

As Introduced

**129th General Assembly
Regular Session
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H. B. No. 137

Representatives Phillips, Driehaus

**Cosponsors: Representatives Murray, Lundy, Yuko, Hagan, R., Foley,
Szollosi, Okey, Pillich, Garland, Clyde**

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A B I L L

To amend sections 121.083, 1349.61, 4111.02, 4111.14, 1
4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 2
4141.01, and 5747.01 and to enact sections 4175.01 3
to 4175.18 and 4175.99 of the Revised Code to 4
create a generally uniform definition of employee 5
for specified labor laws and to create a uniform 6
standard to determine whether an individual 7
performing services for an employer is an employee 8
of that employer. 9

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

Section 1. That sections 121.083, 1349.61, 4111.02, 4111.14, 10
4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 11
be amended and sections 4175.01, 4175.02, 4175.03, 4175.04, 12
4175.05, 4175.06, 4175.07, 4175.08, 4175.09, 4175.10, 4175.11, 13
4175.12, 4175.13, 4175.14, 4175.15, 4175.16, 4175.17, 4175.18, and 14
4175.99 of the Revised Code be enacted to read as follows: 15

Sec. 121.083. The superintendent of labor in the department 16
of commerce shall do all of the following: 17

(A) Administer and enforce the general laws of this state 18

pertaining to buildings, pressure piping, boilers, bedding, 19
upholstered furniture, and stuffed toys, steam engineering, 20
elevators, plumbing, licensed occupations regulated by the 21
department, and travel agents, as they apply to plans review, 22
inspection, code enforcement, testing, licensing, registration, 23
and certification. 24

(B) Exercise the powers and perform the duties delegated to 25
the superintendent by the director of commerce under Chapters 26
4109., 4111., ~~and 4115.~~, and 4175. of the Revised Code. 27

(C) Collect and collate statistics as are necessary. 28

(D) Examine and license persons who desire to act as steam 29
engineers, to operate steam boilers, and to act as inspectors of 30
steam boilers, provide for the scope, conduct, and time of such 31
examinations, provide for, regulate, and enforce the renewal and 32
revocation of such licenses, inspect and examine steam boilers and 33
make, publish, and enforce rules and orders for the construction, 34
installation, inspection, and operation of steam boilers, and do, 35
require, and enforce all things necessary to make such 36
examination, inspection, and requirement efficient. 37

(E) Rent and furnish offices as needed in cities in this 38
state for the conduct of its affairs. 39

(F) Oversee a chief of construction and compliance, a chief 40
of operations and maintenance, a chief of licensing and 41
certification, a chief of worker protection, and other designees 42
appointed by the director to perform the duties described in this 43
section. 44

(G) Enforce the rules the board of building standards adopts 45
pursuant to division (A)(2) of section 4104.43 of the Revised Code 46
under the circumstances described in division (D) of that section. 47

(H) Accept submissions, establish a fee for submissions, and 48
review submissions of certified welding and brazing procedure 49

specifications, procedure qualification records, and performance 50
qualification records for building services piping as required by 51
section 4104.44 of the Revised Code. 52

Sec. 1349.61. (A)(1) Subject to division (C) of this section, 53
no person or entity shall sell a gift card to a purchaser 54
containing an expiration date that is less than two years after 55
the date the gift card is issued. 56

(2) No person or entity, within two years after a gift card 57
is issued, shall charge service charges or fees relative to that 58
gift card, including dormancy fees, latency fees, or 59
administrative fees, that have the effect of reducing the total 60
amount for which the holder of the gift card may redeem the gift 61
card. 62

(B) A gift card sold without an expiration date is valid 63
until redeemed or replaced with a new gift card. 64

(C) Division (A) of this section does not apply to any of the 65
following gift cards: 66

(1) A gift card that is distributed by the issuer to a 67
consumer pursuant to an awards, loyalty, or promotional program 68
without any money or anything of value being given in exchange for 69
the gift card by the consumer; 70

(2) A gift card that is sold below face value at a volume 71
discount to employers or to nonprofit and charitable organizations 72
for fundraising purposes, if the expiration date on that gift card 73
is not more than thirty days after the date of sale; 74

(3) A gift card that is sold by a nonprofit or charitable 75
organization for fundraising purposes; 76

(4) A gift card that an employer gives to an employee if use 77
of the gift card is limited to the employer's business 78
establishment, which may include a group of merchants that are 79

affiliated with that business establishment; 80

(5) A gift certificate issued in accordance with section 81
1533.131 of the Revised Code that may be used to obtain hunting 82
and fishing licenses, fur taker, special deer, and special wild 83
turkey permits, and wetlands habitat stamps; 84

(6) A gift card that is usable with multiple, unaffiliated 85
sellers of goods or services; 86

(7) A gift card that an employer issues to an employee in 87
recognition of services performed by the employee. 88

(D) Whoever violates division (A)(2) of this section is 89
liable to the holder for any amount that the redemption value of 90
the gift card was reduced, any court costs incurred, and 91
reasonable attorney's fees. 92

(E) As used in this section: 93

(1) "Gift card" means a certificate, electronic card, or 94
other medium issued by a merchant that evidences the giving of 95
consideration in exchange for the right to redeem the certificate, 96
electronic card, or other medium for goods, food, services, 97
credit, or money of at least an equal value, including any 98
electronic card issued by a merchant with a monetary value where 99
the issuer has received payment for the full monetary value for 100
the future purchase or delivery of goods or services and any 101
certificate issued by a merchant where the issuer has received 102
payment for the full monetary face value of the certificate for 103
the future purchase or delivery of goods and services. "Gift card" 104
does not include a prepaid calling card used to make telephone 105
calls. 106

(2) "Employer" ~~and "employee" have~~ has the same ~~meanings~~ 107
meaning as in section 4121.01 of the Revised Code. 108

(3) "Employee" means every person who may be required or 109

directed by any employer, in consideration of direct or indirect 110
gain or profit, to engage in any employment, or to go, or work, or 111
be at any time in any place of employment. 112

Sec. 4111.02. Every employer, as defined in Section 34a of 113
Article II, Ohio Constitution, shall pay each of the employer's 114
employees at a wage rate of not less than the wage rate specified 115
in Section 34a of Article II, Ohio Constitution. 116

The director of commerce annually shall adjust the wage rate 117
as specified in Section 34a of Article II, Ohio Constitution. 118

As used in this section, "employee" has the same meaning as 119
in section ~~4111.14~~ 4175.01 of the Revised Code. 120

Sec. 4111.14. (A) Pursuant to the general assembly's 121
authority to establish a minimum wage under Section 34 of Article 122
II, Ohio Constitution, this section is in implementation of 123
Section 34a of Article II, Ohio Constitution. In implementing 124
Section 34a of Article II, Ohio Constitution, the general assembly 125
hereby finds that the purpose of Section 34a of Article II, Ohio 126
Constitution₁ is to: 127

(1) Ensure that Ohio employees, as defined in division (B)(1) 128
of this section, are paid the wage rate required by Section 34a of 129
Article II, Ohio Constitution; 130

(2) Ensure that covered Ohio employers maintain certain 131
records that are directly related to the enforcement of the wage 132
rate requirements in Section 34a of Article II, Ohio Constitution; 133

(3) Ensure that Ohio employees who are paid the wage rate 134
required by Section 34a of Article II, Ohio Constitution₁ may 135
enforce their right to receive that wage rate in the manner set 136
forth in Section 34a of Article II, Ohio Constitution; and 137

(4) Protect the privacy of Ohio employees' pay and personal 138

information specified in Section 34a of Article II, Ohio 139
Constitution, by restricting an employee's access, and access by a 140
person acting on behalf of that employee, to the employee's own 141
pay and personal information. 142

(B) In accordance with Section 34a of Article II, Ohio 143
Constitution, the terms "employer," ~~"employee,"~~ "employ," and 144
~~"person," and "independent contractor"~~ have the same meanings as 145
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 146
U.S.C. 203, as amended. In construing the meaning of these terms, 147
due consideration and great weight shall be given to the United 148
States department of labor's and federal courts' interpretations 149
of those terms under the Fair Labor Standards Act and its 150
regulations. As used in division (B) of this section+ 151

~~(1), "Employee employee" means individuals employed in Ohio,~~ 152
~~but does not mean individuals who are excluded from the definition~~ 153
~~of "employee" under 29 U.S.C. 203(e) or individuals who are~~ 154
~~exempted from the minimum wage requirements in 29 U.S.C. 213 and~~ 155
~~from the definition of "employee" in this chapter.~~ 156

~~(2) "Employ" and "employee" do not include any person acting~~ 157
~~as a volunteer. In construing who is a volunteer, "volunteer"~~ 158
~~shall have the same meaning as in sections 553.101 to 553.106 of~~ 159
~~Title 29 of the Code of Federal Regulations, as amended, and due~~ 160
~~consideration and great weight shall be given to the United States~~ 161
~~department of labor's and federal courts' interpretations of the~~ 162
~~term "volunteer" under the Fair Labor Standards Act and its~~ 163
~~regulations has the same meaning as in section 4175.01 of the~~ 164
~~Revised Code.~~ 165

(C) In accordance with Section 34a of Article II, Ohio 166
Constitution, the state may issue licenses to employers 167
authorizing payment of a wage below that required by Section 34a 168
of Article II, Ohio Constitution, to individuals with mental or 169
physical disabilities that may otherwise adversely affect their 170

opportunity for employment. In issuing such licenses, the state 171
shall abide by the rules adopted pursuant to section 4111.06 of 172
the Revised Code. 173

(D)(1) In accordance with Section 34a of Article II, Ohio 174
Constitution, individuals employed in or about the property of an 175
employer or an individual's residence on a casual basis are not 176
included within the coverage of Section 34a of Article II, Ohio 177
Constitution. As used in division (D) of this section: 178

(a) "Casual basis" means employment that is irregular or 179
intermittent and that is not performed by an individual whose 180
vocation is to be employed in or about the property of the 181
employer or individual's residence. In construing who is employed 182
on a "casual basis," due consideration and great weight shall be 183
given to the United States department of labor's and federal 184
courts' interpretations of the term "casual basis" under the Fair 185
Labor Standards Act and its regulations. 186

(b) "An individual employed in or about the property of an 187
employer or individual's residence" means an individual employed 188
on a casual basis or an individual employed in or about a 189
residence on a casual basis, respectively. 190

(2) In accordance with Section 34a of Article II, Ohio 191
Constitution, employees of a solely family-owned and operated 192
business who are family members of an owner are not included 193
within the coverage of Section 34a of Article II, Ohio 194
Constitution. As used in division (D)(2) of this section, "family 195
member" means a parent, spouse, child, stepchild, sibling, 196
grandparent, grandchild, or other member of an owner's immediate 197
family. 198

(E) In accordance with Section 34a of Article II, Ohio 199
Constitution, an employer shall at the time of hire provide an 200
employee with the employer's name, address, telephone number, and 201

other contact information and update such information when it 202
changes. As used in division (E) of this section: 203

(1) "Other contact information" may include, where 204
applicable, the address of the employer's internet site on the 205
world wide web, the employer's electronic mail address, fax 206
number, or the name, address, and telephone number of the 207
employer's statutory agent. "Other contact information" does not 208
include the name, address, telephone number, fax number, internet 209
site address, or electronic mail address of any employee, 210
shareholder, officer, director, supervisor, manager, or other 211
individual employed by or associated with an employer. 212

(2) "When it changes" means that the employer shall provide 213
its employees with the change in its name, address, telephone 214
number, or other contact information within sixty business days 215
after the change occurs. The employer shall provide the changed 216
information by using any of its usual methods of communicating 217
with its employees, including, but not limited to, listing the 218
change on the employer's internet site on the world wide web, 219
internal computer network, or a bulletin board where it commonly 220
posts employee communications or by insertion or inclusion with 221
employees' paychecks or pay stubs. 222

(F) In accordance with Section 34a of Article II, Ohio 223
Constitution, an employer shall maintain a record of the name, 224
address, occupation, pay rate, hours worked for each day worked, 225
and each amount paid an employee for a period of not less than 226
three years following the last date the employee was employed by 227
that employer. As used in division (F) of this section: 228

(1) "Address" means an employee's home address as maintained 229
in the employer's personnel file or personnel database for that 230
employee. 231

(2)(a) With respect to employees who are not exempt from the 232

overtime pay requirements of the Fair Labor Standards Act or this 233
chapter, "pay rate" means an employee's base rate of pay. 234

(b) With respect to employees who are exempt from the 235
overtime pay requirements of the Fair Labor Standards Act or this 236
chapter, "pay rate" means an employee's annual base salary or 237
other rate of pay by which the particular employee qualifies for 238
that exemption under the Fair Labor Standards Act or this chapter, 239
but does not include bonuses, stock options, incentives, deferred 240
compensation, or any other similar form of compensation. 241

(3) "Record" means the name, address, occupation, pay rate, 242
hours worked for each day worked, and each amount paid an employee 243
in one or more documents, databases, or other paper or electronic 244
forms of record-keeping maintained by an employer. No one 245
particular method or form of maintaining such a record or records 246
is required under this division. An employer is not required to 247
create or maintain a single record containing only the employee's 248
name, address, occupation, pay rate, hours worked for each day 249
worked, and each amount paid an employee. An employer shall 250
maintain a record or records from which the employee or person 251
acting on behalf of that employee could reasonably review the 252
information requested by the employee or person. 253

An employer is not required to maintain the records specified 254
in division (F)(3) of this section for any period before January 255
1, 2007. On and after January 1, 2007, the employer shall maintain 256
the records required by division (F)(3) of this section for three 257
years from the date the hours were worked by the employee and for 258
three years after the date the employee's employment ends. 259

(4)(a) Except for individuals specified in division (F)(4)(b) 260
of this section, "hours worked for each day worked" means the 261
total amount of time worked by an employee in whatever increments 262
the employer uses for its payroll purposes during a day worked by 263
the employee. An employer is not required to keep a record of the 264

time of day an employee begins and ends work on any given day. As 265
used in division (F)(4) of this section, "day" means a fixed 266
period of twenty-four consecutive hours during which an employee 267
performs work for an employer. 268

(b) An employer is not required to keep records of "hours 269
worked for each day worked" for individuals for whom the employer 270
is not required to keep those records under the Fair Labor 271
Standards Act and its regulations or individuals who are not 272
subject to the overtime pay requirements specified in section 273
4111.03 of the Revised Code. 274

(5) "Each amount paid an employee" means the total gross 275
wages paid to an employee for each pay period. As used in division 276
(F)(5) of this section, "pay period" means the period of time 277
designated by an employer to pay an employee the employee's gross 278
wages in accordance with the employer's payroll practices under 279
section 4113.15 of the Revised Code. 280

(G) In accordance with Section 34a of Article II, Ohio 281
Constitution, an employer must provide such information without 282
charge to an employee or person acting on behalf of an employee 283
upon request. As used in division (G) of this section: 284

(1) "Such information" means the name, address, occupation, 285
pay rate, hours worked for each day worked, and each amount paid 286
for the specific employee who has requested that specific 287
employee's own information and does not include the name, address, 288
occupation, pay rate, hours worked for each day worked, or each 289
amount paid of any other employee of the employer. "Such 290
information" does not include hours worked for each day worked by 291
individuals for whom an employer is not required to keep that 292
information under the Fair Labor Standards Act and its regulations 293
or individuals who are not subject to the overtime pay 294
requirements specified in section 4111.03 of the Revised Code. 295

(2) "Acting on behalf of an employee" means a person acting 296
on behalf of an employee as any of the following: 297

(a) The certified or legally recognized collective bargaining 298
representative for that employee under the applicable federal law 299
or Chapter 4117. of the Revised Code; 300

(b) The employee's attorney; 301

(c) The employee's parent, guardian, or legal custodian. 302

A person "acting on behalf of an employee" must be 303
specifically authorized by an employee in order to make a request 304
for that employee's own name, address, occupation, pay rate, hours 305
worked for each day worked, and each amount paid to that employee. 306

(3) "Provide" means that an employer shall provide the 307
requested information within thirty business days after the date 308
the employer receives the request, unless either of the following 309
occurs: 310

(a) The employer and the employee or person acting on behalf 311
of the employee agree to some alternative time period for 312
providing the information. 313

(b) The thirty-day period would cause a hardship on the 314
employer under the circumstances, in which case the employer must 315
provide the requested information as soon as practicable. 316

(4) A "request" made by an employee or a person acting on 317
behalf of an employee means a request by an employee or a person 318
acting on behalf of an employee for the employee's own 319
information. The employer may require that the employee provide 320
the employer with a written request that has been signed by the 321
employee and notarized and that reasonably specifies the 322
particular information being requested. The employer may require 323
that the person acting on behalf of an employee provide the 324
employer with a written request that has been signed by the 325

employee whose information is being requested and notarized and 326
that reasonably specifies the particular information being 327
requested. 328

(H) In accordance with Section 34a of Article II, Ohio 329
Constitution, an employee, person acting on behalf of one or more 330
employees, and any other interested party may file a complaint 331
with the state for a violation of any provision of Section 34a of 332
Article II, Ohio Constitution, or any law or regulation 333
implementing its provisions. Such complaint shall be promptly 334
investigated and resolved by the state. The employee's name shall 335
be kept confidential unless disclosure is necessary to resolution 336
of a complaint and the employee consents to disclosure. As used in 337
division (H) of this section: 338

(1) "Complaint" means a complaint of an alleged violation 339
pertaining to harm suffered by the employee filing the complaint, 340
by a person acting on behalf of one or more employees, or by an 341
interested party. 342

(2) "Acting on behalf of one or more employees" has the same 343
meaning as "acting on behalf of an employee" in division (G)(2) of 344
this section. Each employee must provide a separate written and 345
notarized authorization before the person acting on that 346
employee's or those employees' behalf may request the name, 347
address, occupation, pay rate, hours worked for each day worked, 348
and each amount paid for the particular employee. 349

(3) "Interested party" means a party who alleges to be 350
injured by the alleged violation and who has standing to file a 351
complaint under common law principles of standing. 352

(4) "Resolved by the state" means that the complaint has been 353
resolved to the satisfaction of the state. 354

(5) "Shall be kept confidential" means that the state shall 355
keep the name of the employee confidential as required by division 356

(H) of this section. 357

(I) In accordance with Section 34a of Article II, Ohio 358
Constitution, the state may on its own initiative investigate an 359
employer's compliance with Section 34a of Article II, Ohio 360
Constitution, and any law or regulation implementing Section 34a 361
of Article II, Ohio Constitution. The employer shall make 362
available to the state any records related to such investigation 363
and other information required for enforcement of Section 34a of 364
Article II, Ohio Constitution or any law or regulation 365
implementing Section 34a of Article II, Ohio Constitution. The 366
state shall investigate an employer's compliance with this section 367
in accordance with the procedures described in section 4111.04 of 368
the Revised Code. All records and information related to 369
investigations by the state are confidential and are not a public 370
record subject to section 149.43 of the Revised Code. This 371
division does not prevent the state from releasing to or 372
exchanging with other state and federal wage and hour regulatory 373
authorities information related to investigations. 374

(J) In accordance with Section 34a of Article II, Ohio 375
Constitution, damages shall be calculated as an additional two 376
times the amount of the back wages and in the case of a violation 377
of an anti-retaliation provision an amount set by the state or 378
court sufficient to compensate the employee and deter future 379
violations, but not less than one hundred fifty dollars for each 380
day that the violation continued. The "not less than one hundred 381
fifty dollar" penalty specified in division (J) of this section 382
shall be imposed only for violations of the anti-retaliation 383
provision in Section 34a of Article II, Ohio Constitution. 384

(K) In accordance with Section 34a of Article II, Ohio 385
Constitution, an action for equitable and monetary relief may be 386
brought against an employer by the attorney general and/or an 387
employee or person acting on behalf of an employee or all 388

similarly situated employees in any court of competent 389
jurisdiction, including the court of common pleas of an employee's 390
county of residence, for any violation of Section 34a of Article 391
II, Ohio Constitution, or any law or regulation implementing its 392
provisions within three years of the violation or of when the 393
violation ceased if it was of a continuing nature, or within one 394
year after notification to the employee of final disposition by 395
the state of a complaint for the same violation, whichever is 396
later. 397

