

**As Introduced**

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

**S. B. No. 107**

**Senator Skindell**

**Cosponsors: Senators Cafaro, Tavares, Schiavoni**

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**A B I L L**

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

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

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

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

(A) Administer and enforce the general laws of this state 18  
pertaining to buildings, pressure piping, boilers, bedding, 19

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

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

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

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

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

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

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

(H) Accept submissions, establish a fee for submissions, and 48  
review submissions of certified welding and brazing procedure 49  
specifications, procedure qualification records, and performance 50

qualification records for building services piping as required by 51  
section 4104.44 of the Revised Code. 52

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

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

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

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

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

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

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

(4) A gift card that an employer gives to an employee if use 77  
of the gift card is limited to the employer's business 78  
establishment, which may include a group of merchants that are 79  
affiliated with that business establishment; 80

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

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

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

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

(E) As used in this section: 93

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

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

(3) "Employee" means every person who may be required or 109  
directed by any employer, in consideration of direct or indirect 110  
gain or profit, to engage in any employment, or to go, or work, or 111

be at any time in any place of employment. 112

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

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

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

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

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

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

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

(4) Protect the privacy of Ohio employees' pay and personal 138  
information specified in Section 34a of Article II, Ohio 139  
Constitution, by restricting an employee's access, and access by a 140

person acting on behalf of that employee, to the employee's own 141  
pay and personal information. 142

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

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

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

(C) In accordance with Section 34a of Article II, Ohio 166  
Constitution, the state may issue licenses to employers 167  
authorizing payment of a wage below that required by Section 34a 168  
of Article II, Ohio Constitution, to individuals with mental or 169  
physical disabilities that may otherwise adversely affect their 170  
opportunity for employment. In issuing such licenses, the state 171  
shall abide by the rules adopted pursuant to section 4111.06 of 172

the Revised Code. 173

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

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

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

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

(E) In accordance with Section 34a of Article II, Ohio 199  
Constitution, an employer shall at the time of hire provide an 200  
employee with the employer's name, address, telephone number, and 201  
other contact information and update such information when it 202  
changes. As used in division (E) of this section: 203

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

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

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

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

(2)(a) With respect to employees who are not exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's base rate of pay.



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

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

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

(4)(a) Except for individuals specified in division (F)(4)(b) 260  
of this section, "hours worked for each day worked" means the 261  
total amount of time worked by an employee in whatever increments 262  
the employer uses for its payroll purposes during a day worked by 263  
the employee. An employer is not required to keep a record of the 264  
time of day an employee begins and ends work on any given day. As 265  
used in division (F)(4) of this section, "day" means a fixed 266

period of twenty-four consecutive hours during which an employee 267  
performs work for an employer. 268

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

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

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

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

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

(a) The certified or legally recognized collective bargaining representative for that employee under the applicable federal law or Chapter 4117. of the Revised Code;	298 299 300
(b) The employee's attorney;	301
(c) The employee's parent, guardian, or legal custodian.	302
A person "acting on behalf of an employee" must be specifically authorized by an employee in order to make a request for that employee's own name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to that employee.	303 304 305 306
(3) "Provide" means that an employer shall provide the requested information within thirty business days after the date the employer receives the request, unless either of the following occurs:	307 308 309 310
(a) The employer and the employee or person acting on behalf of the employee agree to some alternative time period for providing the information.	311 312 313
(b) The thirty-day period would cause a hardship on the employer under the circumstances, in which case the employer must provide the requested information as soon as practicable.	314 315 316
(4) A "request" made by an employee or a person acting on behalf of an employee means a request by an employee or a person acting on behalf of an employee for the employee's own information. The employer may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested. The employer may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the employee whose information is being requested and notarized and that reasonably specifies the particular information being requested.	317 318 319 320 321 322 323 324 325 326 327 328

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

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

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

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

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

(5) "Shall be kept confidential" means that the state shall 355  
keep the name of the employee confidential as required by division 356  
(H) of this section. 357

(I) In accordance with Section 34a of Article II, Ohio 358  
Constitution, the state may on its own initiative investigate an 359

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

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

(K) In accordance with Section 34a of Article II, Ohio 385  
Constitution, an action for equitable and monetary relief may be 386  
brought against an employer by the attorney general and/or an 387  
employee or person acting on behalf of an employee or all 388  
similarly situated employees in any court of competent 389  
jurisdiction, including the court of common pleas of an employee's 390  
county of residence, for any violation of Section 34a of Article 391

II, Ohio Constitution, or any law or regulation implementing its provisions within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after notification to the employee of final disposition by the state of a complaint for the same violation, whichever is later.

