

As Reported by the House Human Services and Aging Committee

125th General Assembly

Regular Session

2003-2004

Sub. S. B. No. 92

**Senators Nein, Armbruster, Carey, Austria, Mumper, Roberts, White, Harris
Representatives Schmidt, Flowers, Otterman**

A B I L L

To amend sections 3121.898, 3121.899, 4141.01, 1
4141.281, and 4141.29 of the Revised Code, and to 2
amend Section 3 of S.B. 99 of the 124th General 3
Assembly to modify limitations on the use of new 4
hire reports under the Child Support Law, to 5
change unemployment compensation eligibility 6
requirements when unemployment is caused by a 7
major disaster, to modify the authority of 8
reviewing courts with respect to unemployment 9
compensation appeals, to delay the implementation 10
of specified unemployment compensation application 11
requirements for a year and to declare an 12
emergency. 13

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

Section 1. That sections 3121.898, 3121.899, 4141.01, 14
4141.281, and 4141.29 of the Revised Code be amended to read as 15
follows: 16

Sec. 3121.898. The department of job and family services 17
shall use the new hire reports it receives ~~to~~ for any of the 18
following purposes set forth in 42 U.S.C. 653a, as amended, 19

<u>including:</u>	20
(A) <u>To locate individuals for the purposes of establishing paternity; and for establishing, modifying, and enforcing <u>child support orders being administered by child support enforcement agencies in this state; and to detect fraud in any program administered by the department.</u></u>	21 22 23 24 25
(B) <u>To verify eligibility for any of the following programs:</u>	26
(1) <u>Any Title IV-A program as defined in section 5101.80 of the Revised Code;</u>	27 28
(2) <u>The medicaid program authorized by Chapter 5111. of the Revised Code;</u>	29 30
(3) <u>The unemployment compensation program authorized by Chapter 4141. of the Revised Code;</u>	31 32
(4) <u>The food stamp program authorized by section 5101.54 of the Revised Code;</u>	33 34
(5) <u>Any other program authorized in 42 U.S.C. 1320b-7(b), as amended.</u>	35 36
(C) <u>The administration of the employment security program under the director of job and family services.</u>	37 38
Sec. 3121.899. (A) <u>The new hire reports filed with the department of job and family services pursuant to section 3121.891 of the Revised Code shall not be considered public records for purposes of section 149.43 of the Revised Code. The director of job and family services may adopt rules under section 3125.51 of the Revised Code governing access to, and use and disclosure of, information contained in the new hire reports. The</u>	39 40 41 42 43 44 45
(B) <u>The department of job and family services may disclose information in the new hire reports to all of the following:</u>	46 47

(1) Any child support enforcement agency and any agent of the 48
department or under contract with a child support enforcement 49
agency that is under contract with the department for the purposes 50
listed in division (A) of section 3121.898 of the Revised Code. 51
The department may submit to the bureau of workers' compensation a 52
copy of any new hire report it receives; 53

(2) Any county department of job and family services and any 54
agent under contract with a county department of job and family 55
services for the purposes listed in division (B) of section 56
3121.898 of the Revised Code; 57

(3) Employees of the department of job and family services 58
and any agent under contract with the department of job and family 59
services for the purposes listed in divisions (B) and (C) of 60
section 3121.898 of the Revised Code; 61

(4) The administrator of workers' compensation for the 62
purpose of administering the workers' compensation system pursuant 63
to Chapters 4121., 4123., 4127., and 4131. of the Revised Code. 64

Sec. 4141.01. As used in this chapter, unless the context 65
otherwise requires: 66

(A)(1) "Employer" means the state, its instrumentalities, its 67
political subdivisions and their instrumentalities, and any 68
individual or type of organization including any partnership, 69
limited liability company, association, trust, estate, joint-stock 70
company, insurance company, or corporation, whether domestic or 71
foreign, or the receiver, trustee in bankruptcy, trustee, or the 72
successor thereof, or the legal representative of a deceased 73
person who subsequent to December 31, 1971, or in the case of 74
political subdivisions or their instrumentalities, subsequent to 75
December 31, 1973: 76

(a) Had in employment at least one individual, or in the case 77

of a nonprofit organization, subsequent to December 31, 1973, had 78
not less than four individuals in employment for some portion of a 79
day in each of twenty different calendar weeks, in either the 80
current or the preceding calendar year whether or not the same 81
individual was in employment in each such day; or 82

(b) Except for a nonprofit organization, had paid for service 83
in employment wages of fifteen hundred dollars or more in any 84
calendar quarter in either the current or preceding calendar year; 85
or 86

(c) Had paid, subsequent to December 31, 1977, for employment 87
in domestic service in a local college club, or local chapter of a 88
college fraternity or sorority, cash remuneration of one thousand 89
dollars or more in any calendar quarter in the current calendar 90
year or the preceding calendar year, or had paid subsequent to 91
December 31, 1977, for employment in domestic service in a private 92
home cash remuneration of one thousand dollars in any calendar 93
quarter in the current calendar year or the preceding calendar 94
year: 95

(i) For the purposes of divisions (A)(1)(a) and (b) of this 96
section, there shall not be taken into account any wages paid to, 97
or employment of, an individual performing domestic service as 98
described in this division. 99

(ii) An employer under this division shall not be an employer 100
with respect to wages paid for any services other than domestic 101
service unless the employer is also found to be an employer under 102
division (A)(1)(a), (b), or (d) of this section. 103

(d) As a farm operator or a crew leader subsequent to 104
December 31, 1977, had in employment individuals in agricultural 105
labor; and 106

(i) During any calendar quarter in the current calendar year 107
or the preceding calendar year, paid cash remuneration of twenty 108

thousand dollars or more for the agricultural labor; or 109

(ii) Had at least ten individuals in employment in 110
agricultural labor, not including agricultural workers who are 111
aliens admitted to the United States to perform agricultural labor 112
pursuant to sections 214(e) and 101(a)(15)(H) of the "Immigration 113
and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 114
1101(a)(15)(H)(ii)(a), for some portion of a day in each of the 115
twenty different calendar weeks, in either the current or 116
preceding calendar year whether or not the same individual was in 117
employment in each day; or 118

(e) Is not otherwise an employer as defined under division 119
(A)(1)(a) or (b) of this section; and 120

(i) For which, within either the current or preceding 121
calendar year, service, except for domestic service in a private 122
home not covered under division (A)(1)(c) of this section, is or 123
was performed with respect to which such employer is liable for 124
any federal tax against which credit may be taken for 125
contributions required to be paid into a state unemployment fund; 126

(ii) Which, as a condition for approval of this chapter for 127
full tax credit against the tax imposed by the "Federal 128
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 129
required, pursuant to such act to be an employer under this 130
chapter; or 131

(iii) Who became an employer by election under division 132
(A)(4) or (5) of this section and for the duration of such 133
election; or 134

(f) In the case of the state, its instrumentalities, its 135
political subdivisions, and their instrumentalities, had in 136
employment, as defined in division (B)(2)(a) of this section, at 137
least one individual; 138

(g) For the purposes of division (A)(1)(a) of this section, 139

if any week includes both the thirty-first day of December and the 140
first day of January, the days of that week before the first day 141
of January shall be considered one calendar week and the days 142
beginning the first day of January another week. 143

(2) Each individual employed to perform or to assist in 144
performing the work of any agent or employee of an employer is 145
employed by such employer for all the purposes of this chapter, 146
whether such individual was hired or paid directly by such 147
employer or by such agent or employee, provided the employer had 148
actual or constructive knowledge of the work. All individuals 149
performing services for an employer of any person in this state 150
who maintains two or more establishments within this state are 151
employed by a single employer for the purposes of this chapter. 152

(3) An employer subject to this chapter within any calendar 153
year is subject to this chapter during the whole of such year and 154
during the next succeeding calendar year. 155

(4) An employer not otherwise subject to this chapter who 156
files with the director of job and family services a written 157
election to become an employer subject to this chapter for not 158
less than two calendar years shall, with the written approval of 159
such election by the director, become an employer subject to this 160
chapter to the same extent as all other employers as of the date 161
stated in such approval, and shall cease to be subject to this 162
chapter as of the first day of January of any calendar year 163
subsequent to such two calendar years only if at least thirty days 164
prior to such first day of January the employer has filed with the 165
director a written notice to that effect. 166

(5) Any employer for whom services that do not constitute 167
employment are performed may file with the director a written 168
election that all such services performed by individuals in the 169
employer's employ in one or more distinct establishments or places 170
of business shall be deemed to constitute employment for all the 171

purposes of this chapter, for not less than two calendar years. 172
Upon written approval of the election by the director, such 173
services shall be deemed to constitute employment subject to this 174
chapter from and after the date stated in such approval. Such 175
services shall cease to be employment subject to this chapter as 176
of the first day of January of any calendar year subsequent to 177
such two calendar years only if at least thirty days prior to such 178
first day of January such employer has filed with the director a 179
written notice to that effect. 180

(B)(1) "Employment" means service performed by an individual 181
for remuneration under any contract of hire, written or oral, 182
express or implied, including service performed in interstate 183
commerce and service performed by an officer of a corporation, 184
without regard to whether such service is executive, managerial, 185
or manual in nature, and without regard to whether such officer is 186
a stockholder or a member of the board of directors of the 187
corporation, unless it is shown to the satisfaction of the 188
director that such individual has been and will continue to be 189
free from direction or control over the performance of such 190
service, both under a contract of service and in fact. The 191
director shall adopt rules to define "direction or control." 192

(2) "Employment" includes: 193

(a) Service performed after December 31, 1977, by an 194
individual in the employ of the state or any of its 195
instrumentalities, or any political subdivision thereof or any of 196
its instrumentalities or any instrumentality of more than one of 197
the foregoing or any instrumentality of any of the foregoing and 198
one or more other states or political subdivisions and without 199
regard to divisions (A)(1)(a) and (b) of this section, provided 200
that such service is excluded from employment as defined in the 201
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 202
3306(c)(7) and is not excluded under division (B)(3) of this 203

section; or the services of employees covered by voluntary 204
election, as provided under divisions (A)(4) and (5) of this 205
section; 206

