

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 522

Representative McGregor

Cosponsors: Representatives Beck, Ruhl, Stebelton

—

A B I L L

To amend sections 119.14, 1349.61, 4111.03, 4121.01, 1
4123.01, and 4141.01 of the Revised Code to 2
establish a test to determine whether an 3
individual providing services for or on behalf of 4
certain motor transportation companies is 5
considered an employee under Ohio's Overtime, 6
Workers' Compensation, and Unemployment 7
Compensation Laws. 8

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

Section 1. That sections 119.14, 1349.61, 4111.03, 4121.01, 9
4123.01, and 4141.01 of the Revised Code be amended to read as 10
follows: 11

Sec. 119.14. (A) For any small business that engages in a 12
paperwork violation, the state agency or regulatory authority that 13
regulates the field of operation in which the business operates 14
shall waive any and all administrative fines or civil penalties on 15
that small business for the violation, if the paperwork violation 16
is a first-time offense. 17

(B) When an agency or regulatory authority waives an 18
administrative fine or civil penalty under this section, the state 19

agency or regulatory authority shall require the small business to 20
correct the violation within a reasonable period of time. 21

(C) Notwithstanding this section, a state agency or 22
regulatory authority may impose administrative fines or civil 23
penalties on a small business for a paperwork violation that is a 24
first-time offense for any of the following reasons: 25

(1) The violation has the potential to cause serious harm to 26
the public interest as determined by a state agency or regulatory 27
authority director; 28

(2) The violation involves a small business knowingly or 29
willfully engaging in conduct that may result in a felony 30
conviction; 31

(3) Failure to impose an administrative fine or civil penalty 32
for the violation would impede or interfere with the detection of 33
criminal activity; 34

(4) The violation is of a law concerning the assessment or 35
collection of any tax, debt, revenue, or receipt; 36

(5) The violation presents a direct danger to the public 37
health or safety, results in a financial loss to an employee ~~as~~ 38
~~defined in section 4111.03 of the Revised Code~~, or presents the 39
risk of severe environmental harm, as determined by the head of 40
the agency or regulatory authority; 41

(6) The violation is a failure to comply with a federal 42
requirement for a program that has been delegated from the federal 43
government to a state agency or regulatory authority and where the 44
federal requirement includes a requirement to impose a fine. 45

(D)(1) Nothing in this section shall prohibit a state agency 46
or regulatory authority from waiving administrative fines or civil 47
penalties incurred by a small business for a paperwork violation 48
that is not a first-time offense. 49

(2) Any administrative fine or civil penalty that is waived 50
under this section, may be reinstated and imposed in addition to 51
any additional fines or penalties associated with a subsequent 52
violation for noncompliance with the same paperwork requirement. 53

(E) This section shall not apply to any violation by a small 54
business of a statutory or regulatory requirement mandating the 55
collection of information by a state agency or regulatory body if 56
that small business previously violated any such requirement 57
mandating the collection of information. 58

(F) Nothing in this section shall be construed to diminish 59
the responsibility for any citizen or business to apply for and 60
obtain a permit, license, or authorizing document that is required 61
to engage in a regulated activity, or otherwise comply with state 62
or federal law. 63

(G) As used in this section: 64

(1) "Small business" has the same meaning as defined by the 65
Code of Federal Regulations, Title 13, Chapter 1, Part 121. 66

(2) "Paperwork violation" means the violation of any 67
statutory or regulatory requirement in the Revised Code mandating 68
the collection of information by a state agency or regulatory 69
body. 70

(3) "First-time offense" means the first instance of a 71
violation of the particular statutory or regulatory requirement 72
mandating the collection of information by a state agency or 73
regulatory body. 74

(4) "Employee" means any individual employed by an employer 75
but does not include: 76

(a) Any individual employed by the United States; 77

(b) Any individual employed as a babysitter in the employer's 78
home, or a live-in companion to a sick, convalescing, or elderly 79

person whose principal duties do not include housekeeping; 80

(c) Any individual engaged in the delivery of newspapers to 81
the consumer; 82

(d) Any individual employed as an outside salesperson 83
compensated by commissions or employed in a bona fide executive, 84
administrative, or professional capacity as such terms are defined 85
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 86
U.S.C. 201, as amended; 87

(e) Any individual who works or provides personal services of 88
a charitable nature in a hospital or health institution for which 89
compensation is not sought or contemplated; 90

(f) A member of a police or fire protection agency or student 91
employed on a part-time or seasonal basis by a political 92
subdivision of this state; 93

(g) Any individual in the employ of a camp or recreational 94
area for children under eighteen years of age and owned and 95
operated by a nonprofit organization or group of organizations 96
described in section 501(c)(3) of the "Internal Revenue Code of 97
1954," and exempt from income tax under section 501(a) of that 98
code; 99

(h) Any individual employed directly by the house of 100
representatives or directly by the senate. 101

Sec. 1349.61. (A)(1) Subject to division (C) of this section, 102
no person or entity shall sell a gift card to a purchaser 103
containing an expiration date that is less than two years after 104
the date the gift card is issued. 105

(2) No person or entity, within two years after a gift card 106
is issued, shall charge service charges or fees relative to that 107
gift card, including dormancy fees, latency fees, or 108
administrative fees, that have the effect of reducing the total 109

amount for which the holder of the gift card may redeem the gift card. 110 111

(B) A gift card sold without an expiration date is valid until redeemed or replaced with a new gift card. 112 113

(C) Division (A) of this section does not apply to any of the following gift cards: 114 115

(1) A gift card that is distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or anything of value being given in exchange for the gift card by the consumer; 116 117 118 119

(2) A gift card that is sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes, if the expiration date on that gift card is not more than thirty days after the date of sale; 120 121 122 123

(3) A gift card that is sold by a nonprofit or charitable organization for fundraising purposes; 124 125

(4) A gift card that an employer gives to an employee if use of the gift card is limited to the employer's business establishment, which may include a group of merchants that are affiliated with that business establishment; 126 127 128 129

(5) A gift certificate issued in accordance with section 1533.131 of the Revised Code that may be used to obtain hunting and fishing licenses, fur taker, special deer, and special wild turkey permits, and wetlands habitat stamps; 130 131 132 133

(6) A gift card that is usable with multiple, unaffiliated sellers of goods or services; 134 135

(7) A gift card that an employer issues to an employee in recognition of services performed by the employee. 136 137

(D) Whoever violates division (A)(2) of this section is liable to the holder for any amount that the redemption value of 138 139

the gift card was reduced, any court costs incurred, and 140
reasonable attorney's fees. 141

(E) As used in this section: 142

(1) "Gift card" means a certificate, electronic card, or 143
other medium issued by a merchant that evidences the giving of 144
consideration in exchange for the right to redeem the certificate, 145
electronic card, or other medium for goods, food, services, 146
credit, or money of at least an equal value, including any 147
electronic card issued by a merchant with a monetary value where 148
the issuer has received payment for the full monetary value for 149
the future purchase or delivery of goods or services and any 150
certificate issued by a merchant where the issuer has received 151
payment for the full monetary face value of the certificate for 152
the future purchase or delivery of goods and services. "Gift card" 153
does not include a prepaid calling card used to make telephone 154
calls. 155

(2) "Employer" ~~and "employee" have~~ has the same ~~meanings~~ 156
meaning as in section 4121.01 of the Revised Code. 157

(3) "Employee" means every person who may be required or 158
directed by any employer, in consideration of direct or indirect 159
gain or profit, to engage in any employment, or to go, or work, or 160
be at any time in any place of employment. 161

Sec. 4111.03. (A) An employer shall pay an employee for 162
overtime at a wage rate of one and one-half times the employee's 163
wage rate for hours worked in excess of forty hours in one 164
workweek, in the manner and methods provided in and subject to the 165
exemptions of section 7 and section 13 of the "Fair Labor 166
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 167
amended. 168

Any employee employed in agriculture shall not be covered by 169

the overtime provision of this section. 170

(B) If a county employee elects to take compensatory time off 171
in lieu of overtime pay, for any overtime worked, compensatory 172
time may be granted by the employee's administrative superior, on 173
a time and one-half basis, at a time mutually convenient to the 174
employee and the administrative superior within one hundred eighty 175
days after the overtime is worked. 176

(C) A county appointing authority with the exception of the 177
county department of job and family services may, by rule or 178
resolution as is appropriate, indicate the authority's intention 179
not to be bound by division (B) of this section, and to adopt a 180
different policy for the calculation and payment of overtime than 181
that established by that division. Upon adoption, the alternative 182
overtime policy prevails. Prior to the adoption of an alternative 183
overtime policy, a county appointing authority with the exception 184
of the county department of job and family services shall give a 185
written notice of the alternative policy to each employee at least 186
ten days prior to its effective date. 187

(D) As used in this section: 188

(1) "Employ" means to suffer or to permit to work. 189

(2) "Employer" means the state of Ohio, its 190
instrumentalities, and its political subdivisions and their 191
instrumentalities, any individual, partnership, association, 192
corporation, business trust, or any person or group of persons, 193
acting in the interest of an employer in relation to an employee, 194
but does not include an employer whose annual gross volume of 195
sales made for business done is less than one hundred fifty 196
thousand dollars, exclusive of excise taxes at the retail level 197
which are separately stated. 198