(1) As used in division (K) of this section, "notification" 398
means the date on which the notice was sent to the employee by the 399
state. 400

(2) No employee shall join as a party plaintiff in any civil 401
action that is brought under division (K) of this section by an 402
employee, person acting on behalf of an employee, or person acting 403
on behalf of all similarly situated employees unless that employee 404
first gives written consent to become such a party plaintiff and 405
that consent is filed with the court in which the action is 406
brought. 407

(3) A civil action regarding an alleged violation of this 408
section shall be maintained only under division (K) of this 409
section. This division does not preclude the joinder in a single 410
civil action of an action under this division and an action under 411
section 4111.10 of the Revised Code. 412

(4) Any agreement between an employee and employer to work 413
for less than the wage rate specified in Section 34a of Article 414
II, Ohio Constitution, is no defense to an action under this 415
section. 416

(L) In accordance with Section 34a of Article II, Ohio 417
Constitution, there shall be no exhaustion requirement, no 418
procedural, pleading, or burden of proof requirements beyond those 419

that apply generally to civil suits in order to maintain such 420
action and no liability for costs or attorney's fees on an 421
employee except upon a finding that such action was frivolous in 422
accordance with the same standards that apply generally in civil 423
suits. Nothing in division (L) of this section affects the right 424
of an employer and employee to agree to submit a dispute under 425
this section to alternative dispute resolution, including, but not 426
limited to, arbitration, in lieu of maintaining the civil suit 427
specified in division (K) of this section. Nothing in this 428
division limits the state's ability to investigate or enforce this 429
section. 430

(M) An employer who provides such information specified in 431
Section 34a of Article II, Ohio Constitution, shall be immune from 432
any civil liability for injury, death, or loss to person or 433
property that otherwise might be incurred or imposed as a result 434
of providing that information to an employee or person acting on 435
behalf of an employee in response to a request by the employee or 436
person, and the employer shall not be subject to the provisions of 437
Chapters 1347. and 1349. of the Revised Code to the extent that 438
such provisions would otherwise apply. As used in division (M) of 439
this section, "such information," "acting on behalf of an 440
employee," and "request" have the same meanings as in division (G) 441
of this section. 442

(N) As used in this section, "the state" means the director 443
of commerce. 444

Sec. 4113.15. (A) Every individual, firm, partnership, 445
association, or corporation doing business in this state shall, on 446
or before the first day of each month, pay all its employees the 447
wages earned by them during the first half of the preceding month 448
ending with the fifteenth day thereof, and shall, on or before the 449
fifteenth day of each month, pay such employees the wages earned 450

by them during the last half of the preceding calendar month. If 451
at any time of payment an employee is absent from ~~his~~ the 452
employee's regular place of labor and does not receive ~~his~~ the 453
employee's wages through an authorized representative, such person 454
shall be entitled to said payment at any time thereafter upon 455
demand upon the proper paymaster at the place where such wages are 456
usually paid and where such pay is due. This section does not 457
prohibit the daily or weekly payment of wages. ~~The~~ or the use of a 458
longer time lapse that is customary to a given trade, profession 459
or occupation, or establishment of a different time lapse by 460
written contract or by operation of law. 461

(B) Where wages remain unpaid for thirty days beyond the 462
regularly scheduled payday or, in the case where no regularly 463
scheduled payday is applicable, for sixty days beyond the filing 464
by the employee of a claim or for sixty days beyond the date of 465
the agreement, award, or other act making wages payable and no 466
contest court order or dispute of any wage claim including the 467
assertion of a counterclaim exists accounting for nonpayment, the 468
employer, in addition, as liquidated damages, is liable to the 469
employee in an amount equal to six per cent of the amount of the 470
claim still unpaid and not in contest or disputed or two hundred 471
dollars, whichever is greater. 472

(C) In the absence of a contest, court order or dispute, an 473
employer who is party to an agreement to pay or provide fringe 474
benefits to an employee or to make any employee authorized 475
deduction becomes a trustee of any funds required by such 476
agreement to be paid to any person, organization, or governmental 477
agency from the time that the duty to make such payment arises. No 478
person shall, without reasonable justification or excuse for such 479
failure, knowingly fail or refuse to pay to the appropriate 480
person, organization, or governmental agency the amount necessary 481
to provide the benefits or accomplish the purpose of any employee 482

authorized deduction, within thirty days after the close of the 483
pay period during which the employee earned or had deducted the 484
amount of money necessary to pay for the fringe benefit or make 485
any employee authorized deduction. A failure or refusal to pay, 486
regardless of the number of employee pay accounts involved, 487
constitutes one offense for the first delinquency of thirty days 488
and a separate offense for each successive delinquency of thirty 489
days. 490

(D) As used in this section and section 4113.16 of the 491
Revised Code: 492

(1) "Wage" means the net amount of money payable to an 493
employee, including any guaranteed pay or reimbursement for 494
expenses, less any federal, state, or local taxes withheld; any 495
deductions made pursuant to a written agreement for the purpose of 496
providing the employee with any fringe benefits; and any employee 497
authorized deduction. 498

(2) "Fringe benefits" includes but is not limited to health, 499
welfare, or retirement benefits, whether paid for entirely by the 500
employer or on the basis of a joint employer-employee 501
contribution, or vacation, separation, or holiday pay. 502

(3) "Employee authorized deduction" includes but is not 503
limited to deductions for the purpose of any of the following: ~~(a)~~ 504
~~purchase~~ 505

(a) Purchase of United States savings bonds or corporate 506
stocks or bonds, ~~(b) a~~ 507

(b) A charitable contribution, ~~(c) credit;~~ 508

(c) Credit union savings or other regular savings program, ~~or~~ 509
~~(d) repayment;~~ 510

(d) Repayment of a loan or other obligation. 511

(4) "Employee" has the same meaning as in section 4175.01 of 512

the Revised Code. 513

Sec. 4115.03. As used in sections 4115.03 to 4115.16 of the 514
Revised Code: 515

(A) "Public authority" means any officer, board, or 516
commission of the state, or any political subdivision of the 517
state, authorized to enter into a contract for the construction of 518
a public improvement or to construct the same by the direct 519
employment of labor, or any institution supported in whole or in 520
part by public funds and said sections apply to expenditures of 521
such institutions made in whole or in part from public funds. 522

(B) "Construction" means either of the following: 523

(1) Any new construction of any public improvement, the total 524
overall project cost of which is fairly estimated to be more than 525
fifty thousand dollars adjusted biennially by the director of 526
commerce pursuant to section 4115.034 of the Revised Code and 527
performed by other than full-time employees who have completed 528
their probationary periods in the classified service of a public 529
authority; 530

(2) Any reconstruction, enlargement, alteration, repair, 531
remodeling, renovation, or painting of any public improvement, the 532
total overall project cost of which is fairly estimated to be more 533
than fifteen thousand dollars adjusted biennially by the 534
~~administrator~~ director pursuant to section 4115.034 of the Revised 535
Code and performed by other than full-time employees who have 536
completed their probationary period in the classified civil 537
service of a public authority. 538

(C) "Public improvement" includes all buildings, roads, 539
streets, alleys, sewers, ditches, sewage disposal plants, water 540
works, and all other structures or works constructed by a public 541
authority of the state or any political subdivision thereof or by 542

any person who, pursuant to a contract with a public authority, 543
constructs any structure for a public authority of the state or a 544
political subdivision thereof. When a public authority rents or 545
leases a newly constructed structure within six months after 546
completion of such construction, all work performed on such 547
structure to suit it for occupancy by a public authority is a 548
"public improvement." "Public improvement" does not include an 549
improvement authorized by section 1515.08 of the Revised Code that 550
is constructed pursuant to a contract with a soil and water 551
conservation district, as defined in section 1515.01 of the 552
Revised Code, or performed as a result of a petition filed 553
pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, 554
wherein no less than seventy-five per cent of the project is 555
located on private land and no less than seventy-five per cent of 556
the cost of the improvement is paid for by private property owners 557
pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised 558
Code. 559

(D) "Locality" means the county wherein the physical work 560
upon any public improvement is being performed. 561

(E) "Prevailing wages" means the sum of the following: 562

(1) The basic hourly rate of pay; 563

(2) The rate of contribution irrevocably made by a contractor 564
or subcontractor to a trustee or to a third person pursuant to a 565
fund, plan, or program; 566

(3) The rate of costs to the contractor or subcontractor 567
which may be reasonably anticipated in providing the following 568
fringe benefits to laborers and mechanics pursuant to an 569
enforceable commitment to carry out a financially responsible plan 570
or program which was communicated in writing to the laborers and 571
mechanics affected: 572

(a) Medical or hospital care or insurance to provide such; 573

(b) Pensions on retirement or death or insurance to provide such;	574 575
(c) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;	576 577 578
(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;	579 580
(e) Life insurance;	581
(f) Disability and sickness insurance;	582
(g) Accident insurance;	583
(h) Vacation and holiday pay;	584
(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;	585 586 587
(j) Other bona fide fringe benefits.	588
None of the benefits enumerated in division (E)(3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.	589 590 591 592
(F) "Interested party," with respect to a particular public improvement, means:	593 594
(1) Any person who submits a bid for the purpose of securing the award of a contract for construction of the public improvement;	595 596 597
(2) Any person acting as a subcontractor of a person mentioned in division (F)(1) of this section;	598 599
(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person mentioned in division (F)(1) or (2) of this section and which exists, in whole	600 601 602

or in part, for the purpose of negotiating with employers 603
concerning the wages, hours, or terms and conditions of employment 604
of employees; 605

(4) Any association having as members any of the persons 606
mentioned in division (F)(1) or (2) of this section. 607

(G) Except as used in division (A) of this section, "officer" 608
means an individual who has an ownership interest or holds an 609
office of trust, command, or authority in a corporation, business 610
trust, partnership, or association. 611

(H) "Employee" has the same meaning as in section 4175.01 of 612
the Revised Code. 613

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 of 614
the Revised Code: 615

(1) "Place of employment" means every place, whether indoors 616
or out, or underground, and the premises appurtenant thereto, 617
where either temporarily or permanently any industry, trade, or 618
business is carried on, or where any process or operation, 619
directly or indirectly related to any industry, trade, or 620
business, is carried on and where any person is directly or 621
indirectly employed by another for direct or indirect gain or 622
profit, but does not include any place where persons are employed 623
in private domestic service or agricultural pursuits which do not 624
involve the use of mechanical power. 625

(2) "Employment" means any trade, occupation, or process of 626
manufacture or any method of carrying on such trade, occupation, 627
or process of manufacture in which any person may be engaged, 628
except in such private domestic service or agricultural pursuits 629
as do not involve the use of mechanical power. 630

(3) "Employer" means every person, firm, corporation, agent, 631
manager, representative, or other person having control or custody 632

of any employment, place of employment, or employee. 633

(4) "Employee" ~~means every person who may be required or~~ 634
~~directed by any employer, in consideration of direct or indirect~~ 635
~~gain or profit, to engage in any employment, or to go, or work, or~~ 636
~~be at any time in any place of employment~~ has the same meaning as 637
in section 4175.01 of the Revised Code. 638

(5) "Frequenter" means every person, other than an employee, 639
who may go in or be in a place of employment under circumstances 640
which render the person other than a trespasser. 641

(6) "Deputy" means any person employed by the industrial 642
commission or the bureau of workers' compensation, designated as a 643
deputy by the commission or the administrator of workers' 644
compensation, who possesses special, technical, scientific, 645
managerial, professional, or personal abilities or qualities in 646
matters within the jurisdiction of the commission or the bureau, 647
and who may be engaged in the performance of duties under the 648
direction of the commission or the bureau calling for the exercise 649
of such abilities or qualities. 650

(7) "Order" means any decision, rule, regulation, direction, 651
requirement, or standard, or any other determination or decision 652
that the bureau is empowered to and does make. 653

(8) "General order" means an order that applies generally 654
throughout the state to all persons, employments, or places of 655
employment, or all persons, employments, or places of employment 656
of a class under the jurisdiction of the bureau. All other orders 657
shall be considered special orders. 658

(9) "Local order" means any ordinance, order, rule, or 659
determination of the legislative authority of any municipal 660
corporation, or any trustees, or board or officers of any 661
municipal corporation upon any matter over which the bureau has 662
jurisdiction. 663

(10) "Welfare" means comfort, decency, and moral well-being. 664

(11) "Safe" or "safety," as applied to any employment or a 665
place of employment, means such freedom from danger to the life, 666
health, safety, or welfare of employees or frequenters as the 667
nature of the employment will reasonably permit, including 668
requirements as to the hours of labor with relation to the health 669
and welfare of employees. 670

(12) "Employee organization" means any labor or bona fide 671
organization in which employees participate and that exists for 672
the purpose, in whole or in part, of dealing with employers 673
concerning grievances, labor disputes, wages, hours, terms, and 674
other conditions of employment. 675

(B) As used in the Revised Code: 676

(1) "Industrial commission" means the chairperson of the 677
three-member industrial commission created pursuant to section 678
4121.02 of the Revised Code when the context refers to the 679
authority vested in the chairperson as the chief executive officer 680
of the three-member industrial commission pursuant to divisions 681
(A), (B), (C), and (D) of section 4121.03 of the Revised Code. 682

(2) "Industrial commission" means the three-member industrial 683
commission created pursuant to section 4121.02 of the Revised Code 684
when the context refers to the authority vested in the 685
three-member industrial commission pursuant to division (E) of 686
section 4121.03 of the Revised Code. 687

(3) "Industrial commission" means the industrial commission 688
as a state agency when the context refers to the authority vested 689
in the industrial commission as a state agency. 690

Sec. 4123.01. As used in this chapter: 691

(A)(1) "Employee" ~~means:~~ 692

~~(a) Every person in the service of the state, or of any~~ 693

~~county, municipal corporation, township, or school district~~ 694
~~therein, including regular members of lawfully constituted police~~ 695
~~and fire departments of municipal corporations and townships,~~ 696
~~whether paid or volunteer, and wherever serving within the state~~ 697
~~or on temporary assignment outside thereof, and executive officers~~ 698
~~of boards of education, under any appointment or contract of hire,~~ 699
~~express or implied, oral or written, including any elected~~ 700
~~official of the state, or of any county, municipal corporation, or~~ 701
~~township, or members of boards of education.~~ 702

~~As used in division (A)(1)(a) of this section, the term~~ 703
~~"employee" has the same meaning as in section 4175.01 of the~~ 704
~~Revised Code, except that "employee" also includes the following~~ 705
persons when responding to an inherently dangerous situation that 706
calls for an immediate response on the part of the person, 707
regardless of whether the person is within the limits of the 708
jurisdiction of the person's regular employment or voluntary 709
service when responding, on the condition that the person responds 710
to the situation as the person otherwise would if the person were 711
on duty in the person's jurisdiction: 712

~~(i)~~(a) Off-duty peace officers. As used in division 713
~~(A)(1)(a)(i)~~ of this section, "peace officer" has the same meaning 714
as in section 2935.01 of the Revised Code. 715

~~(ii)~~(b) Off-duty firefighters, whether paid or volunteer, of 716
a lawfully constituted fire department. 717

~~(iii)~~(c) Off-duty first responders, emergency medical 718
technicians-basic, emergency medical technicians-intermediate, or 719
emergency medical technicians-paramedic, whether paid or 720
volunteer, of an ambulance service organization or emergency 721
medical service organization pursuant to Chapter 4765. of the 722
Revised Code. 723

~~(b) Every person in the service of any person, firm, or~~ 724

~~private corporation, including any public service corporation,~~ 725
~~that (i) employs one or more persons regularly in the same~~ 726
~~business or in or about the same establishment under any contract~~ 727
~~of hire, express or implied, oral or written, including aliens and~~ 728
~~minors, household workers who earn one hundred sixty dollars or~~ 729
~~more in cash in any calendar quarter from a single household and~~ 730
~~casual workers who earn one hundred sixty dollars or more in cash~~ 731
~~in any calendar quarter from a single employer, or (ii) is bound~~ 732
~~by any such contract of hire or by any other written contract, to~~ 733
~~pay into the state insurance fund the premiums provided by this~~ 734
~~chapter.~~ 735

~~(c) Every person who performs labor or provides services~~ 736
~~pursuant to a construction contract, as defined in section 4123.79~~ 737
~~of the Revised Code, if at least ten of the following criteria~~ 738
~~apply:~~ 739

~~(i) The person is required to comply with instructions from~~ 740
~~the other contracting party regarding the manner or method of~~ 741
~~performing services;~~ 742

~~(ii) The person is required by the other contracting party to~~ 743
~~have particular training;~~ 744

~~(iii) The person's services are integrated into the regular~~ 745
~~functioning of the other contracting party;~~ 746

~~(iv) The person is required to perform the work personally;~~ 747

~~(v) The person is hired, supervised, or paid by the other~~ 748
~~contracting party;~~ 749

~~(vi) A continuing relationship exists between the person and~~ 750
~~the other contracting party that contemplates continuing or~~ 751
~~recurring work even if the work is not full time;~~ 752

~~(vii) The person's hours of work are established by the other~~ 753
~~contracting party;~~ 754

(viii) The person is required to devote full time to the	755
business of the other contracting party;	756
(ix) The person is required to perform the work on the	757
premises of the other contracting party;	758
(x) The person is required to follow the order of work set by	759
the other contracting party;	760
(xi) The person is required to make oral or written reports	761
of progress to the other contracting party;	762
(xii) The person is paid for services on a regular basis such	763
as hourly, weekly, or monthly;	764
(xiii) The person's expenses are paid for by the other	765
contracting party;	766
(xiv) The person's tools and materials are furnished by the	767
other contracting party;	768
(xv) The person is provided with the facilities used to	769
perform services;	770
(xvi) The person does not realize a profit or suffer a loss	771
as a result of the services provided;	772
(xvii) The person is not performing services for a number of	773
employers at the same time;	774
(xviii) The person does not make the same services available	775
to the general public;	776
(xix) The other contracting party has a right to discharge	777
the person;	778
(xx) The person has the right to end the relationship with	779
the other contracting party without incurring liability pursuant	780
to an employment contract or agreement.	781
Every person in the service of any independent contractor or	782
subcontractor who has failed to pay into the state insurance fund	783

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

~~(d) Every person to whom all of the following apply:~~

~~(i) The person is a resident of a state other than this state
and is covered by that other state's workers' compensation law;~~

~~(ii) The person performs labor or provides services for that
person's employer while temporarily within this state;~~

~~(iii) The laws of that other state do not include the
provisions described in division (H)(4) of section 4123.54 of the
Revised Code.~~

(2) "Employee" does not mean any of the following:

(a) A duly ordained, commissioned, or licensed minister or
assistant or associate minister of a church in the exercise of
ministry;

(b) Any officer of a family farm corporation;

(c) An individual ~~incorporated as a corporation; or~~

~~(d) An individual~~ who otherwise is an employee of an employer
but who signs the waiver and affidavit specified in section
4123.15 of the Revised Code on the condition that the
administrator of workers' compensation has granted a waiver and
exception to the individual's employer under section 4123.15 of
the Revised Code.