(b) Service performed after December 31, 1971, by an 207
individual in the employ of a religious, charitable, educational, 208
or other organization which is excluded from the term "employment" 209
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 210
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 211
3306(c)(8) of that act and is not excluded under division (B)(3) 212
of this section; 213

(c) Domestic service performed after December 31, 1977, for 214
an employer, as provided in division (A)(1)(c) of this section; 215

(d) Agricultural labor performed after December 31, 1977, for 216
a farm operator or a crew leader, as provided in division 217
(A)(1)(d) of this section; 218

(e) Service not covered under division (B)(1) of this section 219
which is performed after December 31, 1971: 220

(i) As an agent-driver or commission-driver engaged in 221
distributing meat products, vegetable products, fruit products, 222
bakery products, beverages other than milk, laundry, or 223
dry-cleaning services, for the individual's employer or principal; 224

(ii) As a traveling or city salesperson, other than as an 225
agent-driver or commission-driver, engaged on a full-time basis in 226
the solicitation on behalf of and in the transmission to the 227
salesperson's employer or principal except for sideline sales 228
activities on behalf of some other person of orders from 229
wholesalers, retailers, contractors, or operators of hotels, 230
restaurants, or other similar establishments for merchandise for 231
resale, or supplies for use in their business operations, provided 232
that for the purposes of ~~this~~ division (B)(2)(e)(ii) of this 233
section, the services shall be deemed employment if the contract 234

of service contemplates that substantially all of the services are 235
to be performed personally by the individual and that the 236
individual does not have a substantial investment in facilities 237
used in connection with the performance of the services other than 238
in facilities for transportation, and the services are not in the 239
nature of a single transaction that is not a part of a continuing 240
relationship with the person for whom the services are performed. 241

(f) An individual's entire service performed within or both 242
within and without the state if: 243

(i) The service is localized in this state. 244

(ii) The service is not localized in any state, but some of 245
the service is performed in this state and either the base of 246
operations, or if there is no base of operations then the place 247
from which such service is directed or controlled, is in this 248
state or the base of operations or place from which such service 249
is directed or controlled is not in any state in which some part 250
of the service is performed but the individual's residence is in 251
this state. 252

(g) Service not covered under division (B)(2)(f)(ii) of this 253
section and performed entirely without this state, with respect to 254
no part of which contributions are required and paid under an 255
unemployment compensation law of any other state, the Virgin 256
Islands, Canada, or of the United States, if the individual 257
performing such service is a resident of this state and the 258
director approves the election of the employer for whom such 259
services are performed; or, if the individual is not a resident of 260
this state but the place from which the service is directed or 261
controlled is in this state, the entire services of such 262
individual shall be deemed to be employment subject to this 263
chapter, provided service is deemed to be localized within this 264
state if the service is performed entirely within this state or if 265
the service is performed both within and without this state but 266

the service performed without this state is incidental to the 267
individual's service within the state, for example, is temporary 268
or transitory in nature or consists of isolated transactions; 269

(h) Service of an individual who is a citizen of the United 270
States, performed outside the United States except in Canada after 271
December 31, 1971, or the Virgin Islands, after December 31, 1971, 272
and before the first day of January of the year following that in 273
which the United States secretary of labor approves the Virgin 274
Islands law for the first time, in the employ of an American 275
employer, other than service which is "employment" under divisions 276
(B)(2)(f) and (g) of this section or similar provisions of another 277
state's law, if: 278

(i) The employer's principal place of business in the United 279
States is located in this state; 280

(ii) The employer has no place of business in the United 281
States, but the employer is an individual who is a resident of 282
this state; or the employer is a corporation which is organized 283
under the laws of this state, or the employer is a partnership or 284
a trust and the number of partners or trustees who are residents 285
of this state is greater than the number who are residents of any 286
other state; or 287

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 288
of this section is met but the employer has elected coverage in 289
this state or the employer having failed to elect coverage in any 290
state, the individual has filed a claim for benefits, based on 291
such service, under this chapter. 292

(i) For the purposes of division (B)(2)(h) of this section, 293
the term "American employer" means an employer who is an 294
individual who is a resident of the United States; or a 295
partnership, if two-thirds or more of the partners are residents 296
of the United States; or a trust, if all of the trustees are 297

residents of the United States; or a corporation organized under 298
the laws of the United States or of any state, provided the term 299
"United States" includes the states, the District of Columbia, the 300
Commonwealth of Puerto Rico, and the Virgin Islands. 301

(j) Notwithstanding any other provisions of divisions (B)(1) 302
and (2) of this section, service, except for domestic service in a 303
private home not covered under division (A)(1)(c) of this section, 304
with respect to which a tax is required to be paid under any 305
federal law imposing a tax against which credit may be taken for 306
contributions required to be paid into a state unemployment fund, 307
or service, except for domestic service in a private home not 308
covered under division (A)(1)(c) of this section, which, as a 309
condition for full tax credit against the tax imposed by the 310
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 311
3311, is required to be covered under this chapter. 312

(k) Construction services performed by any individual under a 313
construction contract, as defined in section 4141.39 of the 314
Revised Code, if the director determines that the employer for 315
whom services are performed has the right to direct or control the 316
performance of the services and that the individuals who perform 317
the services receive remuneration for the services performed. The 318
director shall presume that the employer for whom services are 319
performed has the right to direct or control the performance of 320
the services if ten or more of the following criteria apply: 321

(i) The employer directs or controls the manner or method by 322
which instructions are given to the individual performing 323
services; 324

(ii) The employer requires particular training for the 325
individual performing services; 326

(iii) Services performed by the individual are integrated 327
into the regular functioning of the employer; 328

(iv) The employer requires that services be provided by a particular individual;	329 330
(v) The employer hires, supervises, or pays the wages of the individual performing services;	331 332
(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;	333 334 335
(vii) The employer requires the individual to perform services during established hours;	336 337
(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;	338 339 340
(ix) The employer requires the individual to perform services on the employer's premises;	341 342
(x) The employer requires the individual performing services to follow the order of work established by the employer;	343 344
(xi) The employer requires the individual performing services to make oral or written reports of progress;	345 346
(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;	347 348
(xiii) The employer pays expenses for the individual performing services;	349 350
(xiv) The employer furnishes the tools and materials for use by the individual to perform services;	351 352
(xv) The individual performing services has not invested in the facilities used to perform services;	353 354
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;	355 356 357

(xvii) The individual performing services is not performing services for more than two employers simultaneously;	358 359
(xviii) The individual performing services does not make the services available to the general public;	360 361
(xix) The employer has a right to discharge the individual performing services;	362 363
(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.	364 365 366
(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 to 3311, and if the services are not required to be included under division (B)(2)(j) of this section:	367 368 369 370 371
(a) Service performed after December 31, 1977, in agricultural labor, except as provided in division (A)(1)(d) of this section;	372 373 374
(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;	375 376 377 378
(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:	379 380 381
(i) As a publicly elected official;	382
(ii) As a member of a legislative body, or a member of the judiciary;	383 384
(iii) As a military member of the Ohio national guard;	385
(iv) As an employee, not in the classified service as defined	386

in section 124.11 of the Revised Code, serving on a temporary 387
basis in case of fire, storm, snow, earthquake, flood, or similar 388
emergency; 389

(v) In a position which, under or pursuant to law, is 390
designated as a major nontenured policymaking or advisory 391
position, not in the classified service of the state, or a 392
policymaking or advisory position the performance of the duties of 393
which ordinarily does not require more than eight hours per week. 394

(d) In the employ of any governmental unit or instrumentality 395
of the United States; 396

(e) Service performed after December 31, 1971: 397

(i) Service in the employ of an educational institution or 398
institution of higher education, including those operated by the 399
state or a political subdivision, if such service is performed by 400
a student who is enrolled and is regularly attending classes at 401
the educational institution or institution of higher education; or 402

(ii) By an individual who is enrolled at a nonprofit or 403
public educational institution which normally maintains a regular 404
faculty and curriculum and normally has a regularly organized body 405
of students in attendance at the place where its educational 406
activities are carried on as a student in a full-time program, 407
taken for credit at the institution, which combines academic 408
instruction with work experience, if the service is an integral 409
part of the program, and the institution has so certified to the 410
employer, provided that this subdivision shall not apply to 411
service performed in a program established for or on behalf of an 412
employer or group of employers; 413

(f) Service performed by an individual in the employ of the 414
individual's son, daughter, or spouse and service performed by a 415
child under the age of eighteen in the employ of the child's 416
father or mother; 417

(g) Service performed for one or more principals by an 418
individual who is compensated on a commission basis, who in the 419
performance of the work is master of the individual's own time and 420
efforts, and whose remuneration is wholly dependent on the amount 421
of effort the individual chooses to expend, and which service is 422
not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 423
(1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 424
31, 1971: 425

(i) By an individual for an employer as an insurance agent or 426
as an insurance solicitor, if all this service is performed for 427
remuneration solely by way of commission; 428

(ii) As a home worker performing work, according to 429
specifications furnished by the employer for whom the services are 430
performed, on materials or goods furnished by such employer which 431
are required to be returned to the employer or to a person 432
designated for that purpose. 433

(h) Service performed after December 31, 1971: 434

(i) In the employ of a church or convention or association of 435
churches, or in an organization which is operated primarily for 436
religious purposes and which is operated, supervised, controlled, 437
or principally supported by a church or convention or association 438
of churches; 439

(ii) By a duly ordained, commissioned, or licensed minister 440
of a church in the exercise of the individual's ministry or by a 441
member of a religious order in the exercise of duties required by 442
such order; or 443

