D) of this section shall assign a review date to the rule that is not later than five years after its effective date. If no review date is assigned to a rule, or if a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its effective date. A rule with a review date is subject to review under section 119.032 of the Revised Code. This paragraph does not apply to a rule of a state college or university, community college district, technical college district, or state community college.

If all copies are not filed on the same day, the rule shall be effective on the tenth day after the day on which the latest filing is made. If an agency in adopting a rule designates an effective date that is later than the effective date provided for by division (B)(1) of this section, the rule if filed as required by such division shall become effective on the later date designated by the agency.

Any rule that is required to be filed under division (B)(1) of this section is also subject to division (D) of this section if not exempted by division (D)(1), (2), (3), (4), (5), (6), (7), or (8) of this section.

(2) A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety shall state the reasons for the necessity. Copies of the emergency rule, in final form and in compliance with division (B)(3) of this section, shall be filed as follows: two certified copies of the emergency rule shall be filed with both the secretary of state and the director of the legislative service commission, and one certified copy of the emergency rule shall be filed with the joint committee on agency rule review. The emergency rule is effective immediately upon the latest filing, except that if the agency in adopting the emergency rule designates an effective date, or date and time of day, that is later than the effective date and time provided for by division (B)(2) of this section, the emergency rule if filed as required by such division shall become effective at the later date, or later date and time of day, designated by the agency.

An emergency rule becomes invalid at the end of the ninetieth day it is in effect. Prior to that date, the agency may file the emergency rule as a nonemergency rule in compliance with division (B)(1) of this section. The agency may not refile the emergency rule in compliance with division (B)(2) of this section so that, upon the emergency rule becoming invalid under such division, the emergency rule will continue in effect without interruption for

another ninety-day period.

(3) An agency shall file a rule under division (B)(1) or (2) of this section in compliance with the following standards and procedures:

(a) The rule shall be numbered in accordance with the numbering system devised by the director for the Ohio administrative code.

(b) The rule shall be prepared and submitted in compliance with the rules of the legislative service commission.

(c) The rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.

(d) Each rule that amends or rescinds another rule shall clearly refer to the rule that is amended or rescinded. Each amendment shall fully restate the rule as amended.

If the director of the legislative service commission or the director's designee gives an agency written notice pursuant to section 103.05 of the Revised Code that a rule filed by the agency is not in compliance with the rules of the legislative service commission, the agency shall within thirty days after receipt of the notice conform the rule to the rules of the commission as directed in the notice.

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) of this section shall be recorded by the secretary of state and the director under the title of the agency adopting the rule and shall be numbered according to the numbering system devised by the director. The secretary of state and the director shall preserve the rules in an accessible manner. Each such rule shall be a public record open to public inspection and may be lent to any law publishing company that wishes to reproduce it.

(D) At least sixty days before a board, commission, department, division, or bureau of the government of the state files a rule under division (B)(1) of this section, it shall file two copies of the full text of the proposed rule with the joint committee on agency rule review, and the proposed rule is subject to legislative review and invalidation under division (I) of section 119.03 of the Revised Code. If a state board, commission, department, division, or bureau makes a substantive revision in a proposed rule after it is filed with the joint committee, the state board, commission, department, division, or bureau shall promptly file two copies of the full text of the proposed rule in its revised form with the joint committee. The latest version of a proposed rule as filed with the joint committee supersedes each earlier version of the text of the same proposed rule. Except as provided in division (F) of this section, a state board, commission, department, division, or bureau shall attach one copy of the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, to

each copy of a proposed rule, and to each copy of a proposed rule in revised form, that is filed under this division.

As used in this division, "commission" includes the public utilities commission when adopting rules under a federal or state statute.

This division does not apply to any of the following:

- (1) A proposed rule of an emergency nature;
 - (2) A rule proposed under section 1121.05, 1121.06, 1155.18, 1733.412, 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised Code;
 - (3) A rule proposed by an agency other than a board, commission, department, division, or bureau of the government of the state;
 - (4) A proposed internal management rule of a board, commission, department, division, or bureau of the government of the state;
 - (5) A rule proposed by the Ohio student aid commission that complies with a federal law or rule, so long as the proposed rule contains both of the following:
 - (a) A statement that it is proposed for the purpose of complying with a federal law or rule;
 - (b) A citation to the federal law or rule that requires compliance.
 - (6) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:
 - (a) A statement that it is proposed for the purpose of complying with a federal law or rule;
 - (b) A citation to the federal law or rule that requires verbatim compliance.
 - (7) An initial rule proposed by the director of health to impose safety standards, quality-of-care standards, and quality-of-care data reporting requirements with respect to a health service specified in section 3702.11 of the Revised Code, or an initial rule proposed by the director to impose quality standards on a facility listed in division (A)(4) of section 3702.30 of the Revised Code, if section 3702.12 of the Revised Code requires that the rule be adopted under this section;
 - (8) A rule of the state lottery commission pertaining to instant game rules.
- (E) Whenever a state board, commission, department, division, or bureau files a proposed rule or a proposed rule in revised form under division (D) of this section, it shall also file one copy of the full text of the

same proposed rule or proposed rule in revised form with the secretary of state and two copies thereof with the director of the legislative service commission. Except as provided in division (F) of this section, a state board, commission, department, division, or bureau shall attach a copy of the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, to each copy of a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.

(F) Except as otherwise provided in this division, the auditor of state or the auditor of state's designee is not required to attach a rule summary and fiscal analysis to any copy of a proposed rule, or proposed rule in revised form, that the auditor of state proposes under section 117.12, 117.19, 117.38, or 117.43 of the Revised Code and files under division (D) or (E) of this section. If, however, the auditor of state or the designee prepares a rule summary and fiscal analysis of the original version of such a proposed rule for purposes of complying with section 121.24 of the Revised Code, the auditor of state or designee shall attach a copy of the rule summary and fiscal analysis to each copy of the original version of the proposed rule filed under division (D) or (E) of this section.

Sec. 124.11. The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

(1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;

(2) All election officers as defined in section 3501.01 of the Revised Code;

(3) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with the governor's consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or, if there is no mayor, such other similar chief appointing authority of any city or city school district; except as otherwise provided in division (A)(17) or (C) of this section, this chapter does not exempt the chiefs of police departments and chiefs of fire departments of cities or civil service townships from the competitive classified service;

(4) The members of county or district licensing boards or commissions

and boards of revision, and deputy county auditors;

(5) All officers and employees elected or appointed by either or both branches of the general assembly, and such employees of the city legislative authority as are engaged in legislative duties;

(6) All commissioned, ~~warrant~~, and noncommissioned officers and enlisted persons in the ~~military service of the state~~ Ohio organized militia, including military appointees in the ~~office of the adjutant general~~ general's department;

(7)(a) All presidents, business managers, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers, and such employees as are engaged in educational or research duties connected with the public school system, colleges, and universities, as determined by the governing body of the public school system, colleges, and universities;

(b) The library staff of any library in the state supported wholly or in part at public expense.

(8) Four clerical and administrative support employees for each of the elective state officers; and three clerical and administrative support employees for other elective officers and each of the principal appointive executive officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees;

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section applies to any position in a county department of human services created pursuant to Chapter 329. of the Revised Code.

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise, or who handle public moneys or secured documents, and such officers and employees of courts of record and such deputies of clerks of the courts of common pleas as the director of administrative services finds it impracticable to determine their fitness by competitive examination;

(11) Assistants to the attorney general, special counsel appointed or

ployed by the attorney general, assistants to county prosecuting attorneys, and assistants to city directors of law;

(12) Such teachers and employees in the agricultural experiment stations; such students in normal schools, colleges, and universities of the state who are employed by the state or a political subdivision of the state in student or intern classifications; and such unskilled labor positions as the director of administrative services or any municipal civil service commission may find it impracticable to include in the competitive classified service; provided such exemptions shall be by order of the commission or the director, duly entered on the record of the commission or the director with the reasons for each such exemption;

(13) Any physician or dentist who is a full-time employee of the department of mental health or the department of mental retardation and developmental disabilities or of an institution under the jurisdiction of either department; and physicians who are in residency programs at the institutions;

(14) Up to twenty positions at each institution under the jurisdiction of the department of mental health or the department of mental retardation and developmental disabilities that the department director determines to be primarily administrative or managerial; and up to fifteen positions in any division of either department, excluding administrative assistants to the director and division chiefs, which are within the immediate staff of a division chief and which the director determines to be primarily and distinctively administrative and managerial;

(15) Noncitizens of the United States employed by the state, or its counties or cities, as physicians or nurses who are duly licensed to practice their respective professions under the laws of Ohio, or medical assistants, in mental, tuberculosis, or chronic disease hospitals, or institutions;

(16) Employees of the governor's office;

(17) Fire chiefs and chiefs of police in civil service townships appointed by boards of township trustees under section 505.38 or 505.49 of the Revised Code;

(18) Executive directors, deputy directors, and program directors employed by boards of alcohol, drug addiction, and mental health services under Chapter 340. of the Revised Code, and secretaries of the executive directors, deputy directors, and program directors;

(19) Superintendents, and management employees as defined in section 5126.20 of the Revised Code, of county boards of mental retardation and developmental disabilities;

(20) Physicians, nurses, and other employees of a county hospital who

are appointed pursuant to sections 339.03 and 339.06 of the Revised Code;

(21) The executive director of the state medical board, who is appointed pursuant to division (B) of section 4731.05 of the Revised Code;

(22) County directors of human services as provided in section 329.02 of the Revised Code and administrators appointed under section 329.021 of the Revised Code;

(23) A director of economic development who is hired pursuant to division (A) of section 307.07 of the Revised Code;

(24) Chiefs of construction and compliance, of operations and maintenance, and of licensing and certification in the division of industrial compliance in the department of commerce;

(25) The executive director of a county transit system appointed under division (A) of section 306.04 of the Revised Code;

(26) Up to five positions at each of the administrative departments listed in section 121.02 of the Revised Code and at the department of taxation, department of the adjutant general, department of education, Ohio board of regents, bureau of employment services, bureau of workers' compensation, industrial commission, state lottery commission, and public utilities commission of Ohio that the head of that administrative department or of that other state agency determines to be involved in policy development and implementation. The head of the administrative department or other state agency shall set the compensation for employees in these positions at a rate that is not less than the minimum compensation specified in pay range 41 but not more than the maximum compensation specified in pay range 44 of salary schedule E-2 in section 124.152 of the Revised Code. The authority to establish positions in the unclassified service under division (A)(26) of this section is in addition to and does not limit any other authority that an administrative department or state agency has under the Revised Code to establish positions, appoint employees, or set compensation.

(27) Employees of the department of agriculture employed under section 901.09 of the Revised Code;

(28) For cities, counties, civil service townships, city health districts, general health districts, and city school districts, the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals.

(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service. Upon the creation by the board of trustees of a civil service township civil service commission, the classified service shall also

comprise, except as otherwise provided in division (A)(17) or (C) of this section, all persons in the employ of civil service township police or fire departments having ten or more full-time paid employees. The classified service consists of two classes, which shall be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts thereof, and upon the creation by the board of trustees of a civil service township of a township civil service commission all positions in civil service township police or fire departments having ten or more full-time paid employees, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer, or reduction, as provided in this chapter, and the rules of the director of administrative services, by appointment from those certified to the appointing officer in accordance with this chapter.

(2) The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the director. The director or the commission ~~shall~~, by rule, shall require an applicant for registration in the labor class to furnish such evidence or take such tests as the director considers proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which application is made. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the director shall certify from the highest on the list double the number to be employed; from this number the appointing officer shall appoint the number actually needed for the particular work. If more than one applicant receives the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

(C) A municipal or civil service township civil service commission may place volunteer ~~fire fighters~~ firefighters who are paid on a fee-for-service basis in either the classified or the unclassified civil service.

Sec. 124.29. Any person who, at the time of holding an office or position in the public service, enters the uniformed services, as defined in

section 5903.01 Of the Revised Code, is entitled to reinstatement in accordance with the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4301 to 4333.

The director of administrative services shall adopt rules in accordance with Chapter 119. Of the Revised Code for the implementation of this section.

Sec. 141.02. (A) The salaries of the adjutant general, the assistant adjutant general for army, the assistant adjutant general for air, and the assistant quartermaster general shall be paid according to divisions (B) and (H) of section 124.15 of the Revised Code.

(B) The adjutant general, the assistant adjutant general for army, the assistant adjutant general for air, and the assistant quartermaster general shall receive the pay and basic allowances for quarters and for subsistence of their rank according to the pay at the time prescribed for the armed forces of the United States, except that the assistant adjutant general for air shall not receive flying pay.

~~These salaries shall be paid according to the schedule established in division (B) of section 124.15 of the Revised Code.~~

Sec. 145.01. As used in this chapter:

(A) "Public employee" means:

(1) Any person holding an office, not elective, under the state or any county, township, municipal corporation, park district, conservancy district, sanitary district, health district, metropolitan housing authority, state retirement board, Ohio historical society, public library, county law library, union cemetery, joint hospital, institutional commissary, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division, or employed and paid in whole or in part by the state or any of the authorities named in this division in any capacity not covered by section 742.01, 3307.01, 3309.01, or 5505.01 of the Revised Code.

(2) A person who is a member of the public employees retirement system who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated function. The governmental unit with which the contract has been made shall be deemed the employer for the purposes of administering this chapter.

(3) Any person who is an employee of a public employer, notwithstanding that the person's compensation for that employment is

derived from funds of a person or entity other than the employer. Credit for such service shall be included as total service credit, provided that the employee makes the payments required by this chapter, and the employer makes the payments required by sections 145.48 and 145.51 of the Revised Code.

~~(4) Any civilian employees of the national guard and the air national guard employed in or with a unit of the Ohio national guard or the Ohio air national guard, except those employed by the national guard bureau, shall be considered employees of the adjutant general of the state for the purpose of this chapter, although the employees may be paid by federal funds.~~

In all cases of doubt, the public employees retirement board shall determine whether any person is a public employee, and its decision is final.

(B) "Member" means any public employee, other than a public employee excluded or exempted from membership in the retirement system by section 145.03, 145.031, 145.032, 145.033, 145.034, 145.035, or 145.38 of the Revised Code. "Member" includes a PERS retirant who becomes a member under division (C)(2) of section 145.38 of the Revised Code. "Member" also includes a disability benefit recipient.

(C) "Head of the department" means the elective or appointive head of the several executive, judicial, and administrative departments, institutions, boards, and commissions of the state and local government as the same are created and defined by the laws of this state or, in case of a charter government, by that charter.

(D) "Employer" or "public employer" means the state or any county, township, municipal corporation, park district, conservancy district, sanitary district, health district, metropolitan housing authority, state retirement board, Ohio historical society, public library, county law library, union cemetery, joint hospital, institutional commissary, state medical college, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division not covered by section 3307.01 or 3309.01 of the Revised Code. In addition, "employer" means the employer of any public employee.

(E) "Prior service" means all service as a public employee rendered before January 1, 1935, and all service as an employee of any employer who comes within the state teachers retirement system or of the school employees retirement system or of any other retirement system established under the laws of this state rendered prior to January 1, 1935, provided that if the employee claiming the service was employed in any capacity covered

by that other system after that other system was established, credit for the service may be allowed by the public employees retirement system only when the employee has made payment, to be computed on the salary earned from the date of appointment to the date membership was established in the public employees retirement system, at the rate in effect at the time of payment, and the employer has made payment of the corresponding full liability as provided by section 145.44 of the Revised Code. "Prior service" also means all service credited for active duty with the armed forces of the United States as provided in section 145.30 of the Revised Code.

If an employee who has been granted prior service credit by the public employees retirement system for service rendered prior to January 1, 1935, as an employee of a board of education establishes, before retirement, one year or more of contributing service in the state teachers retirement system or school employees retirement system, then the prior service ceases to be the liability of this system.

If the board determines that a position of any member in any calendar year prior to January 1, 1935, was a part-time position, the board shall determine what fractional part of a year's credit shall be allowed by the following formula:

(1) When the member has been either elected or appointed to an office the term of which was two or more years and for which an annual salary is established, the fractional part of the year's credit shall be computed as follows:

First, when the member's annual salary is one thousand dollars or less, the service credit for each such calendar year shall be forty per cent of a year.

Second, for each full one hundred dollars of annual salary above one thousand dollars, the member's service credit for each such calendar year shall be increased by two and one-half per cent.

(2) When the member is paid on a per diem basis, the service credit for any single year of the service shall be determined by using the number of days of service for which the compensation was received in any such year as a numerator and using two hundred fifty days as a denominator.

(3) When the member is paid on an hourly basis, the service credit for any single year of the service shall be determined by using the number of hours of service for which the compensation was received in any such year as a numerator and using two thousand hours as a denominator.

(F) "Contributor" means any person who has an account in the employees' savings fund created by section 145.23 of the Revised Code.