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

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

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

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

(L) In accordance with Section 34a of Article II, Ohio Constitution, there shall be no exhaustion requirement, no procedural, pleading, or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in

accordance with the same standards that apply generally in civil 423  
suits. Nothing in division (L) of this section affects the right 424  
of an employer and employee to agree to submit a dispute under 425  
this section to alternative dispute resolution, including, but not 426  
limited to, arbitration, in lieu of maintaining the civil suit 427  
specified in division (K) of this section. Nothing in this 428  
division limits the state's ability to investigate or enforce this 429  
section. 430

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

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

**Sec. 4113.15.** (A) Every individual, firm, partnership, 445  
association, or corporation doing business in this state shall, on 446  
or before the first day of each month, pay all its employees the 447  
wages earned by them during the first half of the preceding month 448  
ending with the fifteenth day thereof, and shall, on or before the 449  
fifteenth day of each month, pay such employees the wages earned 450  
by them during the last half of the preceding calendar month. If 451  
at any time of payment an employee is absent from ~~his~~ the 452  
employee's regular place of labor and does not receive ~~his~~ the 453

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

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

(C) In the absence of a contest, court order or dispute, an 473  
employer who is party to an agreement to pay or provide fringe 474  
benefits to an employee or to make any employee authorized 475  
deduction becomes a trustee of any funds required by such 476  
agreement to be paid to any person, organization, or governmental 477  
agency from the time that the duty to make such payment arises. No 478  
person shall, without reasonable justification or excuse for such 479  
failure, knowingly fail or refuse to pay to the appropriate 480  
person, organization, or governmental agency the amount necessary 481  
to provide the benefits or accomplish the purpose of any employee 482  
authorized deduction, within thirty days after the close of the 483  
pay period during which the employee earned or had deducted the 484  
amount of money necessary to pay for the fringe benefit or make 485



any employee authorized deduction. A failure or refusal to pay, 486  
regardless of the number of employee pay accounts involved, 487  
constitutes one offense for the first delinquency of thirty days 488  
and a separate offense for each successive delinquency of thirty 489  
days. 490

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

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

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

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

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

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

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

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

(4) "Employee" has the same meaning as in section 4175.01 of 512  
the Revised Code. 513

**Sec. 4115.03.** As used in sections 4115.03 to 4115.16 of the 514

Revised Code: 515

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

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

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

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

(C) "Public improvement" includes all buildings, roads, 539  
streets, alleys, sewers, ditches, sewage disposal plants, water 540  
works, and all other structures or works constructed by a public 541  
authority of the state or any political subdivision thereof or by 542  
any person who, pursuant to a contract with a public authority, 543  
constructs any structure for a public authority of the state or a 544  
political subdivision thereof. When a public authority rents or 545

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

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

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

(1) The basic hourly rate of pay; 563

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

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

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

(b) Pensions on retirement or death or insurance to provide 574  
such; 575

(c) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;	576 577 578
(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;	579 580
(e) Life insurance;	581
(f) Disability and sickness insurance;	582
(g) Accident insurance;	583
(h) Vacation and holiday pay;	584
(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;	585 586 587
(j) Other bona fide fringe benefits.	588
None of the benefits enumerated in division (E)(3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.	589 590 591 592
(F) "Interested party," with respect to a particular public improvement, means:	593 594
(1) Any person who submits a bid for the purpose of securing the award of a contract for construction of the public improvement;	595 596 597
(2) Any person acting as a subcontractor of a person mentioned in division (F)(1) of this section;	598 599
(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person mentioned in division (F)(1) or (2) of this section and which exists, in whole or in part, for the purpose of negotiating with employers concerning the wages, hours, or terms and conditions of employment	600 601 602 603 604

of employees; 605

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

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

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

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

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

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

(3) "Employer" means every person, firm, corporation, agent, 631  
manager, representative, or other person having control or custody 632  
of any employment, place of employment, or employee. 633