(iii) In a facility conducted for the purpose of carrying out 444
a program of rehabilitation for individuals whose earning capacity 445
is impaired by age or physical or mental deficiency or injury, or 446
providing remunerative work for individuals who because of their 447
impaired physical or mental capacity cannot be readily absorbed in 448

the competitive labor market, by an individual receiving such 449
rehabilitation or remunerative work; 450

(i) Service performed after June 30, 1939, with respect to 451
which unemployment compensation is payable under the "Railroad 452
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 453

(j) Service performed by an individual in the employ of any 454
organization exempt from income tax under section 501 of the 455
"Internal Revenue Code of 1954," if the remuneration for such 456
service does not exceed fifty dollars in any calendar quarter, or 457
if such service is in connection with the collection of dues or 458
premiums for a fraternal beneficial society, order, or association 459
and is performed away from the home office or is ritualistic 460
service in connection with any such society, order, or 461
association; 462

(k) Casual labor not in the course of an employer's trade or 463
business; incidental service performed by an officer, appraiser, 464
or member of a finance committee of a bank, building and loan 465
association, savings and loan association, or savings association 466
when the remuneration for such incidental service exclusive of the 467
amount paid or allotted for directors' fees does not exceed sixty 468
dollars per calendar quarter is casual labor; 469

(l) Service performed in the employ of a voluntary employees' 470
beneficial association providing for the payment of life, 471
sickness, accident, or other benefits to the members of such 472
association or their dependents or their designated beneficiaries, 473
if admission to a membership in such association is limited to 474
individuals who are officers or employees of a municipal or public 475
corporation, of a political subdivision of the state, or of the 476
United States and no part of the net earnings of such association 477
inures, other than through such payments, to the benefit of any 478
private shareholder or individual; 479

(m) Service performed by an individual in the employ of a 480
foreign government, including service as a consular or other 481
officer or employee or of a nondiplomatic representative; 482

(n) Service performed in the employ of an instrumentality 483
wholly owned by a foreign government if the service is of a 484
character similar to that performed in foreign countries by 485
employees of the United States or of an instrumentality thereof 486
and if the director finds that the secretary of state of the 487
United States has certified to the secretary of the treasury of 488
the United States that the foreign government, with respect to 489
whose instrumentality exemption is claimed, grants an equivalent 490
exemption with respect to similar service performed in the foreign 491
country by employees of the United States and of instrumentalities 492
thereof; 493

(o) Service with respect to which unemployment compensation 494
is payable under an unemployment compensation system established 495
by an act of congress; 496

(p) Service performed as a student nurse in the employ of a 497
hospital or a nurses' training school by an individual who is 498
enrolled and is regularly attending classes in a nurses' training 499
school chartered or approved pursuant to state law, and service 500
performed as an intern in the employ of a hospital by an 501
individual who has completed a four years' course in a medical 502
school chartered or approved pursuant to state law; 503

(q) Service performed by an individual under the age of 504
eighteen in the delivery or distribution of newspapers or shopping 505
news, not including delivery or distribution to any point for 506
subsequent delivery or distribution; 507

(r) Service performed in the employ of the United States or 508
an instrumentality of the United States immune under the 509
~~constitution~~ Constitution of the United States from the 510

contributions imposed by this chapter, except that to the extent 511
that congress permits states to require any instrumentalities of 512
the United States to make payments into an unemployment fund under 513
a state unemployment compensation act, this chapter shall be 514
applicable to such instrumentalities and to services performed for 515
such instrumentalities in the same manner, to the same extent, and 516
on the same terms as to all other employers, individuals, and 517
services, provided that if this state is not certified for any 518
year by the proper agency of the United States under section 3304 519
of the "Internal Revenue Code of 1954," the payments required of 520
such instrumentalities with respect to such year shall be refunded 521
by the director from the fund in the same manner and within the 522
same period as is provided in division (E) of section 4141.09 of 523
the Revised Code with respect to contributions erroneously 524
collected; 525

(s) Service performed by an individual as a member of a band 526
or orchestra, provided such service does not represent the 527
principal occupation of such individual, and which service is not 528
subject to or required to be covered for full tax credit against 529
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 530
183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed after 531
December 31, 1971, for a nonprofit organization, this state or its 532
instrumentalities, or a political subdivision or its 533
instrumentalities, as part of an unemployment work-relief or 534
work-training program assisted or financed in whole or in part by 535
any federal agency or an agency of a state or political 536
subdivision thereof, by an individual receiving the work-relief or 537
work-training. 538

(t) Service performed in the employ of a day camp whose 539
camping season does not exceed twelve weeks in any calendar year, 540
and which service is not subject to the "Federal Unemployment Tax 541
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 542

performed after December 31, 1971:	543
(i) In the employ of a hospital, if the service is performed	544
by a patient of the hospital, as defined in division (W) of this	545
section;	546
(ii) For a prison or other correctional institution by an	547
inmate of the prison or correctional institution;	548
(iii) Service performed after December 31, 1977, by an inmate	549
of a custodial institution operated by the state, a political	550
subdivision, or a nonprofit organization.	551
(u) Service that is performed by a nonresident alien	552
individual for the period the individual temporarily is present in	553
the United States as a nonimmigrant under division (F), (J), (M),	554
or (Q) of section 101(a)(15) of the "Immigration and Nationality	555
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded	556
under section 3306(c)(19) of the "Federal Unemployment Tax Act,"	557
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311.	558
(v) Notwithstanding any other provisions of division (B)(3)	559
of this section, services that are excluded under divisions	560
(B)(3)(g), (j), (k), and (l) of this section shall not be excluded	561
from employment when performed for a nonprofit organization, as	562
defined in division (X) of this section, or for this state or its	563
instrumentalities, or for a political subdivision or its	564
instrumentalities;	565
(w) Service that is performed by an individual working as an	566
election official or election worker if the amount of remuneration	567
received by the individual during the calendar year for services	568
as an election official or election worker is less than one	569
thousand dollars;	570
(x) Service performed for an elementary or secondary school	571
that is operated primarily for religious purposes, that is	572
described in subsection 501(c)(3) and exempt from federal income	573

taxation under subsection 501(a) of the Internal Revenue Code, 26 574
U.S.C.A. 501; 575

(y) Service performed by a person committed to a penal 576
institution. 577

(4) If the services performed during one half or more of any 578
pay period by an employee for the person employing that employee 579
constitute employment, all the services of such employee for such 580
period shall be deemed to be employment; but if the services 581
performed during more than one half of any such pay period by an 582
employee for the person employing that employee do not constitute 583
employment, then none of the services of such employee for such 584
period shall be deemed to be employment. As used in division 585
(B)(4) of this section, "pay period" means a period, of not more 586
than thirty-one consecutive days, for which payment of 587
remuneration is ordinarily made to the employee by the person 588
employing that employee. Division (B)(4) of this section does not 589
apply to services performed in a pay period by an employee for the 590
person employing that employee, if any of such service is excepted 591
by division (B)(3)(o) of this section. 592

(C) "Benefits" means money payments payable to an individual 593
who has established benefit rights, as provided in this chapter, 594
for loss of remuneration due to the individual's unemployment. 595

(D) "Benefit rights" means the weekly benefit amount and the 596
maximum benefit amount that may become payable to an individual 597
within the individual's benefit year as determined by the 598
director. 599

(E) "Claim for benefits" means a claim for waiting period or 600
benefits for a designated week. 601

(F) "Additional claim" means the first claim for benefits 602
filed following any separation from employment during a benefit 603
year; "continued claim" means any claim other than the first claim 604

for benefits and other than an additional claim. 605

(G)(1) "Wages" means remuneration paid to an employee by each 606
of the employee's employers with respect to employment; except 607
that wages shall not include that part of remuneration paid during 608
any calendar year to an individual by an employer or such 609
employer's predecessor in interest in the same business or 610
enterprise, which in any calendar year is in excess of eight 611
thousand two hundred fifty dollars on and after January 1, 1992; 612
eight thousand five hundred dollars on and after January 1, 1993; 613
eight thousand seven hundred fifty dollars on and after January 1, 614
1994; and nine thousand dollars on and after January 1, 1995. 615
Remuneration in excess of such amounts shall be deemed wages 616
subject to contribution to the same extent that such remuneration 617
is defined as wages under the "Federal Unemployment Tax Act," 84 618
Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 619
remuneration paid an employee by an employer with respect to 620
employment in another state, upon which contributions were 621
required and paid by such employer under the unemployment 622
compensation act of such other state, shall be included as a part 623
of remuneration in computing the amount specified in this 624
division. 625

(2) Notwithstanding division (G)(1) of this section, if, as 626
of the computation date for any calendar year, the director 627
determines that the level of the unemployment compensation fund is 628
sixty per cent or more below the minimum safe level as defined in 629
section 4141.25 of the Revised Code, then, effective the first day 630
of January of the following calendar year, wages subject to this 631
chapter shall not include that part of remuneration paid during 632
any calendar year to an individual by an employer or such 633
employer's predecessor in interest in the same business or 634
enterprise which is in excess of nine thousand dollars. The 635
increase in the dollar amount of wages subject to this chapter 636

under this division shall remain in effect from the date of the 637
director's determination pursuant to division (G)(2) of this 638
section and thereafter notwithstanding the fact that the level in 639
the fund may subsequently become less than sixty per cent below 640
the minimum safe level. 641

(H)(1) "Remuneration" means all compensation for personal 642
services, including commissions and bonuses and the cash value of 643
all compensation in any medium other than cash, except that in the 644
case of agricultural or domestic service, "remuneration" includes 645
only cash remuneration. Gratuities customarily received by an 646
individual in the course of the individual's employment from 647
persons other than the individual's employer and which are 648
accounted for by such individual to the individual's employer are 649
taxable wages. 650

The reasonable cash value of compensation paid in any medium 651
other than cash shall be estimated and determined in accordance 652
with rules prescribed by the director, provided that 653
"remuneration" does not include: 654

(a) Payments as provided in divisions (b)(2) to (b)(16) of 655
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 656
26 U.S.C.A. 3301 to 3311, as amended; 657