(G) "Beneficiary" or "beneficiaries" means the estate or a person or

persons who, as the result of the death of a member, contributor, or retirant, qualify for or are receiving some right or benefit under this chapter.

(H)(1) "Total service credit," except as provided in section 145.37 of the Revised Code, means all service credited to a member of the retirement system since last becoming a member, including restored service credit as provided by section 145.31 of the Revised Code; credit purchased under sections 145.293 and 145.299 of the Revised Code; all the member's prior service credit; all the member's military service credit computed as provided in this chapter; all service credit established pursuant to section 145.297 of the Revised Code; and any other service credited under this chapter. In addition, "total service credit" includes any period, not in excess of three years, during which a member was out of service and receiving benefits under Chapters 4121. and 4123. of the Revised Code. For the exclusive purpose of satisfying the service credit requirement and of determining eligibility for benefits under sections 145.32, 145.33, 145.331, 145.35, 145.36, and 145.361 of the Revised Code, "five or more years of total service credit" means sixty or more calendar months of contributing service in this system.

(2) "One and one-half years of contributing service credit," as used in division (B) of section 145.45 of the Revised Code, also means eighteen or more calendar months of employment by a municipal corporation that formerly operated its own retirement plan for its employees or a part of its employees, provided that all employees of that municipal retirement plan who have eighteen or more months of such employment, upon establishing membership in the public employees retirement system, shall make a payment of the contributions they would have paid had they been members of this system for the eighteen months of employment preceding the date membership was established. When that payment has been made by all such employee-members, a corresponding payment shall be paid into the employers' accumulation fund by that municipal corporation as the employer of the employees.

(3) Where a member also is a member of the state teachers retirement system or the school employees retirement system, or both, except in cases of retirement on a combined basis pursuant to section 145.37 of the Revised Code, service credit for any period shall be credited on the basis of the ratio that contributions to the public employees retirement system bears to total contributions in all state retirement systems.

(4) Not more than one year of credit may be given for any period of twelve months.

(5) "Ohio service credit" means credit for service that was rendered to

the state or any of its political subdivisions or any employer as defined in division (D) of this section.

(I) "Regular or current interest" means interest at any rates for the respective funds and accounts as the public employees retirement board may determine from time to time, except as follows:

(1) Subsequent to December 31, 1958, the retirement board shall discontinue the annual crediting of current interest to the individual accounts of contributors. The noncrediting of current interest shall not affect the rate of interest at retirement guaranteed under this division.

(2) The rate of interest credited on a contributor's contributions at retirement shall be four per cent per annum, compounded annually, to and including December 31, 1955; three per cent per annum, compounded annually, from January 1, 1956, to and including December 31, 1963; three and one-quarter per cent per annum, compounded annually, from January 1, 1964, to and including December 31, 1969; and thereafter four per cent per annum, compounded annually.

In determining the reserve value for the purpose of computing the amount of the contributor's annuity, the rate of interest used in the annuity values shall be four per cent per annum, compounded annually, for contributors retiring before October 1, 1956, and after December 31, 1969; three per cent per annum, compounded annually, for contributors retiring between October 1, 1956, and December 31, 1963; and three and one-quarter per cent per annum, compounded annually, for contributors retiring from January 1, 1964, to December 31, 1969. Interest on contributions from contributors within any one calendar year shall begin on the first day of the calendar year next following and shall be computed at the end of each calendar year, except in the case of a contributor who retires before the end of the year.

(J) "Accumulated contributions" means the sum of all amounts credited to a contributor's individual account in the employees' savings fund together with any current interest thereon, but does not include the interest adjustment at retirement.

(K)(1) "Final average salary" means the quotient obtained by dividing by three the sum of the three full calendar years of contributing service in which the member's earnable salary was highest, except that if the member has a partial year of contributing service in the year the member's employment terminates and the member's earnable salary for the partial year is higher than for any comparable period in the three years, the member's earnable salary for the partial year shall be substituted for the member's earnable salary for the comparable period during the three years in which

the member's earnable salary was lowest.

(2) If a member has less than three years of contributing service, the member's final average salary shall be the member's total earnable salary divided by the total number of years, including any fraction of a year, of the member's contributing service.

(3) For the purpose of calculating benefits payable to a member qualifying for service credit under division (Z) of this section, "final average salary" means the total earnable salary on which contributions were made divided by the total number of years during which contributions were made, including any fraction of a year. If contributions were made for less than twelve months, "final average salary" means the member's total earnable salary.

(L) "Annuity" means payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund as provided in this chapter. All annuities shall be paid in twelve equal monthly installments.

(M) "Annuity reserve" means the present value, computed upon the basis of the mortality and other tables adopted by the board, of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted to a retirant as provided in this chapter.

(N)(1) "Disability retirement" means retirement as provided in section 145.36 of the Revised Code.

(2) "Disability allowance" means an allowance paid on account of disability under section 145.361 of the Revised Code.

(3) "Disability benefit" means a benefit paid as disability retirement under section 145.36 of the Revised Code, as a disability allowance under section 145.361 of the Revised Code, or as a disability benefit under section 145.37 of the Revised Code.

(4) "Disability benefit recipient" means a member who is receiving a disability benefit.

(O) "Age and service retirement" means retirement as provided in sections 145.32, 145.33, 145.331, 145.34, 145.37, and 145.46 of the Revised Code.

(P) "Pensions" means annual payments for life derived from contributions made by the employer that at the time of retirement are credited into the annuity and pension reserve fund from the employers' accumulation fund and paid from the annuity and pension reserve fund as provided in this chapter. All pensions shall be paid in twelve equal monthly installments.

(Q) "Retirement allowance" means the pension plus that portion of the

benefit derived from contributions made by the member.

(R)(1) Except as otherwise provided in this division, "earnable salary" means all salary, wages, and other earnings paid to a contributor by reason of employment in a position covered by the retirement system. The salary, wages, and other earnings shall be determined prior to determination of the amount required to be contributed to the employees' savings fund under section 145.47 of the Revised Code and without regard to whether any of the salary, wages, or other earnings are treated as deferred income for federal income tax purposes. "Earnable salary" includes the following:

(a) Payments made by the employer in lieu of salary, wages, or other earnings for sick leave, personal leave, or vacation used by the contributor;

(b) Payments made by the employer for the conversion of sick leave, personal leave, and vacation leave accrued but not used if the payment is made during the year in which the leave is accrued, except that payments made pursuant to section 124.383 or 124.386 of the Revised Code are not earnable salary;

(c) Allowances paid by the employer for full maintenance, consisting of housing, laundry, and meals, as certified to the retirement board by the employer or the head of the department that employs the contributor;

(d) Fees and commissions paid under section 507.09 of the Revised Code;

(e) Payments that are made under a disability leave program sponsored by the employer and for which the employer is required by section 145.296 of the Revised Code to make periodic employer and employee contributions;

(f) Amounts included pursuant to divisions (K)(3) and (Y) of this section.

(2) "Earnable salary" does not include any of the following:

(a) Fees and commissions, other than those paid under section 507.09 of the Revised Code, paid as sole compensation for personal services and fees and commissions for special services over and above services for which the contributor receives a salary;

(b) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the contributor or the contributor's family, or amounts paid by the employer to the contributor in lieu of providing the insurance;

(c) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, or use of the employer's property or equipment, or amounts paid by the employer to the contributor in lieu of providing the incidental benefits;

(d) Reimbursement for job-related expenses authorized by the employer, including moving and travel expenses and expenses related to professional development;

(e) Payments for accrued but unused sick leave, personal leave, or vacation that are made at any time other than in the year in which the sick leave, personal leave, or vacation was accrued;

(f) Payments made to or on behalf of a contributor that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended;

(g) Payments made under division (B) or (D) of section 5923.05 of the Revised Code or Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly;

(h) Anything of value received by the contributor that is based on or attributable to retirement or an agreement to retire, except that payments made on or before January 1, 1989, that are based on or attributable to an agreement to retire shall be included in earnable salary if both of the following apply:

(i) The payments are made in accordance with contract provisions that were in effect prior to January 1, 1986;

(ii) The employer pays the retirement system an amount specified by the retirement board equal to the additional liability resulting from the payments.

(3) The retirement board shall determine by rule whether any compensation not enumerated in this division is earnable salary, and its decision shall be final.

(S) "Pension reserve" means the present value, computed upon the basis of the mortality and other tables adopted by the board, of all payments to be made on account of any retirement allowance or benefit in lieu of any retirement allowance, granted to a member or beneficiary under this chapter.

(T)(1) "Contributing service" means all service credited to a member of the system since January 1, 1935, for which contributions are made as required by sections 145.47, 145.48, and 145.483 of the Revised Code. In any year subsequent to 1934, credit for any service shall be allowed by the following formula:

(a) For each month for which the member's earnable salary is two hundred fifty dollars or more, allow one month's credit.

(b) For each month for which the member's earnable salary is less than two hundred fifty dollars, allow a fraction of a month's credit. The numerator of this fraction shall be the earnable salary during the month, and

the denominator shall be two hundred fifty dollars, except that if the member's annual earnable salary is less than six hundred dollars, the member's credit shall not be reduced below twenty per cent of a year for a calendar year of employment during which the member worked each month. This division shall not reduce any credit earned before January 1, 1985.

(2) Notwithstanding division (T)(1) of this section, an elected official who prior to January 1, 1980, was granted a full year of credit for each year of service as an elected official shall be considered to have earned a full year of credit for each year of service regardless of whether the service was full-time or part-time. The public employees retirement board has no authority to reduce the credit.

(U) "State retirement board" means the public employees retirement board, the school employees retirement board, or the state teachers retirement board.

(V) "Retirant" means any former member who retires and is receiving a monthly allowance as provided in sections 145.32, 145.33, 145.331, 145.34, and 145.46 of the Revised Code.

(W) "Employer contribution" means the amount paid by an employer as determined by the employer rate including the normal and deficiency contribution rates.

(X) "Public service terminates" means the last day for which a public employee is compensated for services performed for an employer or the date of the employee's death, whichever occurs first.

(Y) When a member has been elected or appointed to an office, the term of which is two or more years, for which an annual salary is established, and in the event that the salary of the office is increased and the member is denied the additional salary by reason of any constitutional provision prohibiting an increase in salary during a term of office, the member may elect to have the amount of the member's contributions calculated upon the basis of the increased salary for the office. At the member's request, the board shall compute the total additional amount the member would have contributed, or the amount by which each of the member's contributions would have increased, had the member received the increased salary for the office the member holds. If the member elects to have the amount by which the member's contribution would have increased withheld from the member's salary, the member shall notify the employer, and the employer shall make the withholding and transmit it to the retirement system. A member who has not elected to have that amount withheld may elect at any time to make a payment to the retirement system equal to the additional amount the member's contribution would have increased, plus interest on

that contribution, compounded annually at a rate established by the board and computed from the date on which the last contribution would have been withheld from the member's salary to the date of payment. A member may make a payment for part of the period for which the increased contribution was not withheld, in which case the interest shall be computed from the date the last contribution would have been withheld for the period for which the payment is made. Upon the payment of the increased contributions as provided in this division, the increased annual salary as provided by law for the office for the period for which the member paid increased contributions thereon shall be used in determining the member's earnable salary for the purpose of computing the member's "final average salary."

(Z) "Five years of service credit," for the exclusive purpose of satisfying the service credit requirements and of determining eligibility for benefits under section 145.33 of the Revised Code, means employment covered under this chapter or under a former retirement plan operated, recognized, or endorsed by the employer prior to coverage under this chapter, or under a combination of the coverage.

(AA) "Deputy sheriff" means any person who is commissioned and employed as a full-time peace officer by the sheriff of any county, and has been so employed since on or before December 31, 1965, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state; any person who is or has been commissioned and employed as a peace officer by the sheriff of any county since January 1, 1966, and who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state; or any person deputized by the sheriff of any county and employed pursuant to section 2301.12 of the Revised Code as a criminal bailiff or court constable who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state.

(BB) "Township constable or police officer in a township police department or district" means any person who is commissioned and employed as a full-time peace officer pursuant to Chapter 505. or 509. of the Revised Code, who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code, and whose primary duties are to

e the peace, protect life and property, and enforce the laws of this state.

(CC) "Drug agent" means any person who is either of the following:

(1) Employed full-time as a narcotics agent by a county narcotics agency created pursuant to section 307.15 of the Revised Code and has received a certificate attesting to the satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code;

(2) Employed full-time as an undercover drug agent as defined in section 109.79 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(DD) "Liquor control investigator" means a full-time employee of the department of public safety who is engaged in the enforcement of Chapters 4301. and 4303. of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(EE) "Park officer" means a full-time employee of the department of natural resources who is designated a park officer under section 1541.10 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(FF) "Forest officer" means a full-time employee of the department of natural resources who is designated a forest officer under section 1503.29 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(GG) "Wildlife officer" means a full-time employee of the department of natural resources who is designated a wildlife officer under section 1531.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(HH) "State watercraft officer" means a full-time employee of the department of natural resources who is designated a state watercraft officer under section 1547.521 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(II) "Park district police officer" means a full-time employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(JJ) "Conservancy district officer" means a full-time employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(KK) "Municipal police officer" means a member of the organized police department of a municipal corporation who is employed full-time, is in compliance with section 109.77 of the Revised Code, and is not a member

of the police and firemen's disability and pension fund.

(LL) "Ohio veterans' home police officer" means any person who is employed at the Ohio veterans' home as a police officer pursuant to section 5907.02 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(MM) "Special police officer for a mental health institution" means any person who is designated as such pursuant to section 5119.14 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(NN) "Special police officer for an institution for the mentally retarded and developmentally disabled" means any person who is designated as such pursuant to section 5123.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(OO) "State university law enforcement officer" means any person who is employed full-time as a state university law enforcement officer pursuant to section 3345.04 of the Revised Code and who is in compliance with section 109.77 of the Revised Code.

(PP) "Hamilton county municipal court bailiff" means a person appointed by the clerk of courts of the Hamilton county municipal court under division (A)(3) of section 1901.32 of the Revised Code who is employed full-time as a bailiff or deputy bailiff, who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by division (C) of section 109.77 of the Revised Code, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state.

(QQ) Notwithstanding section 2901.01 of the Revised Code, "law enforcement officer" means a sheriff, deputy sheriff, township constable or police officer in a township police department or district, drug agent, liquor control investigator, park officer, forest officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, Ohio veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for the mentally retarded and developmentally disabled, state university law enforcement officer, Hamilton county municipal court bailiff, or municipal police officer.

(RR) "Fiduciary" means a person who does any of the following:

(1) Exercises any discretionary authority or control with respect to the management of the system or with respect to the management or disposition of its assets;

(2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the

administration of the system.

(SS) "Actuary" means an individual who satisfies all of the following requirements:

- (1) Is a member of the American academy of actuaries;
- (2) Is an associate or fellow of the society of actuaries;
- (3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

Sec. 145.30. (A) As used in this section and section 145.301 of the Revised Code:

(1) "Armed forces" of the United States includes the following:

(a) Army, navy, air force, marine corps, coast guard, auxiliary corps as established by congress, red cross nurse serving with the army, navy, air force, or hospital service of the United States, army nurse corps, navy nurse corps, full-time service with the American red cross in a combat zone, and such other service as may be designated by congress as included therein;

(b) Personnel of the Ohio national guard, ~~the Ohio military reserve, the Ohio naval militia,~~ and the reserve components of any of the armed forces enumerated in division (A)(1) of this section who are called to active duty pursuant to an executive order issued by the president of the United States or an act of congress;

(c) Persons on whom United States merchant marine veteran status has been conferred for service aboard oceangoing merchant ships in service to the United States during World War II.

(2) "State retirement system" means any of the following: the police and firemen's disability and pension fund, public employees retirement system, school employees retirement system, state highway patrol retirement system, or the state teachers retirement system.

(B) Upon ~~re-employment~~ reemployment in the public service and completion of one year of service credit as covered by a state retirement system or the Cincinnati retirement system, within two years after ~~an honorable discharge~~ service in the uniformed services that is terminated in a manner other than as described in section 4304 of Title 38 of the United States Code, "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4304, and presentation of ~~an honorable discharge or certificate of documentation of the~~ service and subject to rules adopted by the retirement board, any member of the public employees retirement system who was a member with not less than one year of payroll deductions before entering active duty with the armed forces and maintained membership in the public employees retirement system as provided by section 145.41 of the Revised Code, and who was or is out of

active service as a public employee by reason of having become a member of the armed forces of the United States on active duty or service shall have such military service, not in excess of ten years, considered as the equivalent of prior service. ~~Military Uniformed~~ service as established by ~~an honorable discharge or certificate~~ documentation of the service, not in excess of ten years, shall also be considered prior service for a person who was a public employee and who has acquired service credit for five years prior to, and within the one year preceding, the date of entering on active duty in the armed forces of the United States if such person was ~~re-employed~~ reemployed in the public service within one year after ~~an honorable discharge from the armed forces and established a total service credit, as defined in division (H) of section 145.01 of the Revised Code~~ service in the uniformed services that is terminated in a manner other than as described in section 4304 of Title 38 of the United States Code, "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4304, of twenty years exclusive of credit for ~~military~~ military uniformed service. This division shall not serve to cancel any military service credit earned or granted prior to November 1, 1965.