(4) "Employee" ~~means every person who may be required or~~ 634

~~directed by any employer, in consideration of direct or indirect~~ 635  
~~gain or profit, to engage in any employment, or to go, or work, or~~ 636  
~~be at any time in any place of employment~~ has the same meaning as 637  
in section 4175.01 of the Revised Code. 638

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

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

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

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

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

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

(11) "Safe" or "safety," as applied to any employment or a 665

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

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

(B) As used in the Revised Code: 676

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

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

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

**Sec. 4123.01.** As used in this chapter: 691

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

~~(a) Every person in the service of the state, or of any 693  
county, municipal corporation, township, or school district 694  
therein, including regular members of lawfully constituted police 695~~

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

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

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

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

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

~~(b) Every person in the service of any person, firm, or 724  
private corporation, including any public service corporation, 725  
that (i) employs one or more persons regularly in the same 726~~



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

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

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

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

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

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

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

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

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

~~(viii) The person is required to devote full time to the 755  
business of the other contracting party; 756~~

<del>(ix) The person is required to perform the work on the premises of the other contracting party;</del>	757
	758
<del>(x) The person is required to follow the order of work set by the other contracting party;</del>	759
	760
<del>(xi) The person is required to make oral or written reports of progress to the other contracting party;</del>	761
	762
<del>(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;</del>	763
	764
<del>(xiii) The person's expenses are paid for by the other contracting party;</del>	765
	766
<del>(xiv) The person's tools and materials are furnished by the other contracting party;</del>	767
	768
<del>(xv) The person is provided with the facilities used to perform services;</del>	769
	770
<del>(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;</del>	771
	772
<del>(xvii) The person is not performing services for a number of employers at the same time;</del>	773
	774
<del>(xviii) The person does not make the same services available to the general public;</del>	775
	776
<del>(xix) The other contracting party has a right to discharge the person;</del>	777
	778
<del>(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.</del>	779
	780
	781
<del>Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or</del>	782
	783
	784
	785

~~if a self-insuring employer has failed to pay compensation and 786  
benefits directly to the employer's injured and to the dependents 787  
of the employer's killed employees as required by section 4123.35 788  
of the Revised Code, shall be considered as the employee of the 789  
person who has entered into a contract, whether written or verbal, 790  
with such independent contractor unless such employees or their 791  
legal representatives or beneficiaries elect, after injury or 792  
death, to regard such independent contractor as the employer. 793~~

~~(d) Every person to whom all of the following apply: 794~~

~~(i) The person is a resident of a state other than this state 795  
and is covered by that other state's workers' compensation law; 796~~

~~(ii) The person performs labor or provides services for that 797  
person's employer while temporarily within this state; 798~~

~~(iii) The laws of that other state do not include the 799  
provisions described in division (H)(4) of section 4123.54 of the 800  
Revised Code. 801~~

(2) "Employee" does not mean any of the following: 802

(a) A duly ordained, commissioned, or licensed minister or 803  
assistant or associate minister of a church in the exercise of 804  
ministry; 805

(b) Any officer of a family farm corporation; 806

(c) An individual ~~incorporated as a corporation; or~~ 807

~~(d) An individual~~ who otherwise is an employee of an employer 808  
but who signs the waiver and affidavit specified in section 809  
4123.15 of the Revised Code on the condition that the 810  
administrator of workers' compensation has granted a waiver and 811  
exception to the individual's employer under section 4123.15 of 812  
the Revised Code. 813

Any employer may elect to include as an "employee" within 814  
this chapter, any person excluded from the definition of 815

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

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

(B) "Employer" means: 845

(1) The state, including state hospitals, each county, 846  
municipal corporation, township, school district, and hospital 847

owned by a political subdivision or subdivisions other than the 848  
state; 849

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

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

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

(1) Psychiatric conditions except where the claimant's 873  
psychiatric conditions have arisen from an injury or occupational 874  
disease sustained by that claimant or where the claimant's 875  
psychiatric conditions have arisen from sexual conduct in which 876  
the claimant was forced by threat of physical harm to engage or 877  
participate; 878