(3) "Employee" means any individual employed by an employer 199
but does not include: 200

(a) Any individual employed by the United States;	201
(b) Any individual employed as a baby-sitter <u>babysitter</u> in	202
the employer's home, or a live-in companion to a sick,	203
convalescing, or elderly person whose principal duties do not	204
include housekeeping;	205
(c) Any individual engaged in the delivery of newspapers to	206
the consumer;	207
(d) Any individual employed as an outside salesperson	208
compensated by commissions or employed in a bona fide executive,	209
administrative, or professional capacity as such terms are defined	210
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29	211
U.S.C.A. 201, as amended;	212
(e) Any individual who works or provides personal services of	213
a charitable nature in a hospital or health institution for which	214
compensation is not sought or contemplated;	215
(f) A member of a police or fire protection agency or student	216
employed on a part-time or seasonal basis by a political	217
subdivision of this state;	218
(g) Any individual in the employ of a camp or recreational	219
area for children under eighteen years of age and owned and	220
operated by a nonprofit organization or group of organizations	221
described in Section 501(c)(3) of the "Internal Revenue Code of	222
1954," and exempt from income tax under Section 501(a) of that	223
code;	224
(h) Any individual employed directly by the house of	225
representatives or directly by the senate;	226
<u>(i) An individual who provides services for or on behalf of a</u>	227
<u>motor transportation company transporting property; who is an</u>	228
<u>operator of a car, van, truck, tractor, or truck-tractor that is</u>	229
<u>licensed and registered under Chapter 4503. of the Revised Code or</u>	230

a similar law of another state; and to whom the majority of the 231
following factors apply: 232

(i) The individual owns the vehicle used to provide the 233
service or holds it under a bona fide lease arrangement. 234

(ii) The individual is responsible for the maintenance of the 235
vehicle used to provide the service. 236

(iii) The individual is responsible for the operating costs 237
of the vehicle used to provide the service, including fuel, 238
repairs, supplies, vehicle insurance, and personal expenses, 239
except that the individual may be paid the carrier's fuel 240
surcharge and incidental costs, including tolls, permits, and 241
lumper fees. 242

(iv) The individual is responsible for supplying the 243
necessary personal services to operate the vehicle used to provide 244
the service. 245

(v) The compensation paid to the individual is based on 246
factors related to work performed, including a percentage of any 247
schedule of rates, and not on the basis of the hours or time 248
expended. 249

(vi) The individual substantially controls the means and 250
manner of performing the services, in conformance with regulatory 251
requirements and specifications of the shipper. 252

(vii) The individual enters into a written contract that 253
describes the relationship between the individual and the company 254
for whom the individual is performing the service to be that of an 255
independent contractor and not that of an employee. 256

(4) "Motor transportation company" has the same meaning as in 257
section 4921.02 of the Revised Code. 258

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 of 259
the Revised Code: 260

(1) "Place of employment" means every place, whether indoors 261
or out, or underground, and the premises appurtenant thereto, 262
where either temporarily or permanently any industry, trade, or 263
business is carried on, or where any process or operation, 264
directly or indirectly related to any industry, trade, or 265
business, is carried on and where any person is directly or 266
indirectly employed by another for direct or indirect gain or 267
profit, but does not include any place where persons are employed 268
in private domestic service or agricultural pursuits which do not 269
involve the use of mechanical power. 270

(2) "Employment" means any trade, occupation, or process of 271
manufacture or any method of carrying on such trade, occupation, 272
or process of manufacture in which any person may be engaged, 273
except in such private domestic service or agricultural pursuits 274
as do not involve the use of mechanical power. 275

(3) "Employer" means every person, firm, corporation, agent, 276
manager, representative, or other person having control or custody 277
of any employment, place of employment, or employee. 278

(4)(a) "Employee" means ~~every~~ a person who may be required or 279
directed by any employer, in consideration of direct or indirect 280
gain or profit, to engage in any employment, or to go, or work, or 281
be at any time in any place of employment. 282

(b) "Employee" does not include a person who provides 283
services for or on behalf of a motor transportation company 284
transporting property; who is an operator of a car, van, truck, 285
tractor, or truck-tractor that is licensed and registered under 286
Chapter 4503. of the Revised Code or a similar law of another 287
state; and to whom the majority of the following factors apply: 288

(i) The person owns the vehicle used to provide the service 289
or holds it under a bona fide lease arrangement. 290

(ii) The person is responsible for the maintenance of the 291

vehicle used to provide the service. 292

(iii) The person is responsible for the operating costs of 293
the vehicle used to provide the service, including fuel, repairs, 294
supplies, vehicle insurance, and personal expenses, except that 295
the person may be paid the carrier's fuel surcharge and incidental 296
costs, including tolls, permits, and lump sum fees. 297

(iv) The person is responsible for supplying the necessary 298
personal services to operate the vehicle used to provide the 299
service. 300

(v) The compensation paid to the person is based on factors 301
related to work performed, including a percentage of any schedule 302
of rates, and not on the basis of the hours or time expended. 303

(vi) The person substantially controls the means and manner 304
of performing the services, in conformance with regulatory 305
requirements and specifications of the shipper. 306

(vii) The person enters into a written contract that 307
describes the relationship between the person and the company for 308
whom the person is performing the service to be that of an 309
independent contractor and not that of an employee. 310

(5) "Frequenter" means every person, other than an employee, 311
who may go in or be in a place of employment under circumstances 312
which render the person other than a trespasser. 313

(6) "Deputy" means any person employed by the industrial 314
commission or the bureau of workers' compensation, designated as a 315
deputy by the commission or the administrator of workers' 316
compensation, who possesses special, technical, scientific, 317
managerial, professional, or personal abilities or qualities in 318
matters within the jurisdiction of the commission or the bureau, 319
and who may be engaged in the performance of duties under the 320
direction of the commission or the bureau calling for the exercise 321
of such abilities or qualities. 322

(7) "Order" means any decision, rule, regulation, direction, 323
requirement, or standard, or any other determination or decision 324
that the bureau is empowered to and does make. 325

(8) "General order" means an order that applies generally 326
throughout the state to all persons, employments, or places of 327
employment, or all persons, employments, or places of employment 328
of a class under the jurisdiction of the bureau. All other orders 329
shall be considered special orders. 330

(9) "Local order" means any ordinance, order, rule, or 331
determination of the legislative authority of any municipal 332
corporation, or any trustees, or board or officers of any 333
municipal corporation upon any matter over which the bureau has 334
jurisdiction. 335

(10) "Welfare" means comfort, decency, and moral well-being. 336

(11) "Safe" or "safety," as applied to any employment or a 337
place of employment, means such freedom from danger to the life, 338
health, safety, or welfare of employees or frequenters as the 339
nature of the employment will reasonably permit, including 340
requirements as to the hours of labor with relation to the health 341
and welfare of employees. 342

(12) "Employee organization" means any labor or bona fide 343
organization in which employees participate and that exists for 344
the purpose, in whole or in part, of dealing with employers 345
concerning grievances, labor disputes, wages, hours, terms, and 346
other conditions of employment. 347

(13) "Motor transportation company" has the same meaning as 348
in section 4921.02 of the Revised Code. 349

(B) As used in the Revised Code: 350

(1) "Industrial commission" means the chairperson of the 351
three-member industrial commission created pursuant to section 352

4121.02 of the Revised Code when the context refers to the 353
authority vested in the chairperson as the chief executive officer 354
of the three-member industrial commission pursuant to divisions 355
(A), (B), (C), and (D) of section 4121.03 of the Revised Code. 356

(2) "Industrial commission" means the three-member industrial 357
commission created pursuant to section 4121.02 of the Revised Code 358
when the context refers to the authority vested in the 359
three-member industrial commission pursuant to division (E) of 360
section 4121.03 of the Revised Code. 361

(3) "Industrial commission" means the industrial commission 362
as a state agency when the context refers to the authority vested 363
in the industrial commission as a state agency. 364

Sec. 4123.01. As used in this chapter: 365

(A)(1) "Employee" means: 366

(a) Every person in the service of the state, or of any 367
county, municipal corporation, township, or school district 368
therein, including regular members of lawfully constituted police 369
and fire departments of municipal corporations and townships, 370
whether paid or volunteer, and wherever serving within the state 371
or on temporary assignment outside thereof, and executive officers 372
of boards of education, under any appointment or contract of hire, 373
express or implied, oral or written, including any elected 374
official of the state, or of any county, municipal corporation, or 375
township, or members of boards of education. 376

As used in division (A)(1)(a) of this section, the term 377
"employee" includes the following persons when responding to an 378
inherently dangerous situation that calls for an immediate 379
response on the part of the person, regardless of whether the 380
person is within the limits of the jurisdiction of the person's 381
regular employment or voluntary service when responding, on the 382

condition that the person responds to the situation as the person 383
otherwise would if the person were on duty in the person's 384
jurisdiction: 385