Any employer may elect to include as an "employee" within 814
this chapter, any person excluded from the definition of 815
"employee" pursuant to division (A)(2) of this section. If an 816
employer is a partnership, sole proprietorship, ~~individual~~ 817
~~incorporated as a corporation~~, or family farm corporation, such 818
employer may elect to include as an "employee" within this 819
chapter, any member of such partnership, the owner of the sole 820
proprietorship, ~~the individual incorporated as a corporation~~, or 821
the officers of the family farm corporation. In the event of an 822
election, the employer shall serve upon the bureau of workers' 823
compensation written notice naming the persons to be covered, 824
include such employee's remuneration for premium purposes in all 825
future payroll reports, and no person excluded from the definition 826
of "employee" pursuant to division (A)(2) of this section, 827
~~proprietor, individual incorporated as a corporation~~, or partner 828
shall be deemed an employee within this division until the 829
employer has served such notice. 830

For informational purposes only, the bureau shall prescribe 831
such language as it considers appropriate, on such of its forms as 832
it considers appropriate, to advise employers of their right to 833
elect to include as an "employee" within this chapter a sole 834
proprietor, any member of a partnership, ~~an individual~~ 835
~~incorporated as a corporation~~, the officers of a family farm 836
corporation, or a person excluded from the definition of 837
"employee" under division (A)(2) of this section, that they should 838
check any health and disability insurance policy, or other form of 839
health and disability plan or contract, presently covering them, 840
or the purchase of which they may be considering, to determine 841
whether such policy, plan, or contract excludes benefits for 842
illness or injury that they might have elected to have covered by 843
workers' compensation. 844

(B) "Employer" means: 845

(1) The state, including state hospitals, each county, 846
municipal corporation, township, school district, and hospital 847
owned by a political subdivision or subdivisions other than the 848
state; 849

(2) Every person, firm, professional employer organization as 850
defined in section 4125.01 of the Revised Code, and private 851
corporation, including any public service corporation, that (a) 852
has in service one or more employees or shared employees regularly 853
in the same business or in or about the same establishment under 854
any contract of hire, express or implied, oral or written, or (b) 855
is bound by any such contract of hire or by any other written 856
contract, to pay into the insurance fund the premiums provided by 857
this chapter. 858

All such employers are subject to this chapter. Any member of 859
a firm or association, who regularly performs manual labor in or 860
about a mine, factory, or other establishment, including a 861
household establishment, shall be considered an employee in 862
determining whether such person, firm, or private corporation, or 863
public service corporation, has in its service, one or more 864
employees and the employer shall report the income derived from 865
such labor to the bureau as part of the payroll of such employer, 866
and such member shall thereupon be entitled to all the benefits of 867
an employee. 868

(C) "Injury" includes any injury, whether caused by external 869
accidental means or accidental in character and result, received 870
in the course of, and arising out of, the injured employee's 871
employment. "Injury" does not include: 872

(1) Psychiatric conditions except where the claimant's 873
psychiatric conditions have arisen from an injury or occupational 874
disease sustained by that claimant or where the claimant's 875
psychiatric conditions have arisen from sexual conduct in which 876
the claimant was forced by threat of physical harm to engage or 877

participate; 878

(2) Injury or disability caused primarily by the natural 879
deterioration of tissue, an organ, or part of the body; 880

(3) Injury or disability incurred in voluntary participation 881
in an employer-sponsored recreation or fitness activity if the 882
employee signs a waiver of the employee's right to compensation or 883
benefits under this chapter prior to engaging in the recreation or 884
fitness activity; 885

(4) A condition that pre-existed an injury unless that 886
pre-existing condition is substantially aggravated by the injury. 887
Such a substantial aggravation must be documented by objective 888
diagnostic findings, objective clinical findings, or objective 889
test results. Subjective complaints may be evidence of such a 890
substantial aggravation. However, subjective complaints without 891
objective diagnostic findings, objective clinical findings, or 892
objective test results are insufficient to substantiate a 893
substantial aggravation. 894

(D) "Child" includes a posthumous child and a child legally 895
adopted prior to the injury. 896

(E) "Family farm corporation" means a corporation founded for 897
the purpose of farming agricultural land in which the majority of 898
the voting stock is held by and the majority of the stockholders 899
are persons or the spouse of persons related to each other within 900
the fourth degree of kinship, according to the rules of the civil 901
law, and at least one of the related persons is residing on or 902
actively operating the farm, and none of whose stockholders are a 903
corporation. A family farm corporation does not cease to qualify 904
under this division where, by reason of any devise, bequest, or 905
the operation of the laws of descent or distribution, the 906
ownership of shares of voting stock is transferred to another 907
person, as long as that person is within the degree of kinship 908

stipulated in this division. 909

(F) "Occupational disease" means a disease contracted in the 910
course of employment, which by its causes and the characteristics 911
of its manifestation or the condition of the employment results in 912
a hazard which distinguishes the employment in character from 913
employment generally, and the employment creates a risk of 914
contracting the disease in greater degree and in a different 915
manner from the public in general. 916

(G) "Self-insuring employer" means an employer who is granted 917
the privilege of paying compensation and benefits directly under 918
section 4123.35 of the Revised Code, including a board of county 919
commissioners for the sole purpose of constructing a sports 920
facility as defined in section 307.696 of the Revised Code, 921
provided that the electors of the county in which the sports 922
facility is to be built have approved construction of a sports 923
facility by ballot election no later than November 6, 1997. 924

(H) "Public employer" means an employer as defined in 925
division (B)(1) of this section. 926

(I) "Sexual conduct" means vaginal intercourse between a male 927
and female; anal intercourse, fellatio, and cunnilingus between 928
persons regardless of gender; and, without privilege to do so, the 929
insertion, however slight, of any part of the body or any 930
instrument, apparatus, or other object into the vaginal or anal 931
cavity of another. Penetration, however slight, is sufficient to 932
complete vaginal or anal intercourse. 933

(J) "Other-states' insurer" means an insurance company that 934
is authorized to provide workers' compensation insurance coverage 935
in any of the states that permit employers to obtain insurance for 936
workers' compensation claims through insurance companies. 937

(K) "Other-states' coverage" means insurance coverage 938
purchased by an employer for workers' compensation claims that 939

arise in a state or states other than this state and that are 940
filed by the employees of the employer or those employee's 941
dependents, as applicable, in that other state or those other 942
states. 943

Sec. 4123.026. (A) The administrator of workers' 944
compensation, or a self-insuring public employer for the peace 945
officers, firefighters, and emergency medical workers employed by 946
or volunteering for that self-insuring public employer, shall pay 947
the costs of conducting post-exposure medical diagnostic services, 948
consistent with the standards of medical care existing at the time 949
of the exposure, to investigate whether an injury or occupational 950
disease was sustained by a peace officer, firefighter, or 951
emergency medical worker when coming into contact with the blood 952
or other body fluid of another person in the course of and arising 953
out of the peace officer's, firefighter's, or emergency medical 954
worker's employment, or when responding to an inherently dangerous 955
situation in the manner described in, and in accordance with the 956
conditions specified under, division (A)(1)~~(a)~~ of section 4123.01 957
of the Revised Code, through any of the following means: 958

(1) Splash or spatter in the eye or mouth, including when 959
received in the course of conducting mouth-to-mouth resuscitation; 960

(2) A puncture in the skin; 961

(3) A cut in the skin or another opening in the skin such as 962
an open sore, wound, lesion, abrasion, or ulcer. 963

(B) As used in this section: 964

(1) "Peace officer" has the same meaning as in section 965
2935.01 of the Revised Code. 966

(2) "Firefighter" means a firefighter, whether paid or 967
volunteer, of a lawfully constituted fire department. 968

(3) "Emergency medical worker" means a first responder, 969

emergency medical technician-basic, emergency medical 970
technician-intermediate, or emergency medical 971
technician-paramedic, certified under Chapter 4765. of the Revised 972
Code, whether paid or volunteer. 973

Sec. 4141.01. As used in this chapter, unless the context 974
otherwise requires: 975

(A)(1) "Employer" means the state, its instrumentalities, its 976
political subdivisions and their instrumentalities, Indian tribes, 977
and any individual or type of organization including any 978
partnership, limited liability company, association, trust, 979
estate, joint-stock company, insurance company, or corporation, 980
whether domestic or foreign, or the receiver, trustee in 981
bankruptcy, trustee, or the successor thereof, or the legal 982
representative of a deceased person who subsequent to December 31, 983
1971, or in the case of political subdivisions or their 984
instrumentalities, subsequent to December 31, 1973: 985

(a) Had in employment at least one individual, or in the case 986
of a nonprofit organization, subsequent to December 31, 1973, had 987
not less than four individuals in employment for some portion of a 988
day in each of twenty different calendar weeks, in either the 989
current or the preceding calendar year whether or not the same 990
individual was in employment in each such day; or 991

(b) Except for a nonprofit organization, had paid for service 992
in employment wages of fifteen hundred dollars or more in any 993
calendar quarter in either the current or preceding calendar year; 994
or 995

(c) Had paid, subsequent to December 31, 1977, for employment 996
in domestic service in a local college club, or local chapter of a 997
college fraternity or sorority, cash remuneration of one thousand 998
dollars or more in any calendar quarter in the current calendar 999
year or the preceding calendar year, or had paid subsequent to 1000

December 31, 1977, for employment in domestic service in a private 1001
home cash remuneration of one thousand dollars in any calendar 1002
quarter in the current calendar year or the preceding calendar 1003
year: 1004

(i) For the purposes of divisions (A)(1)(a) and (b) of this 1005
section, there shall not be taken into account any wages paid to, 1006
or employment of, an individual performing domestic service as 1007
described in this division. 1008

(ii) An employer under this division shall not be an employer 1009
with respect to wages paid for any services other than domestic 1010
service unless the employer is also found to be an employer under 1011
division (A)(1)(a), (b), or (d) of this section. 1012

(d) As a farm operator or a crew leader subsequent to 1013
December 31, 1977, had in employment individuals in agricultural 1014
labor; and 1015

(i) During any calendar quarter in the current calendar year 1016
or the preceding calendar year, paid cash remuneration of twenty 1017
thousand dollars or more for the agricultural labor; or 1018

(ii) Had at least ten individuals in employment in 1019
agricultural labor, not including agricultural workers who are 1020
aliens admitted to the United States to perform agricultural labor 1021
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1022
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1023
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 1024
of the twenty different calendar weeks, in either the current or 1025
preceding calendar year whether or not the same individual was in 1026
employment in each day; or 1027

(e) Is not otherwise an employer as defined under division 1028
(A)(1)(a) or (b) of this section; and 1029

(i) For which, within either the current or preceding 1030
calendar year, service, except for domestic service in a private 1031

home not covered under division (A)(1)(c) of this section, is or 1032
was performed with respect to which such employer is liable for 1033
any federal tax against which credit may be taken for 1034
contributions required to be paid into a state unemployment fund; 1035

(ii) Which, as a condition for approval of this chapter for 1036
full tax credit against the tax imposed by the "Federal 1037
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 1038
required, pursuant to such act to be an employer under this 1039
chapter; or 1040

(iii) Who became an employer by election under division 1041
(A)(4) or (5) of this section and for the duration of such 1042
election; or 1043

(f) In the case of the state, its instrumentalities, its 1044
political subdivisions, and their instrumentalities, and Indian 1045
tribes, had in employment, as defined in divisions (B)(2)(a) and 1046
(B)(2)(1) of this section, at least one individual; 1047

(g) For the purposes of division (A)(1)(a) of this section, 1048
if any week includes both the thirty-first day of December and the 1049
first day of January, the days of that week before the first day 1050
of January shall be considered one calendar week and the days 1051
beginning the first day of January another week. 1052

(2) Each individual employed to perform or to assist in 1053
performing the work of any agent or employee of an employer is 1054
employed by such employer for all the purposes of this chapter, 1055
whether such individual was hired or paid directly by such 1056
employer or by such agent or employee, provided the employer had 1057
actual or constructive knowledge of the work. All individuals 1058
performing services for an employer of any person in this state 1059
who maintains two or more establishments within this state are 1060
employed by a single employer for the purposes of this chapter. 1061

(3) An employer subject to this chapter within any calendar 1062

year is subject to this chapter during the whole of such year and 1063
during the next succeeding calendar year. 1064

(4) An employer not otherwise subject to this chapter who 1065
files with the director of job and family services a written 1066
election to become an employer subject to this chapter for not 1067
less than two calendar years shall, with the written approval of 1068
such election by the director, become an employer subject to this 1069
chapter to the same extent as all other employers as of the date 1070
stated in such approval, and shall cease to be subject to this 1071
chapter as of the first day of January of any calendar year 1072
subsequent to such two calendar years only if at least thirty days 1073
prior to such first day of January the employer has filed with the 1074
director a written notice to that effect. 1075

(5) Any employer for whom services that do not constitute 1076
employment are performed may file with the director a written 1077
election that all such services performed by individuals in the 1078
employer's employ in one or more distinct establishments or places 1079
of business shall be deemed to constitute employment for all the 1080
purposes of this chapter, for not less than two calendar years. 1081
Upon written approval of the election by the director, such 1082
services shall be deemed to constitute employment subject to this 1083
chapter from and after the date stated in such approval. Such 1084
services shall cease to be employment subject to this chapter as 1085
of the first day of January of any calendar year subsequent to 1086
such two calendar years only if at least thirty days prior to such 1087
first day of January such employer has filed with the director a 1088
written notice to that effect. 1089

(B)(1) "Employment" means service performed by an individual 1090
for remuneration under any contract of hire, written or oral, 1091
express or implied, including service performed in interstate 1092
commerce and service performed by an officer of a corporation, 1093
without regard to whether such service is executive, managerial, 1094

or manual in nature, and without regard to whether such officer is 1095
a stockholder or a member of the board of directors of the 1096
corporation, unless it is shown to the satisfaction of the 1097
director that such individual has been and will continue to be 1098
free from direction or control over the performance of such 1099
service, both under a contract of service and in fact. The 1100
director shall adopt rules to define "direction or control." 1101

(2) "Employment" includes: 1102

(a) Service performed after December 31, 1977, by an 1103
individual in the employ of the state or any of its 1104
instrumentalities, or any political subdivision thereof or any of 1105
its instrumentalities or any instrumentality of more than one of 1106
the foregoing or any instrumentality of any of the foregoing and 1107
one or more other states or political subdivisions and without 1108
regard to divisions (A)(1)(a) and (b) of this section, provided 1109
that such service is excluded from employment as defined in the 1110
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 1111
3306(c)(7) and is not excluded under division (B)(3) of this 1112
section; or the services of employees covered by voluntary 1113
election, as provided under divisions (A)(4) and (5) of this 1114
section; 1115

(b) Service performed after December 31, 1971, by an 1116
individual in the employ of a religious, charitable, educational, 1117
or other organization which is excluded from the term "employment" 1118
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 1119
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 1120
3306(c)(8) of that act and is not excluded under division (B)(3) 1121
of this section; 1122

(c) Domestic service performed after December 31, 1977, for 1123
an employer, as provided in division (A)(1)(c) of this section; 1124

(d) Agricultural labor performed after December 31, 1977, for 1125

a farm operator or a crew leader, as provided in division 1126
(A)(1)(d) of this section; 1127

(e) Service not covered under division (B)(1) of this section 1128
which is performed after December 31, 1971: 1129

(i) As ~~an agent driver or commission driver~~ a delivery driver 1130
engaged in distributing meat products, vegetable products, fruit 1131
products, bakery products, beverages ~~other than milk~~, laundry, ~~or~~ 1132
parcels, freight, dry-cleaning services, ~~for the individual's~~ 1133
~~employer or principal~~ similar products; 1134

(ii) As a traveling or city salesperson, other than as ~~an~~ 1135
~~agent driver or commission driver~~ a delivery driver, engaged on a 1136
full-time basis in the solicitation on behalf of and in the 1137
transmission to the salesperson's employer or principal except for 1138
sideline sales activities on behalf of some other person of orders 1139
from wholesalers, retailers, contractors, or operators of hotels, 1140
restaurants, or other similar establishments for merchandise for 1141
resale, or supplies for use in their business operations, ~~provided~~ 1142
~~that for the purposes of division (B)(2)(c)(ii) of this section,~~ 1143
~~the services shall be deemed employment if the contract of service~~ 1144
~~contemplates that substantially all of the services are to be~~ 1145
~~performed personally by the individual and that the individual~~ 1146
~~does not have a substantial investment in facilities used in~~ 1147
~~connection with the performance of the services other than in~~ 1148
~~facilities for transportation, and the services are not in the~~ 1149
~~nature of a single transaction that is not a part of a continuing~~ 1150
~~relationship with the person for whom the services are performed.~~ 1151

(f) An individual's entire service performed within or both 1152
within and without the state if: 1153

(i) The service is localized in this state. 1154

(ii) The service is not localized in any state, but some of 1155
the service is performed in this state and either the base of 1156

operations, or if there is no base of operations then the place 1157
from which such service is directed or controlled, is in this 1158
state or the base of operations or place from which such service 1159
is directed or controlled is not in any state in which some part 1160
of the service is performed but the individual's residence is in 1161
this state. 1162

(g) Service not covered under division (B)(2)(f)(ii) of this 1163
section and performed entirely without this state, with respect to 1164
no part of which contributions are required and paid under an 1165
unemployment compensation law of any other state, the Virgin 1166
Islands, Canada, or of the United States, if the individual 1167
performing such service is a resident of this state and the 1168
director approves the election of the employer for whom such 1169
services are performed; or, if the individual is not a resident of 1170
this state but the place from which the service is directed or 1171
controlled is in this state, the entire services of such 1172
individual shall be deemed to be employment subject to this 1173
chapter, provided service is deemed to be localized within this 1174
state if the service is performed entirely within this state or if 1175
the service is performed both within and without this state but 1176
the service performed without this state is incidental to the 1177
individual's service within the state, for example, is temporary 1178
or transitory in nature or consists of isolated transactions; 1179

(h) Service of an individual who is a citizen of the United 1180
States, performed outside the United States except in Canada after 1181
December 31, 1971, or the Virgin Islands, after December 31, 1971, 1182
and before the first day of January of the year following that in 1183
which the United States secretary of labor approves the Virgin 1184
Islands law for the first time, in the employ of an American 1185
employer, other than service which is "employment" under divisions 1186
(B)(2)(f) and (g) of this section or similar provisions of another 1187
state's law, if: 1188

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

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

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

(i) For the purposes of division (B)(2)(h) of this section, the term "American employer" means an employer who is an individual who is a resident of the United States; or a partnership, if two-thirds or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state, provided the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(j) Notwithstanding any other provisions of divisions (B)(1) and (2) of this section, service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, which, as a condition for full tax credit against the tax imposed by the

"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1221
3311, is required to be covered under this chapter. 1222

(k) Construction services performed by any individual under a 1223
construction contract, as defined in section 4141.39 of the 1224
Revised Code, ~~if the director determines that the employer for~~ 1225
~~whom services are performed has the right to direct or control the~~ 1226
~~performance of the services and that the individuals who perform~~ 1227
~~the services receive remuneration for the services performed. The~~ 1228
~~director shall presume that the employer for whom services are~~ 1229
~~performed has the right to direct or control the performance of~~ 1230
~~the services if ten or more of the following criteria apply:~~ 1231

~~(i) The employer directs or controls the manner or method by~~ 1232
~~which instructions are given to the individual performing~~ 1233
~~services;~~ 1234

~~(ii) The employer requires particular training for the~~ 1235
~~individual performing services;~~ 1236

~~(iii) Services performed by the individual are integrated~~ 1237
~~into the regular functioning of the employer;~~ 1238

~~(iv) The employer requires that services be provided by a~~ 1239
~~particular individual;~~ 1240

~~(v) The employer hires, supervises, or pays the wages of the~~ 1241
~~individual performing services;~~ 1242

~~(vi) A continuing relationship between the employer and the~~ 1243
~~individual performing services exists which contemplates~~ 1244
~~continuing or recurring work, even if not full-time work;~~ 1245

~~(vii) The employer requires the individual to perform~~ 1246
~~services during established hours;~~ 1247

~~(viii) The employer requires that the individual performing~~ 1248
~~services be devoted on a full-time basis to the business of the~~ 1249
~~employer;~~ 1250