(b) The payment by an employer, without deduction from the 658
remuneration of the individual in the employer's employ, of the 659
tax imposed upon an individual in the employer's employ under 660
section 3101 of the "Internal Revenue Code of 1954," with respect 661
to services performed after October 1, 1941. 662

(2) "Cash remuneration" means all remuneration paid in cash, 663
including commissions and bonuses, but not including the cash 664
value of all compensation in any medium other than cash. 665

(I) "Interested party" means the director and any party to 666
whom notice of a determination of an application for benefit 667

rights or a claim for benefits is required to be given under 668
section 4141.28 of the Revised Code. 669

(J) "Annual payroll" means the total amount of wages subject 670
to contributions during a twelve-month period ending with the last 671
day of the second calendar quarter of any calendar year. 672

(K) "Average annual payroll" means the average of the last 673
three annual payrolls of an employer, provided that if, as of any 674
computation date, the employer has had less than three annual 675
payrolls in such three-year period, such average shall be based on 676
the annual payrolls which the employer has had as of such date. 677

(L)(1) "Contributions" means the money payments to the state 678
unemployment compensation fund required of employers by section 679
4141.25 of the Revised Code and of the state and any of its 680
political subdivisions electing to pay contributions under section 681
4141.242 of the Revised Code. Employers paying contributions shall 682
be described as "contributory employers." 683

(2) "Payments in lieu of contributions" means the money 684
payments to the state unemployment compensation fund required of 685
reimbursing employers under sections 4141.241 and 4141.242 of the 686
Revised Code. 687

(M) An individual is "totally unemployed" in any week during 688
which the individual performs no services and with respect to such 689
week no remuneration is payable to the individual. 690

(N) An individual is "partially unemployed" in any week if, 691
due to involuntary loss of work, the total remuneration payable to 692
the individual for such week is less than the individual's weekly 693
benefit amount. 694

(O) "Week" means the calendar week ending at midnight 695
Saturday unless an equivalent week of seven consecutive calendar 696
days is prescribed by the director. 697

(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, when necessary to qualify for benefit rights, may 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 that 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, 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 director from the regular quarterly reports of wage information, which are systematically accessible, the

director may, consistent with the provisions of section 4141.28 of 729
the Revised Code, base the determination of eligibility for 730
benefits on the affidavit of the claimant with respect to weeks 731
and wages for that calendar quarter. The claimant shall furnish 732
payroll documentation, where available, in support of the 733
affidavit. The determination based upon the alternate base period 734
as it relates to the claimant's benefit rights, shall be amended 735
when the quarterly report of wage information from the employer is 736
timely received and that information causes a change in the 737
determination. As provided in division (B) of section 4141.28 of 738
the Revised Code, any benefits paid and charged to an employer's 739
account, based upon a claimant's affidavit, shall be adjusted 740
effective as of the beginning of the claimant's benefit year. No 741
calendar quarter in a base period or alternate base period shall 742
be used to establish a subsequent benefit year. 743

(3) The "base period" of a combined wage claim, as described 744
in division (H) of section 4141.43 of the Revised Code, shall be 745
the base period prescribed by the law of the state in which the 746
claim is allowed. 747

(4) For purposes of determining the weeks that comprise a 748
completed calendar quarter under this division, only those weeks 749
ending at midnight Saturday within the calendar quarter shall be 750
utilized. 751

(R)(1) "Benefit year" with respect to an individual means the 752
fifty-two week period beginning with the first day of that week 753
with respect to which the individual first files a valid 754
application for determination of benefit rights, and thereafter 755
the fifty-two week period beginning with the first day of that 756
week with respect to which the individual next files a valid 757
application for determination of benefit rights after the 758
termination of the individual's last preceding benefit year, 759
except that the application shall not be considered valid unless 760

the individual has had employment in six weeks that is subject to 761
this chapter or the unemployment compensation act of another 762
state, or the United States, and has, since the beginning of the 763
individual's previous benefit year, in the employment earned three 764
times the average weekly wage determined for the previous benefit 765
year. The "benefit year" of a combined wage claim, as described in 766
division (H) of section 4141.43 of the Revised Code, shall be the 767
benefit year prescribed by the law of the state in which the claim 768
is allowed. Any application for determination of benefit rights 769
made in accordance with section 4141.28 of the Revised Code is 770
valid if the individual filing such application is unemployed, has 771
been employed by an employer or employers subject to this chapter 772
in at least twenty qualifying weeks within the individual's base 773
period, and has earned or been paid remuneration at an average 774
weekly wage of not less than twenty-seven and one-half per cent of 775
the statewide average weekly wage for such weeks. For purposes of 776
determining whether an individual has had sufficient employment 777
since the beginning of the individual's previous benefit year to 778
file a valid application, "employment" means the performance of 779
services for which remuneration is payable. 780

(2) Effective for benefit years beginning on and after 781
December ~~28, 2003~~ 26, 2004, any application for determination of 782
benefit rights made in accordance with section 4141.28 of the 783
Revised Code is valid if the individual satisfies the criteria 784
described in division (R)(1) of this section, and if the reason 785
for the individual's separation from employment is not 786
disqualifying pursuant to division (D)(2) of section 4141.29 or 787
section 4141.291 of the Revised Code. A disqualification imposed 788
pursuant to division (D)(2) of section 4141.29 or section 4141.291 789
of the Revised Code must be removed as provided in those sections 790
as a requirement of establishing a valid application for benefit 791
years beginning on and after December ~~28, 2003~~ 26, 2004. 792

(3) The statewide average weekly wage shall be calculated by 793
the director once a year based on the twelve-month period ending 794
the thirtieth day of June, as set forth in division (B)(3) of 795
section 4141.30 of the Revised Code, rounded down to the nearest 796
dollar. Increases or decreases in the amount of remuneration 797
required to have been earned or paid in order for individuals to 798
have filed valid applications shall become effective on Sunday of 799
the calendar week in which the first day of January occurs that 800
follows the twelve-month period ending the thirtieth day of June 801
upon which the calculation of the statewide average weekly wage 802
was based. 803

(4) As used in this division, an individual is "unemployed" 804
if, with respect to the calendar week in which such application is 805
filed, the individual is "partially unemployed" or "totally 806
unemployed" as defined in this section or if, prior to filing the 807
application, the individual was separated from the individual's 808
most recent work for any reason which terminated the individual's 809
employee-employer relationship, or was laid off indefinitely or 810
for a definite period of seven or more days. 811

(S) "Calendar quarter" means the period of three consecutive 812
calendar months ending on the thirty-first day of March, the 813
thirtieth day of June, the thirtieth day of September, and the 814
thirty-first day of December, or the equivalent thereof as the 815
director prescribes by rule. 816

(T) "Computation date" means the first day of the third 817
calendar quarter of any calendar year. 818

(U) "Contribution period" means the calendar year beginning 819
on the first day of January of any year. 820

(V) "Agricultural labor," for the purpose of this division, 821
means any service performed prior to January 1, 1972, which was 822
agricultural labor as defined in this division prior to that date, 823

and service performed after December 31, 1971: 824

(1) On a farm, in the employ of any person, in connection 825
with cultivating the soil, or in connection with raising or 826
harvesting any agricultural or horticultural commodity, including 827
the raising, shearing, feeding, caring for, training, and 828
management of livestock, bees, poultry, and fur-bearing animals 829
and wildlife; 830

(2) In the employ of the owner or tenant or other operator of 831
a farm in connection with the operation, management, conservation, 832
improvement, or maintenance of such farm and its tools and 833
equipment, or in salvaging timber or clearing land of brush and 834
other debris left by hurricane, if the major part of such service 835
is performed on a farm; 836

(3) In connection with the production or harvesting of any 837
commodity defined as an agricultural commodity in section 15 (g) 838
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 839
U.S.C. 1141j, as amended, or in connection with the ginning of 840
cotton, or in connection with the operation or maintenance of 841
ditches, canals, reservoirs, or waterways, not owned or operated 842
for profit, used exclusively for supplying and storing water for 843
farming purposes; 844

(4) In the employ of the operator of a farm in handling, 845
planting, drying, packing, packaging, processing, freezing, 846
grading, storing, or delivering to storage or to market or to a 847
carrier for transportation to market, in its unmanufactured state, 848
any agricultural or horticultural commodity, but only if the 849
operator produced more than one half of the commodity with respect 850
to which such service is performed; 851

(5) In the employ of a group of operators of farms, or a 852
cooperative organization of which the operators are members, in 853
the performance of service described in division (V)(4) of this 854

section, but only if the operators produced more than one-half of 855
the commodity with respect to which the service is performed; 856

(6) Divisions (V)(4) and (5) of this section shall not be 857
deemed to be applicable with respect to service performed: 858

(a) In connection with commercial canning or commercial 859
freezing or in connection with any agricultural or horticultural 860
commodity after its delivery to a terminal market for distribution 861
for consumption; or 862

(b) On a farm operated for profit if the service is not in 863
the course of the employer's trade or business. 864

As used in division (V) of this section, "farm" includes 865
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 866
plantations, ranches, nurseries, ranges, greenhouses, or other 867
similar structures used primarily for the raising of agricultural 868
or horticultural commodities and orchards. 869

(W) "Hospital" means an institution which has been registered 870
or licensed by the Ohio department of health as a hospital. 871

(X) "Nonprofit organization" means an organization, or group 872
of organizations, described in section 501(c)(3) of the "Internal 873
Revenue Code of 1954," and exempt from income tax under section 874
501(a) of that code. 875

(Y) "Institution of higher education" means a public or 876
nonprofit educational institution which: 877

(1) Admits as regular students only individuals having a 878
certificate of graduation from a high school, or the recognized 879
equivalent; 880

(2) Is legally authorized in this state to provide a program 881
of education beyond high school; and 882