(i) Off-duty peace officers. As used in division (A)(1)(a)(i) 386
of this section, "peace officer" has the same meaning as in 387
section 2935.01 of the Revised Code. 388

(ii) Off-duty firefighters, whether paid or volunteer, of a 389
lawfully constituted fire department. 390

(iii) Off-duty first responders, emergency medical 391
technicians-basic, emergency medical technicians-intermediate, or 392
emergency medical technicians-paramedic, whether paid or 393
volunteer, of an ambulance service organization or emergency 394
medical service organization pursuant to Chapter 4765. of the 395
Revised Code. 396

(b) Every person in the service of any person, firm, or 397
private corporation, including any public service corporation, 398
that (i) employs one or more persons regularly in the same 399
business or in or about the same establishment under any contract 400
of hire, express or implied, oral or written, including aliens and 401
minors, household workers who earn one hundred sixty dollars or 402
more in cash in any calendar quarter from a single household and 403
casual workers who earn one hundred sixty dollars or more in cash 404
in any calendar quarter from a single employer, or (ii) is bound 405
by any such contract of hire or by any other written contract, to 406
pay into the state insurance fund the premiums provided by this 407
chapter. 408

(c) Every person who performs labor or provides services 409
pursuant to a construction contract, as defined in section 4123.79 410
of the Revised Code, if at least ten of the following criteria 411
apply: 412

(i) The person is required to comply with instructions from 413

the other contracting party regarding the manner or method of performing services;

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

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

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

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

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

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

(viii) The person is required to devote full time to the business of the other contracting party;

(ix) The person is required to perform the work on the premises of the other contracting party;

(x) The person is required to follow the order of work set by the other contracting party;

(xi) The person is required to make oral or written reports of progress to the other contracting party;

(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;

(xiii) The person's expenses are paid for by the other contracting party;

(xiv) The person's tools and materials are furnished by the other contracting party;

(xv) The person is provided with the facilities used to

perform services; 443

(xvi) The person does not realize a profit or suffer a loss 444
as a result of the services provided; 445

(xvii) The person is not performing services for a number of 446
employers at the same time; 447

(xviii) The person does not make the same services available 448
to the general public; 449

(xix) The other contracting party has a right to discharge 450
the person; 451

(xx) The person has the right to end the relationship with 452
the other contracting party without incurring liability pursuant 453
to an employment contract or agreement. 454

Every person in the service of any independent contractor or 455
subcontractor who has failed to pay into the state insurance fund 456
the amount of premium determined and fixed by the administrator of 457
workers' compensation for the person's employment or occupation or 458
if a self-insuring employer has failed to pay compensation and 459
benefits directly to the employer's injured and to the dependents 460
of the employer's killed employees as required by section 4123.35 461
of the Revised Code, shall be considered as the employee of the 462
person who has entered into a contract, whether written or verbal, 463
with such independent contractor unless such employees or their 464
legal representatives or beneficiaries elect, after injury or 465
death, to regard such independent contractor as the employer. 466

(d) Every person to whom all of the following apply: 467

(i) The person is a resident of a state other than this state 468
and is covered by that other state's workers' compensation law; 469

(ii) The person performs labor or provides services for that 470
person's employer while temporarily within this state; 471

(iii) The laws of that other state do not include the 472

provisions described in division (H)(4) of section 4123.54 of the Revised Code.

(e) Every person who provides services for or on behalf of a motor transportation company transporting property and who is an operator of a car, van, truck, tractor, or truck-tractor that is licensed and registered under Chapter 4503. of the Revised Code or a similar law of another state, unless a majority of the following factors apply to the person:

(i) The person owns the vehicle used to provide the service or holds it under a bona fide lease arrangement.

(ii) The person is responsible for the maintenance of the vehicle used to provide the service.

(iii) The person is responsible for the operating costs of the vehicle used to provide the service, including fuel, repairs, supplies, vehicle insurance, and personal expenses, except that the person may be paid the carrier's fuel surcharge and incidental costs, including tolls, permits, and lump sum fees.

(iv) The person is responsible for supplying the necessary personal services to operate the vehicle used to provide the service.

(v) The compensation paid to the person is based on factors related to work performed, including a percentage of any schedule of rates, and not on the basis of the hours or time expended.

(vi) The person substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.

(vii) The individual enters into a written contract that describes the relationship between the person and the company for whom the person is performing the service to be that of an independent contractor and not that of an employee.

(2) "Employee" does not mean: 503

(a) A duly ordained, commissioned, or licensed minister or 504
assistant or associate minister of a church in the exercise of 505
ministry; 506

(b) Any officer of a family farm corporation; 507

(c) An individual incorporated as a corporation; or 508

(d) An individual who otherwise is an employee of an employer 509
but who signs the waiver and affidavit specified in section 510
4123.15 of the Revised Code on the condition that the 511
administrator has granted a waiver and exception to the 512
individual's employer under section 4123.15 of the Revised Code. 513

Any employer may elect to include as an "employee" within 514
this chapter, any person excluded from the definition of 515
"employee" pursuant to division (A)(2) of this section. If an 516
employer is a partnership, sole proprietorship, individual 517
incorporated as a corporation, or family farm corporation, such 518
employer may elect to include as an "employee" within this 519
chapter, any member of such partnership, the owner of the sole 520
proprietorship, the individual incorporated as a corporation, or 521
the officers of the family farm corporation. In the event of an 522
election, the employer shall serve upon the bureau of workers' 523
compensation written notice naming the persons to be covered, 524
include such employee's remuneration for premium purposes in all 525
future payroll reports, and no person excluded from the definition 526
of "employee" pursuant to division (A)(2) of this section, 527
proprietor, individual incorporated as a corporation, or partner 528
shall be deemed an employee within this division until the 529
employer has served such notice. 530

For informational purposes only, the bureau shall prescribe 531
such language as it considers appropriate, on such of its forms as 532
it considers appropriate, to advise employers of their right to 533

elect to include as an "employee" within this chapter a sole 534
proprietor, any member of a partnership, an individual 535
incorporated as a corporation, the officers of a family farm 536
corporation, or a person excluded from the definition of 537
"employee" under division (A)(2) of this section, that they should 538
check any health and disability insurance policy, or other form of 539
health and disability plan or contract, presently covering them, 540
or the purchase of which they may be considering, to determine 541
whether such policy, plan, or contract excludes benefits for 542
illness or injury that they might have elected to have covered by 543
workers' compensation. 544

(B) "Employer" means: 545

(1) The state, including state hospitals, each county, 546
municipal corporation, township, school district, and hospital 547
owned by a political subdivision or subdivisions other than the 548
state; 549

(2) Every person, firm, professional employer organization as 550
defined in section 4125.01 of the Revised Code, and private 551
corporation, including any public service corporation, that (a) 552
has in service one or more employees or shared employees regularly 553
in the same business or in or about the same establishment under 554
any contract of hire, express or implied, oral or written, or (b) 555
is bound by any such contract of hire or by any other written 556
contract, to pay into the insurance fund the premiums provided by 557
this chapter. 558

All such employers are subject to this chapter. Any member of 559
a firm or association, who regularly performs manual labor in or 560
about a mine, factory, or other establishment, including a 561
household establishment, shall be considered an employee in 562
determining whether such person, firm, or private corporation, or 563
public service corporation, has in its service, one or more 564
employees and the employer shall report the income derived from 565

such labor to the bureau as part of the payroll of such employer, 566
and such member shall thereupon be entitled to all the benefits of 567
an employee. 568

(C) "Injury" includes any injury, whether caused by external 569
accidental means or accidental in character and result, received 570
in the course of, and arising out of, the injured employee's 571
employment. "Injury" does not include: 572

(1) Psychiatric conditions except where the claimant's 573
psychiatric conditions have arisen from an injury or occupational 574
disease sustained by that claimant or where the claimant's 575
psychiatric conditions have arisen from sexual conduct in which 576
the claimant was forced by threat of physical harm to engage or 577
participate; 578

(2) Injury or disability caused primarily by the natural 579
deterioration of tissue, an organ, or part of the body; 580

(3) Injury or disability incurred in voluntary participation 581
in an employer-sponsored recreation or fitness activity if the 582
employee signs a waiver of the employee's right to compensation or 583
benefits under this chapter prior to engaging in the recreation or 584
fitness activity; 585

(4) A condition that pre-existed an injury unless that 586
pre-existing condition is substantially aggravated by the injury. 587
Such a substantial aggravation must be documented by objective 588
diagnostic findings, objective clinical findings, or objective 589
test results. Subjective complaints may be evidence of such a 590
substantial aggravation. However, subjective complaints without 591
objective diagnostic findings, objective clinical findings, or 592
objective test results are insufficient to substantiate a 593
substantial aggravation. 594

(D) "Child" includes a posthumous child and a child legally 595
adopted prior to the injury. 596

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

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

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

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

(I) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between

persons regardless of gender; and, without privilege to do so, the
insertion, however slight, of any part of the body or any
instrument, apparatus, or other object into the vaginal or anal
cavity of another. Penetration, however slight, is sufficient to
complete vaginal or anal intercourse.