(C) A member of the public employees retirement system is ineligible to receive service credit under this section for any year of military service credit used in the calculation of any retirement benefit currently being paid to the member or payable in the future under any other retirement program, except social security, or used to obtain service credit pursuant to section 145.301 or 145.302 of the Revised Code. At the time such credit is requested, the member shall certify on a form supplied by the retirement board that the member does and will conform to this requirement. This division does not cancel any military service credit earned prior to March 15, 1979.

Sec. 718.01. (A) As used in this chapter:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(2) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(3) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(4) "Intangible income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code.

(B) No municipal corporation with respect to that income which it may tax shall tax such income at other than a uniform rate.

(C) No municipal corporation shall levy a tax on income at a rate in excess of one per cent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election. The legislative authority of the municipal corporation shall file with the board of elections at least seventy-five days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and directing the board of elections to conduct the election. The ballot shall be in the following form: "Shall the Ordinance providing for a ... per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?"

FOR THE INCOME TAX
AGAINST THE INCOME TAX"

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(D) (1) Except as otherwise provided in division (D)(2) of this section, no municipal corporation shall exempt from a tax on income, compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession.

(2) The legislative authority of a municipal corporation may, by ordinance or resolution, exempt from a tax on income any compensation arising from the grant, sale, exchange, or other disposition of a stock option; the exercise of a stock option; or the sale, exchange, or other disposition of stock purchased under a stock option.

(E) Nothing in this section shall prevent a municipal corporation from permitting lawful deductions as prescribed by ordinance. If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation. In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, a greater amount than the net profit reported by the taxpayer on schedule C filed in reference to the year in

question as taxable income from such sole proprietorship, except as otherwise specifically provided by ordinance or regulation.

(F) No municipal corporation shall tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard;

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(3) Except as otherwise provided in division (G) of this section, intangible income;

(4) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.

(G) Any municipal corporation that taxes any type of intangible income on March 29, 1988, pursuant to Section 3 of Amended Substitute Senate Bill No. 238 of the 116th ~~General Assembly~~ general assembly, may continue to tax that type of income after 1988 if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 vote in favor thereof at an election held on November 8, 1988.

(H) Nothing in this section or section 718.02 of the Revised Code, shall authorize the levy of any tax on income which a municipal corporation is not authorized to levy under existing laws or shall require a municipal corporation to allow a deduction from taxable income for losses incurred from a sole proprietorship or partnership.

Sec. 1751.54. (A) As used in this section:

(1) "Eligible person" means any person who, at the time a reservist is

called or ordered to active duty, is covered under a group contract and is either of the following:

(a) An employee who is a reservist called or ordered to active duty;

(b) The spouse or a dependent child of an employee described in division (A)(1)(a) of this section.

(2) "Group contract" includes any group health insuring corporation contract that satisfies all of the following:

(a) The contract is delivered, issued for delivery, or renewed in this state on or after the effective date of this section.

(b) The contract covers employees for health care services, including basic health care services.

(c) The contract is in effect and covers an eligible person at the time a reservist is called or ordered to active duty.

(3) "Reservist" means a member of a reserve component of the armed forces of the United States. "Reservist" includes a member of the Ohio national guard ~~and the Ohio air national guard.~~

(B) Every group contract shall provide that any eligible person may continue the coverage under the contract for a period of eighteen months after the date on which the coverage would otherwise terminate because the reservist is called or ordered to active duty.

(C)(1) An eligible person may extend the eighteen-month period of continuation of coverage to a thirty-six-month period of continuation of coverage, if any of the following occurs during the eighteen-month period:

(a) The death of the reservist;

(b) The divorce or separation of a reservist from the reservist's spouse;

(c) The cessation of dependency of a child pursuant to the terms of the contract.

(2) The thirty-six-month period of continuation of coverage is deemed to begin on the date on which the coverage would otherwise terminate because the reservist is called or ordered to active duty.

(3) The employer may begin the thirty-six-month period on the date of any occurrence described in division (C)(1) of this section.

(D) All of the following apply to any continuation of coverage, or the extension of any continuation of coverage, provided under division (B) or (C) of this section:

(1) The continuation of coverage shall provide the same benefits as those provided to any similarly situated eligible person who is covered under the same group contract and an employee who has not been called or ordered to active duty.

(2) An employer shall notify each employee of the right of continuation

of coverage at the time of employment. At the time the reservist is called or ordered to active duty, the employer shall notify each eligible person of the requirements for the continuation of coverage.

(3) Each certificate of coverage issued by a health insuring corporation to an employee under the group contract shall include a notice of the eligible person's right of continuation of coverage.

(4) An eligible person shall file a written election of continuation of coverage with the employer and pay the employer the first contribution required under division (D)(5) of this section. The written election and payment must be received by the employer no later than thirty-one days after the date on which the eligible person's coverage would otherwise terminate. If the employer notifies the eligible person of the right of continuation of coverage after the date on which the eligible person's coverage would otherwise terminate, the written election and payment must be received by the employer no later than thirty-one days after the date of the notification.

(5)(a) Except as provided in division (D)(5)(b) or (c) of this section, the eligible person shall pay to the employer, on a monthly basis and in advance, the amount of contribution required by the employer. The amount shall not exceed one hundred two per cent of the group rate for the coverage being continued under the group contract on the due date of each payment.

(b) The employer may pay a portion or all of the eligible person's contribution.

(c) A reservist called or ordered to active duty for less than thirty-one days shall not be required to pay more than the eligible person's contribution, if any, for the coverage.

(E) The eligible person's right to any continuation of coverage, or the extension of any continuation of coverage, provided under division (B) or (C) of this section ceases on the date on which any of the following occurs:

(1) The eligible person, whether as an employee or otherwise, becomes covered by another group contract or other group health plan or arrangement that does not contain any exclusion or limitation with respect to any preexisting condition of that eligible person. For purposes of division (E)(1) of this section, a group contract or other group health plan or arrangement does not include the civilian health and medical program of the uniformed services as defined in Public Law 99-661, 100 Stat. 3898 (1986), 10 U.S.C.A. 1072.

(2) The period of either eighteen months provided under division (B) of this section or thirty-six months provided under division (C) of this section expires.

(3) The eligible person fails to make a timely payment of a required contribution, in which case the coverage ceases at the end of the period of coverage for which contributions were made.

(4) The group contract, or participation under the group contract, is terminated, unless the employer, in accordance with division (F) of this section, replaces the coverage with similar coverage under another group contract or other group health plan or arrangement.

(F) If the employer replaces the group contract with similar coverage as described in division (E)(4) of this section, both of the following apply:

(1) The eligible person is covered under the replacement coverage for the balance of the period that the person would have remained covered under the terminated coverage if it had not been terminated.

(2) The level of benefits under the replacement coverage is the same as the level of benefits provided to any similarly situated eligible person who is covered under the group contract and an employee who has not been called or ordered to active duty.

(G) Upon the reservist's release from active duty and the reservist's return to employment for the employer by whom the reservist was employed at the time the reservist was called or ordered to active duty, both of the following apply:

(1) Every eligible person is entitled, without any waiting period, to coverage under the employer's group contract that is in effect at the time of the reservist's return to employment.

(2) Every eligible person is entitled to all benefits under the group contract described in division (G)(1) of this section from the date of the original coverage under the contract.

(H)(1) No health insuring corporation shall fail to provide for a continuation of coverage, or an extension of a continuation of coverage, in a group contract as required by and in accordance with the terms and conditions set forth under this section.

(2) No health insuring corporation shall fail to issue a certificate of coverage in compliance with division (D)(3) of this section.

(3) No employer shall fail to provide an employee or eligible person with notice of the right to a continuation of coverage under a group contract in accordance with division (D)(2) of this section.

(I) Whoever violates division (H)(1), (2), or (3) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

(J) This section does not apply to any group contract that is subject to

section 5923.051 of the Revised Code.

(K) This section does not apply to any group contract offering only supplemental health care services or specialty health care services.

Sec. 3319.13. Upon the written request of a teacher; or a regular nonteaching school employee, a board of education may grant a leave of absence for a period of not more than two consecutive school years for educational ~~or~~ professional, or other purposes, and shall grant such leave where illness or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. Without request, a board may grant similar leave of absence and renewals thereof to any teacher or regular nonteaching school employee because of physical or mental disability, but such teacher may have a hearing on such unrequested leave of absence or its renewals in accordance with section 3319.16 of the Revised Code, and such nonteaching school employee may have a hearing on such unrequested leave of absence or its renewals in accordance with division (C) of section 3319.081 of the Revised Code. Upon the return to service of a teacher or a nonteaching school employee at the expiration of a leave of absence, ~~he~~ the teacher or nonteaching school employee shall resume the contract status ~~which he~~ that the teacher or nonteaching school employee held prior to ~~such~~ the leave of absence. Any teacher who leaves a teaching position ~~to serve~~ for service in the ~~armed~~ uniformed services ~~or the auxiliaries thereof organized to prosecute World War II, upon returning honorably discharged and who returns from such service in the uniformed services that is terminated in a manner other than as described in section 4304 of Title 38 of the United States Code, "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4304, shall resume the contract status held prior to entering military service~~ the uniformed services, subject to passing a physical examination. Such contract status shall be resumed at the first of the school semester or the beginning of the school year following return from the ~~armed~~ uniformed services. For purposes of this section and section 3319.14 Of the Revised Code, "Armed uniformed services" has and "service in the uniformed services" have the same meaning meanings as defined in section ~~124.29~~ 5903.01 of the Revised Code.

Upon the return of a nonteaching school employee from a leave of absence, the board may terminate the employment of a person hired exclusively for the purpose of replacing the returning employee while ~~he~~ the returning employee was on leave. If, after the return of a nonteaching employee from leave, the person employed exclusively for the purpose of replacing an employee while ~~he~~ the employee was on leave is continued in

employment as a regular nonteaching school employee or if ~~he~~ the person is hired by the board as a regular nonteaching school employee within a year after ~~his~~ employment as a replacement is terminated, ~~he~~ the person shall, for purposes of section 3319.081 of the Revised Code, receive credit for ~~his~~ the person's length of service with the school district during such replacement period in the following manner:

(A) If employed as a replacement for less than twelve months, ~~he~~ the person shall be employed under a contract valid for a period equal to twelve months less the number of months employed as a replacement. At the end of such contract period, if the person is reemployed it shall be under a two-year contract. Subsequent reemployment shall be pursuant to division (B) of section 3319.081 of the Revised Code.

(B) If employed as a replacement for twelve months or more but less than twenty-four months, ~~he~~ the person shall be employed under a contract valid for a period equal to twenty-four months less the number of months employed as a replacement. Subsequent reemployment shall be pursuant to division (B) of section 3319.081 of the Revised Code.

(C) If employed as a replacement for more than twenty-four months, ~~he~~ the person shall be employed pursuant to division (B) of section 3319.081 of the Revised Code.

For purposes of this section, employment during any part of a month shall count as employment during the entire month.

Sec. 3319.14. Any teacher who has left, or leaves, a teaching position, by resignation or otherwise, and within forty school days thereafter entered, or enters, the ~~armed~~ uniformed services ~~of the United States or the auxiliaries thereof, or such other services as are specified in section 124.29 of the Revised Code,~~ and ~~who has returned, or returns, from such whose service with a discharge is terminated in a manner other than dishonorable as described in section 4304 of Title 38 of the United States Code, "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4304,~~ shall be reemployed by the board of education of the district in which ~~he~~ the teacher held such teaching position, under the same type of contract as that which ~~he~~ the teacher last held in such district, if the teacher, ~~within ninety days after such discharge,~~ applies to the board of education for reemployment in accordance with the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4312. Upon such application, the teacher shall be ~~re-employed~~ reemployed at the first of the next school semester, if the application is made not less than thirty days prior to the first of the next school semester, in which case the teacher shall be ~~re-employed~~ reemployed

the first of the following school semester, unless the board of education waives the requirement for the thirty-day period.

For the purposes of seniority and placement on the salary schedule, years of absence ~~in the performing service of~~ in the armed uniformed services of the United States or the auxiliaries thereof, shall be counted as though teaching service had been performed during such time.

The board of education of the district in which such teacher was employed and is ~~re-employed~~ reemployed under this section may suspend the contract of the teacher whose services become unnecessary by reason of the return of a teacher from service in the armed uniformed services or auxiliaries thereof, in accordance with section 3319.17 of the Revised Code.

Sec. 3923.381. (A) As used in this section:

(1) "Eligible person" means any person who, at the time a reservist is called or ordered to active duty, is covered under a group policy and is either of the following:

(a) An employee who is a reservist called or ordered to active duty;

(b) The spouse or a dependent child of an employee described in division (A)(1)(a) of this section.

(2) "Group policy" includes any group sickness and accident insurance policy that satisfies all of the following:

(a) The policy is delivered, issued for delivery, or renewed in this state on or after ~~the effective date of this section~~ APRIL 17, 1991.

(b) The policy covers employees for hospital, surgical, or major medical insurance on an expense incurred or service basis, other than for specified diseases or accidental injuries only.

(c) The policy is in effect and covers an eligible person at the time a reservist is called or ordered to active duty.

(3) "Reservist" means a member of a reserve component of the armed forces of the United States. "Reservist" includes a member of the Ohio national guard ~~and the Ohio air national guard~~.

(B) Every group policy shall provide that any eligible person may continue the coverage under the policy for a period of eighteen months after the date on which the coverage would otherwise terminate because the reservist is called or ordered to active duty.

(C)(1) An eligible person may extend the eighteen-month period of continuation of coverage to a thirty-six-month period of continuation of coverage, if any of the following occurs during the eighteen-month period:

(a) The death of the reservist;

(b) The divorce or separation of a reservist from the reservist's spouse;

(c) The cessation of dependency of a child pursuant to the terms of the

olicy.

(2) The thirty-six-month period of continuation of coverage is deemed to begin on the date on which the coverage would otherwise terminate because the reservist is called or ordered to active duty.

(3) The employer may begin the thirty-six-month period on the date of any occurrence described in division (C)(1) of this section.

(D) All of the following apply to any continuation of coverage, or the extension of any continuation of coverage, provided under division (B) or (C) of this section:

(1) The continuation of coverage shall provide the same benefits as those provided to any similarly situated eligible person who is covered under the same group policy and an employee who has not been called or ordered to active duty.

(2) An employer shall notify each employee of the right of continuation of coverage at the time of employment. At the time the reservist is called or ordered to active duty, the employer shall notify each eligible person of the requirements for the continuation of coverage.

(3) Each certificate of coverage issued by an insurer to an employee under the group policy shall include a notice of the eligible person's right of continuation of coverage.

(4) An eligible person shall file a written election of continuation of coverage with the employer and pay the employer the first contribution required under division (D)(5) of this section. The written election and payment must be received by the employer no later than thirty-one days after the date on which the eligible person's coverage would otherwise terminate. If the employer notifies the eligible person of the right of continuation of coverage after the date on which the eligible person's coverage would otherwise terminate, the written election and payment must be received by the employer no later than thirty-one days after the date of the notification.

(5)(a) Except as provided in division (D)(5)(b) or (c) of this section, the eligible person shall pay to the employer, on a monthly basis and in advance, the amount of contribution required by the employer. The amount shall not exceed one hundred two per cent of the group rate for the coverage being continued under the group policy on the due date of each payment.

(b) The employer may pay a portion or all of the eligible person's contribution.

(c) A reservist called or ordered to active duty for less than thirty-one days shall not be required to pay more than the eligible person's contribution, if any, for the coverage.

(E) The eligible person's right to any continuation of coverage, or the extension of any continuation of coverage, provided under division (B) or (C) of this section ceases on the date on which any of the following occurs:

(1) The eligible person, whether as an employee or otherwise, enrolls in another group policy or other group health plan or arrangement that does not contain any exclusion or limitation with respect to any preexisting condition of that eligible person. For purposes of division (E)(1) of this section, a group policy or other group health plan or arrangement does not include the civilian health and medical program of the uniformed services as defined in Public Law 99-661, 100 Stat. 3898 (1986), 10 U.S.C.A. 1072.

(2) The period of either eighteen months provided under division (B) of this section or thirty-six months provided under division (C) of this section expires.

(3) The eligible person fails to make a timely payment of a required contribution, in which case the coverage ceases at the end of the period of coverage for which contributions were made.

(4) The group policy, or participation under the group policy, is terminated, unless the employer, in accordance with division (F) of this section, replaces the coverage with similar coverage under another group policy or other group health plan or arrangement.