(ix) The employer requires the individual to perform services	1251
on the employer's premises;	1252
(x) The employer requires the individual performing services	1253
to follow the order of work established by the employer;	1254
(xi) The employer requires the individual performing services	1255
to make oral or written reports of progress;	1256
(xii) The employer makes payment to the individual for	1257
services on a regular basis, such as hourly, weekly, or monthly;	1258
(xiii) The employer pays expenses for the individual	1259
performing services;	1260
(xiv) The employer furnishes the tools and materials for use	1261
by the individual to perform services;	1262
(xv) The individual performing services has not invested in	1263
the facilities used to perform services;	1264
(xvi) The individual performing services does not realize a	1265
profit or suffer a loss as a result of the performance of the	1266
services;	1267
(xvii) The individual performing services is not performing	1268
services for more than two employers simultaneously;	1269
(xviii) The individual performing services does not make the	1270
services available to the general public;	1271
(xix) The employer has a right to discharge the individual	1272
performing services;	1273
(xx) The individual performing services has the right to end	1274
the individual's relationship with the employer without incurring	1275
liability pursuant to an employment contract or agreement.	1276
(1) Service performed by an individual in the employ of an	1277
Indian tribe as defined by section 4(e) of the "Indian	1278
Self-Determination and Education Assistance Act," 88 Stat. 2204	1279

(1975), 25 U.S.C.A. 450b(e), including any subdivision, 1280
subsidiary, or business enterprise wholly owned by an Indian tribe 1281
provided that the service is excluded from employment as defined 1282
in the "Federal Unemployment Tax Act," 53 Stat. 183, (1939), 26 1283
U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division 1284
(B)(3) of this section. 1285

(3) "Employment" does not include the following services if 1286
they are found not subject to the "Federal Unemployment Tax Act," 1287
84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services 1288
are not required to be included under division (B)(2)(j) of this 1289
section: 1290

(a) Service performed after December 31, 1977, in 1291
agricultural labor, except as provided in division (A)(1)(d) of 1292
this section; 1293

(b) Domestic service performed after December 31, 1977, in a 1294
private home, local college club, or local chapter of a college 1295
fraternity or sorority except as provided in division (A)(1)(c) of 1296
this section; 1297

(c) Service performed after December 31, 1977, for this state 1298
or a political subdivision as described in division (B)(2)(a) of 1299
this section when performed: 1300

(i) As a publicly elected official; 1301

(ii) As a member of a legislative body, or a member of the 1302
judiciary; 1303

(iii) As a military member of the Ohio national guard; 1304

(iv) As an employee, not in the classified service as defined 1305
in section 124.11 of the Revised Code, serving on a temporary 1306
basis in case of fire, storm, snow, earthquake, flood, or similar 1307
emergency; 1308

(v) In a position which, under or pursuant to law, is 1309

designated as a major nontenured policymaking or advisory 1310
position, not in the classified service of the state, or a 1311
policymaking or advisory position the performance of the duties of 1312
which ordinarily does not require more than eight hours per week. 1313

(d) In the employ of any governmental unit or instrumentality 1314
of the United States; 1315

(e) Service performed after December 31, 1971: 1316

(i) Service in the employ of an educational institution or 1317
institution of higher education, including those operated by the 1318
state or a political subdivision, if such service is performed by 1319
a student who is enrolled and is regularly attending classes at 1320
the educational institution or institution of higher education; or 1321

(ii) By an individual who is enrolled at a nonprofit or 1322
public educational institution which normally maintains a regular 1323
faculty and curriculum and normally has a regularly organized body 1324
of students in attendance at the place where its educational 1325
activities are carried on as a student in a full-time program, 1326
taken for credit at the institution, which combines academic 1327
instruction with work experience, if the service is an integral 1328
part of the program, and the institution has so certified to the 1329
employer, provided that this subdivision shall not apply to 1330
service performed in a program established for or on behalf of an 1331
employer or group of employers; 1332

(f) Service performed by an individual in the employ of the 1333
individual's son, daughter, or spouse and service performed by a 1334
child under the age of eighteen in the employ of the child's 1335
father or mother; 1336

~~(g) Service performed for one or more principals by an 1337
individual who is compensated on a commission basis, who in the 1338
performance of the work is master of the individual's own time and 1339
efforts, and whose remuneration is wholly dependent on the amount 1340~~

~~of effort the individual chooses to expend, and which service is~~ 1341
~~not subject to the "Federal Unemployment Tax Act," 53 Stat. 183~~ 1342
~~(1939), 26 U.S.C.A. 3301 to 3311.~~ Service performed after December 1343
31, 1971: 1344

(i) By an individual for an employer as an insurance agent or 1345
as an insurance solicitor, if all this service is performed for 1346
remuneration solely by way of commission; 1347

(ii) As a home worker performing work, according to 1348
specifications furnished by the employer for whom the services are 1349
performed, on materials or goods furnished by such employer which 1350
are required to be returned to the employer or to a person 1351
designated for that purpose. 1352

(h) Service performed after December 31, 1971: 1353

(i) In the employ of a church or convention or association of 1354
churches, or in an organization which is operated primarily for 1355
religious purposes and which is operated, supervised, controlled, 1356
or principally supported by a church or convention or association 1357
of churches; 1358

(ii) By a duly ordained, commissioned, or licensed minister 1359
of a church in the exercise of the individual's ministry or by a 1360
member of a religious order in the exercise of duties required by 1361
such order; or 1362

(iii) In a facility conducted for the purpose of carrying out 1363
a program of rehabilitation for individuals whose earning capacity 1364
is impaired by age or physical or mental deficiency or injury, or 1365
providing remunerative work for individuals who because of their 1366
impaired physical or mental capacity cannot be readily absorbed in 1367
the competitive labor market, by an individual receiving such 1368
rehabilitation or remunerative work; 1369

(i) Service performed after June 30, 1939, with respect to 1370
which unemployment compensation is payable under the "Railroad 1371

Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1372

(j) Service performed by an individual in the employ of any 1373
organization exempt from income tax under section 501 of the 1374
"Internal Revenue Code of 1954," if the remuneration for such 1375
service does not exceed fifty dollars in any calendar quarter, or 1376
if such service is in connection with the collection of dues or 1377
premiums for a fraternal beneficial society, order, or association 1378
and is performed away from the home office or is ritualistic 1379
service in connection with any such society, order, or 1380
association; 1381

(k) Casual labor not in the course of an employer's trade or 1382
business; incidental service performed by an officer, appraiser, 1383
or member of a finance committee of a bank, building and loan 1384
association, savings and loan association, or savings association 1385
when the remuneration for such incidental service exclusive of the 1386
amount paid or allotted for directors' fees does not exceed sixty 1387
dollars per calendar quarter is casual labor; 1388

(l) Service performed in the employ of a voluntary employees' 1389
beneficial association providing for the payment of life, 1390
sickness, accident, or other benefits to the members of such 1391
association or their dependents or their designated beneficiaries, 1392
if admission to a membership in such association is limited to 1393
individuals who are officers or employees of a municipal or public 1394
corporation, of a political subdivision of the state, or of the 1395
United States and no part of the net earnings of such association 1396
inures, other than through such payments, to the benefit of any 1397
private shareholder or individual; 1398

(m) Service performed by an individual in the employ of a 1399
foreign government, including service as a consular or other 1400
officer or employee or of a nondiplomatic representative; 1401

(n) Service performed in the employ of an instrumentality 1402

wholly owned by a foreign government if the service is of a 1403
character similar to that performed in foreign countries by 1404
employees of the United States or of an instrumentality thereof 1405
and if the director finds that the secretary of state of the 1406
United States has certified to the secretary of the treasury of 1407
the United States that the foreign government, with respect to 1408
whose instrumentality exemption is claimed, grants an equivalent 1409
exemption with respect to similar service performed in the foreign 1410
country by employees of the United States and of instrumentalities 1411
thereof; 1412

(o) Service with respect to which unemployment compensation 1413
is payable under an unemployment compensation system established 1414
by an act of congress; 1415

(p) Service performed as a student nurse in the employ of a 1416
hospital or a nurses' training school by an individual who is 1417
enrolled and is regularly attending classes in a nurses' training 1418
school chartered or approved pursuant to state law, and service 1419
performed as an intern in the employ of a hospital by an 1420
individual who has completed a four years' course in a medical 1421
school chartered or approved pursuant to state law; 1422

(q) Service performed by an individual under the age of 1423
eighteen in the delivery or distribution of newspapers or shopping 1424
news, not including delivery or distribution to any point for 1425
subsequent delivery or distribution; 1426

(r) Service performed in the employ of the United States or 1427
an instrumentality of the United States immune under the 1428
Constitution of the United States from the contributions imposed 1429
by this chapter, except that to the extent that congress permits 1430
states to require any instrumentalities of the United States to 1431
make payments into an unemployment fund under a state unemployment 1432
compensation act, this chapter shall be applicable to such 1433
instrumentalities and to services performed for such 1434

instrumentalities in the same manner, to the same extent, and on 1435
the same terms as to all other employers, individuals, and 1436
services, provided that if this state is not certified for any 1437
year by the proper agency of the United States under section 3304 1438
of the "Internal Revenue Code of 1954," the payments required of 1439
such instrumentalities with respect to such year shall be refunded 1440
by the director from the fund in the same manner and within the 1441
same period as is provided in division (E) of section 4141.09 of 1442
the Revised Code with respect to contributions erroneously 1443
collected; 1444

(s) Service performed by an individual as a member of a band 1445
or orchestra, provided such service does not represent the 1446
principal occupation of such individual, and which service is not 1447
subject to or required to be covered for full tax credit against 1448
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1449
183 (1939), 26 U.S.C.A. 3301 to 3311. 1450

(t) Service performed in the employ of a day camp whose 1451
camping season does not exceed twelve weeks in any calendar year, 1452
and which service is not subject to the "Federal Unemployment Tax 1453
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1454
performed after December 31, 1971: 1455

(i) In the employ of a hospital, if the service is performed 1456
by a patient of the hospital, as defined in division (W) of this 1457
section; 1458

(ii) For a prison or other correctional institution by an 1459
inmate of the prison or correctional institution; 1460

(iii) Service performed after December 31, 1977, by an inmate 1461
of a custodial institution operated by the state, a political 1462
subdivision, or a nonprofit organization. 1463

(u) Service that is performed by a nonresident alien 1464
individual for the period the individual temporarily is present in 1465

the United States as a nonimmigrant under division (F), (J), (M), 1466
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1467
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1468
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1469
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1470

(v) Notwithstanding any other provisions of division (B)(3) 1471
of this section, services that are excluded under divisions 1472
(B)(3)(g), (j), (k), and (l) of this section shall not be excluded 1473
from employment when performed for a nonprofit organization, as 1474
defined in division (X) of this section, or for this state or its 1475
instrumentalities, or for a political subdivision or its 1476
instrumentalities or for Indian tribes; 1477

(w) Service that is performed by an individual working as an 1478
election official or election worker if the amount of remuneration 1479
received by the individual during the calendar year for services 1480
as an election official or election worker is less than one 1481
thousand dollars; 1482

(x) Service performed for an elementary or secondary school 1483
that is operated primarily for religious purposes, that is 1484
described in subsection 501(c)(3) and exempt from federal income 1485
taxation under subsection 501(a) of the Internal Revenue Code, 26 1486
U.S.C.A. 501; 1487

(y) Service performed by a person committed to a penal 1488
institution. 1489

(z) Service performed for an Indian tribe as described in 1490
division (B)(2)(l) of this section when performed in any of the 1491
following manners: 1492

(i) As a publicly elected official; 1493

(ii) As a member of an Indian tribal council; 1494

(iii) As a member of a legislative or judiciary body; 1495

(iv) In a position which, pursuant to Indian tribal law, is 1496
designated as a major nontenured policymaking or advisory 1497
position, or a policymaking or advisory position where the 1498
performance of the duties ordinarily does not require more than 1499
eight hours of time per week; 1500

(v) As an employee serving on a temporary basis in the case 1501
of a fire, storm, snow, earthquake, flood, or similar emergency. 1502

(aa) Service performed after December 31, 1971, for a 1503
nonprofit organization, this state or its instrumentalities, a 1504
political subdivision or its instrumentalities, or an Indian tribe 1505
as part of an unemployment work-relief or work-training program 1506
assisted or financed in whole or in part by any federal agency or 1507
an agency of a state or political subdivision, thereof, by an 1508
individual receiving the work-relief or work-training. 1509

(4) If the services performed during one half or more of any 1510
pay period by an employee for the person employing that employee 1511
constitute employment, all the services of such employee for such 1512
period shall be deemed to be employment; but if the services 1513
performed during more than one half of any such pay period by an 1514
employee for the person employing that employee do not constitute 1515
employment, then none of the services of such employee for such 1516
period shall be deemed to be employment. As used in division 1517
(B)(4) of this section, "pay period" means a period, of not more 1518
than thirty-one consecutive days, for which payment of 1519
remuneration is ordinarily made to the employee by the person 1520
employing that employee. Division (B)(4) of this section does not 1521
apply to services performed in a pay period by an employee for the 1522
person employing that employee, if any of such service is excepted 1523
by division (B)(3)(o) of this section. 1524

(C) "Benefits" means money payments payable to an individual 1525
who has established benefit rights, as provided in this chapter, 1526
for loss of remuneration due to the individual's unemployment. 1527

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

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

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

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

(2) Notwithstanding division (G)(1) of this section, if, as of the computation date for any calendar year, the director

determines that the level of the unemployment compensation fund is 1560
sixty per cent or more below the minimum safe level as defined in 1561
section 4141.25 of the Revised Code, then, effective the first day 1562
of January of the following calendar year, wages subject to this 1563
chapter shall not include that part of remuneration paid during 1564
any calendar year to an individual by an employer or such 1565
employer's predecessor in interest in the same business or 1566
enterprise which is in excess of nine thousand dollars. The 1567
increase in the dollar amount of wages subject to this chapter 1568
under this division shall remain in effect from the date of the 1569
director's determination pursuant to division (G)(2) of this 1570
section and thereafter notwithstanding the fact that the level in 1571
the fund may subsequently become less than sixty per cent below 1572
the minimum safe level. 1573

(H)(1) "Remuneration" means all compensation for personal 1574
services, including commissions and bonuses and the cash value of 1575
all compensation in any medium other than cash, except that in the 1576
case of agricultural or domestic service, "remuneration" includes 1577
only cash remuneration. Gratuities customarily received by an 1578
individual in the course of the individual's employment from 1579
persons other than the individual's employer and which are 1580
accounted for by such individual to the individual's employer are 1581
taxable wages. 1582

The reasonable cash value of compensation paid in any medium 1583
other than cash shall be estimated and determined in accordance 1584
with rules prescribed by the director, provided that 1585
"remuneration" does not include: 1586

(a) Payments as provided in divisions (b)(2) to (b)(16) of 1587
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 1588
26 U.S.C.A. 3301 to 3311, as amended; 1589

(b) The payment by an employer, without deduction from the 1590
remuneration of the individual in the employer's employ, of the 1591

tax imposed upon an individual in the employer's employ under 1592
section 3101 of the "Internal Revenue Code of 1954," with respect 1593
to services performed after October 1, 1941. 1594

(2) "Cash remuneration" means all remuneration paid in cash, 1595
including commissions and bonuses, but not including the cash 1596
value of all compensation in any medium other than cash. 1597

(I) "Interested party" means the director and any party to 1598
whom notice of a determination of an application for benefit 1599
rights or a claim for benefits is required to be given under 1600
section 4141.28 of the Revised Code. 1601

(J) "Annual payroll" means the total amount of wages subject 1602
to contributions during a twelve-month period ending with the last 1603
day of the second calendar quarter of any calendar year. 1604

(K) "Average annual payroll" means the average of the last 1605
three annual payrolls of an employer, provided that if, as of any 1606
computation date, the employer has had less than three annual 1607
payrolls in such three-year period, such average shall be based on 1608
the annual payrolls which the employer has had as of such date. 1609

(L)(1) "Contributions" means the money payments to the state 1610
unemployment compensation fund required of employers by section 1611
4141.25 of the Revised Code and of the state and any of its 1612
political subdivisions electing to pay contributions under section 1613
4141.242 of the Revised Code. Employers paying contributions shall 1614
be described as "contributory employers." 1615

(2) "Payments in lieu of contributions" means the money 1616
payments to the state unemployment compensation fund required of 1617
reimbursing employers under sections 4141.241 and 4141.242 of the 1618
Revised Code. 1619

(M) An individual is "totally unemployed" in any week during 1620
which the individual performs no services and with respect to such 1621
week no remuneration is payable to the individual. 1622

(N) An individual is "partially unemployed" in any week if, 1623
due to involuntary loss of work, the total remuneration payable to 1624
the individual for such week is less than the individual's weekly 1625
benefit amount. 1626

(O) "Week" means the calendar week ending at midnight 1627
Saturday unless an equivalent week of seven consecutive calendar 1628
days is prescribed by the director. 1629

(1) "Qualifying week" means any calendar week in an 1630
individual's base period with respect to which the individual 1631
earns or is paid remuneration in employment subject to this 1632
chapter. A calendar week with respect to which an individual earns 1633
remuneration but for which payment was not made within the base 1634
period, when necessary to qualify for benefit rights, may be 1635
considered to be a qualifying week. The number of qualifying weeks 1636
which may be established in a calendar quarter shall not exceed 1637
the number of calendar weeks in the quarter. 1638

(2) "Average weekly wage" means the amount obtained by 1639
dividing an individual's total remuneration for all qualifying 1640
weeks during the base period by the number of such qualifying 1641
weeks, provided that if the computation results in an amount that 1642
is not a multiple of one dollar, such amount shall be rounded to 1643
the next lower multiple of one dollar. 1644

(P) "Weekly benefit amount" means the amount of benefits an 1645
individual would be entitled to receive for one week of total 1646
unemployment. 1647

(Q)(1) "Base period" means the first four of the last five 1648
completed calendar quarters immediately preceding the first day of 1649
an individual's benefit year, except as provided in division 1650
(Q)(2) of this section. 1651

(2) If an individual does not have sufficient qualifying 1652
weeks and wages in the base period to qualify for benefit rights, 1653

the individual's base period shall be the four most recently 1654
completed calendar quarters preceding the first day of the 1655
individual's benefit year. Such base period shall be known as the 1656
"alternate base period." If information as to weeks and wages for 1657
the most recent quarter of the alternate base period is not 1658
available to the director from the regular quarterly reports of 1659
wage information, which are systematically accessible, the 1660
director may, consistent with the provisions of section 4141.28 of 1661
the Revised Code, base the determination of eligibility for 1662
benefits on the affidavit of the claimant with respect to weeks 1663
and wages for that calendar quarter. The claimant shall furnish 1664
payroll documentation, where available, in support of the 1665
affidavit. The determination based upon the alternate base period 1666
as it relates to the claimant's benefit rights, shall be amended 1667
when the quarterly report of wage information from the employer is 1668
timely received and that information causes a change in the 1669
determination. As provided in division (B) of section 4141.28 of 1670
the Revised Code, any benefits paid and charged to an employer's 1671
account, based upon a claimant's affidavit, shall be adjusted 1672
effective as of the beginning of the claimant's benefit year. No 1673
calendar quarter in a base period or alternate base period shall 1674
be used to establish a subsequent benefit year. 1675

(3) The "base period" of a combined wage claim, as described 1676
in division (H) of section 4141.43 of the Revised Code, shall be 1677
the base period prescribed by the law of the state in which the 1678
claim is allowed. 1679

(4) For purposes of determining the weeks that comprise a 1680
completed calendar quarter under this division, only those weeks 1681
ending at midnight Saturday within the calendar quarter shall be 1682
utilized. 1683

(R)(1) "Benefit year" with respect to an individual means the 1684
fifty-two week period beginning with the first day of that week 1685

with respect to which the individual first files a valid 1686
application for determination of benefit rights, and thereafter 1687
the fifty-two week period beginning with the first day of that 1688
week with respect to which the individual next files a valid 1689
application for determination of benefit rights after the 1690
termination of the individual's last preceding benefit year, 1691
except that the application shall not be considered valid unless 1692
the individual has had employment in six weeks that is subject to 1693
this chapter or the unemployment compensation act of another 1694
state, or the United States, and has, since the beginning of the 1695
individual's previous benefit year, in the employment earned three 1696
times the average weekly wage determined for the previous benefit 1697
year. The "benefit year" of a combined wage claim, as described in 1698
division (H) of section 4141.43 of the Revised Code, shall be the 1699
benefit year prescribed by the law of the state in which the claim 1700
is allowed. Any application for determination of benefit rights 1701
made in accordance with section 4141.28 of the Revised Code is 1702
valid if the individual filing such application is unemployed, has 1703
been employed by an employer or employers subject to this chapter 1704
in at least twenty qualifying weeks within the individual's base 1705
period, and has earned or been paid remuneration at an average 1706
weekly wage of not less than twenty-seven and one-half per cent of 1707
the statewide average weekly wage for such weeks. For purposes of 1708
determining whether an individual has had sufficient employment 1709
since the beginning of the individual's previous benefit year to 1710
file a valid application, "employment" means the performance of 1711
services for which remuneration is payable. 1712