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

(K) "Other-states' coverage" means insurance coverage
purchased by an employer for workers' compensation claims that
arise in a state or states other than this state and that are
filed by the employees of the employer or those employee's
dependents, as applicable, in that other state or those other
states.

(L) "Motor transportation company" has the same meaning as in
section 4921.02 of the Revised Code.

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

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

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

of a nonprofit organization, subsequent to December 31, 1973, had 659
not less than four individuals in employment for some portion of a 660
day in each of twenty different calendar weeks, in either the 661
current or the preceding calendar year whether or not the same 662
individual was in employment in each such day; or 663

(b) Except for a nonprofit organization, had paid for service 664
in employment wages of fifteen hundred dollars or more in any 665
calendar quarter in either the current or preceding calendar year; 666
or 667

(c) Had paid, subsequent to December 31, 1977, for employment 668
in domestic service in a local college club, or local chapter of a 669
college fraternity or sorority, cash remuneration of one thousand 670
dollars or more in any calendar quarter in the current calendar 671
year or the preceding calendar year, or had paid subsequent to 672
December 31, 1977, for employment in domestic service in a private 673
home cash remuneration of one thousand dollars in any calendar 674
quarter in the current calendar year or the preceding calendar 675
year: 676

(i) For the purposes of divisions (A)(1)(a) and (b) of this 677
section, there shall not be taken into account any wages paid to, 678
or employment of, an individual performing domestic service as 679
described in this division. 680

(ii) An employer under this division shall not be an employer 681
with respect to wages paid for any services other than domestic 682
service unless the employer is also found to be an employer under 683
division (A)(1)(a), (b), or (d) of this section. 684

(d) As a farm operator or a crew leader subsequent to 685
December 31, 1977, had in employment individuals in agricultural 686
labor; and 687

(i) During any calendar quarter in the current calendar year 688
or the preceding calendar year, paid cash remuneration of twenty 689

thousand dollars or more for the agricultural labor; or 690

(ii) Had at least ten individuals in employment in 691
agricultural labor, not including agricultural workers who are 692
aliens admitted to the United States to perform agricultural labor 693
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 694
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 695
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 696
of the twenty different calendar weeks, in either the current or 697
preceding calendar year whether or not the same individual was in 698
employment in each day; or 699

(e) Is not otherwise an employer as defined under division 700
(A)(1)(a) or (b) of this section; and 701

(i) For which, within either the current or preceding 702
calendar year, service, except for domestic service in a private 703
home not covered under division (A)(1)(c) of this section, is or 704
was performed with respect to which such employer is liable for 705
any federal tax against which credit may be taken for 706
contributions required to be paid into a state unemployment fund; 707

(ii) Which, as a condition for approval of this chapter for 708
full tax credit against the tax imposed by the "Federal 709
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 710
required, pursuant to such act to be an employer under this 711
chapter; or 712

(iii) Who became an employer by election under division 713
(A)(4) or (5) of this section and for the duration of such 714
election; or 715

(f) In the case of the state, its instrumentalities, its 716
political subdivisions, and their instrumentalities, and Indian 717
tribes, had in employment, as defined in divisions (B)(2)(a) and 718
(B)(2)(1) of this section, at least one individual; 719

(g) For the purposes of division (A)(1)(a) of this section, 720

if any week includes both the thirty-first day of December and the 721
first day of January, the days of that week before the first day 722
of January shall be considered one calendar week and the days 723
beginning the first day of January another week. 724

(2) Each individual employed to perform or to assist in 725
performing the work of any agent or employee of an employer is 726
employed by such employer for all the purposes of this chapter, 727
whether such individual was hired or paid directly by such 728
employer or by such agent or employee, provided the employer had 729
actual or constructive knowledge of the work. All individuals 730
performing services for an employer of any person in this state 731
who maintains two or more establishments within this state are 732
employed by a single employer for the purposes of this chapter. 733

(3) An employer subject to this chapter within any calendar 734
year is subject to this chapter during the whole of such year and 735
during the next succeeding calendar year. 736

(4) An employer not otherwise subject to this chapter who 737
files with the director of job and family services a written 738
election to become an employer subject to this chapter for not 739
less than two calendar years shall, with the written approval of 740
such election by the director, become an employer subject to this 741
chapter to the same extent as all other employers as of the date 742
stated in such approval, and shall cease to be subject to this 743
chapter as of the first day of January of any calendar year 744
subsequent to such two calendar years only if at least thirty days 745
prior to such first day of January the employer has filed with the 746
director a written notice to that effect. 747

(5) Any employer for whom services that do not constitute 748
employment are performed may file with the director a written 749
election that all such services performed by individuals in the 750
employer's employ in one or more distinct establishments or places 751
of business shall be deemed to constitute employment for all the 752

purposes of this chapter, for not less than two calendar years. 753
Upon written approval of the election by the director, such 754
services shall be deemed to constitute employment subject to this 755
chapter from and after the date stated in such approval. Such 756
services shall cease to be employment subject to this chapter as 757
of the first day of January of any calendar year subsequent to 758
such two calendar years only if at least thirty days prior to such 759
first day of January such employer has filed with the director a 760
written notice to that effect. 761

(B)(1) "Employment" means service performed by an individual 762
for remuneration under any contract of hire, written or oral, 763
express or implied, including service performed in interstate 764
commerce and service performed by an officer of a corporation, 765
without regard to whether such service is executive, managerial, 766
or manual in nature, and without regard to whether such officer is 767
a stockholder or a member of the board of directors of the 768
corporation, unless it is shown to the satisfaction of the 769
director that such individual has been and will continue to be 770
free from direction or control over the performance of such 771
service, both under a contract of service and in fact. The 772
director shall adopt rules to define "direction or control." 773

(2) "Employment" includes: 774

(a) Service performed after December 31, 1977, by an 775
individual in the employ of the state or any of its 776
instrumentalities, or any political subdivision thereof or any of 777
its instrumentalities or any instrumentality of more than one of 778
the foregoing or any instrumentality of any of the foregoing and 779
one or more other states or political subdivisions and without 780
regard to divisions (A)(1)(a) and (b) of this section, provided 781
that such service is excluded from employment as defined in the 782
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 783
3306(c)(7) and is not excluded under division (B)(3) of this 784

section; or the services of employees covered by voluntary 785
election, as provided under divisions (A)(4) and (5) of this 786
section; 787

(b) Service performed after December 31, 1971, by an 788
individual in the employ of a religious, charitable, educational, 789
or other organization which is excluded from the term "employment" 790
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 791
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 792
3306(c)(8) of that act and is not excluded under division (B)(3) 793
of this section; 794

(c) Domestic service performed after December 31, 1977, for 795
an employer, as provided in division (A)(1)(c) of this section; 796

(d) Agricultural labor performed after December 31, 1977, for 797
a farm operator or a crew leader, as provided in division 798
(A)(1)(d) of this section; 799

(e) ~~Service~~ Subject to division (B)(2)(m) of this section, 800
service not covered under division (B)(1) of this section which is 801
performed after December 31, 1971: 802

(i) As an agent-driver or commission-driver engaged in 803
distributing meat products, vegetable products, fruit products, 804
bakery products, beverages other than milk, laundry, or 805
dry-cleaning services, for the individual's employer or principal; 806

(ii) As a traveling or city salesperson, other than as an 807
agent-driver or commission-driver, engaged on a full-time basis in 808
the solicitation on behalf of and in the transmission to the 809
salesperson's employer or principal except for sideline sales 810
activities on behalf of some other person of orders from 811
wholesalers, retailers, contractors, or operators of hotels, 812
restaurants, or other similar establishments for merchandise for 813
resale, or supplies for use in their business operations, provided 814
that for the purposes of division (B)(2)(e)(ii) of this section, 815

the services shall be deemed employment if the contract of service 816
contemplates that substantially all of the services are to be 817
performed personally by the individual and that the individual 818
does not have a substantial investment in facilities used in 819
connection with the performance of the services other than in 820
facilities for transportation, and the services are not in the 821
nature of a single transaction that is not a part of a continuing 822
relationship with the person for whom the services are performed. 823

(f) An individual's entire service performed within or both 824
within and without the state if: 825

(i) The service is localized in this state. 826

(ii) The service is not localized in any state, but some of 827
the service is performed in this state and either the base of 828
operations, or if there is no base of operations then the place 829
from which such service is directed or controlled, is in this 830
state or the base of operations or place from which such service 831
is directed or controlled is not in any state in which some part 832
of the service is performed but the individual's residence is in 833
this state. 834

(g) Service not covered under division (B)(2)(f)(ii) of this 835
section and performed entirely without this state, with respect to 836
no part of which contributions are required and paid under an 837
unemployment compensation law of any other state, the Virgin 838
Islands, Canada, or of the United States, if the individual 839
performing such service is a resident of this state and the 840
director approves the election of the employer for whom such 841
services are performed; or, if the individual is not a resident of 842
this state but the place from which the service is directed or 843
controlled is in this state, the entire services of such 844
individual shall be deemed to be employment subject to this 845
chapter, provided service is deemed to be localized within this 846
state if the service is performed entirely within this state or if 847

the service is performed both within and without this state but 848
the service performed without this state is incidental to the 849
individual's service within the state, for example, is temporary 850
or transitory in nature or consists of isolated transactions; 851