(3) Provides an educational program for which it awards a 883
bachelor's or higher degree, or provides a program which is 884

acceptable for full credit toward such a degree, a program of 885
post-graduate or post-doctoral studies, or a program of training 886
to prepare students for gainful employment in a recognized 887
occupation. 888

For the purposes of this division, all colleges and 889
universities in this state are institutions of higher education. 890

(Z) For the purposes of this chapter, "states" includes the 891
District of Columbia, the Commonwealth of Puerto Rico, and the 892
Virgin Islands. 893

(AA) "Alien" means, for the purposes of division (A)(1)(d) of 894
this section, an individual who is an alien admitted to the United 895
States to perform service in agricultural labor pursuant to 896
sections 214 (c) and 101 (a)(15)(H) of the "Immigration and 897
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 898

(BB)(1) "Crew leader" means an individual who furnishes 899
individuals to perform agricultural labor for any other employer 900
or farm operator, and: 901

(a) Pays, either on the individual's own behalf or on behalf 902
of the other employer or farm operator, the individuals so 903
furnished by the individual for the service in agricultural labor 904
performed by them; 905

(b) Has not entered into a written agreement with the other 906
employer or farm operator under which the agricultural worker is 907
designated as in the employ of the other employer or farm 908
operator. 909

(2) For the purposes of this chapter, any individual who is a 910
member of a crew furnished by a crew leader to perform service in 911
agricultural labor for any other employer or farm operator shall 912
be treated as an employee of the crew leader if: 913

(a) The crew leader holds a valid certificate of registration 914

under the "Farm Labor Contractor Registration Act of 1963," 90 915
Stat. 2668, 7 U.S.C. 2041; or 916

(b) Substantially all the members of the crew operate or 917
maintain tractors, mechanized harvesting or crop-dusting 918
equipment, or any other mechanized equipment, which is provided by 919
the crew leader; and 920

(c) If the individual is not in the employment of the other 921
employer or farm operator within the meaning of division (B)(1) of 922
this section. 923

(3) For the purposes of this division, any individual who is 924
furnished by a crew leader to perform service in agricultural 925
labor for any other employer or farm operator and who is not 926
treated as in the employment of the crew leader under division 927
(BB)(2) of this section shall be treated as the employee of the 928
other employer or farm operator and not of the crew leader. The 929
other employer or farm operator shall be treated as having paid 930
cash remuneration to the individual in an amount equal to the 931
amount of cash remuneration paid to the individual by the crew 932
leader, either on the crew leader's own behalf or on behalf of the 933
other employer or farm operator, for the service in agricultural 934
labor performed for the other employer or farm operator. 935

(CC) "Educational institution" means an institution other 936
than an institution of higher education as defined in division (Y) 937
of this section which: 938

(1) Offers participants, trainees, or students an organized 939
course of study or training designed to transfer to them 940
knowledge, skills, information, doctrines, attitudes, or abilities 941
from, by, or under the guidance of an instructor or teacher; and 942

(2) Is approved, chartered, or issued a permit to operate as 943
a school by the state board of education or other government 944
agency that is authorized within the state to approve, charter, or 945

issue a permit for the operation of a school. 946

For the purposes of this division, the courses of study or 947
training which the institution offers may be academic, technical, 948
trade, or preparation for gainful employment in a recognized 949
occupation. 950

Sec. 4141.281. 951

APPEALS 952

(A) APPEAL FILED 953

Any party notified of a determination of benefit rights or a 954
claim for benefits determination may appeal within twenty-one 955
calendar days after the written determination was sent to the 956
party or within an extended period as provided under division 957
(D)(9) of this section. 958

(B) REDETERMINATION 959

Within twenty-one days after receipt of the appeal, the 960
director of job and family services shall issue a redetermination 961
or transfer the appeal to the unemployment compensation review 962
commission. A redetermination under this section is appealable in 963
the same manner as an initial determination by the director. 964

(C) REVIEW COMMISSION 965

(1) JURISDICTION 966

The commission shall provide an opportunity for a fair 967
hearing to the interested parties of appeals over which the 968
commission has jurisdiction. The commission has jurisdiction over 969
an appeal on transfer or on direct appeal to the commission. If 970
the commission concludes that a pending appeal does not warrant a 971
hearing, the commission may remand the appeal to the director for 972
redetermination. The commission retains jurisdiction until the 973
appeal is remanded to the director or a final decision is issued 974
and appealed to court, or the time to request a review or to 975

appeal a decision of a hearing officer or the commission is 976
expired. 977

(2) CONDUCT OF HEARINGS 978

Hearings before the commission are held at the hearing 979
officer level and the review level. Unless otherwise provided in 980
this chapter, initial hearings involving claims for compensation 981
and other unemployment compensation issues are conducted at the 982
hearing officer level by hearing officers appointed by the 983
commission. Hearings at the review level are conducted by hearing 984
officers appointed by the commission, by members of the commission 985
acting either individually or collectively, and by members of the 986
commission and hearing officers acting jointly. In all hearings 987
conducted at the review level, the commission shall designate the 988
hearing officer or officers who are to conduct the hearing. When 989
the term "hearing officer" is used in reference to hearings 990
conducted at the review level, the term includes members of the 991
commission. All decisions issued at the review level are issued by 992
the commission. 993

Provisions contained in the remainder of this paragraph apply 994
to hearings at both the hearing officer level and the review 995
level. The principles of due process in administrative hearings 996
shall be applied to all hearings conducted under the authority of 997
the commission. In conducting hearings, all hearing officers shall 998
control the conduct of the hearing, exclude irrelevant or 999
cumulative evidence, and give weight to the kind of evidence on 1000
which reasonably prudent persons are accustomed to rely in the 1001
conduct of serious affairs. Hearing officers have an affirmative 1002
duty to question parties and witnesses in order to ascertain the 1003
relevant facts and to fully and fairly develop the record. Hearing 1004
officers are not bound by common law or statutory rules of 1005
evidence or by technical or formal rules of procedure. No person 1006
shall impose upon the claimant or the employer any burden of proof 1007

as is required in a court of law. The proceedings at hearings 1008
shall be recorded by mechanical means or otherwise as may be 1009
prescribed by the commission. In the absence of further 1010
proceedings, the record need not be transcribed. After considering 1011
all of the evidence, a hearing officer shall issue a written 1012
decision that sets forth the facts as the hearing officer finds 1013
them to be, cites the applicable law, and gives the reasoning for 1014
the decision. 1015

(3) HEARING OFFICER LEVEL 1016

When an appeal is transferred to the commission by the 1017
director, the commission shall notify all interested parties of 1018
the time and place of the hearing and assign the appeal for a 1019
hearing by a hearing officer. The hearings shall be de novo, 1020
except that the director's file pertaining to a case shall be 1021
included in the record to be considered. 1022

Following a hearing, the hearing officer shall affirm, 1023
modify, or reverse the determination of the director in the manner 1024
that appears just and proper. The hearing officer's written 1025
decision shall be sent to all interested parties. The decision 1026
shall state the right of an interested party to request a review 1027
by the commission. 1028

A request for review shall be filed within twenty-one days 1029
after the decision was sent to the party, or within an extended 1030
period as provided under division (D)(9) of this section. The 1031
hearing officer's decision shall become final unless a request for 1032
review is filed and allowed or the commission removes the appeal 1033
to itself within twenty-one days after the hearing officer's 1034
decision is sent. 1035

(4) REVIEW LEVEL 1036

At the review level, the commission may affirm, modify, or 1037
reverse previous determinations by the director or at the hearing 1038

officer level. At the review level, the commission may affirm, 1039
modify, or reverse a hearing officer's decision or remand the 1040
decision to the hearing officer level for further hearing. The 1041
commission shall consider an appeal at the review level under the 1042
following circumstances: when an appeal is required to be heard 1043
initially at the review level under this chapter; when the 1044
commission on its own motion removes an appeal to itself within 1045
twenty-one days after the hearing officer's decision is sent; when 1046
the assigned hearing officer refers an appeal to the commission 1047
before the hearing officer's decision is sent; or when an 1048
interested party files a request for review with the commission 1049
within twenty-one days after the hearing officer's decision is 1050
sent. 1051

(5) COMMISSION EXAMINATION 1052

The commission shall consider a request for review by an 1053
interested party, including the reasons for the request. The 1054
commission may adopt rules prescribing the methods for requesting 1055
a review. The commission may allow or disallow the request for 1056
review. The disallowance of a request for review constitutes a 1057
final decision by the commission. 1058

(6) REVIEW PROCEDURE 1059

If the commission allows a request for review, the commission 1060
shall notify all interested parties of that fact and provide a 1061
reasonable period of time, as the commission defines by rule, in 1062
which interested parties may file a response. After that period of 1063
time, the commission, based on the record before it, may do one of 1064
the following: affirm the decision of the hearing officer; provide 1065
for the appeal to be heard or reheard at the hearing officer or 1066
review level; provide for the appeal to be heard at the review 1067
level as a potential precedential decision; or provide for the 1068
decision to be rewritten without further hearing at the review 1069
level. When a further hearing is provided or the decision is 1070

rewritten, the commission may affirm, modify, or reverse the 1071
previous decision. 1072

(7) NOTICES 1073

The commission shall send written notice to all interested 1074
parties when it orders an appeal to be heard or reheard. The 1075
notice shall include the reasons for the hearing or rehearing. 1076

(8) PRECEDENTIAL 1077

An appeal the commission identifies as potentially 1078
precedential shall be heard at the review level. In the notice for 1079
that type of hearing, the commission shall notify the director, 1080
all interested parties, and any other parties, as the commission 1081
determines appropriate, that the appeal is designated as 1082
potentially precedential. After the hearing, parties shall be 1083
given the opportunity to submit briefs on the issue or issues 1084
involved. The commission may designate a decision as precedential 1085
after issuing the decision or at any point in the appeal process, 1086
even if the commission does not initially identify the appeal as 1087
potentially precedential. 1088