(2) Effective for benefit years beginning on and after 1713
December 26, 2004, any application for determination of benefit 1714
rights made in accordance with section 4141.28 of the Revised Code 1715
is valid if the individual satisfies the criteria described in 1716
division (R)(1) of this section, and if the reason for the 1717
individual's separation from employment is not disqualifying 1718

pursuant to division (D)(2) of section 4141.29 or section 4141.291 1719
of the Revised Code. A disqualification imposed pursuant to 1720
division (D)(2) of section 4141.29 or section 4141.291 of the 1721
Revised Code must be removed as provided in those sections as a 1722
requirement of establishing a valid application for benefit years 1723
beginning on and after December 26, 2004. 1724

(3) The statewide average weekly wage shall be calculated by 1725
the director once a year based on the twelve-month period ending 1726
the thirtieth day of June, as set forth in division (B)(3) of 1727
section 4141.30 of the Revised Code, rounded down to the nearest 1728
dollar. Increases or decreases in the amount of remuneration 1729
required to have been earned or paid in order for individuals to 1730
have filed valid applications shall become effective on Sunday of 1731
the calendar week in which the first day of January occurs that 1732
follows the twelve-month period ending the thirtieth day of June 1733
upon which the calculation of the statewide average weekly wage 1734
was based. 1735

(4) As used in this division, an individual is "unemployed" 1736
if, with respect to the calendar week in which such application is 1737
filed, the individual is "partially unemployed" or "totally 1738
unemployed" as defined in this section or if, prior to filing the 1739
application, the individual was separated from the individual's 1740
most recent work for any reason which terminated the individual's 1741
employee-employer relationship, or was laid off indefinitely or 1742
for a definite period of seven or more days. 1743

(S) "Calendar quarter" means the period of three consecutive 1744
calendar months ending on the thirty-first day of March, the 1745
thirtieth day of June, the thirtieth day of September, and the 1746
thirty-first day of December, or the equivalent thereof as the 1747
director prescribes by rule. 1748

(T) "Computation date" means the first day of the third 1749
calendar quarter of any calendar year. 1750

(U) "Contribution period" means the calendar year beginning 1751
on the first day of January of any year. 1752

(V) "Agricultural labor," for the purpose of this division, 1753
means any service performed prior to January 1, 1972, which was 1754
agricultural labor as defined in this division prior to that date, 1755
and service performed after December 31, 1971: 1756

(1) On a farm, in the employ of any person, in connection 1757
with cultivating the soil, or in connection with raising or 1758
harvesting any agricultural or horticultural commodity, including 1759
the raising, shearing, feeding, caring for, training, and 1760
management of livestock, bees, poultry, and fur-bearing animals 1761
and wildlife; 1762

(2) In the employ of the owner or tenant or other operator of 1763
a farm in connection with the operation, management, conservation, 1764
improvement, or maintenance of such farm and its tools and 1765
equipment, or in salvaging timber or clearing land of brush and 1766
other debris left by hurricane, if the major part of such service 1767
is performed on a farm; 1768

(3) In connection with the production or harvesting of any 1769
commodity defined as an agricultural commodity in section 15 (g) 1770
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1771
U.S.C. 1141j, as amended, or in connection with the ginning of 1772
cotton, or in connection with the operation or maintenance of 1773
ditches, canals, reservoirs, or waterways, not owned or operated 1774
for profit, used exclusively for supplying and storing water for 1775
farming purposes; 1776

(4) In the employ of the operator of a farm in handling, 1777
planting, drying, packing, packaging, processing, freezing, 1778
grading, storing, or delivering to storage or to market or to a 1779
carrier for transportation to market, in its unmanufactured state, 1780
any agricultural or horticultural commodity, but only if the 1781

operator produced more than one half of the commodity with respect 1782
to which such service is performed; 1783

(5) In the employ of a group of operators of farms, or a 1784
cooperative organization of which the operators are members, in 1785
the performance of service described in division (V)(4) of this 1786
section, but only if the operators produced more than one-half of 1787
the commodity with respect to which the service is performed; 1788

(6) Divisions (V)(4) and (5) of this section shall not be 1789
deemed to be applicable with respect to service performed: 1790

(a) In connection with commercial canning or commercial 1791
freezing or in connection with any agricultural or horticultural 1792
commodity after its delivery to a terminal market for distribution 1793
for consumption; or 1794

(b) On a farm operated for profit if the service is not in 1795
the course of the employer's trade or business. 1796

As used in division (V) of this section, "farm" includes 1797
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 1798
plantations, ranches, nurseries, ranges, greenhouses, or other 1799
similar structures used primarily for the raising of agricultural 1800
or horticultural commodities and orchards. 1801

(W) "Hospital" means an institution which has been registered 1802
or licensed by the Ohio department of health as a hospital. 1803

(X) "Nonprofit organization" means an organization, or group 1804
of organizations, described in section 501(c)(3) of the "Internal 1805
Revenue Code of 1954," and exempt from income tax under section 1806
501(a) of that code. 1807

(Y) "Institution of higher education" means a public or 1808
nonprofit educational institution, including an educational 1809
institution operated by an Indian tribe, which: 1810

(1) Admits as regular students only individuals having a 1811

certificate of graduation from a high school, or the recognized 1812
equivalent; 1813

(2) Is legally authorized in this state or by the Indian 1814
tribe to provide a program of education beyond high school; and 1815

(3) Provides an educational program for which it awards a 1816
bachelor's or higher degree, or provides a program which is 1817
acceptable for full credit toward such a degree, a program of 1818
post-graduate or post-doctoral studies, or a program of training 1819
to prepare students for gainful employment in a recognized 1820
occupation. 1821

For the purposes of this division, all colleges and 1822
universities in this state are institutions of higher education. 1823

(Z) For the purposes of this chapter, "states" includes the 1824
District of Columbia, the Commonwealth of Puerto Rico, and the 1825
Virgin Islands. 1826

(AA) "Alien" means, for the purposes of division (A)(1)(d) of 1827
this section, an individual who is an alien admitted to the United 1828
States to perform service in agricultural labor pursuant to 1829
sections 214 (c) and 101 (a)(15)(H) of the "Immigration and 1830
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 1831

(BB)(1) "Crew leader" means an individual who furnishes 1832
individuals to perform agricultural labor for any other employer 1833
or farm operator, and: 1834

(a) Pays, either on the individual's own behalf or on behalf 1835
of the other employer or farm operator, the individuals so 1836
furnished by the individual for the service in agricultural labor 1837
performed by them; 1838

(b) Has not entered into a written agreement with the other 1839
employer or farm operator under which the agricultural worker is 1840
designated as in the employ of the other employer or farm 1841

operator. 1842

(2) For the purposes of this chapter, any individual who is a 1843
member of a crew furnished by a crew leader to perform service in 1844
agricultural labor for any other employer or farm operator shall 1845
be treated as an employee of the crew leader if: 1846

(a) The crew leader holds a valid certificate of registration 1847
under the "Farm Labor Contractor Registration Act of 1963," 90 1848
Stat. 2668, 7 U.S.C. 2041; or 1849

(b) Substantially all the members of the crew operate or 1850
maintain tractors, mechanized harvesting or crop-dusting 1851
equipment, or any other mechanized equipment, which is provided by 1852
the crew leader; and 1853

(c) If the individual is not in the employment of the other 1854
employer or farm operator within the meaning of division (B)(1) of 1855
this section. 1856

(3) For the purposes of this division, any individual who is 1857
furnished by a crew leader to perform service in agricultural 1858
labor for any other employer or farm operator and who is not 1859
treated as in the employment of the crew leader under division 1860
(BB)(2) of this section shall be treated as the employee of the 1861
other employer or farm operator and not of the crew leader. The 1862
other employer or farm operator shall be treated as having paid 1863
cash remuneration to the individual in an amount equal to the 1864
amount of cash remuneration paid to the individual by the crew 1865
leader, either on the crew leader's own behalf or on behalf of the 1866
other employer or farm operator, for the service in agricultural 1867
labor performed for the other employer or farm operator. 1868

(CC) "Educational institution" means an institution other 1869
than an institution of higher education as defined in division (Y) 1870
of this section, including an educational institution operated by 1871
an Indian tribe, which: 1872

(1) Offers participants, trainees, or students an organized 1873
course of study or training designed to transfer to them 1874
knowledge, skills, information, doctrines, attitudes, or abilities 1875
from, by, or under the guidance of an instructor or teacher; and 1876

(2) Is approved, chartered, or issued a permit to operate as 1877
a school by the state board of education, other government agency, 1878
or Indian tribe that is authorized within the state to approve, 1879
charter, or issue a permit for the operation of a school. 1880

For the purposes of this division, the courses of study or 1881
training which the institution offers may be academic, technical, 1882
trade, or preparation for gainful employment in a recognized 1883
occupation. 1884

(DD) "Cost savings day" means any unpaid day off from work in 1885
which employees continue to accrue employee benefits which have a 1886
determinable value including, but not limited to, vacation, 1887
pension contribution, sick time, and life and health insurance. 1888

(EE) "Employee" has the same meaning as in section 4175.01 of 1889
the Revised Code, unless the services performed by the individual 1890
do not constitute "employment" as defined in division (B) of this 1891
section. 1892

Sec. 4175.01. As used in this chapter: 1893

(A) "Aggrieved party" means any of the following entities 1894
that believes that the entity has been injured by an employer's 1895
alleged violation of section 4175.02 of the Revised Code: 1896

(1) An employee; 1897

(2) An employer association; 1898

(3) An interested party; 1899

(4) A labor organization. 1900

(B) "Construction" means any constructing, altering, 1901

reconstructing, repairing, rehabilitating, refinishing, 1902
refurbishing, remodeling, remediating, renovating, custom 1903
fabricating, maintenance, landscaping, improving, wrecking, 1904
painting, decorating, demolishing, and adding to or subtracting 1905
from any building, structure, highway, roadway, street, bridge, 1906
alley, sewer, ditch, sewage disposal plant, water works, parking 1907
facility, railroad, excavation, or other structure, project, 1908
development, real property or improvement, or to do any part 1909
thereof, regardless of whether the performance of the work 1910
involves the addition to or fabrication of any material or article 1911
of merchandise into any structure, project, development, real 1912
property, or improvement. "Construction" includes moving 1913
construction-related materials to the job site and removing 1914
construction-related materials from the job site. 1915

(C) "Contractor" means any sole proprietorship, partnership, 1916
firm, corporation, limited liability company, association, or 1917
other entity permitted by law to do business within this state 1918
that engages in construction. "Contractor" does not include either 1919
of the following: 1920

(1) The state or its officers, agencies, or political 1921
subdivisions; 1922

(2) The federal government. 1923

(D)(1) "Employee" means an individual who performs services 1924
for compensation for an employer. 1925

(2) "Employee" does not mean an individual who performs 1926
services for an employer and to whom all of the following 1927
conditions apply: 1928

(a) The individual has been and continues to be free from 1929
control and direction in connection with the performance of the 1930
service. 1931

(b) The individual customarily is engaged in an independently 1932

established trade, occupation, profession, or business of the same 1933
nature of the trade, occupation, profession, or business involved 1934
in the service performed. 1935

(c) The individual is a separate and distinct business entity 1936
from the entity for which the service is being performed or if the 1937
individual is providing construction services and is a sole 1938
proprietorship or a partner in a partnership, the individual is a 1939
legitimate sole proprietorship or a partner in a legitimate 1940
partnership to which section 4175.04 of the Revised Code applies, 1941
as applicable. 1942

(d) The individual incurs the main expenses and has 1943
continuing or recurring business liabilities related to the 1944
service performed. 1945

(e) The individual is liable for breach of contract for 1946
failure to complete the service. 1947

(f) An agreement, written or oral, express or implied, exists 1948
describing the service to be performed, the payment the individual 1949
will receive for performance of the service, and the time frame 1950
for completion of the service. 1951

(g) The service performed by the individual is outside of the 1952
usual course of business of the employer. 1953

(E) "Employer" means any person, the state, any agency or 1954
instrumentality of the state, and any municipal corporation, 1955
county, township, school district, or other political subdivision 1956
or any agency or instrumentality thereof that engages an 1957
individual to perform services. 1958

(F) "Interested party" means any of the following entities: 1959

(1) Any contractor who submits a bid for the purpose of 1960
securing the award of a contract for construction of a public 1961
improvement as that term is defined in section 4115.03 of the 1962

<u>Revised Code;</u>	1963
<u>(2) Any person acting as a subcontractor of a contractor</u>	1964
<u>described in division (F)(1) of this section;</u>	1965
<u>(3) Any bona fide labor organization that has as members or</u>	1966
<u>is authorized to represent employees of a person described in</u>	1967
<u>division (F)(1) or (2) of this section;</u>	1968
<u>(4) Any association having as members any of the persons</u>	1969
<u>described in division (F)(1) or (2) of this section.</u>	1970
<u>(G) "Labor organization" has the same meaning as in section</u>	1971
<u>3517.01 of the Revised Code.</u>	1972
<u>(H) "State agency" has the same meaning as in section 1.60 of</u>	1973
<u>the Revised Code.</u>	1974
<u>(I) "Subcontractor" means any person who undertakes to</u>	1975
<u>perform construction services under a contract with any individual</u>	1976
<u>other than the owner, part owner, or lessee.</u>	1977
 <u>Sec. 4175.02. (A) No employer shall fail to designate an</u>	1978
<u>individual who performs services for the employer as an employee</u>	1979
<u>unless the conditions described in division (D)(2) of section</u>	1980
<u>4175.01 of the Revised Code apply to that individual. The director</u>	1981
<u>of commerce shall not use an employer's failure to withhold</u>	1982
<u>federal or state income taxes with respect to an individual or to</u>	1983
<u>include remuneration paid to an individual for purposes of section</u>	1984
<u>4123.26 or 4141.20 of the Revised Code when making a determination</u>	1985
<u>as to whether the employer violated this division. The director</u>	1986
<u>shall not use an individual's election to obtain workers'</u>	1987
<u>compensation coverage as a sole proprietor or a partnership in</u>	1988
<u>making a determination as to whether the individual has violated</u>	1989
<u>this division. The burden of proof is on the party asserting that</u>	1990
<u>an individual is not an employee.</u>	1991
 <u>(B) No employer shall retaliate through discharge, or in any</u>	1992

<u>other manner, against any individual for exercising any rights</u>	1993
<u>granted under this chapter.</u>	1994
<u>(C) No employer shall retaliate against an individual if the</u>	1995
<u>individual does any of the following:</u>	1996
<u>(1) Makes a complaint to an employer, coworker, community</u>	1997
<u>organization, or to a federal or state agency or at a public</u>	1998
<u>hearing, stating that provisions of this chapter allegedly have</u>	1999
<u>been violated;</u>	2000
<u>(2) Causes to be instituted any proceeding under or related</u>	2001
<u>to this chapter;</u>	2002
<u>(3) Testifies or prepares to testify in an investigation or</u>	2003
<u>proceeding under this chapter;</u>	2004
<u>(4) Opposes misclassification.</u>	2005
<u>(D) No employer shall attempt to cause or cause an individual</u>	2006
<u>to waive the provisions of this chapter or to enter into a</u>	2007
<u>predispute waiver.</u>	2008
<u>(E) No employer shall violate a rule adopted by the director</u>	2009
<u>pursuant to section 4175.06 of the Revised Code.</u>	2010
<u>(F) No person shall require or request an individual to enter</u>	2011
<u>into an agreement or sign a document that results in the</u>	2012
<u>misclassification of the individual as an independent contractor</u>	2013
<u>or otherwise does not accurately reflect the individual's</u>	2014
<u>relationship with an employer.</u>	2015
<u>Sec. 4175.03. This chapter shall apply only to determinations</u>	2016
<u>as to whether an individual is an employer for purposes of section</u>	2017
<u>4111.02, 4111.14, 4113.15, or 4115.03 of the Revised Code or</u>	2018
<u>Chapter 4121., 4123., 4141., or 5747. of the Revised Code. Nothing</u>	2019
<u>in this chapter shall be construed as to limit the application of</u>	2020
<u>any other remedies available at law or in equity.</u>	2021

Sec. 4175.04. An employer and the director of commerce shall 2022
consider a sole proprietorship or partnership that performs 2023
construction services for the employer to be a legitimate sole 2024
proprietorship or a legitimate partnership if the employer 2025
demonstrates all of the following: 2026

(A) The sole proprietorship or partnership performs the 2027
construction service free from the direction or control of the 2028
employer over the means and manner of providing the service, 2029
subject only to the right of the employer for whom the service is 2030
provided to specify the desired result. 2031

(B) The sole proprietorship or partnership is not subject to 2032
cancellation or destruction upon severance of the relationship 2033
with the employer. 2034

(C) The owner of the sole proprietorship or the partners in 2035
the partnership have a substantial investment of capital in the 2036
sole proprietorship or partnership beyond ordinary tools and 2037
equipment and a personal vehicle. 2038

(D) The sole proprietorship or partnership owns the capital 2039
goods, gains the profits, and bears the losses of the sole 2040
proprietorship or partnership. 2041

(E) The sole proprietorship or partnership makes its 2042
construction services available to the general public or the 2043
business community on a continuing basis. 2044

(F) The sole proprietorship or partnership reported a profit 2045
or loss or earnings from self-employment on the sole 2046
proprietorship or partnership's federal income tax schedule. 2047

(G) The sole proprietorship or partnership performs 2048
construction services for the employer under the name of the sole 2049
proprietorship or partnership. 2050

(H) If the construction services the sole proprietorship or 2051

partnership provides to the employer require a license or permit 2052
in order to provide those services, the sole proprietorship or 2053
partnership obtains the appropriate license or permit in the name 2054
of the sole proprietorship or partnership name and directly pays 2055
for the appropriate license or permit. 2056

(I) The sole proprietorship or partnership furnishes the 2057
tools and equipment necessary for the sole proprietorship or 2058
partnership to provide the construction service for the employer. 2059

(J) If necessary, the sole proprietorship or partnership 2060
hires its own employees without obtaining approval from the 2061
employer, pays those employees without direct reimbursement from 2062
the employer, and reports the employees' income to the internal 2063
revenue service. 2064

(K) The employer does not represent the sole proprietorship 2065
or the partners of the partnership as an employee of the employer 2066
to the employer's customers. 2067

(L) The sole proprietorship or partnership performs similar 2068
construction services for others on whatever basis and whenever 2069
the sole proprietorship or partnership chooses. 2070

If the director of commerce, using the factors listed in this 2071
section, determines that a sole proprietorship or partnership 2072
performing construction services for an employer is not a 2073
legitimate sole proprietorship or a legitimate partnership, the 2074
director shall consider the owner of the sole proprietorship, each 2075
partner of the partnership, and each of the employees of the sole 2076
proprietorship or partnership, as applicable, as an employee of 2077
the employer for the purposes of this chapter. 2078

Sec. 4175.05. The provisions of this chapter apply to all 2079
subcontractors or lower tier subcontractors. 2080

A contractor is liable under this chapter for the failure of 2081

any subcontractor or lower tier subcontractor to properly classify 2082
individuals performing services related to construction as 2083
employees. A subcontractor is liable under this chapter for the 2084
failure of any lower tier subcontractor to properly classify 2085
individuals performing services related to construction as 2086
employees. 2087