(F) If the employer replaces the group policy with similar coverage as described in division (E)(4) of this section, both of the following apply:

(1) The eligible person is covered under the replacement coverage for the balance of the period that ~~he~~ the eligible person would have remained covered under the terminated coverage if it had not been terminated.

(2) The level of benefits under the replacement coverage is the same as the level of benefits provided to any similarly situated eligible person who is covered under the group policy and an employee who has not been called or ordered to active duty.

(G) Upon the reservist's release from active duty and ~~his~~ return to employment for the employer by whom ~~he~~ the reservist was employed at the time ~~he was~~ of being called or ordered to active duty, both of the following apply:

(1) Every eligible person is entitled, without any waiting period, to coverage under the employer's group policy that is in effect at the time of the reservist's return to employment.

(2) Every eligible person is entitled to all benefits under the group policy described in division (G)(1) of this section from the date of the original coverage under the policy.

(H)(1) No insurer shall fail to provide for a continuation of coverage, or

an extension of a continuation of coverage, in a group policy as required by and in accordance with the terms and conditions set forth under this section.

(2) No insurer shall fail to issue a certificate of coverage in compliance with division (D)(3) of this section.

(3) No employer shall fail to provide an employee or eligible person with notice of the right to a continuation of coverage under a group policy in accordance with division (D)(2) of this section.

(I) Whoever violates division (H)(1), (2), or (3) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

~~(J) This section does not apply to any group policy that is subject to section 5923.051 of the Revised Code.~~

Sec. 3923.382. (A) As used in this section:

(1) "Eligible person" means any person who, at the time a reservist is called or ordered to active duty, is covered under a group plan and is either of the following:

(a) An employee who is a reservist called or ordered to active duty;

(b) The spouse or a dependent child of an employee described in division (A)(1)(a) of this section.

(2) "Group plan" includes any private or public employer self-insurance plan that satisfies all of the following:

(a) The plan is established or modified in this state on or after April 17, 1991.

(b) The plan provides, or provides payment for, health benefits for employees resident in this state other than through an insurer or health insuring corporation.

(c) The plan is in effect and covers an eligible person at the time a reservist is called or ordered to active duty.

(3) "Group rate" means the average monthly cost per employee, over a period of at least twelve months of the operation of a group plan, that would represent a group insurance rate if the same coverage had been provided under a group sickness and accident insurance policy.

(4) "Reservist" means a member of a reserve component of the armed forces of the United States. "Reservist" includes a member of the Ohio national guard ~~and the Ohio air national guard.~~

(B) Every group plan shall provide that any eligible person may continue the coverage under the plan for a period of eighteen months after the date on which the coverage would otherwise terminate because the reservist is called or ordered to active duty.

(C)(1) An eligible person may extend the eighteen-month period of continuation of coverage to a thirty-six-month period of continuation of coverage, if any of the following occurs during the eighteen-month period:

- (a) The death of the reservist;
- (b) The divorce or separation of a reservist from the reservist's spouse;
- (c) The cessation of dependency of a child pursuant to the terms of the plan.

(2) The thirty-six-month period of continuation of coverage is deemed to begin on the date on which the coverage would otherwise terminate because the reservist is called or ordered to active duty.

(3) The employer may begin the thirty-six-month period on the date of any occurrence described in division (C)(1) of this section.

(D) All of the following apply to any continuation of coverage, or the extension of any continuation of coverage, provided under division (B) or (C) of this section:

(1) The continuation of coverage shall provide the same benefits as those provided to any similarly situated eligible person who is covered under the same group plan and an employee who has not been called or ordered to active duty.

(2) An employer shall notify each employee of the right of continuation of coverage at the time of employment. At the time the reservist is called or ordered to active duty, the employer shall notify each eligible person of the requirements for the continuation of coverage.

(3) Each certificate or other evidence of coverage issued by an employer to an employee under the group plan shall include a notice of the eligible person's right of continuation of coverage.

(4) An eligible person shall file a written election of continuation of coverage with the employer and pay the employer the first contribution required under division (D)(5) of this section. The written election and payment must be received by the employer no later than thirty-one days after the date on which the eligible person's coverage would otherwise terminate. If the employer notifies the eligible person of the right of continuation of coverage after the date on which the eligible person's coverage would otherwise terminate, the written election and payment must be received by the employer no later than thirty-one days after the date of the notification.

(5)(a) Except as provided in division (D)(5)(b) or (c) of this section, the eligible person shall pay to the employer, on a monthly basis and in advance, the amount of contribution required by the employer. The amount shall not exceed one hundred two per cent of the group rate for the coverage

being continued under the group plan on the due date of each payment.

(b) The employer may pay a portion or all of the eligible person's contribution.

(c) A reservist called or ordered to active duty for less than thirty-one days shall not be required to pay more than the eligible person's contribution if any, for the coverage.

(E) The eligible person's right to any continuation of coverage, or the extension of any continuation of coverage, provided under division (B) or (C) of this section ceases on the date on which any of the following occurs:

(1) The eligible person, whether as an employee or otherwise, enrolls in another group plan or other group health plan or arrangement that does not contain any exclusion or limitation with respect to any preexisting condition of that eligible person. For purposes of division (E)(1) of this section, a group plan or other group health plan or arrangement does not include the civilian health and medical program of the uniformed services as defined in Public Law 99-661, 100 Stat. 3898 (1986), 10 U.S.C.A. 1072.

(2) The period of either eighteen months provided under division (B) of this section or thirty-six months provided under division (C) of this section expires.

(3) The eligible person fails to make a timely payment of a required contribution, in which case the coverage ceases at the end of the period of coverage for which contributions were made.

(4) The group plan, or participation under the group plan, is terminated, unless the employer, in accordance with division (F) of this section, replaces the coverage with similar coverage under another group plan or other group health plan or arrangement.

(F) If the employer replaces the group plan with similar coverage as described in division (E)(4) of this section, both of the following apply:

(1) The eligible person is covered under the replacement coverage for the balance of the period that the person would have remained covered under the terminated coverage if it had not been terminated.

(2) The level of benefits under the replacement coverage is the same as the level of benefits provided to any similarly situated eligible person who is covered under the group plan and an employee who has not been called or ordered to active duty.

(G) Upon the reservist's release from active duty and the reservist's return to employment for the employer by whom the reservist was employed at the time the reservist was called or ordered to active duty, both of the following apply:

(1) Every eligible person is entitled, without any waiting period, to

coverage under the employer's group plan that is in effect at the time of the reservist's return to employment.

(2) Every eligible person is entitled to all benefits under the group plan described in division (G)(1) of this section from the date of the original coverage under the plan.

(H)(1) No employer shall fail to provide for a continuation of coverage, or an extension of a continuation of coverage, in a group plan as required by and in accordance with the terms and conditions set forth under this section.

(2) No employer shall fail to issue a certificate or other evidence of coverage in compliance with division (D)(3) of this section.

(3) No employer shall fail to provide an employee or eligible person with notice of the right to a continuation of coverage under a group plan in accordance with division (D)(2) of this section.

(I) Whoever violates division (H)(1), (2), or (3) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

(J) This section does not apply to a group plan ~~under either of the following circumstances:~~

~~(1) The group plan is subject to section 5923.051 of the Revised Code.~~

~~(2) The application of this section that is superseded, preempted, prohibited, or otherwise precluded by federal law.~~

Sec. 4117.01. As used in this chapter:

(A) "Person," in addition to those included in division (C) of section 1.59 of the Revised Code, includes employee organizations, public employees, and public employers.

(B) "Public employer" means the state or any political subdivision of the state located entirely within the state, including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census; county; township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census; school district; governing authority of a community school established under Chapter 3314. of the Revised Code; state institution of higher learning; public or special district; state agency, authority, commission, or board; or other branch of public employment.

(C) "Public employee" means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has

declined jurisdiction on the basis that the involved employees are employees of a public employer, except:

- (1) Persons holding elective office;
- (2) Employees of the general assembly and employees of any other legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;
- (3) Employees on the staff of the governor or the chief executive of the public employer whose principal duties are directly related to the performance of the executive functions of the governor or the chief executive;
- (4) Persons who are members of the Ohio organized militia, while on active-duty training or performing duty under section 5919.29 or 5923.12 Of the Revised Code;
- (5) Employees of the state employment relations board;
- (6) Confidential employees;
- (7) Management level employees;
- (8) Employees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function;
- (9) Employees of a public official who act in a fiduciary capacity, appointed pursuant to section 124.11 of the Revised Code;
- (10) Supervisors;
- (11) Students whose primary purpose is educational training, including graduate assistants or associates, residents, interns, or other students working as part-time public employees less than fifty per cent of the normal year in the employee's bargaining unit;
- (12) Employees of county boards of election;
- (13) Seasonal and casual employees as determined by the state employment relations board;
- (14) Part-time faculty members of an institution of higher education;
- (15) Employees of the state personnel board of review;
- (16) Employees of the board of directors of the Ohio low-level radioactive waste facility development authority created in section 3747.05 of the Revised Code;
- (17) Participants in a work activity, developmental activity, or alternative work activity under sections 5107.40 to 5107.69 of the Revised Code who perform a service for a public employer that the public employer needs but is not performed by an employee of the public employer if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.

(D) "Employee organization" means any labor or bona fide organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.

(E) "Exclusive representative" means the employee organization certified or recognized as an exclusive representative under section 4117.05 of the Revised Code.

(F) "Supervisor" means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment, provided that:

(1) Employees of school districts who are department chairpersons or consulting teachers shall not be deemed supervisors;

(2) With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. Where prior to June 1, 1982, a public employer pursuant to a judicial decision, rendered in litigation to which the public employer was a party, has declined to engage in collective bargaining with members of a police or fire department on the basis that those members are supervisors, those members of a police or fire department do not have the rights specified in this chapter for the purposes of future collective bargaining. The state employment relations board shall decide all disputes concerning the application of division (F)(2) of this section.

(3) With respect to faculty members of a state institution of higher education, heads of departments or divisions are supervisors; however, no other faculty member or group of faculty members is a supervisor solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, or other matters of academic policy;

(4) No teacher as defined in section 3319.09 of the Revised Code shall be designated as a supervisor or a management level employee unless the teacher is employed under a contract governed by section 3319.01, 3319.011, or 3319.02 of the Revised Code and is assigned to a position for which a license deemed to be for administrators under state board rules is required pursuant to section 3319.22 of the Revised Code.

(G) "To bargain collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

(H) "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Strike" does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment.

(I) "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Unauthorized strike" includes any such action, absence, stoppage, slowdown, or abstinence when done partially or intermittently, whether during or after the expiration of the term or extended term of a collective bargaining agreement or during or after the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code.

(J) "Professional employee" means any employee engaged in work that is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship; or an employee who has completed the courses of specialized intellectual instruction and is performing related work under the supervision of a

professional person to become qualified as a professional employee.

(K) "Confidential employee" means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

(L) "Management level employee" means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. Assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code are management level employees. With respect to members of a faculty of a state institution of higher education, no person is a management level employee because of the person's involvement in the formulation or implementation of academic or institution policy.

(M) "Wages" means hourly rates of pay, salaries, or other forms of compensation for services rendered.

(N) "Member of a police department" means a person who is in the employ of a police department of a municipal corporation as a full-time regular police officer as the result of an appointment from a duly established civil service eligibility list or under section 737.15 or 737.16 of the Revised Code, a full-time deputy sheriff appointed under section 311.04 of the Revised Code, a township constable appointed under section 509.01 of the Revised Code, or a member of a township police district police department appointed under section 505.49 of the Revised Code.

(O) "Members of the state highway patrol" means highway patrol troopers and radio operators appointed under section 5503.01 of the Revised Code.

(P) "Member of a fire department" means a person who is in the employ of a fire department of a municipal corporation or a township as a fire cadet, full-time regular ~~fire-fighter~~ firefighter, or promoted rank as the result of an appointment from a duly established civil service eligibility list or under section 505.38, 709.012, or 737.22 of the Revised Code.

(Q) "Day" means calendar day.

Sec. 4141.01. As used in this chapter, unless the context otherwise requires:

(A)(1) "Employer" means the state, its instrumentalities, its political

subdivisions and their instrumentalities, and any individual or type of organization including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1971, or in the case of political subdivisions or their instrumentalities, subsequent to December 31, 1973:

(a) Had in employment at least one individual, or in the case of a nonprofit organization, subsequent to December 31, 1973, had not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day; or

(b) Except for a nonprofit organization, had paid for service in employment wages of fifteen hundred dollars or more in any calendar quarter in either the current or preceding calendar year; or

(c) Had paid, subsequent to December 31, 1977, for employment in domestic service in a local college club, or local chapter of a college fraternity or sorority, cash remuneration of one thousand dollars or more in any calendar quarter in the current calendar year or the preceding calendar year, or had paid subsequent to December 31, 1977, for employment in domestic service in a private home cash remuneration of one thousand dollars in any calendar quarter in the current calendar year or the preceding calendar year:

(i) For the purposes of divisions (A)(1)(a) and (b) of this section, there shall not be taken into account any wages paid to, or employment of, an individual performing domestic service as described in this division.

(ii) An employer under this division shall not be an employer with respect to wages paid for any services other than domestic service unless the employer is also found to be an employer under division (A)(1)(a), (b), or (d) of this section.

(d) As a farm operator or a crew leader subsequent to December 31, 1977, had in employment individuals in agricultural labor; and

(i) During any calendar quarter in the current calendar year or the preceding calendar year, paid cash remuneration of twenty thousand dollars or more for the agricultural labor; or

(ii) Had at least ten individuals in employment in agricultural labor, not including such labor when performed before January 1, 1980, by an alien, for some portion of a day in each of the twenty different calendar weeks, in either the current or preceding calendar year whether or not the same individual was in employment in each day; or

(e) Is not otherwise an employer as defined under division (A)(1)(a) or (b) of this section; and

(i) For which, within either the current or preceding calendar year, service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, is or was performed with respect to which such employer is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(ii) Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301, is required, pursuant to such act to be an employer under this chapter; or

(iii) Who became an employer by election under division (A)(4) or (5) of this section and for the duration of such election; or

(f) In the case of the state, its instrumentalities, its political subdivisions, and their instrumentalities, had in employment, as defined in division (B)(2)(a) of this section, at least one individual;

(g) For the purposes of division (A)(1)(a) of this section, if any week includes both the thirty-first day of December and the first day of January, the days of that week before the first day of January shall be considered one calendar week and the days beginning the first day of January another week.

(2) Each individual employed to perform or to assist in performing the work of any agent or employee of an employer is employed by such employer for all the purposes of this chapter, whether such individual was hired or paid directly by such employer or by such agent or employee, provided the employer had actual or constructive knowledge of the work. All individuals performing services for an employer of any person in this state who maintains two or more establishments within this state are employed by a single employer for the purposes of this chapter.

(3) An employer subject to this chapter within any calendar year is subject to this chapter during the whole of such year and during the next succeeding calendar year.

(4) An employer not otherwise subject to this chapter who files with the administrator of the bureau of employment services a written election to become an employer subject to this chapter for not less than two calendar years shall, with the written approval of such election by the administrator, become an employer subject to this chapter to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject to this chapter as of the first day of January of any calendar year subsequent to such two calendar years only if at least thirty days prior to such first day of January the employer has filed with the administrator a

written notice to that effect.

(5) Any employer for whom services that do not constitute employment are performed may file with the administrator a written election that all such services performed by individuals in the employer's employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter, for not less than two calendar years. Upon written approval of the election by the administrator, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be employment subject to this chapter as of the first day of January of any calendar year subsequent to such two calendar years only if at least thirty days prior to such first day of January such employer has filed with the administrator a written notice to that effect.

(B)(1) "Employment" means:

(a) Service performed for wages under any contract of hire, written or oral, express or implied, including service performed in interstate commerce and service performed by an officer of a corporation, without regard to whether such service is executive, managerial, or manual in nature, and without regard to whether such officer is a stockholder or a member of the board of directors of the corporation;

(b) Services performed by an individual for remuneration unless it is shown to the satisfaction of the administrator that such individual:

(i) Has been and will continue to be free from control or direction over the performance of such service, both under a contract of service and in fact;

(ii) That such service is outside the usual course of the business for which service is performed; and

(iii) That such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(2) "Employment" includes:

(a) Service performed after December 31, 1977, by an individual in the employ of the state or any of its instrumentalities, or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions and without regard to divisions (A)(1)(a) and (b) of this section, provided that such service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3306(c)(7) and is not excluded under division (B)(3) of this section; or the services of employees covered by voluntary election, as provided under divisions (A)(4) and (5) of this section;

(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301, solely by reason of section 26 U.S.C.A. 3306(c)(8) of that act and is not excluded under division (B)(3) of this section;

(c) Domestic service performed after December 31, 1977, for an employer, as provided in division (A)(1)(c) of this section;

(d) Agricultural labor performed after December 31, 1977, for a farm operator or a crew leader, as provided in division (A)(1)(d) of this section;

(e) Service not covered under division (B)(1)(b) of this section which is performed after December 31, 1971:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, laundry, or dry-cleaning services, for the individual's employer or principal;

(ii) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and in the transmission to the salesperson's employer or principal except for sideline sales activities on behalf of some other person of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale, or supplies for use in their business operations, provided that for the purposes of this division (B)(2)(e)(ii) of this section, the services shall be deemed employment if the contract of service contemplates that substantially all of the services are to be performed personally by the individual and that the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation, and the services are not in the nature of a single transaction that is not a part of a continuing relationship with the person for whom the services are performed.