(h) Service of an individual who is a citizen of the United 852
States, performed outside the United States except in Canada after 853
December 31, 1971, or the Virgin Islands, after December 31, 1971, 854
and before the first day of January of the year following that in 855
which the United States secretary of labor approves the Virgin 856
Islands law for the first time, in the employ of an American 857
employer, other than service which is "employment" under divisions 858
(B)(2)(f) and (g) of this section or similar provisions of another 859
state's law, if: 860

(i) The employer's principal place of business in the United 861
States is located in this state; 862

(ii) The employer has no place of business in the United 863
States, but the employer is an individual who is a resident of 864
this state; or the employer is a corporation which is organized 865
under the laws of this state, or the employer is a partnership or 866
a trust and the number of partners or trustees who are residents 867
of this state is greater than the number who are residents of any 868
other state; or 869

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 870
of this section is met but the employer has elected coverage in 871
this state or the employer having failed to elect coverage in any 872
state, the individual has filed a claim for benefits, based on 873
such service, under this chapter. 874

(i) For the purposes of division (B)(2)(h) of this section, 875
the term "American employer" means an employer who is an 876
individual who is a resident of the United States; or a 877
partnership, if two-thirds or more of the partners are residents 878

of the United States; or a trust, if all of the trustees are 879
residents of the United States; or a corporation organized under 880
the laws of the United States or of any state, provided the term 881
"United States" includes the states, the District of Columbia, the 882
Commonwealth of Puerto Rico, and the Virgin Islands. 883

(j) Notwithstanding any other provisions of divisions (B)(1) 884
and (2) of this section, service, except for domestic service in a 885
private home not covered under division (A)(1)(c) of this section, 886
with respect to which a tax is required to be paid under any 887
federal law imposing a tax against which credit may be taken for 888
contributions required to be paid into a state unemployment fund, 889
or service, except for domestic service in a private home not 890
covered under division (A)(1)(c) of this section, which, as a 891
condition for full tax credit against the tax imposed by the 892
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 893
3311, is required to be covered under this chapter. 894

(k) Construction services performed by any individual under a 895
construction contract, as defined in section 4141.39 of the 896
Revised Code, if the director determines that the employer for 897
whom services are performed has the right to direct or control the 898
performance of the services and that the individuals who perform 899
the services receive remuneration for the services performed. The 900
director shall presume that the employer for whom services are 901
performed has the right to direct or control the performance of 902
the services if ten or more of the following criteria apply: 903

(i) The employer directs or controls the manner or method by 904
which instructions are given to the individual performing 905
services; 906

(ii) The employer requires particular training for the 907
individual performing services; 908

(iii) Services performed by the individual are integrated 909

into the regular functioning of the employer; 910

(iv) The employer requires that services be provided by a 911
particular individual; 912

(v) The employer hires, supervises, or pays the wages of the 913
individual performing services; 914

(vi) A continuing relationship between the employer and the 915
individual performing services exists which contemplates 916
continuing or recurring work, even if not full-time work; 917

(vii) The employer requires the individual to perform 918
services during established hours; 919

(viii) The employer requires that the individual performing 920
services be devoted on a full-time basis to the business of the 921
employer; 922

(ix) The employer requires the individual to perform services 923
on the employer's premises; 924

(x) The employer requires the individual performing services 925
to follow the order of work established by the employer; 926

(xi) The employer requires the individual performing services 927
to make oral or written reports of progress; 928

(xii) The employer makes payment to the individual for 929
services on a regular basis, such as hourly, weekly, or monthly; 930

(xiii) The employer pays expenses for the individual 931
performing services; 932

(xiv) The employer furnishes the tools and materials for use 933
by the individual to perform services; 934

(xv) The individual performing services has not invested in 935
the facilities used to perform services; 936

(xvi) The individual performing services does not realize a 937
profit or suffer a loss as a result of the performance of the 938

services; 939

(xvii) The individual performing services is not performing 940
services for more than two employers simultaneously; 941

(xviii) The individual performing services does not make the 942
services available to the general public; 943

(xix) The employer has a right to discharge the individual 944
performing services; 945

(xx) The individual performing services has the right to end 946
the individual's relationship with the employer without incurring 947
liability pursuant to an employment contract or agreement. 948

(1) Service performed by an individual in the employ of an 949
Indian tribe as defined by section 4(e) of the "Indian 950
Self-Determination and Education Assistance Act," 88 Stat. 2204 951
(1975), 25 U.S.C.A. 450b(e), including any subdivision, 952
subsidiary, or business enterprise wholly owned by an Indian tribe 953
provided that the service is excluded from employment as defined 954
in the "Federal Unemployment Tax Act," 53 Stat. 1837 (1939), 26 955
U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division 956
(B)(3) of this section. 957

(m) Service performed by an individual for or on behalf of a 958
motor transportation company transporting property and the 959
individual is an operator of a car, van, truck, tractor, or 960
truck-tractor that is licensed and registered under Chapter 4503. 961
of the Revised Code or a similar law of another state, unless the 962
majority of the following factors apply to the individual: 963

(i) The individual owns the vehicle used to provide the 964
service or holds it under a bona fide lease arrangement. 965

(ii) The individual is responsible for the maintenance of the 966
vehicle used to provide the service. 967

(iii) The individual is responsible for the operating costs 968

of the vehicle used to provide the service, including fuel, 969
repairs, supplies, vehicle insurance, and personal expenses, 970
except that the individual may be paid the carrier's fuel 971
surcharge and incidental costs, including tolls, permits, and 972
lumper fees. 973

(iv) The individual is responsible for supplying the 974
necessary personal services to operate the vehicle used to provide 975
the service. 976

(v) The compensation paid to the individual is based on 977
factors related to work performed, including a percentage of any 978
schedule of rates, and not on the basis of the hours or time 979
expended. 980

(vi) The individual substantially controls the means and 981
manner of performing the services, in conformance with regulatory 982
requirements and specifications of the shipper. 983

(vii) The individual enters into a written contract that 984
describes the relationship between the individual and the company 985
for whom the individual is performing the service to be that of an 986
independent contractor and not that of an employee. 987

(3) "Employment" does not include the following services if 988
they are found not subject to the "Federal Unemployment Tax Act," 989
84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services 990
are not required to be included under division (B)(2)(j) of this 991
section: 992

(a) Service performed after December 31, 1977, in 993
agricultural labor, except as provided in division (A)(1)(d) of 994
this section; 995

(b) Domestic service performed after December 31, 1977, in a 996
private home, local college club, or local chapter of a college 997
fraternity or sorority except as provided in division (A)(1)(c) of 998
this section; 999

(c) Service performed after December 31, 1977, for this state 1000
or a political subdivision as described in division (B)(2)(a) of 1001
this section when performed: 1002

(i) As a publicly elected official; 1003

(ii) As a member of a legislative body, or a member of the 1004
judiciary; 1005

(iii) As a military member of the Ohio national guard; 1006

(iv) As an employee, not in the classified service as defined 1007
in section 124.11 of the Revised Code, serving on a temporary 1008
basis in case of fire, storm, snow, earthquake, flood, or similar 1009
emergency; 1010

(v) In a position which, under or pursuant to law, is 1011
designated as a major nontenured policymaking or advisory 1012
position, not in the classified service of the state, or a 1013
policymaking or advisory position the performance of the duties of 1014
which ordinarily does not require more than eight hours per week. 1015

(d) In the employ of any governmental unit or instrumentality 1016
of the United States; 1017

(e) Service performed after December 31, 1971: 1018

(i) Service in the employ of an educational institution or 1019
institution of higher education, including those operated by the 1020
state or a political subdivision, if such service is performed by 1021
a student who is enrolled and is regularly attending classes at 1022
the educational institution or institution of higher education; or 1023

(ii) By an individual who is enrolled at a nonprofit or 1024
public educational institution which normally maintains a regular 1025
faculty and curriculum and normally has a regularly organized body 1026
of students in attendance at the place where its educational 1027
activities are carried on as a student in a full-time program, 1028
taken for credit at the institution, which combines academic 1029

instruction with work experience, if the service is an integral 1030
part of the program, and the institution has so certified to the 1031
employer, provided that this subdivision shall not apply to 1032
service performed in a program established for or on behalf of an 1033
employer or group of employers+_. 1034

(f) Service performed by an individual in the employ of the 1035
individual's son, daughter, or spouse and service performed by a 1036
child under the age of eighteen in the employ of the child's 1037
father or mother; 1038

(g) Service performed for one or more principals by an 1039
individual who is compensated on a commission basis, who in the 1040
performance of the work is master of the individual's own time and 1041
efforts, and whose remuneration is wholly dependent on the amount 1042
of effort the individual chooses to expend, and which service is 1043
not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 1044
(1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 1045
31, 1971: 1046