Sec. 4175.06. The director of commerce shall enforce this 2088
chapter. The director shall hire as many investigators and other 2089
personnel as the director determines are necessary to administer 2090
and enforce this chapter. The director may adopt reasonable rules 2091
in accordance with Chapter 119. of the Revised Code to implement 2092
and administer this chapter. 2093

Sec. 4175.07. Any aggrieved party may file a complaint with 2094
the director of commerce against an employer if the aggrieved 2095
party reasonably believes that the employer is in violation of 2096
section 4175.02 of the Revised Code. The director shall conduct 2097
investigations in connection with the administration and 2098
enforcement of this chapter. Any investigator employed by the 2099
division of labor within the department of commerce is authorized 2100
to visit and inspect, at all reasonable times, all of the offices 2101
and job sites maintained by the employer who is the subject of the 2102
complaint, and is authorized to inspect and audit, at all 2103
reasonable times, all documents necessary to determine whether an 2104
individual performing services for the employer is an employee. 2105
The director may compel, by subpoena, the attendance and testimony 2106
of witnesses and the production of books, payrolls, records, 2107
papers, and other evidence in any investigation, and may 2108
administer oaths to witnesses. Upon completion of an investigation 2109
under this section, the investigator shall submit the results of 2110
the investigator's investigation to the superintendent of labor. 2111

Sec. 4175.08. If, after receiving the results of an 2112
investigation conducted pursuant to section 4175.07 of the Revised 2113
Code, the superintendent of labor determines that reasonable 2114
evidence exists that an employer has violated section 4175.02 of 2115
the Revised Code, the superintendent shall send a written notice 2116
to the director of commerce informing the director of the 2117
superintendent's determination. 2118

Within seven days after the director receives a written 2119
report from the superintendent, the director shall send a written 2120
notice to the employer who is the subject of the investigation in 2121
the same manner as prescribed in section 119.07 of the Revised 2122
Code for licensees, except that the notice shall specify that a 2123
hearing will be held and shall specify the date, time, and place 2124
of the hearing. The director shall hold a hearing regarding the 2125
alleged violation in the same manner prescribed for an 2126
adjudication hearing under section 119.09 of the Revised Code. If 2127
the director, after the hearing, determines a violation has 2128
occurred, the director may discipline the employer in accordance 2129
with section 4175.09 of the Revised Code. The director's 2130
determination is an order that the person may appeal in accordance 2131
with section 119.12 of the Revised Code. If an employer who 2132
allegedly committed a violation of section 4175.02 of the Revised 2133
Code fails to appear for a hearing, the director may request the 2134
court of common pleas of the county where the alleged violation 2135
occurred to compel the person to appear before the director for a 2136
hearing. 2137

Sec. 4175.09. (A) If, after a hearing held in accordance with 2138
section 4175.08 of the Revised Code, the director of commerce 2139
determines that an employer violated section 4175.02 of the 2140
Revised Code, the director may do any of the following: 2141

(1) Issue and cause to be served on any party an order to 2142

cease and desist from further violation of that section; 2143

(2) Take affirmative or other action the director considers 2144
reasonable to eliminate the effect of the violation; 2145

(3) Collect the amount of any wages, salary, employment 2146
benefits, or other compensation denied or lost to an individual 2147
because the employer misclassified the individual; 2148

(4) Assess any civil penalty allowed under section 4175.10 or 2149
4175.11 of the Revised Code. 2150

(B) If the director assesses an employer a civil penalty for 2151
a violation of section 4175.02 of the Revised Code and the 2152
employer fails to pay that civil penalty within the time period 2153
prescribed by the director, the director shall forward to the 2154
attorney general the name of the employer and the amount of the 2155
civil penalty for the purpose of collecting that civil penalty. In 2156
addition to the civil penalty assessed pursuant to this section, 2157
the employer also shall pay any fee assessed by the attorney 2158
general for collection of the civil penalty. 2159

(C) The attorney general shall bring any action for relief 2160
requested by the director in the name of the people of the state 2161
of Ohio. 2162

Sec. 4175.10. (A) Except as otherwise provided in division 2163
(B) of this section and section 4175.11 of the Revised Code, if, 2164
after a hearing conducted pursuant to section 4175.08 of the 2165
Revised Code, the director of commerce determines that an employer 2166
has violated section 4175.02 of the Revised Code, the employer 2167
shall be subject to a civil penalty of one thousand five hundred 2168
dollars for each violation. 2169

(B) Except as otherwise provided in section 4175.11 of the 2170
Revised Code if, after a hearing held in accordance with section 2171
4175.08 of the Revised Code, the director determines that the 2172

employer has committed a violation of section 4175.02 of the 2173
Revised Code and that violation occurred within five years after 2174
the date the director made a determination that resulted in the 2175
director assessing the employer a civil penalty under division (A) 2176
or (B) of this section, the employer is subject to a civil penalty 2177
not less than one thousand five hundred dollars or more than two 2178
thousand five hundred dollars for each violation found by the 2179
director that occurred during that five-year period. 2180

(C) For purposes of this section, each violation of section 2181
4175.02 of the Revised Code constitutes a separate violation for 2182
each individual or rule involved and for each day the violation 2183
continues. 2184

(D) The director shall base the amount of the civil penalty 2185
assessed under this section upon the director's determination of 2186
the gravity of the violations committed by the employer. 2187

Sec. 4175.11. (A) Whoever knowingly violates section 4175.02 2188
of the Revised Code, or whoever obstructs the director of commerce 2189
or any other person authorized to inspect places of employment 2190
pursuant to section 4175.07 of the Revised Code is liable for 2191
penalties up to double the amount specified in section 4175.10 of 2192
the Revised Code. 2193

(B) An employer who is liable under division (A) of this 2194
section because the employer knowingly violated section 4175.02 of 2195
the Revised Code also is liable to the employee who was injured by 2196
the employer's violation for punitive damages in an amount equal 2197
to the amount of the penalties assessed against the employer 2198
pursuant to division (A) of this section. 2199

(C) The director shall impose the penalties described in 2200
divisions (A) and (B) of this section if a preponderance of the 2201
evidence demonstrates that the employer acted knowingly when 2202
committing the violation. 2203

Sec. 4175.12. If the director of commerce determines that an 2204
alleged violation of this chapter has occurred that may result in 2205
a penalty assessed pursuant to section 4175.99 of the Revised 2206
Code, the director shall refer the matter to the appropriate 2207
prosecutorial authority. 2208

Sec. 4175.13. If the director of commerce believes that any 2209
employer allegedly has violated a valid order issued by the 2210
director pursuant to section 4175.09 of the Revised Code, the 2211
director may commence an action in the court of common pleas in 2212
the county where the alleged violation has occurred and obtain 2213
from the court an order compelling the employer to obey the order 2214
of the director or be found guilty of contempt of court and 2215
punished in accordance with Chapter 2705. of the Revised Code. 2216

Sec. 4175.14. (A) An aggrieved party may file suit in the 2217
court of common pleas in the county where the alleged violation 2218
occurred or where any individual who is party to the action 2219
resides, without regard to exhaustion of any alternative 2220
administrative remedies provided in this chapter. An aggrieved 2221
party may bring an action on behalf of the aggrieved party or on 2222
behalf of any other individual who is similarly situated to the 2223
aggrieved party. If a court or a jury in a civil action brought 2224
pursuant to this division determines that a violation of section 2225
4175.02 of the Revised Code has occurred, the court shall award to 2226
the plaintiff all of the following: 2227

(1) The amount of any wages, salary, employment benefits, or 2228
other compensation denied or lost to an individual by reason of 2229
the violation, plus an equal amount in liquidated damages; 2230

(2) Compensatory damages and an amount up to five hundred 2231
dollars for each violation of section 4175.02 of the Revised Code; 2232

(3) In the case of a violation of division (B) or (C) of 2233

section 4175.02 of the Revised Code, all legal or equitable relief 2234
that the court determines appropriate; 2235

(4) Attorney's fees and costs. 2236

(B) An aggrieved party shall bring an action under division 2237
(A) of this section not later than three years after the last day 2238
the aggrieved individual or individual for whom the aggrieved 2239
party is bringing the action performed services for an employer 2240
who has allegedly violated section 4175.02 of the Revised Code. 2241
The three-year period specified in this division is tolled if the 2242
employer has deterred the ability of an individual to bring an 2243
action under this section or to file a complaint under section 2244
4175.07 of the Revised Code. 2245

(C) If the director of commerce has determined under section 2246
4175.09 of the Revised Code that an employer is subject to a civil 2247
penalty under section 4175.10 or 4175.11 of the Revised Code for a 2248
violation of section 4175.02 of the Revised Code, an aggrieved 2249
party, within ninety days after the director issues that 2250
determination, may bring a civil action in the court of common 2251
pleas in the county where the violation occurred to enforce that 2252
penalty. If an aggrieved party elects to bring such an action, the 2253
aggrieved party shall notify the director of that election in 2254
writing. During that ninety-day period, the attorney general shall 2255
not bring an action to enforce that penalty. After the ninety-day 2256
period expires, only the attorney general, on behalf of the 2257
director and in accordance with this chapter, may bring an action 2258
to collect the civil penalty. In any civil action brought by an 2259
aggrieved party pursuant to this division, the court shall award 2260
the aggrieved party ten per cent of the amount of the penalty owed 2261
by the employer, and the remaining amount recovered shall be 2262
awarded to the director. 2263

Sec. 4175.15. (A) The director of commerce shall create a 2264

summary of the requirements of this chapter in English and Spanish 2265
and shall post that summary on the official web site maintained by 2266
the department of commerce and on the bulletin boards located in 2267
each of the offices of the department. 2268

(B) If an employer engages an individual to perform services 2269
and that individual is not considered an employee, that employer 2270
shall post and keep posted, in a conspicuous place on each job 2271
site where that individual performs services and in each of the 2272
employer's offices, the notice prepared by the director pursuant 2273
to division (A) of this section. The director shall furnish copies 2274
of the notice without charge to an employer upon request. 2275

Sec. 4175.16. The director of commerce shall create a list of 2276
employers who have committed multiple violations of section 2277
4175.02 of the Revised Code. The director shall add an employer's 2278
name to the list if the director assesses against the employer the 2279
civil penalty described in division (B) of section 4175.10 of the 2280
Revised Code. The list shall include the name of the employer and 2281
the date that the employer committed the employer's most recent 2282
violation. The director shall notify an employer that the employer 2283
will be added to this list within five days after the director 2284
determines that the employer will be added to the list. The 2285
director shall publish the list on the web site maintained by the 2286
department of commerce. No state agency shall enter into a 2287
contract with an employer included in that list for a period of 2288
four years after the date of the employer's most recent violation. 2289
The director shall remove an employer's name and information from 2290
the list upon expiration of the time period of the employer's 2291
debarment. 2292

Sec. 4175.17. The director of commerce, the director of job 2293
and family services, the tax commissioner, and the administrator 2294

of workers' compensation shall share information concerning any 2295
suspected misclassification by an employer or entity of one or 2296
more of the employer's employees as independent contractors in 2297
violation of section 4175.02 of the Revised Code. Upon determining 2298
that an employer has misclassified an employee as an independent 2299
contractor in violation of division (A) of that section, the 2300
director of commerce shall notify the director of job and family 2301
services, the tax commissioner, and the administrator, each of 2302
whom shall determine whether the employer's violation of section 2303
4175.02 of the Revised Code results in the employer not complying 2304
with the requirements of sections 4111.02, 4111.14, 4113.15, or 2305
4115.03 to 4115.21 or Chapter 4121., 4123., 4127., 4131., 4141., 2306
or 5747. of the Revised Code, as applicable. The determination 2307
made by the director of commerce that an employer has 2308
misclassified an employee as an independent contractor is binding 2309
on the director of job and family services, the tax commissioner, 2310
and the administrator unless the individual is otherwise not 2311
considered an employee under the applicable law. Notwithstanding 2312
any provision of this section to the contrary, nothing in this 2313
chapter shall be construed to limit or otherwise constrain the 2314
duties and powers of the administrator under Chapters 4121., 2315
4123., 4127., and 4131. of the Revised Code, the director of job 2316
and family services under Chapter 4141. of the Revised Code, or 2317
the tax commissioner under Chapter 5747. of the Revised Code. 2318

Sec. 4175.18. There is hereby created in the state treasury 2319
the employee classification fund. The director of commerce shall 2320
deposit all moneys the director receives under this chapter, 2321
including civil penalties, into the fund. The director shall use 2322
the fund for the administration, investigation, and other expenses 2323
incurred in carrying out the director's powers and duties under 2324
this chapter. If, at the end of a fiscal year, the director 2325

determines that excess moneys exist in the fund, the director 2326
shall coordinate with the director of budget and management to 2327
transfer the excess funds to the division of administration fund 2328
created under section 121.08 of the Revised Code. 2329

Sec. 4175.99. (A) An employer or person that knowingly 2330
violates division (A), (B), (C), (E), or (F) of section 4175.02 of 2331
the Revised Code, for the first offense, is guilty of a 2332
misdemeanor of the fourth degree, and for any subsequent violation 2333
of division (A), (B), (C), (E), or (F) of section 4175.02 of the 2334
Revised Code committed within a five-year period beginning on the 2335
date the employer or person previously was convicted of or pleaded 2336
guilty to the first violation, the employer or entity is guilty of 2337
a felony of the fifth degree. 2338

(B) Whoever violates division (D) of section 4175.02 of the 2339
Revised Code is guilty of a misdemeanor of the fourth degree. 2340

Sec. 5747.01. Except as otherwise expressly provided or 2341
clearly appearing from the context, any term used in this chapter 2342
that is not otherwise defined in this section has the same meaning 2343
as when used in a comparable context in the laws of the United 2344
States relating to federal income taxes or if not used in a 2345
comparable context in those laws, has the same meaning as in 2346
section 5733.40 of the Revised Code. Any reference in this chapter 2347
to the Internal Revenue Code includes other laws of the United 2348
States relating to federal income taxes. 2349

As used in this chapter: 2350

(A) "Adjusted gross income" or "Ohio adjusted gross income" 2351
means federal adjusted gross income, as defined and used in the 2352
Internal Revenue Code, adjusted as provided in this section: 2353

(1) Add interest or dividends on obligations or securities of 2354

any state or of any political subdivision or authority of any 2355
state, other than this state and its subdivisions and authorities. 2356

(2) Add interest or dividends on obligations of any 2357
authority, commission, instrumentality, territory, or possession 2358
of the United States to the extent that the interest or dividends 2359
are exempt from federal income taxes but not from state income 2360
taxes. 2361

(3) Deduct interest or dividends on obligations of the United 2362
States and its territories and possessions or of any authority, 2363
commission, or instrumentality of the United States to the extent 2364
that the interest or dividends are included in federal adjusted 2365
gross income but exempt from state income taxes under the laws of 2366
the United States. 2367

(4) Deduct disability and survivor's benefits to the extent 2368
included in federal adjusted gross income. 2369

(5) Deduct benefits under Title II of the Social Security Act 2370
and tier 1 railroad retirement benefits to the extent included in 2371
federal adjusted gross income under section 86 of the Internal 2372
Revenue Code. 2373

(6) In the case of a taxpayer who is a beneficiary of a trust 2374
that makes an accumulation distribution as defined in section 665 2375
of the Internal Revenue Code, add, for the beneficiary's taxable 2376
years beginning before 2002, the portion, if any, of such 2377
distribution that does not exceed the undistributed net income of 2378
the trust for the three taxable years preceding the taxable year 2379
in which the distribution is made to the extent that the portion 2380
was not included in the trust's taxable income for any of the 2381
trust's taxable years beginning in 2002 or thereafter. 2382
"Undistributed net income of a trust" means the taxable income of 2383
the trust increased by (a)(i) the additions to adjusted gross 2384
income required under division (A) of this section and (ii) the 2385

personal exemptions allowed to the trust pursuant to section 2386
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 2387
deductions to adjusted gross income required under division (A) of 2388
this section, (ii) the amount of federal income taxes attributable 2389
to such income, and (iii) the amount of taxable income that has 2390
been included in the adjusted gross income of a beneficiary by 2391
reason of a prior accumulation distribution. Any undistributed net 2392
income included in the adjusted gross income of a beneficiary 2393
shall reduce the undistributed net income of the trust commencing 2394
with the earliest years of the accumulation period. 2395

(7) Deduct the amount of wages and salaries, if any, not 2396
otherwise allowable as a deduction but that would have been 2397
allowable as a deduction in computing federal adjusted gross 2398
income for the taxable year, had the targeted jobs credit allowed 2399
and determined under sections 38, 51, and 52 of the Internal 2400
Revenue Code not been in effect. 2401

(8) Deduct any interest or interest equivalent on public 2402
obligations and purchase obligations to the extent that the 2403
interest or interest equivalent is included in federal adjusted 2404
gross income. 2405

(9) Add any loss or deduct any gain resulting from the sale, 2406
exchange, or other disposition of public obligations to the extent 2407
that the loss has been deducted or the gain has been included in 2408
computing federal adjusted gross income. 2409

(10) Deduct or add amounts, as provided under section 5747.70 2410
of the Revised Code, related to contributions to variable college 2411
savings program accounts made or tuition units purchased pursuant 2412
to Chapter 3334. of the Revised Code. 2413

(11)(a) Deduct, to the extent not otherwise allowable as a 2414
deduction or exclusion in computing federal or Ohio adjusted gross 2415
income for the taxable year, the amount the taxpayer paid during 2416

the taxable year for medical care insurance and qualified 2417
long-term care insurance for the taxpayer, the taxpayer's spouse, 2418
and dependents. No deduction for medical care insurance under 2419
division (A)(11) of this section shall be allowed either to any 2420
taxpayer who is eligible to participate in any subsidized health 2421
plan maintained by any employer of the taxpayer or of the 2422
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2423
application would be entitled to, benefits under part A of Title 2424
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 2425
301, as amended. For the purposes of division (A)(11)(a) of this 2426
section, "subsidized health plan" means a health plan for which 2427
the employer pays any portion of the plan's cost. The deduction 2428
allowed under division (A)(11)(a) of this section shall be the net 2429
of any related premium refunds, related premium reimbursements, or 2430
related insurance premium dividends received during the taxable 2431
year. 2432

(b) Deduct, to the extent not otherwise deducted or excluded 2433
in computing federal or Ohio adjusted gross income during the 2434
taxable year, the amount the taxpayer paid during the taxable 2435
year, not compensated for by any insurance or otherwise, for 2436
medical care of the taxpayer, the taxpayer's spouse, and 2437
dependents, to the extent the expenses exceed seven and one-half 2438
per cent of the taxpayer's federal adjusted gross income. 2439

(c) Deduct, to the extent not otherwise deducted or excluded 2440
in computing federal or Ohio adjusted gross income, any amount 2441
included in federal adjusted gross income under section 105 or not 2442
excluded under section 106 of the Internal Revenue Code solely 2443
because it relates to an accident and health plan for a person who 2444
otherwise would be a "qualifying relative" and thus a "dependent" 2445
under section 152 of the Internal Revenue Code but for the fact 2446
that the person fails to meet the income and support limitations 2447
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 2448

(d) For purposes of division (A)(11) of this section, 2449
"medical care" has the meaning given in section 213 of the 2450
Internal Revenue Code, subject to the special rules, limitations, 2451
and exclusions set forth therein, and "qualified long-term care" 2452
has the same meaning given in section 7702B(c) of the Internal 2453
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 2454
of this section, "dependent" includes a person who otherwise would 2455
be a "qualifying relative" and thus a "dependent" under section 2456
152 of the Internal Revenue Code but for the fact that the person 2457
fails to meet the income and support limitations under section 2458
152(d)(1)(B) and (C) of the Internal Revenue Code. 2459

(12)(a) Deduct any amount included in federal adjusted gross 2460
income solely because the amount represents a reimbursement or 2461
refund of expenses that in any year the taxpayer had deducted as 2462
an itemized deduction pursuant to section 63 of the Internal 2463
Revenue Code and applicable United States department of the 2464
treasury regulations. The deduction otherwise allowed under 2465
division (A)(12)(a) of this section shall be reduced to the extent 2466
the reimbursement is attributable to an amount the taxpayer 2467
deducted under this section in any taxable year. 2468