(f) An individual's entire service performed within or both within and without the state if:

(i) The service is localized in this state.

(ii) The service is not localized in any state, but some of the service is performed in this state and either the base of operations, or if there is no base of operations then the place from which such service is directed or controlled, is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(g) Service not covered under division (B)(2)(f)(ii) of this section and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, the Virgin Islands, Canada, or of the United States, if the individual performing such service is a resident of this state and the administrator of the bureau of employment services approves the election of the employer for whom such services are performed; or, if the individual is not a resident of this state but the place from which the service is directed or controlled is in this state, the entire services of such individual shall be deemed to be employment subject to this chapter, provided service is deemed to be localized within this state if the service is performed entirely within this state or if the service is performed both within and without this state but the service performed without this state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(h) Service of an individual who is a citizen of the United States, performed outside the United States except in Canada after December 31, 1971, or the Virgin Islands, after December 31, 1971, and before the first day of January of the year following that in which the United States secretary of labor approves the Virgin Islands law for the first time, in the employ of an American employer, other than service which is "employment" under divisions (B)(2)(f) and (g) of this section or similar provisions of another state's law, if:

(i) The employer's principal place of business in the United States is located in this state;

(ii) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) of this section is met but the employer has elected coverage in this state or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under this chapter.

(i) For the purposes of division (B)(2)(h) of this section, the term "American employer" means an employer who is an individual who is a resident of the United States; or a partnership, if two-thirds or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of

the United States or of any state, provided the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(j) Notwithstanding any other provisions of divisions (B)(1) and (2) of this section, service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, which, as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301, is required to be covered under this chapter.

(k) Construction services performed by any individual under a construction contract, as defined in section 4141.39 of the Revised Code, if the administrator determines that the employer for whom services are performed has the right to direct or control the performance of the services and that the individuals who perform the services receive remuneration for the services performed. The administrator shall presume that the employer for whom services are performed has the right to direct or control the performance of the services if ten or more of the following criteria apply:

(i) The employer directs or controls the manner or method by which instructions are given to the individual performing services;

(ii) The employer requires particular training for the individual performing services;

(iii) Services performed by the individual are integrated into the regular functioning of the employer;

(iv) The employer requires that services be provided by a particular individual;

(v) The employer hires, supervises, or pays the wages of the individual performing services;

(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full-time work;

(vii) The employer requires the individual to perform services during established hours;

(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;

(ix) The employer requires the individual to perform services on the employer's premises;

(x) The employer requires the individual performing services to follow the order of work established by the employer;

(xi) The employer requires the individual performing services to make oral or written reports of progress;

(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;

(xiii) The employer pays expenses for the individual performing services;

(xiv) The employer furnishes the tools and materials for use by the individual to perform services;

(xv) The individual performing services has not invested in the facilities used to perform services;

(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;

(xvii) The individual performing services is not performing services for more than two employers simultaneously;

(xviii) The individual performing services does not make the services available to the general public;

(xix) The employer has a right to discharge the individual performing services;

(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.

(3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301, and if the services are not required to be included under division (B)(2)(j) of this section:

(a) Service performed after December 31, 1977, in agricultural labor, except as provided in division (A)(1)(d) of this section;

(b) Domestic service performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority except as provided in division (A)(1)(c) of this section;

(c) Service performed after December 31, 1977, for this state or a political subdivision as described in division (B)(2) (a) of this section when performed:

(i) As a publicly elected official;

(ii) As a member of a legislative body, or a member of the judiciary;

(iii) As a military member of the state Ohio national guard ~~or air national guard~~;

(iv) As an employee, not in the classified service as defined in section

124.11 of the Revised Code, serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(v) In a position which, under or pursuant to law, is designated as a major nontenured policymaking or advisory position, not in the classified service of the state, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(d) In the employ of any governmental unit or instrumentality of the United States;

(e) Service performed after December 31, 1971:

(i) Service in the employ of an educational institution or institution of higher education, including those operated by the state or a political subdivision, if such service is performed by a student who is enrolled and is regularly attending classes at the educational institution or institution of higher education; or

(ii) By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, provided that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(f) Service performed by an individual in the employ of the individual's son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of the child's father or mother;

(g) Service performed for one or more principals by an individual who is compensated on a commission basis, who in the performance of the work is master of the individual's own time and efforts, and whose remuneration is wholly dependent on the amount of effort the individual chooses to expend, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301. Service performed after December 31, 1971:

(i) By an individual for an employer as an insurance agent or as an insurance solicitor, if all this service is performed for remuneration solely by way of commission;

(ii) As a home worker performing work, according to specifications furnished by the employer for whom the services are performed, on materials or goods furnished by such employer which are required to be

urned to the employer or to a person designated for that purpose.

(h) Service performed after December 31, 1971:

(i) In the employ of a church or convention or association of churches, or in an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry or by a member of a religious order in the exercise of duties required by such order; or

(iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(i) Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the "Railroad Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351;

(j) Service performed by an individual in the employ of any organization exempt from income tax under section 501 of the "Internal Revenue Code of 1954," if the remuneration for such service does not exceed fifty dollars in any calendar quarter, or if such service is in connection with the collection of dues or premiums for a fraternal beneficial society, order, or association and is performed away from the home office or is ritualistic service in connection with any such society, order, or association;

(k) Casual labor not in the course of an employer's trade or business; incidental service performed by an officer, appraiser, or member of a finance committee of a bank, building and loan association, savings and loan association, or savings association when the remuneration for such incidental service exclusive of the amount paid or allotted for directors' fees does not exceed sixty dollars per calendar quarter is casual labor;

(l) Service performed in the employ of a voluntary employees' beneficial association providing for the payment of life, sickness, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if admission to a membership in such association is limited to individuals who are officers or employees of a municipal or public corporation, of a political subdivision of the state, or of the United States and no part of the net earnings of such association inures, other than through such payments, to the benefit of any private shareholder

or individual;

(m) Service performed by an individual in the employ of a foreign government, including service as a consular or other officer or employee or of a nondiplomatic representative;

(n) Service performed in the employ of an instrumentality wholly owned by a foreign government if the service is of a character similar to that performed in foreign countries by employees of the United States or of an instrumentality thereof and if the administrator finds that the secretary of state of the United States has certified to the secretary of the treasury of the United States that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States and of instrumentalities thereof;

(o) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(p) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

(q) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(r) Service performed in the employ of the United States or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by this chapter, except that to the extent that congress permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, this chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, provided that if this state is not certified for any year by the proper agency of the United States under section 3304 of the "Internal Revenue Code of 1954," the payments required of such instrumentalities with respect to such year shall be refunded by the administrator from the fund in the same manner and within the same period as is provided in division (E) of section 4141.09 of the Revised Code with respect to contributions erroneously collected;

(s) Service performed by an individual as a member of a band or orchestra, provided such service does not represent the principal occupation of such individual, and which service is not subject to or required to be covered for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301. Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, or a political subdivision or its instrumentalities, as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work-relief or work-training.

(t) Service performed in the employ of a day camp whose camping season does not exceed twelve weeks in any calendar year, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301. Service performed after December 31, 1971:

(i) In the employ of a hospital, if the service is performed by a patient of the hospital, as defined in division (W) of this section;

(ii) For a prison or other correctional institution by an inmate of the prison or correctional institution;

(iii) Service performed after December 31, 1977, by an inmate of a custodial institution operated by the state, a political subdivision, or a nonprofit organization.

(u) Notwithstanding any other provisions of division (B)(3) of this section, services which are excluded under divisions (B)(3)(g), (j), (k), and (l) of this section, shall not be excluded from employment when performed for a nonprofit organization, as defined in division (X) of this section or for this state or its instrumentalities, or for a political subdivision or its instrumentalities.

(4) If the services performed during one half or more of any pay period by an employee for the person employing that employee constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing that employee do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in division (B)(4) of this section, "pay period" means a period, of not more than thirty-one consecutive days, for which payment of remuneration is ordinarily made to the employee by the person employing that employee. Division (B)(4) of this section does not apply to services performed in a pay period by an employee for the person employing that employee, if any of

such service is excepted by division (B)(3)(o) of this section.

(C) "Benefits" means money payments payable to an individual who has established benefit rights, as provided in this chapter, for loss of remuneration due to the individual's unemployment.

(D) "Benefit rights" means the weekly benefit amount and the maximum benefit amount that may become payable to an individual within the individual's benefit year as determined by the administrator or the administrator's deputy.

(E) "Claim for benefits" means a claim for waiting period or benefits for a designated week.

(F) "Additional claim" means the first claim for benefits filed following any separation from employment during a benefit year; "continued claim" means any claim other than the first claim for benefits and other than an additional claim.

(G)(1) "Wages" means remuneration paid to an employee by each of the employee's employers with respect to employment; except that wages shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise, which in any calendar year is in excess of eight thousand two hundred fifty dollars on and after January 1, 1992; eight thousand five hundred dollars on and after January 1, 1993; eight thousand seven hundred fifty dollars on and after January 1, 1994; and nine thousand dollars on and after January 1, 1995. Remuneration in excess of such amounts shall be deemed wages subject to contribution to the same extent that such remuneration is defined as wages under the "Federal Unemployment Compensation Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301, as amended. The remuneration paid an employee by an employer with respect to employment in another state, upon which contributions were required and paid by such employer under the unemployment compensation act of such other state, shall be included as a part of remuneration in computing the amount specified in this division.

(2) Notwithstanding division (G)(1) of this section, if, as of the computation date for any calendar year, the administrator determines that the level of the unemployment compensation fund is sixty per cent or more below the minimum safe level as defined in section 4141.25 of the Revised Code, then, effective the first day of January of the following calendar year, wages subject to this chapter shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise which is in excess of nine thousand dollars. The increase in the dollar amount of wages subject

to this chapter under this division shall remain in effect from the date of the administrator's determination pursuant to division (G)(2) of this section and thereafter notwithstanding the fact that the level in the fund may subsequently become less than sixty per cent below the minimum safe level.

(H)(1) "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, except that in the case of agricultural or domestic service, "remuneration" includes only cash remuneration. Gratuities customarily received by an individual in the course of the individual's employment from persons other than the individual's employer and which are accounted for by such individual to the individual's employer are taxable wages.

The reasonable cash value of compensation paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the administrator, provided that "remuneration" does not include:

(a) Payments as provided in divisions (b)(2) to (b)(16) of section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301, as amended;

(b) The payment by an employer, without deduction from the remuneration of the individual in the employer's employ, of the tax imposed upon an individual in the employer's employ under section 3101 of the "Internal Revenue Code of 1954," with respect to services performed after October 1, 1941.

(2) "Cash remuneration" means all remuneration paid in cash, including commissions and bonuses, but not including the cash value of all compensation in any medium other than cash.

(I) "Interested party" means the administrator and any party to whom notice of a determination of an application for benefit rights or a claim for benefits is required to be given under section 4141.28 of the Revised Code.

(J) "Annual payroll" means the total amount of wages subject to contributions during a twelve-month period ending with the last day of the second calendar quarter of any calendar year.

(K) "Average annual payroll" means the average of the last three annual payrolls of an employer, provided that if, as of any computation date, the employer has had less than three annual payrolls in such three-year period, such average shall be based on the annual payrolls which the employer has had as of such date.

(L)(1) "Contributions" means the money payments to the state unemployment compensation fund required of employers by section

4141.25 of the Revised Code and of the state and any of its political subdivisions electing to pay contributions under section 4141.242 of the Revised Code. Employers paying contributions shall be described as "contributory employers."

(2) "Payments in lieu of contributions" means the money payments to the state unemployment compensation fund required of reimbursing employers under sections 4141.241 and 4141.242 of the Revised Code.

(M) An individual is "totally unemployed" in any week during which the individual performs no services and with respect to such week no remuneration is payable to the individual.

(N) An individual is "partially unemployed" in any week if, due to involuntary loss of work, the total remuneration payable to the individual for such week is less than the individual's weekly benefit amount.

(O) "Week" means the calendar week ending at midnight Saturday unless an equivalent week of seven consecutive calendar days is prescribed by the administrator.

(1) "Qualifying week" means any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to this chapter. A calendar week with respect to which an individual earns remuneration but for which payment was not made within the base period may, when necessary to qualify for benefit rights, be considered to be a qualifying week. The number of qualifying weeks which may be established in a calendar quarter shall not exceed the number of calendar weeks in the quarter.

(2) "Average weekly wage" means the amount obtained by dividing an individual's total remuneration for all qualifying weeks during the base period by the number of such qualifying weeks, provided that if the computation results in an amount which is not a multiple of one dollar, such amount shall be rounded to the next lower multiple of one dollar.

(P) "Weekly benefit amount" means the amount of benefits an individual would be entitled to receive for one week of total unemployment.

(Q)(1) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except as provided in division (Q)(2) of this section.

(2) If an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, ~~his~~ the individual's base period shall be the four most recently completed calendar quarters preceding the first day of the individual's benefit year. Such base period shall be known as the "alternate base period." If information as to weeks and wages for the most recent quarter of the alternate base period is not available to the

administrator from the regular quarterly reports of wage information, which are systematically accessible, the administrator may, consistent with the provisions of section 4141.28 of the Revised Code, base the determination of eligibility for benefits on the affidavit of the claimant with respect to weeks and wages for that calendar quarter. The claimant shall furnish payroll documentation, where available, in support of the affidavit. The determination based upon the alternate base period as it relates to the claimant's benefit rights, shall be amended when the quarterly report of wage information from the employer is timely received and that information causes a change in the determination. As provided in division (B)(1)(b) of section 4141.28 of the Revised Code, any benefits paid and charged to an employer's account, based upon a claimant's affidavit, shall be adjusted effective as of the beginning of the claimant's benefit year. No calendar quarter in a base period or alternate base period shall be used to establish a subsequent benefit year.

(3) The "base period" of a combined wage claim, as described in division (H) of section 4141.43 of the Revised Code, shall be the base period prescribed by the law of the state in which the claim is allowed.

(R) "Benefit year" with respect to an individual means the fifty-two week period beginning with the first day of that week with respect to which the individual first files a valid application for determination of benefit rights, and thereafter the fifty-two week period beginning with the first day of that week with respect to which the individual next files a valid application for determination of benefit rights after the termination of the individual's last preceding benefit year, except that the application shall not be considered valid unless the individual has had employment in six weeks that is subject to this chapter or the unemployment compensation act of another state, or the United States, and has, since the beginning of the individual's previous benefit year, in the employment earned three times the average weekly wage determined for the previous benefit year. The "benefit year" of a combined wage claim, as described in division (H) of section 4141.43 of the Revised Code, shall be the benefit year prescribed by the law of the state in which the claim is allowed. Any application for determination of benefit rights made in accordance with section 4141.28 of the Revised Code is valid if the individual filing such application is unemployed, has been employed by an employer or employers subject to this chapter, in at least twenty qualifying weeks within the individual's base period, and in such weeks has earned or been paid remuneration at an average weekly wage, beginning on and after January 1, 1992, of not less than twenty-seven and one-half per cent of the statewide average weekly wage. The statewide

average weekly wage shall be calculated by the administrator once a year based on the twelve-month period ending the thirtieth day of June, as set forth in division (B)(3) of section 4141.30 of the Revised Code, rounded down to the nearest dollar. Increases or decreases in the amount of remuneration required to have been earned or paid in order for individuals to have filed valid applications shall become effective on Sunday of the calendar week in which the first day of January occurs that follows the twelve-month period ending the thirtieth day of June upon which the calculation of the statewide average weekly wage was based.

As used in this division, an individual is "unemployed" if, with respect to the calendar week in which such application is filed, the individual is "partially unemployed" or "totally unemployed" as defined in this section or if, prior to filing the application, the individual was separated from the individual's most recent work for any reason which terminated the individual's employee-employer relationship, or was laid off indefinitely or for a definite period of seven or more days.

(S) "Calendar quarter" means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December, or the equivalent thereof as the administrator prescribes by rule.

(T) "Computation date" means the first day of the third calendar quarter of any calendar year.

(U) "Contribution period" means the calendar year beginning on the first day of January of any year.