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

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

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

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

(E) "Family farm corporation" means a corporation founded for 897  
the purpose of farming agricultural land in which the majority of 898  
the voting stock is held by and the majority of the stockholders 899  
are persons or the spouse of persons related to each other within 900  
the fourth degree of kinship, according to the rules of the civil 901  
law, and at least one of the related persons is residing on or 902  
actively operating the farm, and none of whose stockholders are a 903  
corporation. A family farm corporation does not cease to qualify 904  
under this division where, by reason of any devise, bequest, or 905  
the operation of the laws of descent or distribution, the 906  
ownership of shares of voting stock is transferred to another 907  
person, as long as that person is within the degree of kinship 908  
stipulated in this division. 909

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

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

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

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

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

(K) "Other-states' coverage" means insurance coverage 938  
purchased by an employer for workers' compensation claims that 939  
arise in a state or states other than this state and that are 940

filed by the employees of the employer or those employee's 941  
dependents, as applicable, in that other state or those other 942  
states. 943

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

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

(2) A puncture in the skin; 961

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

(B) As used in this section: 964

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

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

(3) "Emergency medical worker" means a first responder, 969  
emergency medical technician-basic, emergency medical 970



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

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

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

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

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

(c) Had paid, subsequent to December 31, 1977, for employment 996  
in domestic service in a local college club, or local chapter of a 997  
college fraternity or sorority, cash remuneration of one thousand 998  
dollars or more in any calendar quarter in the current calendar 999  
year or the preceding calendar year, or had paid subsequent to 1000  
December 31, 1977, for employment in domestic service in a private 1001

home cash remuneration of one thousand dollars in any calendar 1002  
quarter in the current calendar year or the preceding calendar 1003  
year: 1004

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

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

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

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

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

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

(i) For which, within either the current or preceding 1030  
calendar year, service, except for domestic service in a private 1031  
home not covered under division (A)(1)(c) of this section, is or 1032

was performed with respect to which such employer is liable for 1033  
any federal tax against which credit may be taken for 1034  
contributions required to be paid into a state unemployment fund; 1035

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

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

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

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

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

(3) An employer subject to this chapter within any calendar 1062  
year is subject to this chapter during the whole of such year and 1063

during the next succeeding calendar year. 1064

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

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

(B)(1) "Employment" means service performed by an individual 1090  
for remuneration under any contract of hire, written or oral, 1091  
express or implied, including service performed in interstate 1092  
commerce and service performed by an officer of a corporation, 1093  
without regard to whether such service is executive, managerial, 1094  
or manual in nature, and without regard to whether such officer is 1095

a stockholder or a member of the board of directors of the 1096  
corporation, unless it is shown to the satisfaction of the 1097  
director that such individual has been and will continue to be 1098  
free from direction or control over the performance of such 1099  
service, both under a contract of service and in fact. The 1100  
director shall adopt rules to define "direction or control." 1101

(2) "Employment" includes: 1102

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

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

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

(d) Agricultural labor performed after December 31, 1977, for 1125  
a farm operator or a crew leader, as provided in division 1126

(A)(1)(d) of this section;	1127
(e) Service not covered under division (B)(1) of this section	1128
which is performed after December 31, 1971:	1129
(i) As <del>an agent driver or commission driver</del> <u>a delivery driver</u>	1130
engaged in distributing meat products, vegetable products, fruit	1131
products, bakery products, beverages <del>other than milk</del> , laundry, <del>or</del>	1132
<u>parcels, freight</u> , dry-cleaning services, <del>for the individual's</del>	1133
<del>employer or principal</del> <u>similar products</u> ;	1134
(ii) As a traveling or city salesperson, other than as <del>an</del>	1135
<del>agent driver or commission driver</del> <u>a delivery driver</u> , engaged on a	1136
full-time basis in the solicitation on behalf of and in the	1137
transmission to the salesperson's employer or principal except for	1138
sideline sales activities on behalf of some other person of orders	1139
from wholesalers, retailers, contractors, or operators of hotels,	1140
restaurants, or other similar establishments for merchandise for	1141
resale, or supplies for use in their business operations, <del>provided</del>	1142
<del>that for the purposes of division (B)(2)(c)(ii) of this section,</del>	1143
<del>the services shall be deemed employment if the contract of service</del>	1144
<del>contemplates that substantially all of the services are to be</del>	1145
<del>performed personally by the individual and that the individual</del>	1146
<del>does not have a substantial investment in facilities used in</del>	1147
<del>connection with the performance of the services other than in</del>	1148
<del>facilities for transportation, and the services are not in the</del>	1149
<del>nature of a single transaction that is not a part of a continuing</del>	1150
<del>relationship with the person for whom the services are performed.</del>	1151
(f) An individual's entire service performed within or both	1152
within and without the state if:	1153
(i) The service is localized in this state.	1154
(ii) The service is not localized in any state, but some of	1155
the service is performed in this state and either the base of	1156
operations, or if there is no base of operations then the place	1157