(b) Add any amount not otherwise included in Ohio adjusted 2469
gross income for any taxable year to the extent that the amount is 2470
attributable to the recovery during the taxable year of any amount 2471
deducted or excluded in computing federal or Ohio adjusted gross 2472
income in any taxable year. 2473

(13) Deduct any portion of the deduction described in section 2474
1341(a)(2) of the Internal Revenue Code, for repaying previously 2475
reported income received under a claim of right, that meets both 2476
of the following requirements: 2477

(a) It is allowable for repayment of an item that was 2478
included in the taxpayer's adjusted gross income for a prior 2479
taxable year and did not qualify for a credit under division (A) 2480

or (B) of section 5747.05 of the Revised Code for that year; 2481

(b) It does not otherwise reduce the taxpayer's adjusted 2482
gross income for the current or any other taxable year. 2483

(14) Deduct an amount equal to the deposits made to, and net 2484
investment earnings of, a medical savings account during the 2485
taxable year, in accordance with section 3924.66 of the Revised 2486
Code. The deduction allowed by division (A)(14) of this section 2487
does not apply to medical savings account deposits and earnings 2488
otherwise deducted or excluded for the current or any other 2489
taxable year from the taxpayer's federal adjusted gross income. 2490

(15)(a) Add an amount equal to the funds withdrawn from a 2491
medical savings account during the taxable year, and the net 2492
investment earnings on those funds, when the funds withdrawn were 2493
used for any purpose other than to reimburse an account holder 2494
for, or to pay, eligible medical expenses, in accordance with 2495
section 3924.66 of the Revised Code; 2496

(b) Add the amounts distributed from a medical savings 2497
account under division (A)(2) of section 3924.68 of the Revised 2498
Code during the taxable year. 2499

(16) Add any amount claimed as a credit under section 2500
5747.059 of the Revised Code to the extent that such amount 2501
satisfies either of the following: 2502

(a) The amount was deducted or excluded from the computation 2503
of the taxpayer's federal adjusted gross income as required to be 2504
reported for the taxpayer's taxable year under the Internal 2505
Revenue Code; 2506

(b) The amount resulted in a reduction of the taxpayer's 2507
federal adjusted gross income as required to be reported for any 2508
of the taxpayer's taxable years under the Internal Revenue Code. 2509

(17) Deduct the amount contributed by the taxpayer to an 2510

individual development account program established by a county 2511
department of job and family services pursuant to sections 329.11 2512
to 329.14 of the Revised Code for the purpose of matching funds 2513
deposited by program participants. On request of the tax 2514
commissioner, the taxpayer shall provide any information that, in 2515
the tax commissioner's opinion, is necessary to establish the 2516
amount deducted under division (A)(17) of this section. 2517

(18) Beginning in taxable year 2001 but not for any taxable 2518
year beginning after December 31, 2005, if the taxpayer is married 2519
and files a joint return and the combined federal adjusted gross 2520
income of the taxpayer and the taxpayer's spouse for the taxable 2521
year does not exceed one hundred thousand dollars, or if the 2522
taxpayer is single and has a federal adjusted gross income for the 2523
taxable year not exceeding fifty thousand dollars, deduct amounts 2524
paid during the taxable year for qualified tuition and fees paid 2525
to an eligible institution for the taxpayer, the taxpayer's 2526
spouse, or any dependent of the taxpayer, who is a resident of 2527
this state and is enrolled in or attending a program that 2528
culminates in a degree or diploma at an eligible institution. The 2529
deduction may be claimed only to the extent that qualified tuition 2530
and fees are not otherwise deducted or excluded for any taxable 2531
year from federal or Ohio adjusted gross income. The deduction may 2532
not be claimed for educational expenses for which the taxpayer 2533
claims a credit under section 5747.27 of the Revised Code. 2534

(19) Add any reimbursement received during the taxable year 2535
of any amount the taxpayer deducted under division (A)(18) of this 2536
section in any previous taxable year to the extent the amount is 2537
not otherwise included in Ohio adjusted gross income. 2538

(20)(a)(i) Add five-sixths of the amount of depreciation 2539
expense allowed by subsection (k) of section 168 of the Internal 2540
Revenue Code, including the taxpayer's proportionate or 2541
distributive share of the amount of depreciation expense allowed 2542

by that subsection to a pass-through entity in which the taxpayer 2543
has a direct or indirect ownership interest. 2544

(ii) Add five-sixths of the amount of qualifying section 179 2545
depreciation expense, including a person's proportionate or 2546
distributive share of the amount of qualifying section 179 2547
depreciation expense allowed to any pass-through entity in which 2548
the person has a direct or indirect ownership. For the purposes of 2549
this division, "qualifying section 179 depreciation expense" means 2550
the difference between (I) the amount of depreciation expense 2551
directly or indirectly allowed to the taxpayer under section 179 2552
of the Internal Revenue Code, and (II) the amount of depreciation 2553
expense directly or indirectly allowed to the taxpayer under 2554
section 179 of the Internal Revenue Code as that section existed 2555
on December 31, 2002. 2556

The tax commissioner, under procedures established by the 2557
commissioner, may waive the add-backs related to a pass-through 2558
entity if the taxpayer owns, directly or indirectly, less than 2559
five per cent of the pass-through entity. 2560

(b) Nothing in division (A)(20) of this section shall be 2561
construed to adjust or modify the adjusted basis of any asset. 2562

(c) To the extent the add-back required under division 2563
(A)(20)(a) of this section is attributable to property generating 2564
nonbusiness income or loss allocated under section 5747.20 of the 2565
Revised Code, the add-back shall be situated to the same location 2566
as the nonbusiness income or loss generated by the property for 2567
the purpose of determining the credit under division (A) of 2568
section 5747.05 of the Revised Code. Otherwise, the add-back shall 2569
be apportioned, subject to one or more of the four alternative 2570
methods of apportionment enumerated in section 5747.21 of the 2571
Revised Code. 2572

(d) For the purposes of division (A) of this section, net 2573

operating loss carryback and carryforward shall not include 2574
five-sixths of the allowance of any net operating loss deduction 2575
carryback or carryforward to the taxable year to the extent such 2576
loss resulted from depreciation allowed by section 168(k) of the 2577
Internal Revenue Code and by the qualifying section 179 2578
depreciation expense amount. 2579

(21)(a) If the taxpayer was required to add an amount under 2580
division (A)(20)(a) of this section for a taxable year, deduct 2581
one-fifth of the amount so added for each of the five succeeding 2582
taxable years. 2583

(b) If the amount deducted under division (A)(21)(a) of this 2584
section is attributable to an add-back allocated under division 2585
(A)(20)(c) of this section, the amount deducted shall be sitused 2586
to the same location. Otherwise, the add-back shall be apportioned 2587
using the apportionment factors for the taxable year in which the 2588
deduction is taken, subject to one or more of the four alternative 2589
methods of apportionment enumerated in section 5747.21 of the 2590
Revised Code. 2591

(c) No deduction is available under division (A)(21)(a) of 2592
this section with regard to any depreciation allowed by section 2593
168(k) of the Internal Revenue Code and by the qualifying section 2594
179 depreciation expense amount to the extent that such 2595
depreciation resulted in or increased a federal net operating loss 2596
carryback or carryforward to a taxable year to which division 2597
(A)(20)(d) of this section does not apply. 2598

(22) Deduct, to the extent not otherwise deducted or excluded 2599
in computing federal or Ohio adjusted gross income for the taxable 2600
year, the amount the taxpayer received during the taxable year as 2601
reimbursement for life insurance premiums under section 5919.31 of 2602
the Revised Code. 2603

(23) Deduct, to the extent not otherwise deducted or excluded 2604

in computing federal or Ohio adjusted gross income for the taxable 2605
year, the amount the taxpayer received during the taxable year as 2606
a death benefit paid by the adjutant general under section 5919.33 2607
of the Revised Code. 2608

(24) Deduct, to the extent included in federal adjusted gross 2609
income and not otherwise allowable as a deduction or exclusion in 2610
computing federal or Ohio adjusted gross income for the taxable 2611
year, military pay and allowances received by the taxpayer during 2612
the taxable year for active duty service in the United States 2613
army, air force, navy, marine corps, or coast guard or reserve 2614
components thereof or the national guard. The deduction may not be 2615
claimed for military pay and allowances received by the taxpayer 2616
while the taxpayer is stationed in this state. 2617

(25) Deduct, to the extent not otherwise allowable as a 2618
deduction or exclusion in computing federal or Ohio adjusted gross 2619
income for the taxable year and not otherwise compensated for by 2620
any other source, the amount of qualified organ donation expenses 2621
incurred by the taxpayer during the taxable year, not to exceed 2622
ten thousand dollars. A taxpayer may deduct qualified organ 2623
donation expenses only once for all taxable years beginning with 2624
taxable years beginning in 2007. 2625

For the purposes of division (A)(25) of this section: 2626

(a) "Human organ" means all or any portion of a human liver, 2627
pancreas, kidney, intestine, or lung, and any portion of human 2628
bone marrow. 2629

(b) "Qualified organ donation expenses" means travel 2630
expenses, lodging expenses, and wages and salary forgone by a 2631
taxpayer in connection with the taxpayer's donation, while living, 2632
of one or more of the taxpayer's human organs to another human 2633
being. 2634

(26) Deduct, to the extent not otherwise deducted or excluded 2635

in computing federal or Ohio adjusted gross income for the taxable 2636
year, amounts received by the taxpayer as retired military 2637
personnel pay for service in the United States army, navy, air 2638
force, coast guard, or marine corps or reserve components thereof, 2639
or the national guard, or received by the surviving spouse or 2640
former spouse of such a taxpayer under the survivor benefit plan 2641
on account of such a taxpayer's death. If the taxpayer receives 2642
income on account of retirement paid under the federal civil 2643
service retirement system or federal employees retirement system, 2644
or under any successor retirement program enacted by the congress 2645
of the United States that is established and maintained for 2646
retired employees of the United States government, and such 2647
retirement income is based, in whole or in part, on credit for the 2648
taxpayer's military service, the deduction allowed under this 2649
division shall include only that portion of such retirement income 2650
that is attributable to the taxpayer's military service, to the 2651
extent that portion of such retirement income is otherwise 2652
included in federal adjusted gross income and is not otherwise 2653
deducted under this section. Any amount deducted under division 2654
(A)(26) of this section is not included in a taxpayer's adjusted 2655
gross income for the purposes of section 5747.055 of the Revised 2656
Code. No amount may be deducted under division (A)(26) of this 2657
section on the basis of which a credit was claimed under section 2658
5747.055 of the Revised Code. 2659

(27) Deduct, to the extent not otherwise deducted or excluded 2660
in computing federal or Ohio adjusted gross income for the taxable 2661
year, the amount the taxpayer received during the taxable year 2662
from the military injury relief fund created in section 5101.98 of 2663
the Revised Code. 2664

(28) Deduct, to the extent not otherwise deducted or excluded 2665
in computing federal or Ohio adjusted gross income for the taxable 2666
year, the amount the taxpayer received as a veterans bonus during 2667

the taxable year from the Ohio department of veterans services as 2668
authorized by Section 2r of Article VIII, Ohio Constitution. 2669

(29) Deduct, to the extent not otherwise deducted or excluded 2670
in computing federal or Ohio adjusted gross income for the taxable 2671
year, any loss from wagering transactions that is allowed as an 2672
itemized deduction under section 165 of the Internal Revenue Code 2673
and that the taxpayer deducted in computing federal taxable 2674
income. 2675

(B) "Business income" means income, including gain or loss, 2676
arising from transactions, activities, and sources in the regular 2677
course of a trade or business and includes income, gain, or loss 2678
from real property, tangible property, and intangible property if 2679
the acquisition, rental, management, and disposition of the 2680
property constitute integral parts of the regular course of a 2681
trade or business operation. "Business income" includes income, 2682
including gain or loss, from a partial or complete liquidation of 2683
a business, including, but not limited to, gain or loss from the 2684
sale or other disposition of goodwill. 2685

(C) "Nonbusiness income" means all income other than business 2686
income and may include, but is not limited to, compensation, rents 2687
and royalties from real or tangible personal property, capital 2688
gains, interest, dividends and distributions, patent or copyright 2689
royalties, or lottery winnings, prizes, and awards. 2690

(D) "Compensation" means any form of remuneration paid to an 2691
employee for personal services. 2692

(E) "Fiduciary" means a guardian, trustee, executor, 2693
administrator, receiver, conservator, or any other person acting 2694
in any fiduciary capacity for any individual, trust, or estate. 2695

(F) "Fiscal year" means an accounting period of twelve months 2696
ending on the last day of any month other than December. 2697

(G) "Individual" means any natural person. 2698

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

(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:

(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;

(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.

(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.

For the purposes of division (I)(3) of this section:

(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:

(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;

(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion

of the trust's current taxable year; 2729

(iii) A person who was domiciled in this state for the 2730
purposes of this chapter when the trust document or instrument or 2731
part of the trust document or instrument became irrevocable, but 2732
only if at least one of the trust's qualifying beneficiaries is a 2733
resident domiciled in this state for the purposes of this chapter 2734
during all or some portion of the trust's current taxable year. If 2735
a trust document or instrument became irrevocable upon the death 2736
of a person who at the time of death was domiciled in this state 2737
for purposes of this chapter, that person is a person described in 2738
division (I)(3)(a)(iii) of this section. 2739

(b) A trust is irrevocable to the extent that the transferor 2740
is not considered to be the owner of the net assets of the trust 2741
under sections 671 to 678 of the Internal Revenue Code. 2742

(c) With respect to a trust other than a charitable lead 2743
trust, "qualifying beneficiary" has the same meaning as "potential 2744
current beneficiary" as defined in section 1361(e)(2) of the 2745
Internal Revenue Code, and with respect to a charitable lead trust 2746
"qualifying beneficiary" is any current, future, or contingent 2747
beneficiary, but with respect to any trust "qualifying 2748
beneficiary" excludes a person or a governmental entity or 2749
instrumentality to any of which a contribution would qualify for 2750
the charitable deduction under section 170 of the Internal Revenue 2751
Code. 2752

(d) For the purposes of division (I)(3)(a) of this section, 2753
the extent to which a trust consists directly or indirectly, in 2754
whole or in part, of assets, net of any related liabilities, that 2755
were transferred directly or indirectly, in whole or part, to the 2756
trust by any of the sources enumerated in that division shall be 2757
ascertained by multiplying the fair market value of the trust's 2758
assets, net of related liabilities, by the qualifying ratio, which 2759
shall be computed as follows: 2760

(i) The first time the trust receives assets, the numerator 2761
of the qualifying ratio is the fair market value of those assets 2762
at that time, net of any related liabilities, from sources 2763
enumerated in division (I)(3)(a) of this section. The denominator 2764
of the qualifying ratio is the fair market value of all the 2765
trust's assets at that time, net of any related liabilities. 2766

(ii) Each subsequent time the trust receives assets, a 2767
revised qualifying ratio shall be computed. The numerator of the 2768
revised qualifying ratio is the sum of (1) the fair market value 2769
of the trust's assets immediately prior to the subsequent 2770
transfer, net of any related liabilities, multiplied by the 2771
qualifying ratio last computed without regard to the subsequent 2772
transfer, and (2) the fair market value of the subsequently 2773
transferred assets at the time transferred, net of any related 2774
liabilities, from sources enumerated in division (I)(3)(a) of this 2775
section. The denominator of the revised qualifying ratio is the 2776
fair market value of all the trust's assets immediately after the 2777
subsequent transfer, net of any related liabilities. 2778

(iii) Whether a transfer to the trust is by or from any of 2779
the sources enumerated in division (I)(3)(a) of this section shall 2780
be ascertained without regard to the domicile of the trust's 2781
beneficiaries. 2782

(e) For the purposes of division (I)(3)(a)(i) of this 2783
section: 2784

(i) A trust is described in division (I)(3)(e)(i) of this 2785
section if the trust is a testamentary trust and the testator of 2786
that testamentary trust was domiciled in this state at the time of 2787
the testator's death for purposes of the taxes levied under 2788
Chapter 5731. of the Revised Code. 2789

(ii) A trust is described in division (I)(3)(e)(ii) of this 2790
section if the transfer is a qualifying transfer described in any 2791

of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 2792
irrevocable inter vivos trust, and at least one of the trust's 2793
qualifying beneficiaries is domiciled in this state for purposes 2794
of this chapter during all or some portion of the trust's current 2795
taxable year. 2796

(f) For the purposes of division (I)(3)(e)(ii) of this 2797
section, a "qualifying transfer" is a transfer of assets, net of 2798
any related liabilities, directly or indirectly to a trust, if the 2799
transfer is described in any of the following: 2800

(i) The transfer is made to a trust, created by the decedent 2801
before the decedent's death and while the decedent was domiciled 2802
in this state for the purposes of this chapter, and, prior to the 2803
death of the decedent, the trust became irrevocable while the 2804
decedent was domiciled in this state for the purposes of this 2805
chapter. 2806

(ii) The transfer is made to a trust to which the decedent, 2807
prior to the decedent's death, had directly or indirectly 2808
transferred assets, net of any related liabilities, while the 2809
decedent was domiciled in this state for the purposes of this 2810
chapter, and prior to the death of the decedent the trust became 2811
irrevocable while the decedent was domiciled in this state for the 2812
purposes of this chapter. 2813

(iii) The transfer is made on account of a contractual 2814
relationship existing directly or indirectly between the 2815
transferor and either the decedent or the estate of the decedent 2816
at any time prior to the date of the decedent's death, and the 2817
decedent was domiciled in this state at the time of death for 2818
purposes of the taxes levied under Chapter 5731. of the Revised 2819
Code. 2820

(iv) The transfer is made to a trust on account of a 2821
contractual relationship existing directly or indirectly between 2822

the transferor and another person who at the time of the 2823
decedent's death was domiciled in this state for purposes of this 2824
chapter. 2825

(v) The transfer is made to a trust on account of the will of 2826
a testator who was domiciled in this state at the time of the 2827
testator's death for purposes of the taxes levied under Chapter 2828
5731. of the Revised Code. 2829

(vi) The transfer is made to a trust created by or caused to 2830
be created by a court, and the trust was directly or indirectly 2831
created in connection with or as a result of the death of an 2832
individual who, for purposes of the taxes levied under Chapter 2833
5731. of the Revised Code, was domiciled in this state at the time 2834
of the individual's death. 2835

(g) The tax commissioner may adopt rules to ascertain the 2836
part of a trust residing in this state. 2837

(J) "Nonresident" means an individual or estate that is not a 2838
resident. An individual who is a resident for only part of a 2839
taxable year is a nonresident for the remainder of that taxable 2840
year. 2841

(K) "Pass-through entity" has the same meaning as in section 2842
5733.04 of the Revised Code. 2843

(L) "Return" means the notifications and reports required to 2844
be filed pursuant to this chapter for the purpose of reporting the 2845
tax due and includes declarations of estimated tax when so 2846
required. 2847

(M) "Taxable year" means the calendar year or the taxpayer's 2848
fiscal year ending during the calendar year, or fractional part 2849
thereof, upon which the adjusted gross income is calculated 2850
pursuant to this chapter. 2851

(N) "Taxpayer" means any person subject to the tax imposed by 2852

section 5747.02 of the Revised Code or any pass-through entity 2853
that makes the election under division (D) of section 5747.08 of 2854
the Revised Code. 2855

(O) "Dependents" means dependents as defined in the Internal 2856
Revenue Code and as claimed in the taxpayer's federal income tax 2857
return for the taxable year or which the taxpayer would have been 2858
permitted to claim had the taxpayer filed a federal income tax 2859
return. 2860

(P) "Principal county of employment" means, in the case of a 2861
nonresident, the county within the state in which a taxpayer 2862
performs services for an employer or, if those services are 2863
performed in more than one county, the county in which the major 2864
portion of the services are performed. 2865