(V) "Agricultural labor," for the purpose of this division, means any service performed prior to January 1, 1972, which was agricultural labor as defined in this division prior to that date, and service performed after December 31, 1971:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the "Agricultural

Marketing Act," 46 Stat. 1550 (1931), 12 U.S.C. 1141j, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if the operator produced more than one half of the commodity with respect to which such service is performed;

(5) In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in division (V)(4) of this section, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(6) Divisions (V)(4) and (5) of this section shall not be deemed to be applicable with respect to service performed:

(a) In connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(b) On a farm operated for profit if the service is not in the course of the employer's trade or business.

As used in division (V) of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(W) "Hospital" means an institution which has been registered or licensed by the Ohio department of health as a hospital.

(X) "Nonprofit organization" means an organization, or group of organizations, described in section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under section 501(a) of that code.

(Y) "Institution of higher education" means a public or nonprofit educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent;

(2) Is legally authorized in this state to provide a program of education beyond high school; and

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit

toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation.

For the purposes of this division, all colleges and universities in this state are institutions of higher education.

(Z) For the purposes of this chapter, "states" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(AA) "Alien" means, for the purposes of division (A)(1)(d) of this section, an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a)(15)(H) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101.

(BB)(1) "Crew leader" means an individual who furnishes individuals to perform agricultural labor for any other employer or farm operator, and:

(a) Pays, either on the individual's own behalf or on behalf of the other employer or farm operator, the individuals so furnished by the individual for the service in agricultural labor performed by them;

(b) Has not entered into a written agreement with the other employer or farm operator under which the agricultural worker is designated as in the employ of the other employer or farm operator.

(2) For the purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other employer or farm operator shall be treated as an employee of the crew leader if:

(a) The crew leader holds a valid certificate of registration under the "Farm Labor Contractor Registration Act of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or

(b) Substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(c) If the individual is not in the employment of the other employer or farm operator within the meaning of division (B)(1) of this section.

(3) For the purposes of this division, any individual who is furnished by a crew leader to perform service in agricultural labor for any other employer or farm operator and who is not treated as in the employment of the crew leader under division (BB)(2) of this section shall be treated as the employee of the other employer or farm operator and not of the crew leader. The other employer or farm operator shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on the crew leader's own

behalf or on behalf of the other employer or farm operator, for the service in agricultural labor performed for the other employer or farm operator.

(CC) "Educational institution" means an institution other than an institution of higher education as defined in division (Y) of this section which:

(1) Offers participants, trainees, or students an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of an instructor or teacher; and

(2) Is approved, chartered, or issued a permit to operate as a school by the state board of education or other government agency that is authorized within the state to approve, charter, or issue a permit for the operation of a school.

For the purposes of this division, the courses of study or training which the institution offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

Sec. 4506.02. (A) Nothing in this chapter applies to any person when engaged in the operation of any of the following:

(1) A farm truck;

(2) Fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district;

(3) A public safety vehicle used to provide transportation or emergency medical service for ill or injured persons;

(4) A recreational vehicle;

(5) A commercial motor vehicle within the boundaries of an eligible unit of local government, if the person is employed by the eligible unit of local government and is operating the commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, but only if either the employee who holds a commercial driver's license issued under this chapter and ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle, or the employing eligible unit of local government determines that a snow or ice emergency exists that requires additional assistance;

(6) A vehicle owned by the department of defense and operated by any member or uniformed employee of the armed forces of the United States or their reserve components, including the Ohio national guard. This exception does not apply to United States reserve technicians.

Nothing contained in division (A)(5) of this section shall be construed as ~~pre-empting~~ preempting or superseding any law, rule, or regulation of this state concerning the safe operation of commercial motor vehicles.

(B) As used in this section:

(1) "Eligible unit of local government" means a village, township, or county that has a population of not more than three thousand persons according to the most recent federal census.

(2) "Farm truck" means a truck controlled and operated by a farmer for use in the transportation to or from a farm, for a distance of no more than one hundred fifty miles, of products of the farm, including livestock and its products, poultry and its products, floricultural and horticultural products, and in the transportation to the farm, from a distance of no more than one hundred fifty miles, of supplies for the farm, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production, and livestock, poultry, and other animals and things used for breeding, feeding, or other purposes connected with the operation of the farm, when the truck is operated in accordance with this division and is not used in the operations of a motor transportation company or private motor carrier.

(3) "Public safety vehicle" has the same meaning as in divisions (E)(1) and (3) of section 4511.01 of the Revised Code.

(4) "Recreational vehicle" includes every vehicle that is defined as a recreational vehicle in section 4501.01 of the Revised Code and is used exclusively for purposes other than engaging in business for profit.

Sec. 4911.04. The consumers' counsel shall be a resident of this state and during ~~his~~ the counsel's term of office shall not hold any other office of either trust or profit under the government of the United States, this state, or any political subdivision of this state, except that this section shall not be construed to preclude the consumers' counsel from serving as a member of the reserve of the armed forces of the United States; ~~OR the Ohio national guard, the air national guard, or the naval~~ ORGANIZED militia. The counsel shall not engage in any other occupation or business, but shall devote ~~his entire~~ full time to the duties of ~~his~~ the office of consumers' counsel.

Sec. 5101.312. (A) As used in this section:

(1) "Child support order" has the same meaning as in section 2301.373 of the Revised Code.

(2) "Employer" means any employer with twenty-five or more employees other than an executive agency of the United States, except "employer" also means an employer with fewer than twenty-five employees if the employer's business is one of the following:

- (a) Eating and drinking place;
- (b) General building contractor;

- (c) Construction--special trade contractor;
- (d) Motor freight transportation and warehousing;
- (e) Automotive dealer or gasoline service station;
- (f) Automotive repair, services, and parking.

(3) "Obligor" means a person required to pay support under a child support order.

(B) Effective January 1, 1996, an employer shall report in writing to the department of human services the hiring, rehiring, or return to work as an employee of a person who resides, works, or will be assigned to work in this state to whom the employer anticipates paying compensation.

(C) An employer shall include all of the following in each report:

- (1) The employee's name, address, and social security number;
- (2) The employer's name, address, and identification number.

(D) An employer may make a report by submitting a copy of the United States internal revenue service form W-4 (employee's withholding allowance certificate) for the employee, a form provided by the department, or any other hiring document or data storage device or mechanism the department authorizes. An employer may make the report by mail, fax, or other means the department authorizes. If an employer makes a report by mail, the date of making the report is the postmark date if the report is mailed in the United States with first class postage and is addressed as the department authorizes. An employer shall make the report not later than thirty days after the date on which the employer hires or rehires an employee or the employee returns to work.

(E) The department shall use the reports it receives pursuant to this section to locate obligors under child support orders being administered by child support enforcement agencies in this state and to detect fraud in any program administered by the department. The department may submit to the bureau of workers' compensation or the bureau of employment services a copy of any report it receives from an employer pursuant to this section. The department shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. In adopting the rules, the department shall work with the bureau of employment services for the purpose of identifying the industries listed in division (A)(2) of this section by using the Standard Industrial Classification codes established in the standard industrial classification manual, 1987, published by the executive office of the president, office of management and budget.

(F) An employer who fails to make a report required by this section shall be required by the department of human services to pay a fee of twenty-five dollars for each failure to make a report.

Sec. 5903.01. As used in ~~section~~ sections 5903.01 ~~to 5903.05~~ and 5903.02 of the Revised Code:

(A) "Permanent public employee" means any person holding a position in public employment that requires working a regular schedule of twenty-six consecutive ~~bi-weekly~~ biweekly pay periods, or any other regular schedule of comparable consecutive pay periods, which is not limited to a specific season or duration. "Permanent public employee" does not include student help; intermittent, seasonal, or external interim employees; or individuals covered by personal services contracts.

(B) "Public employment" means employment by the state, or any county, municipal corporation, or other civil or political subdivision, including any department or agency thereof.

(C) "Public employer" means any government, department, or agency mentioned in division (B) of this section.

(D) "Position" means employment, full-time, part-time, probationary, or otherwise, held at the time of entrance into ~~military duty~~ the uniformed services, but does not include temporary or casual employment or an office filled by election.

(E) ~~"Military duty" means training and service performed by a member of the Ohio national guard, Ohio military reserve, or Ohio naval militia, or by an inductee, enlistee, reservist, or any entrant into a reserve component of the armed forces of the United States, and time spent in reporting for and returning from such service and training, or if a rejection occurs, from the place of reporting therefor~~ Permanent private employee" means any person holding a position with a private employer.

(F) "Private employer" means any person, institution, organization, or other entity that is not a public employer and that pays salary or wages for work performed or that has control over employment opportunities.

(G) "Service in the uniformed services" means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, and performance of duty or training by a member of the Ohio organized militia pursuant to Chapter 5923. of the Revised Code. "Service in the uniformed services" includes also the period of time for which a person is absent from a position of public or private employment for the purpose of an examination to determine the fitness of the person to perform any duty described in this division.

(H) "Uniformed services" means the armed forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or

full-time national guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency.

Sec. 5903.02. (A) The determination of reinstatement and reemployment rights of permanent public employees and permanent private employees in the uniformed services shall be made in accordance with the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4301, et. seq.

(B) The director of administrative services shall adopt rules for the implementation of this chapter.

Sec. 5903.99. Whoever violates sections 5903.01 to 5903.05 and 5903.02 of the Revised Code may be fined not more than one thousand dollars or imprisoned not more than six months, or both.

Sec. 5911.011. ~~The adjutant general is the~~ (A) As director of state armories. He shall provide, the adjutant general may acquire, design, construct, expand, rehabilitate, and convert grounds, armories, airfields, and other buildings, and facilities for the purpose purposes of developing, training, and operating units of the Ohio national guard and for the safekeeping of arms, clothing, equipment, and other state or federal military property issued to the Ohio national guard, or state property issued to the Ohio military reserve; or the Ohio naval militia, and.

(B) In acquiring grounds, armories, airfields, and other facilities for the purposes described in division (A) of this section, the adjutant general may purchase, lease property for any period of time not exceeding term up to ninety-nine years, subject to the availability of state funds or federal funds obtained under an agreement by which the United States contributes to the cost of leasing the grounds, armory, airfield, or other facility, or the adjutant general may build suitable buildings, airfields, and facilities for such those purposes when, in his judgment, it is for the best interest of the state to do so. He shall

(C) The adjutant general may provide for the leasing, management, care, and maintenance of such those grounds, armories, airfields, buildings, and other facilities and may prescribe such any rules for the management, government, and guidance of the organizations and units occupying them as that are necessary and desirable. When promulgating such those rules, the adjutant general need not comply with Chapter 111. or 119. of the Revised Code.

Sec. 5911.03. (A) The adjutant general may receive gifts of land, money, or other property for the purpose of aiding in the acquisition of grounds and airfields, or the purchase, building, furnishing, or maintaining

of an armory, ~~building~~ airfield, or other facility for military purposes. ~~All~~

(B) All lands so acquired under this section shall be deeded to the state, and all property received under this section from any source shall become the property of this state, except as may be provided in an agreement by which the United States contributes to the cost of acquiring, designing, or constructing the grounds, armory, airfield, or other facility used for developing, training, and operating units of the national guard.

Sec. 5911.04 The adjutant general shall be governed in the construction of armories, other ~~buildings~~, facilities, and airfields for military purposes by sections 153.01 to 153.20 and 153.50 to 153.60 of the Revised Code.

Sec. 5911.08. ~~The (A) Except as allowed under a permit issued under Chapter 4303. of the Revised Code, the sale of beer or intoxicating liquor in an armory, building, airfield, or other facility used for training and for the safekeeping of arms, clothing, equipment, and other military property belonging to the Ohio national guard, the Ohio military reserve, or the Ohio naval organized militia provided for by section 5911.011 of the Revised Code is prohibited and any.~~

(B) Any person guilty of violating such prohibition division (A) of this section shall be punished as a court-martial directs provided in Chapter 4303. of the Revised Code.

Sec. 5913.01. ~~(A) The adjutant general shall be chief of staff to is the commander in chief and administrative head of the Ohio organized militia. He~~ The adjutant general shall be;

(1) Be provided offices in Columbus and shall keep them open during usual business hours. He shall have;

(2) have and maintain custody of all military records, correspondence, and other military documents. He shall superintend of the Ohio organized militia;

(3) superintend the preparation of all returns and reports required by the United States from the state on military matters. He shall keep;

(4) keep a roster of all officers of the military forces of the state Ohio organized militia, including retired officers. He shall, whenever;

(5) whenever necessary, cause the military code, provisions of the Revised Code and the orders, regulations, pamphlets, circulars, and memorandums of the adjutant general's department to be printed and distributed to the commissioned officers and organizations of the Ohio organized militia. He shall prepare;

(6) prepare and issue all necessary books, blanks, and notices. He shall Ohio organized militia forms and attest to all commissions issued to military officers. He shall have of the Ohio organized militia;

(7) have a seal, and all copies of orders, records, and papers in ~~his~~ the adjutant general's office certified and authenticated ~~under said~~ with that seal shall be competent evidence in like manner as if the originals were produced. All orders issued from ~~his~~ the adjutant general's office shall ~~be authenticated with said~~ bear a duplicate of the seal.

~~He shall keep~~ (8) Keep and preserve the arms, ordnance, equipment, and all other military property belonging to the state or issued to the state by the federal government and ~~he shall make and~~ issue such any regulations ~~as are~~ necessary to keep, preserve, and repair such the property as ~~in his opinion~~ conditions demand. ~~He shall issue such military;~~

(9) Issue adjutant general's property to the units of the Ohio organized militia as the necessity of the service or organizational or allowance tables requires. ~~He shall submit;~~

(10) submit an annual report to the governor at such time as the governor requires of the transaction of ~~his~~ the adjutant general's department, setting forth the strength and condition of the Ohio organized militia and ~~such~~ other matters ~~as he deems important.~~ He that the adjutant general chooses;

(11) Command the state area command of the Ohio national guard.

(B) The adjutant general shall issue and distribute all orders issued in the name of the governor as the commander in chief of the Ohio organized militia and perform such the duties as that the commander in chief governor directs and such other duties as are prescribed by law.

(C) The adjutant general may enter into cooperative agreements, contractual arrangements, or agreements for the acceptance of grants with the United States or any agency or department of the United States, other states, any department or political subdivision of this state, or any person or body politic, to accomplish the purposes of the adjutant general's department. The adjutant general shall cooperate with, and not infringe upon, the rights of other state departments, divisions, boards, commissions, and agencies, political subdivisions, and other public officials and public and private agencies when the interests of the adjutant general's department and those other entities overlap.

The funds made available by the United States for the exclusive use of the department shall be expended only by the department and only for the purposes for which the federal funds were appropriated. In accepting federal funds, the department agrees to abide by the terms and conditions of the grant or cooperative agreement and further agrees to expend the federal funds in accordance with the laws and regulations of the United States.

Sec. 5913.02. (A) The military staff of the governor ~~shall~~ may consist of

~~an~~ any of the following:

(1) An adjutant general ~~of~~ in the grade of major general, ~~upon whom~~ who shall ~~devolve~~ perform the duties of quartermaster general; ~~an~~

(2) An assistant adjutant general for army ~~of~~ in the grade of ~~brigadier~~ major general; ~~an~~

(3) an assistant adjutant general for air ~~of~~ in the grade of ~~brigadier~~ major general; ~~an~~

(4) an assistant quartermaster general ~~of~~ in the grade of colonel; ~~all of whom~~ or any retired officer who has appropriate qualifications for the position, as determined by the adjutant general and the governor.

All persons named in divisions (A)(1) to (4) of this section shall be appointed by the governor and shall hold office during ~~his~~ the governor's pleasure. ~~The~~

(B) The governor's military staff also shall ~~also~~ include four aides-de-camp, who shall be appointed by the governor and hold office during ~~his~~ the governor's pleasure.

Sec. 5913.021. (A) The adjutant general at the time of appointment shall be a federally recognized officer ~~of~~ in the Ohio national guard ~~of~~ in the grade of colonel or above, ~~the~~.

(B) The assistant adjutant general for army at the time of appointment shall be a federally recognized officer ~~of~~ in the Ohio army national guard ~~of~~ in the grade of ~~lieutenant~~ colonel or above, ~~the~~.

(C) The assistant adjutant general for air at the time of appointment shall be A federally recognized ~~rated~~ officer ~~of~~ in the Ohio air national guard ~~of~~ in the grade of ~~lieutenant~~ colonel or above, ~~and the~~.

(D) The assistant quartermaster general at the time of appointment shall be a federally recognized officer ~~of~~ in the Ohio army national guard ~~of~~ in the grade of ~~major~~ lieutenant colonel or above, or any retired officer who has appropriate qualifications for the position, as determined by the adjutant general and the governor. ~~The~~

(E) The adjutant general, the assistant adjutant general for ~~the~~ army, the assistant adjutant general for air, and the assistant quartermaster general at the time of appointment shall each have not less than ten years' commissioned service in the armed forces of the United States, not less than five years of ~~such~~ that service being in the Ohio national guard, and shall at all times during their tenure of office be federally recognized officers of the Ohio national guard.