from which such service is directed or controlled, is in this 1158  
state or the base of operations or place from which such service 1159  
is directed or controlled is not in any state in which some part 1160  
of the service is performed but the individual's residence is in 1161  
this state. 1162

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

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

(i) The employer's principal place of business in the United 1189

States is located in this state; 1190

(ii) The employer has no place of business in the United 1191  
States, but the employer is an individual who is a resident of 1192  
this state; or the employer is a corporation which is organized 1193  
under the laws of this state, or the employer is a partnership or 1194  
a trust and the number of partners or trustees who are residents 1195  
of this state is greater than the number who are residents of any 1196  
other state; or 1197

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 1198  
of this section is met but the employer has elected coverage in 1199  
this state or the employer having failed to elect coverage in any 1200  
state, the individual has filed a claim for benefits, based on 1201  
such service, under this chapter. 1202

(i) For the purposes of division (B)(2)(h) of this section, 1203  
the term "American employer" means an employer who is an 1204  
individual who is a resident of the United States; or a 1205  
partnership, if two-thirds or more of the partners are residents 1206  
of the United States; or a trust, if all of the trustees are 1207  
residents of the United States; or a corporation organized under 1208  
the laws of the United States or of any state, provided the term 1209  
"United States" includes the states, the District of Columbia, the 1210  
Commonwealth of Puerto Rico, and the Virgin Islands. 1211

(j) Notwithstanding any other provisions of divisions (B)(1) 1212  
and (2) of this section, service, except for domestic service in a 1213  
private home not covered under division (A)(1)(c) of this section, 1214  
with respect to which a tax is required to be paid under any 1215  
federal law imposing a tax against which credit may be taken for 1216  
contributions required to be paid into a state unemployment fund, 1217  
or service, except for domestic service in a private home not 1218  
covered under division (A)(1)(c) of this section, which, as a 1219  
condition for full tax credit against the tax imposed by the 1220  
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1221



3311, is required to be covered under this chapter. 1222

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

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

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

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

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

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

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

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

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

~~(ix) The employer requires the individual to perform services~~ 1251

<del>on the employer's premises;</del>	1252
<del>(x) The employer requires the individual performing services to follow the order of work established by the employer;</del>	1253
<del>(xi) The employer requires the individual performing services to make oral or written reports of progress;</del>	1254
<del>(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;</del>	1255
<del>(xiii) The employer pays expenses for the individual performing services;</del>	1256
<del>(xiv) The employer furnishes the tools and materials for use by the individual to perform services;</del>	1257
<del>(xv) The individual performing services has not invested in the facilities used to perform services;</del>	1258
<del>(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;</del>	1259
<del>(xvii) The individual performing services is not performing services for more than two employers simultaneously;</del>	1260
<del>(xviii) The individual performing services does not make the services available to the general public;</del>	1261
<del>(xix) The employer has a right to discharge the individual performing services;</del>	1262
<del>(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.</del>	1263
(1) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision,	1264
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subsidiary, or business enterprise wholly owned by an Indian tribe 1281  
provided that the service is excluded from employment as defined 1282  
in the "Federal Unemployment Tax Act," 53 Stat. 183, (1939), 26 1283  
U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division 1284  
(B)(3) of this section. 1285

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

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

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

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

(i) As a publicly elected official; 1301

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

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

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

(v) In a position which, under or pursuant to law, is 1309  
designated as a major nontenured policymaking or advisory 1310

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

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

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

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

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

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

~~(g) Service performed for one or more principals by an 1337  
individual who is compensated on a commission basis, who in the 1338  
performance of the work is master of the individual's own time and 1339  
efforts, and whose remuneration is wholly dependent on the amount 1340  
of effort the individual chooses to expend, and which service is 1341~~