(i) By an individual for an employer as an insurance agent or 1047
as an insurance solicitor, if all this service is performed for 1048
remuneration solely by way of commission; 1049

(ii) As a home worker performing work, according to 1050
specifications furnished by the employer for whom the services are 1051
performed, on materials or goods furnished by such employer which 1052
are required to be returned to the employer or to a person 1053
designated for that purpose. 1054

(h) Service performed after December 31, 1971: 1055

(i) In the employ of a church or convention or association of 1056
churches, or in an organization which is operated primarily for 1057
religious purposes and which is operated, supervised, controlled, 1058
or principally supported by a church or convention or association 1059
of churches; 1060

(ii) By a duly ordained, commissioned, or licensed minister 1061
of a church in the exercise of the individual's ministry or by a 1062
member of a religious order in the exercise of duties required by 1063
such order; or 1064

(iii) In a facility conducted for the purpose of carrying out 1065
a program of rehabilitation for individuals whose earning capacity 1066
is impaired by age or physical or mental deficiency or injury, or 1067
providing remunerative work for individuals who because of their 1068
impaired physical or mental capacity cannot be readily absorbed in 1069
the competitive labor market, by an individual receiving such 1070
rehabilitation or remunerative work; 1071

(i) Service performed after June 30, 1939, with respect to 1072
which unemployment compensation is payable under the "Railroad 1073
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1074

(j) Service performed by an individual in the employ of any 1075
organization exempt from income tax under section 501 of the 1076
"Internal Revenue Code of 1954," if the remuneration for such 1077
service does not exceed fifty dollars in any calendar quarter, or 1078
if such service is in connection with the collection of dues or 1079
premiums for a fraternal beneficial society, order, or association 1080
and is performed away from the home office or is ritualistic 1081
service in connection with any such society, order, or 1082
association; 1083

(k) Casual labor not in the course of an employer's trade or 1084
business; incidental service performed by an officer, appraiser, 1085
or member of a finance committee of a bank, building and loan 1086
association, savings and loan association, or savings association 1087
when the remuneration for such incidental service exclusive of the 1088
amount paid or allotted for directors' fees does not exceed sixty 1089
dollars per calendar quarter is casual labor; 1090

(l) Service performed in the employ of a voluntary employees' 1091

beneficial association providing for the payment of life, 1092
sickness, accident, or other benefits to the members of such 1093
association or their dependents or their designated beneficiaries, 1094
if admission to a membership in such association is limited to 1095
individuals who are officers or employees of a municipal or public 1096
corporation, of a political subdivision of the state, or of the 1097
United States and no part of the net earnings of such association 1098
inures, other than through such payments, to the benefit of any 1099
private shareholder or individual; 1100

(m) Service performed by an individual in the employ of a 1101
foreign government, including service as a consular or other 1102
officer or employee or of a nondiplomatic representative; 1103

(n) Service performed in the employ of an instrumentality 1104
wholly owned by a foreign government if the service is of a 1105
character similar to that performed in foreign countries by 1106
employees of the United States or of an instrumentality thereof 1107
and if the director finds that the secretary of state of the 1108
United States has certified to the secretary of the treasury of 1109
the United States that the foreign government, with respect to 1110
whose instrumentality exemption is claimed, grants an equivalent 1111
exemption with respect to similar service performed in the foreign 1112
country by employees of the United States and of instrumentalities 1113
thereof; 1114

(o) Service with respect to which unemployment compensation 1115
is payable under an unemployment compensation system established 1116
by an act of congress; 1117

(p) Service performed as a student nurse in the employ of a 1118
hospital or a nurses' training school by an individual who is 1119
enrolled and is regularly attending classes in a nurses' training 1120
school chartered or approved pursuant to state law, and service 1121
performed as an intern in the employ of a hospital by an 1122
individual who has completed a four years' course in a medical 1123

school chartered or approved pursuant to state law; 1124

(q) Service performed by an individual under the age of 1125
eighteen in the delivery or distribution of newspapers or shopping 1126
news, not including delivery or distribution to any point for 1127
subsequent delivery or distribution; 1128

(r) Service performed in the employ of the United States or 1129
an instrumentality of the United States immune under the 1130
Constitution of the United States from the contributions imposed 1131
by this chapter, except that to the extent that congress permits 1132
states to require any instrumentalities of the United States to 1133
make payments into an unemployment fund under a state unemployment 1134
compensation act, this chapter shall be applicable to such 1135
instrumentalities and to services performed for such 1136
instrumentalities in the same manner, to the same extent, and on 1137
the same terms as to all other employers, individuals, and 1138
services, provided that if this state is not certified for any 1139
year by the proper agency of the United States under section 3304 1140
of the "Internal Revenue Code of 1954," the payments required of 1141
such instrumentalities with respect to such year shall be refunded 1142
by the director from the fund in the same manner and within the 1143
same period as is provided in division (E) of section 4141.09 of 1144
the Revised Code with respect to contributions erroneously 1145
collected; 1146

(s) Service performed by an individual as a member of a band 1147
or orchestra, provided such service does not represent the 1148
principal occupation of such individual, and which service is not 1149
subject to or required to be covered for full tax credit against 1150
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1151
183 (1939), 26 U.S.C.A. 3301 to 3311. 1152

(t) Service performed in the employ of a day camp whose 1153
camping season does not exceed twelve weeks in any calendar year, 1154
and which service is not subject to the "Federal Unemployment Tax 1155

Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1156
performed after December 31, 1971: 1157

(i) In the employ of a hospital, if the service is performed 1158
by a patient of the hospital, as defined in division (W) of this 1159
section; 1160

(ii) For a prison or other correctional institution by an 1161
inmate of the prison or correctional institution; 1162

(iii) Service performed after December 31, 1977, by an inmate 1163
of a custodial institution operated by the state, a political 1164
subdivision, or a nonprofit organization. 1165

(u) Service that is performed by a nonresident alien 1166
individual for the period the individual temporarily is present in 1167
the United States as a nonimmigrant under division (F), (J), (M), 1168
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1169
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1170
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1171
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1172

(v) Notwithstanding any other provisions of division (B)(3) 1173
of this section, services that are excluded under divisions 1174
(B)(3)(g), (j), (k), and (l) of this section shall not be excluded 1175
from employment when performed for a nonprofit organization, as 1176
defined in division (X) of this section, or for this state or its 1177
instrumentalities, or for a political subdivision or its 1178
instrumentalities or for Indian tribes; 1179

(w) Service that is performed by an individual working as an 1180
election official or election worker if the amount of remuneration 1181
received by the individual during the calendar year for services 1182
as an election official or election worker is less than one 1183
thousand dollars; 1184

(x) Service performed for an elementary or secondary school 1185
that is operated primarily for religious purposes, that is 1186

described in subsection 501(c)(3) and exempt from federal income 1187
taxation under subsection 501(a) of the Internal Revenue Code, 26 1188
U.S.C.A. 501; 1189

(y) Service performed by a person committed to a penal 1190
institution. 1191

(z) Service performed for an Indian tribe as described in 1192
division (B)(2)(1) of this section when performed in any of the 1193
following manners: 1194

(i) As a publicly elected official; 1195

(ii) As a member of an Indian tribal council; 1196

(iii) As a member of a legislative or judiciary body; 1197

(iv) In a position which, pursuant to Indian tribal law, is 1198
designated as a major nontenured policymaking or advisory 1199
position, or a policymaking or advisory position where the 1200
performance of the duties ordinarily does not require more than 1201
eight hours of time per week; 1202

(v) As an employee serving on a temporary basis in the case 1203
of a fire, storm, snow, earthquake, flood, or similar emergency. 1204

(aa) Service performed after December 31, 1971, for a 1205
nonprofit organization, this state or its instrumentalities, a 1206
political subdivision or its instrumentalities, or an Indian tribe 1207
as part of an unemployment work-relief or work-training program 1208
assisted or financed in whole or in part by any federal agency or 1209
an agency of a state or political subdivision, thereof, by an 1210
individual receiving the work-relief or work-training. 1211

(4) If the services performed during one half or more of any 1212
pay period by an employee for the person employing that employee 1213
constitute employment, all the services of such employee for such 1214
period shall be deemed to be employment; but if the services 1215
performed during more than one half of any such pay period by an 1216

employee for the person employing that employee do not constitute 1217
employment, then none of the services of such employee for such 1218
period shall be deemed to be employment. As used in division 1219
(B)(4) of this section, "pay period" means a period, of not more 1220
than thirty-one consecutive days, for which payment of 1221
remuneration is ordinarily made to the employee by the person 1222
employing that employee. Division (B)(4) of this section does not 1223
apply to services performed in a pay period by an employee for the 1224
person employing that employee, if any of such service is excepted 1225
by division (B)(3)(o) of this section. 1226

(C) "Benefits" means money payments payable to an individual 1227
who has established benefit rights, as provided in this chapter, 1228
for loss of remuneration due to the individual's unemployment. 1229

(D) "Benefit rights" means the weekly benefit amount and the 1230
maximum benefit amount that may become payable to an individual 1231
within the individual's benefit year as determined by the 1232
director. 1233