(F) The provisions of this section relative to federal recognition shall be suspended during any period of emergency when the majority of the units of the Ohio national guard are in the federal service, ~~in which.~~ In that event,

retired officers of the Ohio national guard shall be eligible to serve as adjutant general, assistant adjutant general for army, assistant adjutant general for air, and assistant quartermaster general for the duration of such emergency or until a majority of the units of the Ohio national guard are released from federal service.

Sec. 5913.03. The adjutant general shall give bond in the sum of thirty thousand dollars to the state conditioned upon the faithful performance of ~~his~~ the adjutant general's official duties; the assistant adjutant general for army and the assistant adjutant general for air shall give ~~like bonds~~ bond in the sum of ten thousand dollars; and the assistant quartermaster general shall give ~~a like~~ bond in the sum of twenty thousand dollars. If a surety bond is given, the premiums shall be paid out of funds appropriated ~~therefor~~ for the surety bond. ~~Said~~ These bonds shall be filed in the office of the secretary of state. All other bonds given by the various officers of the Ohio organized militia shall be filed and recorded in the office of the adjutant general.

Sec. 5913.04. The governor's aides-de-camp shall be detailed from the commissioned officers of the Ohio national guard in active service ~~from those of a grade below that of colonel~~. ~~Such~~ This detail shall not add to the grade of the officer so appointed. The officers detailed as aides-de-camp shall not be relieved from duty with their respective organizations, but shall perform ~~all duties pertaining thereto, except when on duty~~ as aides-de-camp under orders of the governor as an exception to their usual duties.

Sec. 5913.05. (A) The assistant adjutants general shall serve in the office of the adjutant general; and aid ~~him~~ the adjutant general by performing ~~such~~ the duties as that the adjutant general assigns them. ~~It~~

(B) In the absence or disability of the adjutant general, the senior assistant adjutant general shall perform the duties of the adjutant general. ~~It~~

(C) In the absence or disability of the adjutant general and the senior assistant adjutant general, the junior assistant adjutant general shall perform the duties of the adjutant general.

Sec. 5913.051. To supplement the military staff of the governor, the adjutant general ~~shall~~ may appoint an assistant to the state area commander for readiness and training for army. This assistant shall be a brigadier general and shall ~~serve in the office of~~ aid the adjutant general ~~and aid him and the state area commander~~ by performing ~~such~~ duties as that the adjutant general assigns in the areas of readiness, training, and mobilization. This assistant shall not be a full-time state employee, but shall serve in ~~his~~ that capacity only during federally recognized training, special duty periods, or mobilization periods, and shall at the time of ~~his~~ appointment be ~~of~~ in the rank of colonel or above but otherwise meet the qualifications established in

section 5913.021 of the Revised Code.

Sec. 5913.06. ~~(A)~~ The assistant quartermaster general, under direction of the adjutant general as quartermaster general, shall have charge of all state military property and property of the adjutant general's department belonging to the state. ~~The~~

~~(B)~~ The assistant quartermaster general shall keep an accurate account thereof of state military property and property of the adjutant general's department and shall make such returns and prepare reports as the adjutant general directs. He

~~(C)~~ The assistant quartermaster general shall perform such other duties as are assigned to him by the adjutant general. He

~~(D)~~ In the absence or disability of the adjutant general, and the assistant adjutants general, the assistant quartermaster general shall perform the duties of the adjutant general.

Sec. 5913.07. ~~(A)~~ Any person who has served as a member of the Ohio organized militia of Ohio or of the armed forces of the United States, or both, for a period of ~~three~~ twenty years, ~~one year~~ eight years of which ~~has~~ have been served as a commissioned officer of the Ohio state guard, the Ohio state naval organized militia, or the Ohio military reserve may, at his ~~own~~ the person's request and upon approval of the adjutant general, may be placed upon the reserve retired list, which shall be kept in the office of the adjutant general. ~~Such~~

~~(B)~~ Retired officers shall receive no compensation from the state for their services except as provided in this section, but shall be permitted may on all occasions of ceremony ~~to~~ wear the uniform of their rank. ~~The commander in chief~~

~~(C)~~ The adjutant general may assign or detail such retired officers upon duty and when so assigned or detailed, they shall receive the same pay and allowances as officers on the active list of the element of the Ohio organized militia assigned, detailed, or employed under like condition.

Sec. 5913.08. The adjutant general ~~shall have~~ has general direction over ~~the state arsenal, state camp grounds, and other~~ military and other adjutant general's department property ~~of~~ belonging to the state. ~~He shall~~ The adjutant general may employ such labor thereat employees as the governor deems the necessities and best interests of the state require necessary to carry out the duties of the adjutant general's department.

Sec. 5913.09. ~~(A)~~ The adjutant general ~~shall be~~ is the custodian of all military and other adjutant general's department property, both real and personal, belonging to the state.

~~He~~ (B) The adjutant general may make such changes and improvements

~~in such to military and other adjutant general's department property as the needs of the state and federal government and the exigencies of the service require. All improvements made upon such that property belonging to the state, from moneys received either all or in part from the state or federal government, or both, become the property of the state, except as may be provided in an agreement and corresponding regulations by which the United States contributes to the cost of an improvement. The~~

~~(C)(1) In accordance with applicable state and federal law and regulations, the adjutant general may, with the approval of the governor, may acquire by purchase lease, license, or rent military otherwise, real and personal property of necessary for the state upon such terms and under such conditions as purposes of the adjutant general considers appropriate and proper department. Except~~

~~(2) In accordance with applicable state and federal law and regulations, the adjutant general, with the approval of the attorney general, may enter into contracts for the construction, repair, renovation, maintenance, and operation of military or other adjutant general's department property.~~

~~(3) In accordance with applicable state and federal law and regulations, the adjutant general, with the approval of the governor, may lease or exchange all or part of any military or other adjutant general's department property or grant easements or licenses, if the lease, exchange, easement, or license is advantageous to the state.~~

~~(4) All real property of the adjutant general's department shall be sold in accordance with section 5911.10 Of the Revised Code.~~

~~(D) Except as otherwise provided in this section, all receipts income from any military or other adjutant general's department property of the state, not made a portion of the company, troop, battery, detachment, squadron, or other organization funds by regulations, shall be credited to the funds for the operation and maintenance of the Ohio national guard, Ohio naval organized militia, or the Ohio military reserve, as the adjutant general directs, in accordance with applicable state and federal law and regulations and the agreements by which the United States contributes to the cost of operation and maintenance of the Ohio national guard. All income received from seasonal rental units and recreational facilities at Camp Perry shall be paid into the state treasury to the credit of the Camp Perry clubhouse and rental activities fund, which is hereby created.~~

Sec. 5913.10. (A) The adjutant general may prescribe and enforce rules and police regulations for the range and ground property referred to in section 5913.09 of the Revised Code, as he the adjutant general deems necessary for protection and safety.

(B) In prescribing regulations under division (A) of this section, the adjutant general need not comply with Chapter 111. or 119. of the Revised Code.

Sec. 5913.17. No person shall enter an encampment of the Ohio organized militia, ~~or a camp or cantonment of any military organization of the United States,~~ when forbidden to do so, or, having been permitted to enter ~~therein~~ the encampment, ~~shall conduct himself~~ behave in a disorderly manner or shall resist a sentry or guard acting under orders to prevent ~~such~~ that entry or disorderly conduct.

Sec. 5919.01. (A) The Ohio national guard shall consist consists of such those organizations and units as that are, under the laws of the United States and the regulations promulgated in pursuance thereof under them, prescribed as the portion of the army or air national guard of the United States ~~apportioned~~ located and ~~assigned to~~ organized within this state ~~in accordance with troop basis~~ according to the locations, branches, organizations, and allotments approved by the governor of ~~Ohio~~ this state.

(B) The organizations and units of the Ohio national guard shall conform to and be organized in accordance with according to the organizational or allowance tables of organizations as prescribed by the department of defense the army or air force and by the national guard bureau for the national guard. In case of an emergency or imminent danger thereof of an emergency, the governor, as commander in chief, may increase the ~~organized military forces of the state in accordance with~~ size of the Ohio national guard according to the existing rules and regulations governing the armed forces of the United States, as the exigency of the occasion requires; ~~and such.~~ Any organization and increase may be made either pursuant to, or in advance of, any call or order made by the president of the United States.

Sec. 5919.02. (A) All commissioned and warrant officers of the Ohio national guard shall be appointed by the governor as commander in chief; upon the recommendation of the commanding officers of the organizations to which such officers are to be assigned for duty, and shall be commissioned or warranted according to grade in under the regulations of the department, corps, arm, or service in which they are appointed of the army or air force and the national guard bureau. No

(B) No officer shall be commissioned or warranted until he the officer has successfully passed tests as to his physical, moral, and professional fitness as prescribed by regulations promulgated under federal law for federal recognition as an a commissioned or warrant officer.

(C) General officers of the line shall be appointed from the federally recognized eligible commissioned officers of the army or air national guard

of this state or of another component of the armed forces of the United States, who ~~shall~~ have served at least fifteen years as a commissioned officer in the army or air national guard or in another component of the armed forces of the United States, or both. ~~At least ten years of such service shall have been with troops.~~

Sec. 5919.04. ~~(A)~~ The ~~governor~~ adjutant general may issue ~~such regulations and other publications~~ governing the appointment of officers in the Ohio national guard and ~~such all~~ other matters ~~pertaining to the Ohio national guard~~ as are necessary to conform to the requirements made or authorized by congress for participation in federal appropriations for the national guard.

(B) In issuing regulations and other publications under division (A) of this section, the adjutant general need not comply with Chapter 111. or 119. Of the Revised Code.

Sec. 5919.071. Any person, commissioned or warranted as an officer in the Ohio national guard, shall hold ~~his~~ the commission or warrant during the period of ~~his~~ the person's federal recognition. The termination or withdrawal by the department of ~~defense~~ the army or air force of the federal recognition of any commissioned or warrant officer in the army or air national guard of the United States shall terminate ~~his~~ the person's commission or warrant in the Ohio national guard.

Sec. 5919.09. ~~Original enlistments~~ Enlistments in the Ohio national guard ~~and all subsequent enlistments~~ shall be for the period prescribed by act of congress and publications of the department of the army or air force and national guard bureau.

Sec. 5919.12. ~~An~~ A commissioned or warrant officer of the Ohio national guard may be honorably discharged by the governor as commander in chief upon ~~tender of his~~ the officer's resignation, in conformity with the requirements of the department of ~~defense~~ the army or air force and the national guard bureau, ~~provided he~~ but the officer shall not be discharged until ~~he~~ the officer has accounted for all state and United States property and all public moneys for which ~~he~~ the officer is responsible.

Sec. 5919.13. ~~(A)~~ Any commissioned or warrant officer who has served as a member of the Ohio national guard for a period of ~~ten~~ twenty years, ~~five~~ eight of which have been as a commissioned or warrant officer, may at ~~his~~ the officer's request, and shall upon termination of ~~his~~ the officer's federal recognition, be placed upon the retired list, which shall be kept in the office of the adjutant general. ~~Officer so retired~~

(B) Retired officers shall receive no compensation from the state for their services except as provided in this section, but shall be permitted may

on all occasions of ceremony to wear the uniform of the grade upon which retired their rank. The commander in chief

(C) The adjutant general may detail officers so a retired upon officer to duty other than in the command of troops, and when so detailed, they consistent with federal publications. A retired officer then shall receive like pay and allowances as officers on the active list detailed or employed under like conditions prescribed under the department of defense pay manual.

Sec. 5919.14. (A) At any time the moral character, capacity, and general fitness for services, service of any Ohio national guard officer may be determined by an efficiency A board of three commissioned officers, appointed by the governor, who shall be senior in rank, if practicable, to the officer whose fitness for service is under investigation, and if the finding of such board is unfavorable to such officer and is approved by the governor, he the officer shall be discharged which shall be convened and proceed according to publications of the department of the army or air force and the national guard bureau.

(B) A board of officers convened under division (A) of this section is not a public body subject to section 121.22 of the Revised Code.

Sec. 5919.15. There shall be organized a national guard reserve which shall consist of such organizations, officers, and enlisted man, as the president of the United States prescribes. Officers commissioned officers, warrant officers, and enlisted men personnel of the Ohio national guard may be transferred to the inactive national guard reserve under such regulations as that the president national guard bureau prescribes.

Sec. 5919.16. Commissions of (A) Commissioned and warrant officers of in the Ohio national guard shall be vacated discharged by the adjutant general upon either of the following:

(1) The officer's resignation, by termination;

(2) Approval of a board's recommendation for withdrawal of federal recognition by the department of defense, absence chief of the national guard bureau.

(B) An officer also may be discharged under any of the following circumstances:

(1) Pursuant to other federal regulations;

(2) If absent without leave for three months, upon recommendation of an efficiency board, pursuant;

(3) Pursuant to sentence by court-martial, or if such;

(4) If the officer has been convicted of an infamous a crime classified as a felony as described in division (D) or (E) of section 2901.02 of the Revised Code.

Sec. 5919.17. (A) An enlisted ~~man~~ person discharged from service in the Ohio national guard shall receive a discharge, in writing, in ~~such~~ the form and with ~~such classification as is~~ the characterization prescribed ~~for~~ by the ~~regular~~ army or air force. In time of peace, discharges may be given ~~prior to~~ before the expiration of terms of enlistment, under prescribed regulations, subject to ~~the~~ any restrictions ~~of the national defense act contained in publications of the department of the army or air force and the national guard bureau.~~

(B) On termination of an emergency in which ~~the officers and enlisted men~~ personnel of the Ohio national guard have been called or ~~drafted~~ ordered into federal service by the president of the United States, ~~in accordance with~~ according to the laws of the United States, ~~such called or drafted officers and enlisted men~~ those persons shall continue to serve in the Ohio national guard until the dates upon which their ~~commissions or enlistments~~ service obligations entered into ~~prior to~~ before the call or ~~draft order~~ into the federal service would have expired if uninterrupted.

Sec. 5919.22. No ~~officer or~~ enlisted ~~man~~ person may be discharged from the Ohio national guard except as provided ~~in section 5919.01 to 5919.25, inclusive, of the Revised Code; nor shall any officer be demoted for any cause except upon his written consent; nor shall the enlistment of any eligible citizen or alien who has declared his intention to become a citizen be denied, except as provided in such sections~~ by publications of the department of the army or air force and the national guard bureau.

Sec. 5919.25. The Ohio national guard ~~shall~~, as far as practicable, shall be uniformed, armed, and equipped with the same type of uniforms, arms, and equipment as is provided for the ~~armed forces of the United States~~ air force or army.

Sec. 5919.28. The system of tactics, field exercises, and training for ~~the armed forces of the United States~~ army or air force shall be the system of tactics, field exercises, and training for the Ohio national guard.

Sec. 5919.29. (A) The governor as commander in chief may order individuals and units of the Ohio national guard to perform any training or duty authorized under the "Act of August 10, 1956," 70A Stat. 596, 32 U.S.C.A. ~~401-716~~ 101 TO 716, and under regulations prescribed by the president of the United States, the secretary of defense, the secretary of the army, the secretary of the air force, or the chief of the national guard bureau.

(B) When ordered by the governor to perform training or duty under this section or section 5923.12 of the Revised Code, members of the Ohio national guard shall have the protections afforded to persons on federal active duty by "The Soldiers and Sailors Civil Relief Act of 1940," 54 Stat.

1178, 50 App. U.S.C.A. 501-548 and 560-591, and by the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4301 to 4333.

~~Sec. 5919.30. There shall be an annual inspection~~ (A) Inspection of each organization and unit units of the Ohio national guard shall be conducted under such rules and regulations as are prescribed under the National Defense Act by the president of the United States or secretary of defense the army or secretary of the air force and the chief of the national guard bureau.
The

(B) The adjutant general or an officer acting under his the adjutant general's authority may make such other inspections as are considered necessary by the adjutant general.

~~Sec. 5919.32. While on duty under the authority of the department of defense of the United States, and in going to and returning therefrom, officers and enlisted men of the Ohio national guard shall receive such pay and allowances as are allowed by the department of defense. For attendance at armory drill satisfactorily performing inactive duty for training, annual training, and active duty for special work, officers and enlisted men personnel of the Ohio national guard shall receive such pay and allowances as are from the United States authorized and allowed by the department of defense pay manual, subject to such rules and regulations as may be promulgated by under it.~~

Sec. 5919.33. Upon certification of availability of funds by the director of budget and management, the adjutant general shall pay a death benefit of twenty thousand dollars from the appropriations for operating expenses; to the beneficiary or beneficiaries of any member of the Ohio national guard who dies while performing state active duty under orders issued by ~~competent authority. Provided such the adjutant general on behalf of the governor, if the~~ beneficiary or beneficiaries has or have been so designated in a written statement as prescribed by the adjutant general.