(9) MASS APPEALS 1089

When the commission determines that it has five appeals 1090
pending that have common facts or common issues, the commission 1091
may transfer the appeals to the review level on its own motion to 1092
be heard as a mass appeal, including appeals from claimants 1093
separated due to a labor dispute, on the condition that there are 1094
fewer than twenty-five claimants involved. 1095

To facilitate a mass hearing, the commission may allow an 1096
authorized agent to accept notice of hearing on behalf of 1097
claimants. An authorized agent may waive this notice of hearing 1098
and also the sending of decisions to individual claimants 1099
represented by the agent. 1100

(D) SPECIAL PROVISIONS 1101

(1) TIMELINESS OF APPEALS 1102

The date of the mailing provided by the director or the 1103
commission is sufficient evidence upon which to conclude that a 1104
determination, redetermination, or decision was sent to the party 1105
on that date. Appeals may be filed with the director, commission, 1106
with an employee of another state or federal agency charged with 1107
the duty of accepting claims, or with the unemployment insurance 1108
commission of Canada. Any timely written notice by an interested 1109
party indicating a desire to appeal shall be accepted. 1110

The director, commission, or authorized agent must receive 1111
the appeal within the specified appeal period in order for the 1112
appeal to be deemed timely filed, except that: if the United 1113
States postal service is used as the means of delivery, the 1114
enclosing envelope must have a postmark date or postal meter 1115
postmark that is on or before the last day of the specified appeal 1116
period; and where the postmark is illegible or missing, the appeal 1117
is timely filed if received not later than the end of the fifth 1118
calendar day following the last day of the specified appeal 1119
period. 1120

The director and the commission may adopt rules pertaining to 1121
alternate methods of filing appeals under this section. 1122

(2) WAIVER 1123

Interested parties may waive, in writing, a hearing at either 1124
the hearing officer or review level. If the parties waive a 1125
hearing, the hearing officer shall issue a decision based on the 1126
evidence of record. 1127

(3) TELEPHONE HEARINGS 1128

Hearing officers may conduct hearings at either the hearing 1129
officer or review level in person or by telephone. The commission 1130

shall adopt rules that designate the circumstances under which 1131
hearing officers may conduct a hearing by telephone or grant a 1132
party to the hearing the opportunity to object to a hearing by 1133
telephone. An interested party whose hearing would be by telephone 1134
may elect to have an in-person hearing, provided that the party 1135
agrees to have the hearing at the time and place the commission 1136
determines pursuant to rule. 1137

(4) EVENING HEARINGS 1138

Where a party requests that a hearing at either the hearing 1139
officer or review level be scheduled in the evening because the 1140
party is employed during the day, the commission shall schedule 1141
the hearing during hours that the party is not employed. If a 1142
conflict concerning a request for an evening hearing and an 1143
in-person hearing arises, the commission shall schedule the 1144
hearing by telephone during evening hours. 1145

(5) NO APPEARANCE -- APPELLANT 1146

For hearings at either the hearing officer or review level, 1147
if the appealing party fails to appear at the hearing, the hearing 1148
officer shall dismiss the appeal. The commission shall vacate the 1149
dismissal upon a showing that written notice of the hearing was 1150
not sent to that party's last known address, or good cause for the 1151
appellant's failure to appear is shown to the commission within 1152
fourteen days after the hearing date. 1153

If the commission finds that the appealing party's reason for 1154
failing to appear does not constitute good cause for failing to 1155
appear, the commission shall send written notice of that finding, 1156
and the appealing party may request a hearing to present testimony 1157
on the issue of good cause for failing to appear. The appealing 1158
party shall file a request for a hearing on the issue of good 1159
cause for failing to appear within ten days after the commission 1160
sends written notice indicating a finding of no good cause for 1161

failing to appear.	1162
(6) NO APPEARANCE -- APPELLEE	1163
For hearings at either the hearing officer or review level,	1164
if the appellee fails to appear at the hearing, the hearing	1165
officer shall proceed with the hearing and shall issue a decision	1166
based on the evidence of record. The commission shall vacate the	1167
decision upon a showing that written notice of the hearing was not	1168
sent to the appellee's last known address, or good cause for the	1169
appellee's failure to appear is shown to the commission within	1170
fourteen days after the hearing date.	1171
(7) AGENT	1172
Any appeal or request for review may be executed on behalf of	1173
any party or any group of claimants by an agent.	1174
(8) COLLATERAL ESTOPPEL	1175
No finding of fact or law, decision, or order of the	1176
director, hearing officer, or the commission, <u>or a reviewing court</u>	1177
under this section or section 4141.28 of the Revised Code shall be	1178
given collateral estoppel or res judicata effect in any separate	1179
or subsequent judicial, administrative, or arbitration proceeding,	1180
other than a proceeding arising under this chapter.	1181
(9) EXTENSION OF APPEAL PERIODS	1182
The time for filing an appeal or a request for review under	1183
this section or a court appeal under section 4141.282 of the	1184
Revised Code shall be extended in the manner described in the	1185
following four sentences. When the last day of an appeal period is	1186
a Saturday, Sunday, or legal holiday, the appeal period is	1187
extended to the next work day after the Saturday, Sunday, or legal	1188
holiday. When an interested party provides certified medical	1189
evidence stating that the interested party's physical condition or	1190
mental capacity prevented the interested party from filing an	1191

appeal or request for review under this section within the 1192
appropriate twenty-one-day period, the appeal period is extended 1193
to twenty-one days after the end of the physical or mental 1194
condition, and the appeal or request for review is considered 1195
timely filed if filed within that extended period. When an 1196
interested party provides evidence, which evidence may consist of 1197
testimony from the interested party, that is sufficient to 1198
establish that the party did not actually receive the 1199
determination or decision within the applicable appeal period 1200
under this section, and the director or the commission finds that 1201
the interested party did not actually receive the determination or 1202
decision within the applicable appeal period, then the appeal 1203
period is extended to twenty-one days after the interested party 1204
actually receives the determination or decision. When an 1205
interested party provides evidence, which evidence may consist of 1206
testimony from the interested party, that is sufficient to 1207
establish that the party did not actually receive a decision 1208
within the thirty-day appeal period provided in section 4141.282 1209
of the Revised Code, and a court of common pleas finds that the 1210
interested party did not actually receive the decision within that 1211
thirty-day appeal period, then the appeal period is extended to 1212
thirty days after the interested party actually receives the 1213
decision. 1214

Sec. 4141.29. Each eligible individual shall receive benefits 1215
as compensation for loss of remuneration due to involuntary total 1216
or partial unemployment in the amounts and subject to the 1217
conditions stipulated in this chapter. 1218

(A) No individual is entitled to a waiting period or benefits 1219
for any week unless the individual: 1220

(1) Has filed a valid application for determination of 1221
benefit rights in accordance with section 4141.28 of the Revised 1222

Code;	1223
(2) Has made a claim for benefits in accordance with section 4141.28 of the Revised Code;	1224 1225
(3) Has registered at an employment office or other registration place maintained or designated by the director of job and family services. Registration shall be made in accordance with the time limits, frequency, and manner prescribed by the director.	1226 1227 1228 1229
(4)(a)(i) Is able to work and available for suitable work and, <u>except as provided in division (A)(4)(a)(ii) of this section,</u> is actively seeking suitable work either in a locality in which the individual has earned wages subject to this chapter during the individual's base period, or if the individual leaves that locality, then in a locality where suitable work normally is performed.	1230 1231 1232 1233 1234 1235 1236
(ii) The director may waive the requirement that a claimant be actively seeking work when the director finds that an <u>either of the following is true:</u>	1237 1238 1239
(I) <u>The individual's unemployment is directly attributable to a major disaster declared by the president of the United States pursuant to the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C. 5121, and the employer whose operation was adversely affected by the disaster, requests a waiver from the director for the individual to be exempt from the requirement to actively seek suitable work;</u>	1240 1241 1242 1243 1244 1245 1246
(II) <u>The</u> individual has been laid off and the employer who laid the individual off has notified the director within ten days after the layoff, that work is expected to be available for the individual within a specified number of days not to exceed forty-five calendar days following the last day the individual worked. In the event the individual is not recalled within the specified period, this waiver shall cease to be operative with	1247 1248 1249 1250 1251 1252 1253

respect to that layoff. 1254

(b) The individual shall be instructed as to the efforts that 1255
the individual must make in the search for suitable work, except 1256
where the active search for work requirement has been waived under 1257
division (A)(4)(a) of this section, and shall keep a record of 1258
where and when the individual has sought work in complying with 1259
those instructions and, upon request, shall produce that record 1260
for examination by the director. 1261

(c) An individual who is attending a training course approved 1262
by the director meets the requirement of this division, if 1263
attendance was recommended by the director and the individual is 1264
regularly attending the course and is making satisfactory 1265
progress. An individual also meets the requirements of this 1266
division if the individual is participating and advancing in a 1267
training program, as defined in division (P) of section 5709.61 of 1268
the Revised Code, and if an enterprise, defined in division (B) of 1269
section 5709.61 of the Revised Code, is paying all or part of the 1270
cost of the individual's participation in the training program 1271
with the intention of hiring the individual for employment as a 1272
new employee, as defined in division (L) of section 5709.61 of the 1273
Revised Code, for at least ninety days after the individual's 1274
completion of the training program. 1275

(d) An individual who becomes unemployed while attending a 1276
regularly established school and whose base period qualifying 1277
weeks were earned in whole or in part while attending that school, 1278
meets the availability and active search for work requirements of 1279
division (A)(4)(a) of this section if the individual regularly 1280
attends the school during weeks with respect to which the 1281
individual claims unemployment benefits and makes self available 1282
on any shift of hours for suitable employment with the 1283
individual's most recent employer or any other employer in the 1284
individual's base period, or for any other suitable employment to 1285

which the individual is directed, under this chapter. 1286

(e) The director shall adopt any rules that the director 1287
deems necessary for the administration of division (A)(4) of this 1288
section. 1289