~~not subject to the "Federal Unemployment Tax Act," 53 Stat. 183~~ 1342  
~~(1939), 26 U.S.C.A. 3301 to 3311. Service performed after December~~ 1343  
31, 1971: 1344

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

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

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

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

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

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

(i) Service performed after June 30, 1939, with respect to 1370  
which unemployment compensation is payable under the "Railroad 1371  
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1372

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

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

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

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

(n) Service performed in the employ of an instrumentality wholly owned by a foreign government if the service is of a character similar to that performed in foreign countries by

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

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

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

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

(r) Service performed in the employ of the United States or 1427  
an instrumentality of the United States immune under the 1428  
Constitution of the United States from the contributions imposed 1429  
by this chapter, except that to the extent that congress permits 1430  
states to require any instrumentalities of the United States to 1431  
make payments into an unemployment fund under a state unemployment 1432  
compensation act, this chapter shall be applicable to such 1433  
instrumentalities and to services performed for such 1434  
instrumentalities in the same manner, to the same extent, and on 1435  
the same terms as to all other employers, individuals, and 1436

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

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

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

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

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

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

(u) Service that is performed by a nonresident alien 1464  
individual for the period the individual temporarily is present in 1465  
the United States as a nonimmigrant under division (F), (J), (M), 1466  
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1467



Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1468  
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1469  
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1470

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

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

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

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

(z) Service performed for an Indian tribe as described in 1490  
division (B)(2)(1) of this section when performed in any of the 1491  
following manners: 1492

(i) As a publicly elected official; 1493

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

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

(iv) In a position which, pursuant to Indian tribal law, is 1496  
designated as a major nontenured policymaking or advisory 1497

position, or a policymaking or advisory position where the 1498  
performance of the duties ordinarily does not require more than 1499  
eight hours of time per week; 1500

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

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

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

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

(D) "Benefit rights" means the weekly benefit amount and the 1528

maximum benefit amount that may become payable to an individual 1529  
within the individual's benefit year as determined by the 1530  
director. 1531

(E) "Claim for benefits" means a claim for waiting period or 1532  
benefits for a designated week. 1533

(F) "Additional claim" means the first claim for benefits 1534  
filed following any separation from employment during a benefit 1535  
year; "continued claim" means any claim other than the first claim 1536  
for benefits and other than an additional claim. 1537

(G)(1) "Wages" means remuneration paid to an employee by each 1538  
of the employee's employers with respect to employment; except 1539  
that wages shall not include that part of remuneration paid during 1540  
any calendar year to an individual by an employer or such 1541  
employer's predecessor in interest in the same business or 1542  
enterprise, which in any calendar year is in excess of eight 1543  
thousand two hundred fifty dollars on and after January 1, 1992; 1544  
eight thousand five hundred dollars on and after January 1, 1993; 1545  
eight thousand seven hundred fifty dollars on and after January 1, 1546  
1994; and nine thousand dollars on and after January 1, 1995. 1547  
Remuneration in excess of such amounts shall be deemed wages 1548  
subject to contribution to the same extent that such remuneration 1549  
is defined as wages under the "Federal Unemployment Tax Act," 84 1550  
Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 1551  
remuneration paid an employee by an employer with respect to 1552  
employment in another state, upon which contributions were 1553  
required and paid by such employer under the unemployment 1554  
compensation act of such other state, shall be included as a part 1555  
of remuneration in computing the amount specified in this 1556  
division. 1557

(2) Notwithstanding division (G)(1) of this section, if, as 1558  
of the computation date for any calendar year, the director 1559  
determines that the level of the unemployment compensation fund is 1560

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

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

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

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

(b) The payment by an employer, without deduction from the 1590  
remuneration of the individual in the employer's employ, of the 1591  
tax imposed upon an individual in the employer's employ under 1592

section 3101 of the "Internal Revenue Code of 1954," with respect 1593  
to services performed after October 1, 1941. 1594

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operator. 1842

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

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

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

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

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

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

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

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

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

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

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

**Sec. 4175.01. As used in this chapter:**

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

(1) An employee;

(2) An employer association;

(3) An interested party;

(4) A labor organization.