(E) "Claim for benefits" means a claim for waiting period or 1234
benefits for a designated week. 1235

(F) "Additional claim" means the first claim for benefits 1236
filed following any separation from employment during a benefit 1237
year; "continued claim" means any claim other than the first claim 1238
for benefits and other than an additional claim. 1239

(G)(1) "Wages" means remuneration paid to an employee by each 1240
of the employee's employers with respect to employment; except 1241
that wages shall not include that part of remuneration paid during 1242
any calendar year to an individual by an employer or such 1243
employer's predecessor in interest in the same business or 1244
enterprise, which in any calendar year is in excess of eight 1245
thousand two hundred fifty dollars on and after January 1, 1992; 1246
eight thousand five hundred dollars on and after January 1, 1993; 1247

eight thousand seven hundred fifty dollars on and after January 1, 1248
1994; and nine thousand dollars on and after January 1, 1995. 1249
Remuneration in excess of such amounts shall be deemed wages 1250
subject to contribution to the same extent that such remuneration 1251
is defined as wages under the "Federal Unemployment Tax Act," 84 1252
Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 1253
remuneration paid an employee by an employer with respect to 1254
employment in another state, upon which contributions were 1255
required and paid by such employer under the unemployment 1256
compensation act of such other state, shall be included as a part 1257
of remuneration in computing the amount specified in this 1258
division. 1259

(2) Notwithstanding division (G)(1) of this section, if, as 1260
of the computation date for any calendar year, the director 1261
determines that the level of the unemployment compensation fund is 1262
sixty per cent or more below the minimum safe level as defined in 1263
section 4141.25 of the Revised Code, then, effective the first day 1264
of January of the following calendar year, wages subject to this 1265
chapter shall not include that part of remuneration paid during 1266
any calendar year to an individual by an employer or such 1267
employer's predecessor in interest in the same business or 1268
enterprise which is in excess of nine thousand dollars. The 1269
increase in the dollar amount of wages subject to this chapter 1270
under this division shall remain in effect from the date of the 1271
director's determination pursuant to division (G)(2) of this 1272
section and thereafter notwithstanding the fact that the level in 1273
the fund may subsequently become less than sixty per cent below 1274
the minimum safe level. 1275

(H)(1) "Remuneration" means all compensation for personal 1276
services, including commissions and bonuses and the cash value of 1277
all compensation in any medium other than cash, except that in the 1278
case of agricultural or domestic service, "remuneration" includes 1279

only cash remuneration. Gratuities customarily received by an 1280
individual in the course of the individual's employment from 1281
persons other than the individual's employer and which are 1282
accounted for by such individual to the individual's employer are 1283
taxable wages. 1284

The reasonable cash value of compensation paid in any medium 1285
other than cash shall be estimated and determined in accordance 1286
with rules prescribed by the director, provided that 1287
"remuneration" does not include: 1288

(a) Payments as provided in divisions (b)(2) to (b)(16) of 1289
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 1290
26 U.S.C.A. 3301 to 3311, as amended; 1291

(b) The payment by an employer, without deduction from the 1292
remuneration of the individual in the employer's employ, of the 1293
tax imposed upon an individual in the employer's employ under 1294
section 3101 of the "Internal Revenue Code of 1954," with respect 1295
to services performed after October 1, 1941. 1296

(2) "Cash remuneration" means all remuneration paid in cash, 1297
including commissions and bonuses, but not including the cash 1298
value of all compensation in any medium other than cash. 1299

(I) "Interested party" means the director and any party to 1300
whom notice of a determination of an application for benefit 1301
rights or a claim for benefits is required to be given under 1302
section 4141.28 of the Revised Code. 1303

(J) "Annual payroll" means the total amount of wages subject 1304
to contributions during a twelve-month period ending with the last 1305
day of the second calendar quarter of any calendar year. 1306

(K) "Average annual payroll" means the average of the last 1307
three annual payrolls of an employer, provided that if, as of any 1308
computation date, the employer has had less than three annual 1309
payrolls in such three-year period, such average shall be based on 1310

the annual payrolls which the employer has had as of such date. 1311

(L)(1) "Contributions" means the money payments to the state 1312
unemployment compensation fund required of employers by section 1313
4141.25 of the Revised Code and of the state and any of its 1314
political subdivisions electing to pay contributions under section 1315
4141.242 of the Revised Code. Employers paying contributions shall 1316
be described as "contributory employers." 1317

(2) "Payments in lieu of contributions" means the money 1318
payments to the state unemployment compensation fund required of 1319
reimbursing employers under sections 4141.241 and 4141.242 of the 1320
Revised Code. 1321

(M) An individual is "totally unemployed" in any week during 1322
which the individual performs no services and with respect to such 1323
week no remuneration is payable to the individual. 1324

(N) An individual is "partially unemployed" in any week if, 1325
due to involuntary loss of work, the total remuneration payable to 1326
the individual for such week is less than the individual's weekly 1327
benefit amount. 1328

(O) "Week" means the calendar week ending at midnight 1329
Saturday unless an equivalent week of seven consecutive calendar 1330
days is prescribed by the director. 1331

(1) "Qualifying week" means any calendar week in an 1332
individual's base period with respect to which the individual 1333
earns or is paid remuneration in employment subject to this 1334
chapter. A calendar week with respect to which an individual earns 1335
remuneration but for which payment was not made within the base 1336
period, when necessary to qualify for benefit rights, may be 1337
considered to be a qualifying week. The number of qualifying weeks 1338
which may be established in a calendar quarter shall not exceed 1339
the number of calendar weeks in the quarter. 1340

(2) "Average weekly wage" means the amount obtained by 1341

dividing an individual's total remuneration for all qualifying 1342
weeks during the base period by the number of such qualifying 1343
weeks, provided that if the computation results in an amount that 1344
is not a multiple of one dollar, such amount shall be rounded to 1345
the next lower multiple of one dollar. 1346

(P) "Weekly benefit amount" means the amount of benefits an 1347
individual would be entitled to receive for one week of total 1348
unemployment. 1349

(Q)(1) "Base period" means the first four of the last five 1350
completed calendar quarters immediately preceding the first day of 1351
an individual's benefit year, except as provided in division 1352
(Q)(2) of this section. 1353

(2) If an individual does not have sufficient qualifying 1354
weeks and wages in the base period to qualify for benefit rights, 1355
the individual's base period shall be the four most recently 1356
completed calendar quarters preceding the first day of the 1357
individual's benefit year. Such base period shall be known as the 1358
"alternate base period." If information as to weeks and wages for 1359
the most recent quarter of the alternate base period is not 1360
available to the director from the regular quarterly reports of 1361
wage information, which are systematically accessible, the 1362
director may, consistent with the provisions of section 4141.28 of 1363
the Revised Code, base the determination of eligibility for 1364
benefits on the affidavit of the claimant with respect to weeks 1365
and wages for that calendar quarter. The claimant shall furnish 1366
payroll documentation, where available, in support of the 1367
affidavit. The determination based upon the alternate base period 1368
as it relates to the claimant's benefit rights, shall be amended 1369
when the quarterly report of wage information from the employer is 1370
timely received and that information causes a change in the 1371
determination. As provided in division (B) of section 4141.28 of 1372
the Revised Code, any benefits paid and charged to an employer's 1373

account, based upon a claimant's affidavit, shall be adjusted 1374
effective as of the beginning of the claimant's benefit year. No 1375
calendar quarter in a base period or alternate base period shall 1376
be used to establish a subsequent benefit year. 1377

(3) The "base period" of a combined wage claim, as described 1378
in division (H) of section 4141.43 of the Revised Code, shall be 1379
the base period prescribed by the law of the state in which the 1380
claim is allowed. 1381

(4) For purposes of determining the weeks that comprise a 1382
completed calendar quarter under this division, only those weeks 1383
ending at midnight Saturday within the calendar quarter shall be 1384
utilized. 1385

(R)(1) "Benefit year" with respect to an individual means the 1386
fifty-two week period beginning with the first day of that week 1387
with respect to which the individual first files a valid 1388
application for determination of benefit rights, and thereafter 1389
the fifty-two week period beginning with the first day of that 1390
week with respect to which the individual next files a valid 1391
application for determination of benefit rights after the 1392
termination of the individual's last preceding benefit year, 1393
except that the application shall not be considered valid unless 1394
the individual has had employment in six weeks that is subject to 1395
this chapter or the unemployment compensation act of another 1396
state, or the United States, and has, since the beginning of the 1397
individual's previous benefit year, in the employment earned three 1398
times the average weekly wage determined for the previous benefit 1399
year. The "benefit year" of a combined wage claim, as described in 1400
division (H) of section 4141.43 of the Revised Code, shall be the 1401
benefit year prescribed by the law of the state in which the claim 1402
is allowed. Any application for determination of benefit rights 1403
made in accordance with section 4141.28 of the Revised Code is 1404
valid if the individual filing such application is unemployed, has 1405

been employed by an employer or employers subject to this chapter 1406
in at least twenty qualifying weeks within the individual's base 1407
period, and has earned or been paid remuneration at an average 1408
weekly wage of not less than twenty-seven and one-half per cent of 1409
the statewide average weekly wage for such weeks. For purposes of 1410
determining whether an individual has had sufficient employment 1411
since the beginning of the individual's previous benefit year to 1412
file a valid application, "employment" means the performance of 1413
services for which remuneration is payable. 1414