(f) Notwithstanding any other provisions of this section, no 1290
otherwise eligible individual shall be denied benefits for any 1291
week because the individual is in training approved under section 1292
236(a)(1) of the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 1293
2296, nor shall that individual be denied benefits by reason of 1294
leaving work to enter such training, provided the work left is not 1295
suitable employment, or because of the application to any week in 1296
training of provisions in this chapter, or any applicable federal 1297
unemployment compensation law, relating to availability for work, 1298
active search for work, or refusal to accept work. 1299

For the purposes of division (A)(4)(f) of this section, 1300
"suitable employment" means with respect to an individual, work of 1301
a substantially equal or higher skill level than the individual's 1302
past adversely affected employment, as defined for the purposes of 1303
the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 2101, and 1304
wages for such work at not less than eighty per cent of the 1305
individual's average weekly wage as determined for the purposes of 1306
that federal act. 1307

(5) Is unable to obtain suitable work. An individual who is 1308
provided temporary work assignments by the individual's employer 1309
under agreed terms and conditions of employment, and who is 1310
required pursuant to those terms and conditions to inquire with 1311
the individual's employer for available work assignments upon the 1312
conclusion of each work assignment, is not considered unable to 1313
obtain suitable employment if suitable work assignments are 1314
available with the employer but the individual fails to contact 1315
the employer to inquire about work assignments. 1316

(6) Participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust benefits under this chapter, including compensation payable pursuant to 5 U.S.C.A. Chapter 85, other than extended compensation, and needs reemployment services pursuant to the profiling system established by the director under division (K) of this section, unless the director determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services.

(B) An individual suffering total or partial unemployment is eligible for benefits for unemployment occurring subsequent to a waiting period of one week and no benefits shall be payable during this required waiting period, ~~but no~~ except when the unemployment during this waiting period is directly attributable to a major disaster declared by the president of the United States pursuant to the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C. 5121. Not more than one week of waiting period shall be required of any ~~such~~ individual in any benefit year in order to establish the individual's eligibility for total or partial unemployment benefits.

(C) The waiting period for total or partial unemployment shall commence on the first day of the first week with respect to which the individual first files a claim for benefits at an employment office or other place of registration maintained or designated by the director or on the first day of the first week with respect to which the individual has otherwise filed a claim for benefits in accordance with the rules of the department of job and family services, provided such claim is allowed by the director.

(D) Notwithstanding division (A) of this section, no

individual may serve a waiting period or be paid benefits under 1348
the following conditions: 1349

(1) For any week with respect to which the director finds 1350
that: 1351

(a) The individual's unemployment was due to a labor dispute 1352
other than a lockout at any factory, establishment, or other 1353
premises located in this or any other state and owned or operated 1354
by the employer by which the individual is or was last employed; 1355
and for so long as the individual's unemployment is due to such 1356
labor dispute. No individual shall be disqualified under this 1357
provision if either of the following applies: 1358

(i) The individual's employment was with such employer at any 1359
factory, establishment, or premises located in this state, owned 1360
or operated by such employer, other than the factory, 1361
establishment, or premises at which the labor dispute exists, if 1362
it is shown that the individual is not financing, participating 1363
in, or directly interested in such labor dispute; 1364

(ii) The individual's employment was with an employer not 1365
involved in the labor dispute but whose place of business was 1366
located within the same premises as the employer engaged in the 1367
dispute, unless the individual's employer is a wholly owned 1368
subsidiary of the employer engaged in the dispute, or unless the 1369
individual actively participates in or voluntarily stops work 1370
because of such dispute. If it is established that the claimant 1371
was laid off for an indefinite period and not recalled to work 1372
prior to the dispute, or was separated by the employer prior to 1373
the dispute for reasons other than the labor dispute, or that the 1374
individual obtained a bona fide job with another employer while 1375
the dispute was still in progress, such labor dispute shall not 1376
render the employee ineligible for benefits. 1377

(b) The individual has been given a disciplinary layoff for 1378

misconduct in connection with the individual's work. 1379

(2) For the duration of the individual's unemployment if the 1380
director finds that: 1381

(a) The individual quit work without just cause or has been 1382
discharged for just cause in connection with the individual's 1383
work, provided division (D)(2) of this section does not apply to 1384
the separation of a person under any of the following 1385
circumstances: 1386

(i) Separation from employment for the purpose of entering 1387
the armed forces of the United States if the individual makes 1388
application to enter, or is inducted into the armed forces within 1389
thirty days after such separation; 1390

(ii) Separation from employment pursuant to a 1391
labor-management contract or agreement, or pursuant to an 1392
established employer plan, program, or policy, which permits the 1393
employee, because of lack of work, to accept a separation from 1394
employment; 1395

(iii) The individual has left employment to accept a recall 1396
from a prior employer or, except as provided in division 1397
(D)(2)(a)(iv) of this section, to accept other employment as 1398
provided under section 4141.291 of the Revised Code, or left or 1399
was separated from employment that was concurrent employment at 1400
the time of the most recent separation or within six weeks prior 1401
to the most recent separation where the remuneration, hours, or 1402
other conditions of such concurrent employment were substantially 1403
less favorable than the individual's most recent employment and 1404
where such employment, if offered as new work, would be considered 1405
not suitable under the provisions of divisions (E) and (F) of this 1406
section. Any benefits that would otherwise be chargeable to the 1407
account of the employer from whom an individual has left 1408
employment or was separated from employment that was concurrent 1409

employment under conditions described in division (D)(2)(a)(iii) 1410
of this section, shall instead be charged to the mutualized 1411
account created by division (B) of section 4141.25 of the Revised 1412
Code, except that any benefits chargeable to the account of a 1413
reimbursing employer under division (D)(2)(a)(iii) of this section 1414
shall be charged to the account of the reimbursing employer and 1415
not to the mutualized account, except as provided in division 1416
(D)(2) of section 4141.24 of the Revised Code. 1417

(iv) When an individual has been issued a definite layoff 1418
date by the individual's employer and before the layoff date, the 1419
individual quits to accept other employment, the provisions of 1420
division (D)(2)(a)(iii) of this section apply and no 1421
disqualification shall be imposed under division (D) of this 1422
section. However, if the individual fails to meet the employment 1423
and earnings requirements of division (A)(2) of section 4141.291 1424
of the Revised Code, then the individual, pursuant to division 1425
(A)(5) of this section, shall be ineligible for benefits for any 1426
week of unemployment that occurs prior to the layoff date. 1427

(b) The individual has refused without good cause to accept 1428
an offer of suitable work when made by an employer either in 1429
person or to the individual's last known address, or has refused 1430
or failed to investigate a referral to suitable work when directed 1431
to do so by a local employment office of this state or another 1432
state, provided that this division shall not cause a 1433
disqualification for a waiting week or benefits under the 1434
following circumstances: 1435

(i) When work is offered by the individual's employer and the 1436
individual is not required to accept the offer pursuant to the 1437
terms of the labor-management contract or agreement; or 1438

(ii) When the individual is attending a vocational training 1439
course pursuant to division (A)(4) of this section except, in the 1440
event of a refusal to accept an offer of suitable work or a 1441

refusal or failure to investigate a referral, benefits thereafter 1442
paid to such individual shall not be charged to the account of any 1443
employer and, except as provided in division (B)(1)(b) of section 1444
4141.241 of the Revised Code, shall be charged to the mutualized 1445
account as provided in division (B) of section 4141.25 of the 1446
Revised Code. 1447

(c) Such individual quit work to marry or because of marital, 1448
parental, filial, or other domestic obligations. 1449

(d) The individual has knowingly made a false statement or 1450
representation or knowingly failed to report any material fact 1451
with the object of obtaining benefits to which the individual is 1452
not entitled. 1453

(e) The individual became unemployed by reason of commitment 1454
to any correctional institution. 1455

(f) The individual became unemployed because of dishonesty in 1456
connection with the individual's most recent or any base period 1457
work. Remuneration earned in such work shall be excluded from the 1458
individual's total base period remuneration and qualifying weeks 1459
that otherwise would be credited to the individual for such work 1460
in the individual's base period shall not be credited for the 1461
purpose of determining the total benefits to which the individual 1462
is eligible and the weekly benefit amount to be paid under section 1463
4141.30 of the Revised Code. Such excluded remuneration and 1464
noncredited qualifying weeks shall be excluded from the 1465
calculation of the maximum amount to be charged, under division 1466
(D) of section 4141.24 and section 4141.33 of the Revised Code, 1467
against the accounts of the individual's base period employers. In 1468
addition, no benefits shall thereafter be paid to the individual 1469
based upon such excluded remuneration or noncredited qualifying 1470
weeks. 1471

For purposes of division (D)(2)(f) of this section, 1472

"dishonesty" means the commission of substantive theft, fraud, or
deceitful acts. 1473
1474

(E) No individual otherwise qualified to receive benefits 1475
shall lose the right to benefits by reason of a refusal to accept 1476
new work if: 1477

(1) As a condition of being so employed the individual would 1478
be required to join a company union, or to resign from or refrain 1479
from joining any bona fide labor organization, or would be denied 1480
the right to retain membership in and observe the lawful rules of 1481
any such organization. 1482

(2) The position offered is vacant due directly to a strike, 1483
lockout, or other labor dispute. 1484

(3) The work is at an unreasonable distance from the 1485
individual's residence, having regard to the character of the work 1486
the individual has been accustomed to do, and travel to the place 1487
of work involves expenses substantially greater than that required 1488
for the individual's former work, unless the expense is provided 1489
for. 1490

(4) The remuneration, hours, or other conditions of the work 1491
offered are substantially less favorable to the individual than 1492
those prevailing for similar work in the locality. 1493