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2866
Code: 2867

(1) "Subdivision" means any county, municipal corporation, 2868
park district, or township. 2869

(2) "Essential local government purposes" includes all 2870
functions that any subdivision is required by general law to 2871
exercise, including like functions that are exercised under a 2872
charter adopted pursuant to the Ohio Constitution. 2873

(R) "Overpayment" means any amount already paid that exceeds 2874
the figure determined to be the correct amount of the tax. 2875

(S) "Taxable income" or "Ohio taxable income" applies only to 2876
estates and trusts, and means federal taxable income, as defined 2877
and used in the Internal Revenue Code, adjusted as follows: 2878

(1) Add interest or dividends, net of ordinary, necessary, 2879
and reasonable expenses not deducted in computing federal taxable 2880
income, on obligations or securities of any state or of any 2881
political subdivision or authority of any state, other than this 2882

state and its subdivisions and authorities, but only to the extent 2883
that such net amount is not otherwise includible in Ohio taxable 2884
income and is described in either division (S)(1)(a) or (b) of 2885
this section: 2886

(a) The net amount is not attributable to the S portion of an 2887
electing small business trust and has not been distributed to 2888
beneficiaries for the taxable year; 2889

(b) The net amount is attributable to the S portion of an 2890
electing small business trust for the taxable year. 2891

(2) Add interest or dividends, net of ordinary, necessary, 2892
and reasonable expenses not deducted in computing federal taxable 2893
income, on obligations of any authority, commission, 2894
instrumentality, territory, or possession of the United States to 2895
the extent that the interest or dividends are exempt from federal 2896
income taxes but not from state income taxes, but only to the 2897
extent that such net amount is not otherwise includible in Ohio 2898
taxable income and is described in either division (S)(1)(a) or 2899
(b) of this section; 2900

(3) Add the amount of personal exemption allowed to the 2901
estate pursuant to section 642(b) of the Internal Revenue Code; 2902

(4) Deduct interest or dividends, net of related expenses 2903
deducted in computing federal taxable income, on obligations of 2904
the United States and its territories and possessions or of any 2905
authority, commission, or instrumentality of the United States to 2906
the extent that the interest or dividends are exempt from state 2907
taxes under the laws of the United States, but only to the extent 2908
that such amount is included in federal taxable income and is 2909
described in either division (S)(1)(a) or (b) of this section; 2910

(5) Deduct the amount of wages and salaries, if any, not 2911
otherwise allowable as a deduction but that would have been 2912
allowable as a deduction in computing federal taxable income for 2913

the taxable year, had the targeted jobs credit allowed under 2914
sections 38, 51, and 52 of the Internal Revenue Code not been in 2915
effect, but only to the extent such amount relates either to 2916
income included in federal taxable income for the taxable year or 2917
to income of the S portion of an electing small business trust for 2918
the taxable year; 2919

(6) Deduct any interest or interest equivalent, net of 2920
related expenses deducted in computing federal taxable income, on 2921
public obligations and purchase obligations, but only to the 2922
extent that such net amount relates either to income included in 2923
federal taxable income for the taxable year or to income of the S 2924
portion of an electing small business trust for the taxable year; 2925

(7) Add any loss or deduct any gain resulting from sale, 2926
exchange, or other disposition of public obligations to the extent 2927
that such loss has been deducted or such gain has been included in 2928
computing either federal taxable income or income of the S portion 2929
of an electing small business trust for the taxable year; 2930

(8) Except in the case of the final return of an estate, add 2931
any amount deducted by the taxpayer on both its Ohio estate tax 2932
return pursuant to section 5731.14 of the Revised Code, and on its 2933
federal income tax return in determining federal taxable income; 2934

(9)(a) Deduct any amount included in federal taxable income 2935
solely because the amount represents a reimbursement or refund of 2936
expenses that in a previous year the decedent had deducted as an 2937
itemized deduction pursuant to section 63 of the Internal Revenue 2938
Code and applicable treasury regulations. The deduction otherwise 2939
allowed under division (S)(9)(a) of this section shall be reduced 2940
to the extent the reimbursement is attributable to an amount the 2941
taxpayer or decedent deducted under this section in any taxable 2942
year. 2943

(b) Add any amount not otherwise included in Ohio taxable 2944

income for any taxable year to the extent that the amount is 2945
attributable to the recovery during the taxable year of any amount 2946
deducted or excluded in computing federal or Ohio taxable income 2947
in any taxable year, but only to the extent such amount has not 2948
been distributed to beneficiaries for the taxable year. 2949

(10) Deduct any portion of the deduction described in section 2950
1341(a)(2) of the Internal Revenue Code, for repaying previously 2951
reported income received under a claim of right, that meets both 2952
of the following requirements: 2953

(a) It is allowable for repayment of an item that was 2954
included in the taxpayer's taxable income or the decedent's 2955
adjusted gross income for a prior taxable year and did not qualify 2956
for a credit under division (A) or (B) of section 5747.05 of the 2957
Revised Code for that year. 2958

(b) It does not otherwise reduce the taxpayer's taxable 2959
income or the decedent's adjusted gross income for the current or 2960
any other taxable year. 2961

(11) Add any amount claimed as a credit under section 2962
5747.059 of the Revised Code to the extent that the amount 2963
satisfies either of the following: 2964

(a) The amount was deducted or excluded from the computation 2965
of the taxpayer's federal taxable income as required to be 2966
reported for the taxpayer's taxable year under the Internal 2967
Revenue Code; 2968

(b) The amount resulted in a reduction in the taxpayer's 2969
federal taxable income as required to be reported for any of the 2970
taxpayer's taxable years under the Internal Revenue Code. 2971

(12) Deduct any amount, net of related expenses deducted in 2972
computing federal taxable income, that a trust is required to 2973
report as farm income on its federal income tax return, but only 2974
if the assets of the trust include at least ten acres of land 2975

satisfying the definition of "land devoted exclusively to
agricultural use" under section 5713.30 of the Revised Code,
regardless of whether the land is valued for tax purposes as such
land under sections 5713.30 to 5713.38 of the Revised Code. If the
trust is a pass-through entity investor, section 5747.231 of the
Revised Code applies in ascertaining if the trust is eligible to
claim the deduction provided by division (S)(12) of this section
in connection with the pass-through entity's farm income.

Except for farm income attributable to the S portion of an
electing small business trust, the deduction provided by division
(S)(12) of this section is allowed only to the extent that the
trust has not distributed such farm income. Division (S)(12) of
this section applies only to taxable years of a trust beginning in
2002 or thereafter.

(13) Add the net amount of income described in section 641(c)
of the Internal Revenue Code to the extent that amount is not
included in federal taxable income.

(14) Add or deduct the amount the taxpayer would be required
to add or deduct under division (A)(20) or (21) of this section if
the taxpayer's Ohio taxable income were computed in the same
manner as an individual's Ohio adjusted gross income is computed
under this section. In the case of a trust, division (S)(14) of
this section applies only to any of the trust's taxable years
beginning in 2002 or thereafter.

(T) "School district income" and "school district income tax"
have the same meanings as in section 5748.01 of the Revised Code.

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7)
of this section, "public obligations," "purchase obligations," and
"interest or interest equivalent" have the same meanings as in
section 5709.76 of the Revised Code.

(V) "Limited liability company" means any limited liability

company formed under Chapter 1705. of the Revised Code or under 3007
the laws of any other state. 3008

(W) "Pass-through entity investor" means any person who, 3009
during any portion of a taxable year of a pass-through entity, is 3010
a partner, member, shareholder, or equity investor in that 3011
pass-through entity. 3012

(X) "Banking day" has the same meaning as in section 1304.01 3013
of the Revised Code. 3014

(Y) "Month" means a calendar month. 3015

(Z) "Quarter" means the first three months, the second three 3016
months, the third three months, or the last three months of the 3017
taxpayer's taxable year. 3018

(AA)(1) "Eligible institution" means a state university or 3019
state institution of higher education as defined in section 3020
3345.011 of the Revised Code, or a private, nonprofit college, 3021
university, or other post-secondary institution located in this 3022
state that possesses a certificate of authorization issued by the 3023
Ohio board of regents pursuant to Chapter 1713. of the Revised 3024
Code or a certificate of registration issued by the state board of 3025
career colleges and schools under Chapter 3332. of the Revised 3026
Code. 3027

(2) "Qualified tuition and fees" means tuition and fees 3028
imposed by an eligible institution as a condition of enrollment or 3029
attendance, not exceeding two thousand five hundred dollars in 3030
each of the individual's first two years of post-secondary 3031
education. If the individual is a part-time student, "qualified 3032
tuition and fees" includes tuition and fees paid for the academic 3033
equivalent of the first two years of post-secondary education 3034
during a maximum of five taxable years, not exceeding a total of 3035
five thousand dollars. "Qualified tuition and fees" does not 3036
include: 3037

(a) Expenses for any course or activity involving sports, 3038
games, or hobbies unless the course or activity is part of the 3039
individual's degree or diploma program; 3040

(b) The cost of books, room and board, student activity fees, 3041
athletic fees, insurance expenses, or other expenses unrelated to 3042
the individual's academic course of instruction; 3043

(c) Tuition, fees, or other expenses paid or reimbursed 3044
through an employer, scholarship, grant in aid, or other 3045
educational benefit program. 3046

(BB)(1) "Modified business income" means the business income 3047
included in a trust's Ohio taxable income after such taxable 3048
income is first reduced by the qualifying trust amount, if any. 3049

(2) "Qualifying trust amount" of a trust means capital gains 3050
and losses from the sale, exchange, or other disposition of equity 3051
or ownership interests in, or debt obligations of, a qualifying 3052
investee to the extent included in the trust's Ohio taxable 3053
income, but only if the following requirements are satisfied: 3054

(a) The book value of the qualifying investee's physical 3055
assets in this state and everywhere, as of the last day of the 3056
qualifying investee's fiscal or calendar year ending immediately 3057
prior to the date on which the trust recognizes the gain or loss, 3058
is available to the trust. 3059

(b) The requirements of section 5747.011 of the Revised Code 3060
are satisfied for the trust's taxable year in which the trust 3061
recognizes the gain or loss. 3062

Any gain or loss that is not a qualifying trust amount is 3063
modified business income, qualifying investment income, or 3064
modified nonbusiness income, as the case may be. 3065

(3) "Modified nonbusiness income" means a trust's Ohio 3066
taxable income other than modified business income, other than the 3067

qualifying trust amount, and other than qualifying investment 3068
income, as defined in section 5747.012 of the Revised Code, to the 3069
extent such qualifying investment income is not otherwise part of 3070
modified business income. 3071

(4) "Modified Ohio taxable income" applies only to trusts, 3072
and means the sum of the amounts described in divisions (BB)(4)(a) 3073
to (c) of this section: 3074

(a) The fraction, calculated under section 5747.013, and 3075
applying section 5747.231 of the Revised Code, multiplied by the 3076
sum of the following amounts: 3077

(i) The trust's modified business income; 3078

(ii) The trust's qualifying investment income, as defined in 3079
section 5747.012 of the Revised Code, but only to the extent the 3080
qualifying investment income does not otherwise constitute 3081
modified business income and does not otherwise constitute a 3082
qualifying trust amount. 3083

(b) The qualifying trust amount multiplied by a fraction, the 3084
numerator of which is the sum of the book value of the qualifying 3085
investee's physical assets in this state on the last day of the 3086
qualifying investee's fiscal or calendar year ending immediately 3087
prior to the day on which the trust recognizes the qualifying 3088
trust amount, and the denominator of which is the sum of the book 3089
value of the qualifying investee's total physical assets 3090
everywhere on the last day of the qualifying investee's fiscal or 3091
calendar year ending immediately prior to the day on which the 3092
trust recognizes the qualifying trust amount. If, for a taxable 3093
year, the trust recognizes a qualifying trust amount with respect 3094
to more than one qualifying investee, the amount described in 3095
division (BB)(4)(b) of this section shall equal the sum of the 3096
products so computed for each such qualifying investee. 3097

(c)(i) With respect to a trust or portion of a trust that is 3098

a resident as ascertained in accordance with division (I)(3)(d) of 3099
this section, its modified nonbusiness income. 3100

(ii) With respect to a trust or portion of a trust that is 3101
not a resident as ascertained in accordance with division 3102
(I)(3)(d) of this section, the amount of its modified nonbusiness 3103
income satisfying the descriptions in divisions (B)(2) to (5) of 3104
section 5747.20 of the Revised Code, except as otherwise provided 3105
in division (BB)(4)(c)(ii) of this section. With respect to a 3106
trust or portion of a trust that is not a resident as ascertained 3107
in accordance with division (I)(3)(d) of this section, the trust's 3108
portion of modified nonbusiness income recognized from the sale, 3109
exchange, or other disposition of a debt interest in or equity 3110
interest in a section 5747.212 entity, as defined in section 3111
5747.212 of the Revised Code, without regard to division (A) of 3112
that section, shall not be allocated to this state in accordance 3113
with section 5747.20 of the Revised Code but shall be apportioned 3114
to this state in accordance with division (B) of section 5747.212 3115
of the Revised Code without regard to division (A) of that 3116
section. 3117

If the allocation and apportionment of a trust's income under 3118
divisions (BB)(4)(a) and (c) of this section do not fairly 3119
represent the modified Ohio taxable income of the trust in this 3120
state, the alternative methods described in division (C) of 3121
section 5747.21 of the Revised Code may be applied in the manner 3122
and to the same extent provided in that section. 3123

(5)(a) Except as set forth in division (BB)(5)(b) of this 3124
section, "qualifying investee" means a person in which a trust has 3125
an equity or ownership interest, or a person or unit of government 3126
the debt obligations of either of which are owned by a trust. For 3127
the purposes of division (BB)(2)(a) of this section and for the 3128
purpose of computing the fraction described in division (BB)(4)(b) 3129
of this section, all of the following apply: 3130

(i) If the qualifying investee is a member of a qualifying
controlled group on the last day of the qualifying investee's
fiscal or calendar year ending immediately prior to the date on
which the trust recognizes the gain or loss, then "qualifying
investee" includes all persons in the qualifying controlled group
on such last day.

(ii) If the qualifying investee, or if the qualifying
investee and any members of the qualifying controlled group of
which the qualifying investee is a member on the last day of the
qualifying investee's fiscal or calendar year ending immediately
prior to the date on which the trust recognizes the gain or loss,
separately or cumulatively own, directly or indirectly, on the
last day of the qualifying investee's fiscal or calendar year
ending immediately prior to the date on which the trust recognizes
the qualifying trust amount, more than fifty per cent of the
equity of a pass-through entity, then the qualifying investee and
the other members are deemed to own the proportionate share of the
pass-through entity's physical assets which the pass-through
entity directly or indirectly owns on the last day of the
pass-through entity's calendar or fiscal year ending within or
with the last day of the qualifying investee's fiscal or calendar
year ending immediately prior to the date on which the trust
recognizes the qualifying trust amount.

(iii) For the purposes of division (BB)(5)(a)(iii) of this
section, "upper level pass-through entity" means a pass-through
entity directly or indirectly owning any equity of another
pass-through entity, and "lower level pass-through entity" means
that other pass-through entity.

An upper level pass-through entity, whether or not it is also
a qualifying investee, is deemed to own, on the last day of the
upper level pass-through entity's calendar or fiscal year, the
proportionate share of the lower level pass-through entity's

physical assets that the lower level pass-through entity directly 3163
or indirectly owns on the last day of the lower level pass-through 3164
entity's calendar or fiscal year ending within or with the last 3165
day of the upper level pass-through entity's fiscal or calendar 3166
year. If the upper level pass-through entity directly and 3167
indirectly owns less than fifty per cent of the equity of the 3168
lower level pass-through entity on each day of the upper level 3169
pass-through entity's calendar or fiscal year in which or with 3170
which ends the calendar or fiscal year of the lower level 3171
pass-through entity and if, based upon clear and convincing 3172
evidence, complete information about the location and cost of the 3173
physical assets of the lower pass-through entity is not available 3174
to the upper level pass-through entity, then solely for purposes 3175
of ascertaining if a gain or loss constitutes a qualifying trust 3176
amount, the upper level pass-through entity shall be deemed as 3177
owning no equity of the lower level pass-through entity for each 3178
day during the upper level pass-through entity's calendar or 3179
fiscal year in which or with which ends the lower level 3180
pass-through entity's calendar or fiscal year. Nothing in division 3181
(BB)(5)(a)(iii) of this section shall be construed to provide for 3182
any deduction or exclusion in computing any trust's Ohio taxable 3183
income. 3184

(b) With respect to a trust that is not a resident for the 3185
taxable year and with respect to a part of a trust that is not a 3186
resident for the taxable year, "qualifying investee" for that 3187
taxable year does not include a C corporation if both of the 3188
following apply: 3189

(i) During the taxable year the trust or part of the trust 3190
recognizes a gain or loss from the sale, exchange, or other 3191
disposition of equity or ownership interests in, or debt 3192
obligations of, the C corporation. 3193

(ii) Such gain or loss constitutes nonbusiness income. 3194

(6) "Available" means information is such that a person is 3195
able to learn of the information by the due date plus extensions, 3196
if any, for filing the return for the taxable year in which the 3197
trust recognizes the gain or loss. 3198

(CC) "Qualifying controlled group" has the same meaning as in 3199
section 5733.04 of the Revised Code. 3200

(DD) "Related member" has the same meaning as in section 3201
5733.042 of the Revised Code. 3202

(EE)(1) For the purposes of division (EE) of this section: 3203

(a) "Qualifying person" means any person other than a 3204
qualifying corporation. 3205

(b) "Qualifying corporation" means any person classified for 3206
federal income tax purposes as an association taxable as a 3207
corporation, except either of the following: 3208

(i) A corporation that has made an election under subchapter 3209
S, chapter one, subtitle A, of the Internal Revenue Code for its 3210
taxable year ending within, or on the last day of, the investor's 3211
taxable year; 3212

(ii) A subsidiary that is wholly owned by any corporation 3213
that has made an election under subchapter S, chapter one, 3214
subtitle A of the Internal Revenue Code for its taxable year 3215
ending within, or on the last day of, the investor's taxable year. 3216

(2) For the purposes of this chapter, unless expressly stated 3217
otherwise, no qualifying person indirectly owns any asset directly 3218
or indirectly owned by any qualifying corporation. 3219

(FF) For purposes of this chapter and Chapter 5751. of the 3220
Revised Code: 3221

(1) "Trust" does not include a qualified pre-income tax 3222
trust. 3223

(2) A "qualified pre-income tax trust" is any pre-income tax 3224

trust that makes a qualifying pre-income tax trust election as 3225
described in division (FF)(3) of this section. 3226

(3) A "qualifying pre-income tax trust election" is an 3227
election by a pre-income tax trust to subject to the tax imposed 3228
by section 5751.02 of the Revised Code the pre-income tax trust 3229
and all pass-through entities of which the trust owns or controls, 3230
directly, indirectly, or constructively through related interests, 3231
five per cent or more of the ownership or equity interests. The 3232
trustee shall notify the tax commissioner in writing of the 3233
election on or before April 15, 2006. The election, if timely 3234
made, shall be effective on and after January 1, 2006, and shall 3235
apply for all tax periods and tax years until revoked by the 3236
trustee of the trust. 3237

(4) A "pre-income tax trust" is a trust that satisfies all of 3238
the following requirements: 3239

(a) The document or instrument creating the trust was 3240
executed by the grantor before January 1, 1972; 3241

(b) The trust became irrevocable upon the creation of the 3242
trust; and 3243

(c) The grantor was domiciled in this state at the time the 3244
trust was created. 3245

(GG) "Employee" has the same meaning as in section 4175.01 of 3246
the Revised Code, unless the internal revenue service has accepted 3247
the classification an individual as an independent contractor made 3248
by the individual and the individual's payer. 3249

Section 2. That existing sections 121.083, 1349.61, 4111.02, 3250
4111.14, 4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 4141.01, 3251
and 5747.01 of the Revised Code are hereby repealed. 3252