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

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

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

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

(2) The federal government. 1923

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cease and desist from further violation of that section; 2143

(2) Take affirmative or other action the director considers reasonable to eliminate the effect of the violation; 2144  
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(3) Collect the amount of any wages, salary, employment benefits, or other compensation denied or lost to an individual because the employer misclassified the individual; 2146  
2147  
2148

(4) Assess any civil penalty allowed under section 4175.10 or 4175.11 of the Revised Code. 2149  
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(B) If the director assesses an employer a civil penalty for a violation of section 4175.02 of the Revised Code and the employer fails to pay that civil penalty within the time period prescribed by the director, the director shall forward to the attorney general the name of the employer and the amount of the civil penalty for the purpose of collecting that civil penalty. In addition to the civil penalty assessed pursuant to this section, the employer also shall pay any fee assessed by the attorney general for collection of the civil penalty. 2151  
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(C) The attorney general shall bring any action for relief requested by the director in the name of the people of the state of Ohio. 2160  
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**Sec. 4175.10.** (A) Except as otherwise provided in division (B) of this section and section 4175.11 of the Revised Code, if, after a hearing conducted pursuant to section 4175.08 of the Revised Code, the director of commerce determines that an employer has violated section 4175.02 of the Revised Code, the employer shall be subject to a civil penalty of one thousand five hundred dollars for each violation. 2163  
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(B) Except as otherwise provided in section 4175.11 of the Revised Code if, after a hearing held in accordance with section 4175.08 of the Revised Code, the director determines that the 2170  
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2172

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

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

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

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

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

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



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

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

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

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

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

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

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

(4) Attorney's fees and costs. 2236

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

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

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

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

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

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

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

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

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

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

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

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

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

As used in this chapter: 2350

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

or (B) of section 5747.05 of the Revised Code for that year;	2481
(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year.	2482 2483
(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A)(14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.	2484 2485 2486 2487 2488 2489 2490
(15)(a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;	2491 2492 2493 2494 2495 2496
(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.	2497 2498 2499
(16) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:	2500 2501 2502
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	2503 2504 2505 2506
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	2507 2508 2509
(17) Deduct the amount contributed by the taxpayer to an	2510

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2699  
2700

(I) "Resident" means any of the following, provided that 2701  
division (I)(3) of this section applies only to taxable years of a 2702  
trust beginning in 2002 or thereafter: 2703

(1) An individual who is domiciled in this state, subject to 2704  
section 5747.24 of the Revised Code; 2705

(2) The estate of a decedent who at the time of death was 2706  
domiciled in this state. The domicile tests of section 5747.24 of 2707  
the Revised Code are not controlling for purposes of division 2708  
(I)(2) of this section. 2709

(3) A trust that, in whole or part, resides in this state. If 2710  
only part of a trust resides in this state, the trust is a 2711  
resident only with respect to that part. 2712

For the purposes of division (I)(3) of this section: 2713

(a) A trust resides in this state for the trust's current 2714  
taxable year to the extent, as described in division (I)(3)(d) of 2715  
this section, that the trust consists directly or indirectly, in 2716  
whole or in part, of assets, net of any related liabilities, that 2717  
were transferred, or caused to be transferred, directly or 2718  
indirectly, to the trust by any of the following: 2719

(i) A person, a court, or a governmental entity or 2720  
instrumentality on account of the death of a decedent, but only if 2721  
the trust is described in division (I)(3)(e)(i) or (ii) of this 2722  
section; 2723

(ii) A person who was domiciled in this state for the 2724  
purposes of this chapter when the person directly or indirectly 2725  
transferred assets to an irrevocable trust, but only if at least 2726  
one of the trust's qualifying beneficiaries is domiciled in this 2727  
state for the purposes of this chapter during all or some portion 2728

of the trust's current taxable year; 2729

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.	3195 3196 3197 3198
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	3199 3200
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	3201 3202
(EE)(1) For the purposes of division (EE) of this section:	3203
(a) "Qualifying person" means any person other than a qualifying corporation.	3204 3205
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	3206 3207 3208
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;	3209 3210 3211 3212
(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.	3213 3214 3215 3216
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.	3217 3218 3219
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	3220 3221
(1) "Trust" does not include a qualified pre-income tax trust.	3222 3223
(2) A "qualified pre-income tax trust" is any pre-income tax	3224

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

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

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

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

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

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

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

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