(2) Effective for benefit years beginning on and after 1415
December 26, 2004, any application for determination of benefit 1416
rights made in accordance with section 4141.28 of the Revised Code 1417
is valid if the individual satisfies the criteria described in 1418
division (R)(1) of this section, and if the reason for the 1419
individual's separation from employment is not disqualifying 1420
pursuant to division (D)(2) of section 4141.29 or section 4141.291 1421
of the Revised Code. A disqualification imposed pursuant to 1422
division (D)(2) of section 4141.29 or section 4141.291 of the 1423
Revised Code must be removed as provided in those sections as a 1424
requirement of establishing a valid application for benefit years 1425
beginning on and after December 26, 2004. 1426

(3) The statewide average weekly wage shall be calculated by 1427
the director once a year based on the twelve-month period ending 1428
the thirtieth day of June, as set forth in division (B)(3) of 1429
section 4141.30 of the Revised Code, rounded down to the nearest 1430
dollar. Increases or decreases in the amount of remuneration 1431
required to have been earned or paid in order for individuals to 1432
have filed valid applications shall become effective on Sunday of 1433
the calendar week in which the first day of January occurs that 1434
follows the twelve-month period ending the thirtieth day of June 1435
upon which the calculation of the statewide average weekly wage 1436
was based. 1437

(4) As used in this division, an individual is "unemployed" 1438
if, with respect to the calendar week in which such application is 1439
filed, the individual is "partially unemployed" or "totally 1440
unemployed" as defined in this section or if, prior to filing the 1441
application, the individual was separated from the individual's 1442
most recent work for any reason which terminated the individual's 1443
employee-employer relationship, or was laid off indefinitely or 1444
for a definite period of seven or more days. 1445

(S) "Calendar quarter" means the period of three consecutive 1446
calendar months ending on the thirty-first day of March, the 1447
thirtieth day of June, the thirtieth day of September, and the 1448
thirty-first day of December, or the equivalent thereof as the 1449
director prescribes by rule. 1450

(T) "Computation date" means the first day of the third 1451
calendar quarter of any calendar year. 1452

(U) "Contribution period" means the calendar year beginning 1453
on the first day of January of any year. 1454

(V) "Agricultural labor," for the purpose of this division, 1455
means any service performed prior to January 1, 1972, which was 1456
agricultural labor as defined in this division prior to that date, 1457
and service performed after December 31, 1971: 1458

(1) On a farm, in the employ of any person, in connection 1459
with cultivating the soil, or in connection with raising or 1460
harvesting any agricultural or horticultural commodity, including 1461
the raising, shearing, feeding, caring for, training, and 1462
management of livestock, bees, poultry, and fur-bearing animals 1463
and wildlife; 1464

(2) In the employ of the owner or tenant or other operator of 1465
a farm in connection with the operation, management, conservation, 1466
improvement, or maintenance of such farm and its tools and 1467
equipment, or in salvaging timber or clearing land of brush and 1468

other debris left by hurricane, if the major part of such service 1469
is performed on a farm; 1470

(3) In connection with the production or harvesting of any 1471
commodity defined as an agricultural commodity in section 15 (g) 1472
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1473
U.S.C. 1141j, as amended, or in connection with the ginning of 1474
cotton, or in connection with the operation or maintenance of 1475
ditches, canals, reservoirs, or waterways, not owned or operated 1476
for profit, used exclusively for supplying and storing water for 1477
farming purposes; 1478

(4) In the employ of the operator of a farm in handling, 1479
planting, drying, packing, packaging, processing, freezing, 1480
grading, storing, or delivering to storage or to market or to a 1481
carrier for transportation to market, in its unmanufactured state, 1482
any agricultural or horticultural commodity, but only if the 1483
operator produced more than one half of the commodity with respect 1484
to which such service is performed; 1485

(5) In the employ of a group of operators of farms, or a 1486
cooperative organization of which the operators are members, in 1487
the performance of service described in division (V)(4) of this 1488
section, but only if the operators produced more than one-half of 1489
the commodity with respect to which the service is performed; 1490

(6) Divisions (V)(4) and (5) of this section shall not be 1491
deemed to be applicable with respect to service performed: 1492

(a) In connection with commercial canning or commercial 1493
freezing or in connection with any agricultural or horticultural 1494
commodity after its delivery to a terminal market for distribution 1495
for consumption; or 1496

(b) On a farm operated for profit if the service is not in 1497
the course of the employer's trade or business. 1498

As used in division (V) of this section, "farm" includes 1499

stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 1500
plantations, ranches, nurseries, ranges, greenhouses, or other 1501
similar structures used primarily for the raising of agricultural 1502
or horticultural commodities and orchards. 1503

(W) "Hospital" means an institution which has been registered 1504
or licensed by the Ohio department of health as a hospital. 1505

(X) "Nonprofit organization" means an organization, or group 1506
of organizations, described in section 501(c)(3) of the "Internal 1507
Revenue Code of 1954," and exempt from income tax under section 1508
501(a) of that code. 1509

(Y) "Institution of higher education" means a public or 1510
nonprofit educational institution, including an educational 1511
institution operated by an Indian tribe, which: 1512

(1) Admits as regular students only individuals having a 1513
certificate of graduation from a high school, or the recognized 1514
equivalent; 1515

(2) Is legally authorized in this state or by the Indian 1516
tribe to provide a program of education beyond high school; and 1517

(3) Provides an educational program for which it awards a 1518
bachelor's or higher degree, or provides a program which is 1519
acceptable for full credit toward such a degree, a program of 1520
post-graduate or post-doctoral studies, or a program of training 1521
to prepare students for gainful employment in a recognized 1522
occupation. 1523

For the purposes of this division, all colleges and 1524
universities in this state are institutions of higher education. 1525

(Z) For the purposes of this chapter, "states" includes the 1526
District of Columbia, the Commonwealth of Puerto Rico, and the 1527
Virgin Islands. 1528

(AA) "Alien" means, for the purposes of division (A)(1)(d) of 1529

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

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

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

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

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

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

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

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

(3) For the purposes of this division, any individual who is

furnished by a crew leader to perform service in agricultural 1560
labor for any other employer or farm operator and who is not 1561
treated as in the employment of the crew leader under division 1562
(BB)(2) of this section shall be treated as the employee of the 1563
other employer or farm operator and not of the crew leader. The 1564
other employer or farm operator shall be treated as having paid 1565
cash remuneration to the individual in an amount equal to the 1566
amount of cash remuneration paid to the individual by the crew 1567
leader, either on the crew leader's own behalf or on behalf of the 1568
other employer or farm operator, for the service in agricultural 1569
labor performed for the other employer or farm operator. 1570

(CC) "Educational institution" means an institution other 1571
than an institution of higher education as defined in division (Y) 1572
of this section, including an educational institution operated by 1573
an Indian tribe, which: 1574

(1) Offers participants, trainees, or students an organized 1575
course of study or training designed to transfer to them 1576
knowledge, skills, information, doctrines, attitudes, or abilities 1577
from, by, or under the guidance of an instructor or teacher; and 1578

(2) Is approved, chartered, or issued a permit to operate as 1579
a school by the state board of education, other government agency, 1580
or Indian tribe that is authorized within the state to approve, 1581
charter, or issue a permit for the operation of a school. 1582

For the purposes of this division, the courses of study or 1583
training which the institution offers may be academic, technical, 1584
trade, or preparation for gainful employment in a recognized 1585
occupation. 1586

(DD) "Cost savings day" means any unpaid day off from work in 1587
which employees continue to accrue employee benefits which have a 1588
determinable value including, but not limited to, vacation, 1589
pension contribution, sick time, and life and health insurance. 1590

(EE) "Motor transportation company" has the same meaning as 1591
in section 4921.02 of the Revised Code. 1592

Section 2. That existing sections 119.14, 1349.61, 4111.03, 1593
4121.01, 4123.01, and 4141.01 of the Revised Code are hereby 1594
repealed. 1595

Section 3. The amendments made to sections 4111.03, 4121.01, 1596
4123.01, and 4141.01 of the Revised Code under Section 1 of this 1597
act do not apply to any claim or cause of action pending under 1598
Chapter 4111., 4121., 4123., or 4141. of the Revised Code on the 1599
effective date of this act. 1600

Section 4. Section 4111.03 of the Revised Code is presented 1601
in this act as a composite of the section as amended by both Sub. 1602
H.B. 187 and Am. Sub. H.B. 690 of the 126th General Assembly. The 1603
General Assembly, applying the principle stated in division (B) of 1604
section 1.52 of the Revised Code that amendments are to be 1605
harmonized if reasonably capable of simultaneous operation, finds 1606
that the composite is the resulting version of the section in 1607
effect prior to the effective date of the section as presented in 1608
this act. 1609