(F) Subject to the special exceptions contained in division 1494
(A)(4)(f) of this section and section 4141.301 of the Revised 1495
Code, in determining whether any work is suitable for a claimant 1496
in the administration of this chapter, the director, in addition 1497
to the determination required under division (E) of this section, 1498
shall consider the degree of risk to the claimant's health, 1499
safety, and morals, the individual's physical fitness for the 1500
work, the individual's prior training and experience, the length 1501
of the individual's unemployment, the distance of the available 1502
work from the individual's residence, and the individual's 1503

prospects for obtaining local work. 1504

(G) The "duration of unemployment" as used in this section 1505
means the full period of unemployment next ensuing after a 1506
separation from any base period or subsequent work and until an 1507
individual has become reemployed in employment subject to this 1508
chapter, or the unemployment compensation act of another state, or 1509
of the United States, and until such individual has worked six 1510
weeks and for those weeks has earned or been paid remuneration 1511
equal to six times an average weekly wage of not less than: 1512
eighty-five dollars and ten cents per week beginning on June 26, 1513
1990; and beginning on and after January 1, 1992, twenty-seven and 1514
one-half per cent of the statewide average weekly wage as computed 1515
each first day of January under division (B)(3) of section 4141.30 1516
of the Revised Code, rounded down to the nearest dollar, except 1517
for purposes of division (D)(2)(c) of this section, such term 1518
means the full period of unemployment next ensuing after a 1519
separation from such work and until such individual has become 1520
reemployed subject to the terms set forth above, and has earned 1521
wages equal to one-half of the individual's average weekly wage or 1522
sixty dollars, whichever is less. 1523

(H) If a claimant is disqualified under division (D)(2)(a), 1524
(c), or (e) of this section or found to be qualified under the 1525
exceptions provided in division (D)(2)(a)(i), (iii), or (iv) of 1526
this section or division (A)(2) of section 4141.291 of the Revised 1527
Code, then benefits that may become payable to such claimant, 1528
which are chargeable to the account of the employer from whom the 1529
individual was separated under such conditions, shall be charged 1530
to the mutualized account provided in section 4141.25 of the 1531
Revised Code, provided that no charge shall be made to the 1532
mutualized account for benefits chargeable to a reimbursing 1533
employer, except as provided in division (D)(2) of section 4141.24 1534
of the Revised Code. In the case of a reimbursing employer, the 1535

director shall refund or credit to the account of the reimbursing 1536
employer any over-paid benefits that are recovered under division 1537
(B) of section 4141.35 of the Revised Code. 1538

(I)(1) Benefits based on service in employment as provided in 1539
divisions (B)(2)(a) and (b) of section 4141.01 of the Revised Code 1540
shall be payable in the same amount, on the same terms, and 1541
subject to the same conditions as benefits payable on the basis of 1542
other service subject to this chapter; except that after December 1543
31, 1977: 1544

(a) Benefits based on service in an instructional, research, 1545
or principal administrative capacity in an institution of higher 1546
education, as defined in division (Y) of section 4141.01 of the 1547
Revised Code; or for an educational institution as defined in 1548
division (CC) of section 4141.01 of the Revised Code, shall not be 1549
paid to any individual for any week of unemployment that begins 1550
during the period between two successive academic years or terms, 1551
or during a similar period between two regular but not successive 1552
terms or during a period of paid sabbatical leave provided for in 1553
the individual's contract, if the individual performs such 1554
services in the first of those academic years or terms and has a 1555
contract or a reasonable assurance that the individual will 1556
perform services in any such capacity for any such institution in 1557
the second of those academic years or terms. 1558

(b) Benefits based on service for an educational institution 1559
or an institution of higher education in other than an 1560
instructional, research, or principal administrative capacity, 1561
shall not be paid to any individual for any week of unemployment 1562
which begins during the period between two successive academic 1563
years or terms of the employing educational institution or 1564
institution of higher education, provided the individual performed 1565
those services for the educational institution or institution of 1566
higher education during the first such academic year or term and, 1567

there is a reasonable assurance that such individual will perform 1568
those services for any educational institution or institution of 1569
higher education in the second of such academic years or terms. 1570

If compensation is denied to any individual for any week 1571
under division (I)(1)(b) of this section and the individual was 1572
not offered an opportunity to perform those services for an 1573
institution of higher education or for an educational institution 1574
for the second of such academic years or terms, the individual is 1575
entitled to a retroactive payment of compensation for each week 1576
for which the individual timely filed a claim for compensation and 1577
for which compensation was denied solely by reason of division 1578
(I)(1)(b) of this section. An application for retroactive benefits 1579
shall be timely filed if received by the director or the 1580
director's deputy within or prior to the end of the fourth full 1581
calendar week after the end of the period for which benefits were 1582
denied because of reasonable assurance of employment. The 1583
provision for the payment of retroactive benefits under division 1584
(I)(1)(b) of this section is applicable to weeks of unemployment 1585
beginning on and after November 18, 1983. The provisions under 1586
division (I)(1)(b) of this section shall be retroactive to 1587
September 5, 1982, only if, as a condition for full tax credit 1588
against the tax imposed by the "Federal Unemployment Tax Act," 53 1589
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311, the United States 1590
secretary of labor determines that retroactivity is required by 1591
federal law. 1592

(c) With respect to weeks of unemployment beginning after 1593
December 31, 1977, benefits shall be denied to any individual for 1594
any week which commences during an established and customary 1595
vacation period or holiday recess, if the individual performs any 1596
services described in divisions (I)(1)(a) and (b) of this section 1597
in the period immediately before the vacation period or holiday 1598
recess, and there is a reasonable assurance that the individual 1599

will perform any such services in the period immediately following 1600
the vacation period or holiday recess. 1601

(d) With respect to any services described in division 1602
(I)(1)(a), (b), or (c) of this section, benefits payable on the 1603
basis of services in any such capacity shall be denied as 1604
specified in division (I)(1)(a), (b), or (c) of this section to 1605
any individual who performs such services in an educational 1606
institution or institution of higher education while in the employ 1607
of an educational service agency. For this purpose, the term 1608
"educational service agency" means a governmental agency or 1609
governmental entity that is established and operated exclusively 1610
for the purpose of providing services to one or more educational 1611
institutions or one or more institutions of higher education. 1612

(e) Any individual employed by a public school district or a 1613
county board of mental retardation shall be notified by the 1614
thirtieth day of April each year if the individual is not to be 1615
reemployed the following academic year. 1616

(2) No disqualification will be imposed, between academic 1617
years or terms or during a vacation period or holiday recess under 1618
this division, unless the director or the director's deputy has 1619
received a statement in writing from the educational institution 1620
or institution of higher education that the claimant has a 1621
contract for, or a reasonable assurance of, reemployment for the 1622
ensuing academic year or term. 1623

(3) If an individual has employment with an educational 1624
institution or an institution of higher education and employment 1625
with a noneducational employer, during the base period of the 1626
individual's benefit year, then the individual may become eligible 1627
for benefits during the between-term, or vacation or holiday 1628
recess, disqualification period, based on employment performed for 1629
the noneducational employer, provided that the employment is 1630
sufficient to qualify the individual for benefit rights separately 1631

from the benefit rights based on school employment. The weekly 1632
benefit amount and maximum benefits payable during a 1633
disqualification period shall be computed based solely on the 1634
nonschool employment. 1635

(J) Benefits shall not be paid on the basis of employment 1636
performed by an alien, unless the alien had been lawfully admitted 1637
to the United States for permanent residence at the time the 1638
services were performed, was lawfully present for purposes of 1639
performing the services, or was otherwise permanently residing in 1640
the United States under color of law at the time the services were 1641
performed, under section 212(d)(5) of the "Immigration and 1642
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101: 1643

(1) Any data or information required of individuals applying 1644
for benefits to determine whether benefits are not payable to them 1645
because of their alien status shall be uniformly required from all 1646
applicants for benefits. 1647

(2) In the case of an individual whose application for 1648
benefits would otherwise be approved, no determination that 1649
benefits to the individual are not payable because of the 1650
individual's alien status shall be made except upon a 1651
preponderance of the evidence that the individual had not, in 1652
fact, been lawfully admitted to the United States. 1653

(K) The director shall establish and utilize a system of 1654
profiling all new claimants under this chapter that: 1655

(1) Identifies which claimants will be likely to exhaust 1656
regular compensation and will need job search assistance services 1657
to make a successful transition to new employment; 1658

(2) Refers claimants identified pursuant to division (K)(1) 1659
of this section to reemployment services, such as job search 1660
assistance services, available under any state or federal law; 1661

(3) Collects follow-up information relating to the services 1662

received by such claimants and the employment outcomes for such 1663
claimant's subsequent to receiving such services and utilizes such 1664
information in making identifications pursuant to division (K)(1) 1665
of this section; and 1666

(4) Meets such other requirements as the United States 1667
secretary of labor determines are appropriate. 1668

Section 2. That existing sections 3121.898, 3121.899, 1669
4141.01, 4141.281, and 4141.29 of the Revised Code are hereby 1670
repealed. 1671

Section 3. That Section 3 of S.B. 99 of the 124th General 1672
Assembly be amended to read as follows: 1673

Sec. 3. Notwithstanding division (R)(2) of section 4141.01 of 1674
the Revised Code as amended by ~~this act~~ S.B. 99 of the 124th 1675
General Assembly, the Director of Job and Family Services may 1676
specify that the provisions of that division are applicable for 1677
the determination of benefit rights involving benefit years 1678
beginning on or before December ~~28, 2003~~ 26, 2004, if the Director 1679
determines that the technological systems necessary to effect the 1680
purposes of that division are operational and sufficiently 1681
adequate to assure no interruption in the discharge of the duties 1682
of the Director and the Department of Job and Family Services 1683
under Chapter 4141. of the Revised Code. 1684

Section 4. That existing Section 3 of S.B. 99 of the 124th 1685
General Assembly is hereby repealed. 1686

Section 5. This act is hereby declared to be an emergency 1687
measure necessary for the immediate preservation of the public 1688
peace, health, and safety. The reason for this necessity is that 1689
timely financial provision during times of unemployment is 1690
critically important to the citizens of Ohio. Therefore, this act 1691

shall go into immediate effect.

1692