Sec. 5919.35. (A) The stockage, accountability, issuance, and dispensing of any drug, as defined in section 4729.02 of the Revised Code, that is issued to any unit or member of the Ohio national guard is governed exclusively by regulations or other directives prescribed by the United States army or air force and the national guard bureau. Ohio national guard units and personnel are not subject to Chapter 4729. or 3715. of the Revised Code or other statutes or regulations in conflict with military regulations or other directives when acting in furtherance of their official duties.

(B) This section applies despite the order of Ohio national guard units or personnel to state active duty under section 5923.22 of the Revised Code or

the fact that accountable officers or employees of the Ohio national guard are employed in a civilian status.

Sec. 5920.10. Whenever the Ohio military reserve or any part thereof is ordered out for active service by the governor, the Ohio code of military justice shall be in full force in respect to such forces. ~~Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty.~~

Sec. 5921.09. The Ohio naval militia shall be organized, governed, drilled, and instructed in accordance with the regulations and customs provided for the navy of the United States, and Chapter 5924. of the Revised Code, together with the orders of the governor. ~~Every commissioned officer, warrant officer, and enlisted member, when ordered out for active service by the governor, shall during his service therein, be exempt from service upon any posse comitatus and from jury duty.~~

Sec. 5923.01. (A) The Ohio organized militia of the state shall consist consists of all able-bodied citizens of the state who are not permanently handicapped, as handicapped is defined in section 4112.01 of the Revised Code, who are more than seventeen years of age, and not more than sixty-seven years, of age except unless exempted as provided in section 5923.03 5923.02 of the Revised Code. The militia shall be divided into four classes, and who are members of one of the following:

- ~~(A)(1) The Ohio national guard;~~
- ~~(B)(2) The Ohio naval militia;~~
- ~~(C)(3) The Ohio military reserve;~~
- ~~(D) The unorganized militia.~~

(B) The Ohio national guard, including both the Ohio air national guard and the Ohio army national guard, the Ohio naval militia, and the Ohio military reserve shall be are known collectively as the Ohio organized militia.

~~"Military forces" includes the (C) The Ohio national guard, the Ohio naval militia, and the Ohio military reserve, and the unorganized militia.~~

~~"National Defense Act," means an act of congress, entitled "An act for making further and more effectual provision for the national defense and for other purposes," approved by the president, June 3, 1916, and all acts amendatory thereof and supplementary thereto are known collectively as the state defense forces.~~

(D) The unorganized militia consists of those citizens of the state as described in division (A) of this section who are not members of the Ohio organized militia.

(E) No troops shall be maintained in time of peace other than as

authorized and prescribed under the "~~National Defense Act~~ Act of August 10, 1956," 70A Stat. 596, 32 U.S.C.A. 101 to 716." ~~Such~~ This limitation does not affect the right of the state to the use of ~~the~~ its organized militia within its borders in time of peace as prescribed ~~in~~ by the ~~military~~ laws of this state. This section does not prevent the organization and maintenance of police.

Sec. 5923.02. ~~The~~ (A) The following persons, if subject to duty in the Ohio organized militia, may be exempted by the adjutant general from duty on request:

(1) The vice-president of the United States;

(2) The officers, judicial and executive, of the departments of the state and of the United States, and the members of the general assembly, without regard to age, shall be exempt from duty in the Ohio militia, and all persons who;

(3) Members of the armed forces of the United States or their reserve components;

(4) Customhouse clerks;

(5) Employees of the United States postal service;

(6) Workers employed in armories, arsenals, or naval shipyards of the United States;

(7) Pilots on the navigable waters of the United States;

(8) Mariners licensed by the United States.

(B) Any person because of religious belief or other moral conviction held as a matter of conscience may claim exemption from ~~military Ohio organized militia~~ service, when the conscientious holding of such belief by such person is established under such regulations as the governor prescribes, shall be exempted from military service in a combatant capacity; but no person so exempted shall be exempt from military service in any capacity that the governor declares to be noncombatant.

Sec. 5923.03. ~~(A) The Ohio national guard and the Ohio naval militia shall consist~~ consists of the members of the Ohio organized militia regularly who are enlisted therein, transferred or assigned thereto under the laws and regulations of the United States, and of the officers and warrant officers regularly commissioned and, or warranted therein or assigned thereto, in the Ohio national guard, all as shall be prescribed by publications of the department of defense the army or air force and the national guard bureau for the national guard and the naval militia as prescribed by Chapter 5919. of the Revised Code. The

(B) The Ohio military reserve shall consist consists of the members of the Ohio organized militia who are more than seventeen years of age and

~~regularly enlisted therein, and of officers between the ages of eighteen and sixty-seven years regularly, commissioned therein or assigned thereto, or warranted in the Ohio military reserve as prescribed by Chapter 5920. of Revised Code.~~

(C) The Ohio naval militia consists of the members of the Ohio organized militia who are enlisted, commissioned, or warranted in the Ohio naval militia as prescribed by Chapter 5921. Of the Revised Code.

Sec. 5923.05. (A)(1) Permanent public employees, as defined in section 5903.01 of the Revised Code, who are members of the Ohio ~~national guard, the Ohio military reserve, the Ohio naval~~ organized militia, or members of other reserve components of the armed forces of the United States, including the Ohio national guard, are entitled to leave of absence from their respective ~~duties~~ positions without loss of pay for ~~such~~ the time as they are performing ~~military duty~~ service in the uniformed services, as defined in section 5903.01 of the Revised Code for periods ~~not to exceed twenty-two eight-hour work days or one hundred seventy-six hours in any one calendar year of up to one month,~~ for each calendar year in which ~~military duty is performed~~ they are performing service in the uniformed services.

(2) As used in this section, "calendar year" means the year beginning on the first day of January and ending on the last day of December, and "month" means twenty-two eight-hour work days or one hundred seventy-six hours within one calendar year.

(B) Except as otherwise provided in division (C) of this section, any permanent public employee who is entitled to the leave provided under division (A) of this section and who is called or ordered to ~~military duty~~ the uniformed services for ~~a period in excess of twenty-two eight-hour work days or one hundred seventy-six hours in any one calendar year longer than a month,~~ for each calendar year in which ~~military duty is~~ the employee performed service in the uniformed services, because of an executive order issued by the president of the United States or an act of congress is entitled, during the period designated in the order or act, to a leave of absence and to be paid, during each ~~month of that~~ monthly pay period of that leave of absence, the lesser of the following:

(1) The difference between ~~his~~ the permanent public employee's gross monthly wage or salary as an officer or permanent public employee and the sum of ~~his~~ the permanent public employee's gross ~~military~~ uniformed pay and allowances received that month;

(2) Five hundred dollars.

(C) No permanent public employee shall receive payments under division (B) of this section if the sum of ~~his~~ the permanent public

s gross ~~military~~ ~~uniformed~~ pay and allowances received in a ~~month~~ ~~pay period~~ exceeds ~~his~~ ~~the employee's~~ gross ~~monthly~~ wage or salary as a permanent public employee ~~for that period~~ or if the permanent public employee is receiving ~~his~~ pay ~~pursuant to~~ ~~under~~ division (A) of this section.

(D) Any political subdivision of the state, as defined in section 2744.01 of the Revised Code, may elect to pay any of its permanent public employees who are entitled to the leave provided under division (A) of this section and who are called or ordered to ~~military duty~~ the uniformed services for a period in excess of twenty-two eight hour work days or one hundred seventy-six hours in any one calendar year longer than one month, for each calendar year in which ~~military duty~~ is the employee performed service in the uniformed services, because of an executive order issued by the president or an act of congress, such payments, in addition to those payments required by division (B) of this section, as may be authorized by the legislative authority of the political subdivision.

(E) Each permanent public employee who is entitled to leave provided under division (A) of this section shall submit to ~~his~~ the permanent public employee's appointing authority the published order authorizing the ~~military duty~~ call or order to the uniformed services or a written statement from the appropriate military commander authorizing ~~such duty~~ that service, prior to being credited with such leave.

(F) Any permanent public employee of a political subdivision whose employment is governed by a collective bargaining agreement with provision for ~~military leave~~ the performance of service in the uniformed services shall abide by the terms of that collective bargaining agreement with respect to ~~military leave~~ the performance of such service, except that no collective bargaining agreement may afford fewer rights and benefits than are conferred under this section.

Sec. 5923.09. Each enlisted ~~man~~ member and each commissioned or warrant officer of the Ohio military reserve ~~shall~~ or Ohio naval militia, if funds are appropriated for this purpose by the general assembly, may be paid at rates to be prescribed ~~from time to time~~ by the ~~governor~~ as commander in chief adjutant general but not exceeding one-thirtieth of the monthly base pay of ~~his~~ the member's or officer's grade, as is provided for enlisted ~~men~~ members or commissioned or warrant officers of the armed forces of the United States under the department of defense pay manual, for each authorized regular drill attended, to be paid ~~quarterly~~ monthly.

Sec. 5923.10. (A) If any enlisted ~~man~~ member in the Ohio ~~national guard~~, ~~Ohio naval~~ organized militia, ~~or the Ohio military reserve~~ willfully, maliciously, purposely, or through carelessness or neglect, permits any of

the arms, equipment, or other property issued to ~~him~~ the enlisted member belonging to the state or the United States, to become lost, damaged, or destroyed, the commanding officer of ~~his~~ the enlisted member's company, troop, battery, detachment, or other organization shall charge the value of the ~~same~~ lost, damaged, or destroyed arms, equipment, or other property against any pay due ~~him~~ the enlisted member under ~~such~~ rules applicable thereto as prescribed by the department of defense or the ~~governor~~ adjutant general.

~~AH~~ (B) All property of the United States issued to a unit or member of the Ohio national guard shall be accounted and recouped for as provided by the regulations prescribed by the army or the air force and the national guard bureau, as appropriate and as supplemented by the adjutant general.

(C) Notwithstanding any contrary provisions of Chapter 2716. of the Revised Code, all allowances and pay provided for officers and enlisted ~~men~~ members of the Ohio organized militia shall be ~~applied~~ subject to the payment of any shortage of or injury to state or United States property or funds for which ~~such~~ those officers or enlisted ~~men~~ members are responsible or accountable.

Sec. 5923.21. (A) The Ohio organized militia may be called by the governor by proclamation to aid the civil authorities to do any of the following:

- (1) Execute the laws of this state;
- (2) Suppress insurrection;
- (3) Repel invasion;

(4) Act in the event of a disaster, as defined in section 5502.21 of the Revised Code, within the state;

(5) Promote the health, safety, and welfare of the citizens of this state.

(B) In all cases, the organized militia shall be called to state active duty before the unorganized militia.

(C) The governor's proclamation under division (A) of this section shall specify the statutory basis of the call.

Sec. 5923.28. ~~The~~ (A) Except as provided in division (B) of this section, the military laws of this state shall conform to all laws of and regulations of promulgated by the United States affecting the same subject and anything to the contrary ~~shall be~~ is void ~~so long as~~ if the subject matter has been acted on by the ~~United States~~ army, air force, or national guard bureau.

(B) All matters relating to the organization, discipline, and government of the military state defense forces, not otherwise provided by the laws of this state or the rules ~~and regulations~~ promulgated thereunder under those laws, shall be decided by the custom, regulations, and usage of the armed

forces of the United States.

Sec. 5924.15. Under such regulations as the governor may prescribe, and under such additional regulations as may be prescribed by the adjutant general of Ohio, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to, or embarked in a vessel, punishment may not be imposed upon any person subject to this code under this section if such person has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. Subject to the foregoing, any commanding officer, and for the purposes of this section the adjutant general of Ohio, may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(A) Upon officers of ~~his~~ the commanding officer's command:

(1) Restriction to certain specified limits, with or without suspension from duty, for not more than thirty consecutive days;

(2) If imposed by the governor, the adjutant general, the commanding officer of a force of the organized militia, or the commanding general of a division;

(a) Arrest in quarters for not more than thirty consecutive days;

(b) Fine or forfeiture of not more than one-half of one month's pay per month for two months, or the sum of one hundred fifty dollars, whichever is greater;

(c) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days;

(d) Detention of not more than one-half of one month's pay per month for three months, or the sum of two hundred twenty-five dollars, whichever is greater;

(B) Upon other military personnel of ~~his~~ the commanding officer's command:

(1) If imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(2) Correctional custody for not more than seven consecutive days;

(3) Fine or forfeiture of not more than seven days' pay, or the sum of twenty-five dollars, whichever is greater;

(4) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(5) Extra duties, including fatigue or other duties, for not more than fourteen consecutive days;

(6) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(7) Detention of not more than fourteen days' pay, or the sum of fifty dollars, whichever is greater;

(8) If imposed by an officer of the grade of major or lieutenant commander, or above;

(a) The punishment authorized under division (B)(1) of this section;

(b) Correctional custody for not more than thirty consecutive days;

(c) Fine or forfeiture of not more than one-half of one month's pay per month for two months, or the sum of fifty dollars, whichever is greater;

(d) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in pay grade above E-4 may not be reduced more than two pay grades;

(e) Extra duties, including fatigue or other duties, for not more than forty-five consecutive days;

(f) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days;

(g) Detention of not more than one-half of one month's pay per month for three months, or the sum of seventy-five dollars, whichever is greater;

Detention of pay shall be for a stated period of not more than one year, but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this section "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association

with persons awaiting trial or held in confinement pursuant to trial by court-martial or civilian court.

(C) An officer in charge may impose upon enlisted members assigned to the unit of which ~~he~~ the officer is in charge such of the punishments authorized under divisions (B)(1) to (B)(7) of this section, as the governor or adjutant general may specifically prescribe by regulation.

(D) The officer who imposes the punishment authorized in divisions (A) or (B) of this section, or ~~his~~ the officer's successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under divisions (A) or (B) of this section, whether or not executed. In addition, ~~he~~ the officer who imposed the punishment may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. ~~He~~ The officer who imposed the punishment may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating:

- (1) Arrest in quarters to restriction;
- (2) Confinement on bread and water or diminished rations to correctional custody;
- (3) Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or
- (4) Extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(E) A person punished under this section who considers ~~his~~ the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under division (D) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (1) Arrest in quarters for more than seven days;
- (2) Correctional custody for more than seven days;
- (3) Forfeiture of more than seven days' pay;
- (4) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (5) Extra duties for more than fourteen days;
- (6) Restriction for more than fourteen days; or
- (7) Detention of more than fourteen days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate of the Ohio ~~army national guard or the Ohio air national guard, or a law specialist of the Ohio naval~~ ORGANIZED militia for consideration and advice, and may so refer the case upon appeal from any punishment imposed under divisions (A) or (B) of this section.

(F) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(G) The governor or the adjutant general may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(H) The punishments imposed pursuant to this section, except fine and forfeiture of pay, shall not extend beyond the termination of the duty status of the individual punished.

SECTION 2. That existing sections 111.15, 124.11, 141.02, 145.01, 145.30, 718.01, 1751.54, 3319.13, 3319.14, 3923.381, 3923.382, 4117.01, 4141.01, 4506.02, 4911.04, 5101.312, 5903.01, 5903.99, 5911.011, 5911.03, 5911.04, 5911.08, 5913.01, 5913.02, 5913.021, 5913.03, 5913.04, 5913.05, 5913.051, 5913.06, 5913.07, 5913.08, 5913.09, 5913.10, 5913.17, 5919.01, 5919.02, 5919.04, 5919.071, 5919.09, 5919.12, 5919.13, 5919.14, 5919.15, 5919.16, 5919.17, 5919.22, 5919.25, 5919.28, 5919.29, 5919.30, 5919.32, 5919.33, 5920.10, 5921.09, 5923.01, 5923.02, 5923.03, 5923.05, 5923.09, 5923.10, 5923.21, 5923.28, and 5924.15 and sections 124.28, 124.29, 5903.02, 5903.03, 5903.04, 5903.05, 5903.09, 5913.013, 5913.11, 5917.01, 5917.02, 5917.03, 5917.04, 5917.05, 5917.06, 5917.99, 5919.20, 5923.051, and 5923.35 of the Revised Code are hereby repealed.

SECTION 3. Section 4117.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 215 and Sub. H.B. 408 of the 122nd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

SECTION 4. (A) Section 718.01 of the Revised Code is amended by this act and also by Am. Sub. H.B. 215 of the 122nd General Assembly (effective September 29, 1997). The amendments of Am. Sub. H.B. 215 are included in this act in lower case to confirm the intention to retain them, but are not intended to be effective until September 29, 1997.

(B) Sections 124.11 and 4117.01 of the Revised Code are amended by this act and also by Sub. H.B. 408 of the 122nd General Assembly (effective October 1, 1997). The amendments of Sub H.B. 408 are included in this act in lower case to confirm the intention to retain them, but are not intended to be effective until October 1, 1997.

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that immediate action is crucial to enable the Adjutant General's Department to capitalize on time-sensitive federal actions scheduled for September 30, 1997. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____