

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 347

Representatives Phillips, Driehaus

**Cosponsors: Representatives Barborak, Clyde, Foley, Hagan, R., Heard,
Lundy, Mallory, Ramos, Sheehy, Strahorn**

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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 industrial compliance in 16
the department 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 1533.131 of the Revised Code that may be used to obtain hunting and fishing licenses, fur taker, special deer, and special wild turkey permits, and wetlands habitat stamps;	81 82 83 84
(6) A gift card that is usable with multiple, unaffiliated sellers of goods or services;	85 86
(7) A gift card that an employer issues to an employee in recognition of services performed by the employee.	87 88
(D) Whoever violates division (A)(2) of this section is liable to the holder for any amount that the redemption value of the gift card was reduced, any court costs incurred, and reasonable attorney's fees.	89 90 91 92
(E) As used in this section:	93
(1) "Gift card" means a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value, including any electronic card issued by a merchant with a monetary value where the issuer has received payment for the full monetary value for the future purchase or delivery of goods or services and any certificate issued by a merchant where the issuer has received payment for the full monetary face value of the certificate for the future purchase or delivery of goods and services. "Gift card" does not include a prepaid calling card used to make telephone calls.	94 95 96 97 98 99 100 101 102 103 104 105 106
(2) "Employer" and "employee" have <u>has</u> the same meanings <u>meaning</u> as in section 4121.01 of the Revised Code.	107 108
(3) <u>"Employee" means every person who may be required or</u>	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 204
applicable, the address of the employer's internet site on the 205
world wide web, the employer's electronic mail address, fax 206
number, or the name, address, and telephone number of the 207
employer's statutory agent. "Other contact information" does not 208
include the name, address, telephone number, fax number, internet 209
site address, or electronic mail address of any employee, 210
shareholder, officer, director, supervisor, manager, or other 211
individual employed by or associated with an employer. 212

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Acting on behalf of an employee" means a person acting on behalf of an employee as any of the following:	296 297
(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	317 318 319 320 321 322 323 324 325

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

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

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

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

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

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

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

(H) of this section. 357

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Credit union savings or other regular savings program, ~~or~~ 509
~~(d) repayment~~ i 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 any of the following: 523

(1) Except as provided in division (B)(3) of this section, 524
any new construction of a public improvement, the total overall 525
project cost of which is fairly estimated to be more than the 526
following amounts and performed by other than full-time employees 527
who have completed their probationary periods in the classified 528
service of a public authority: 529

(a) One hundred twenty-five thousand dollars, beginning on 530
~~the effective date of this amendment~~ September 29, 2011, and 531
continuing for one year thereafter; 532

(b) Two hundred thousand dollars, beginning when the time 533
period described in division (B)(1)(a) of this section expires and 534
continuing for one year thereafter; 535

(c) Two hundred fifty thousand dollars, beginning when the 536
time period described in division (B)(1)(b) of this section 537
expires. 538

(2) Except as provided in division (B)(4) of this section, 539
any reconstruction, enlargement, alteration, repair, remodeling, 540
renovation, or painting of a public improvement, the total overall 541
project cost of which is fairly estimated to be more than the 542

following amounts and performed by other than full-time employees 543
who have completed their probationary period in the classified 544
civil service of a public authority: 545

(a) Thirty-eight thousand dollars, beginning on ~~the effective~~ 546
~~date of this amendment~~ September 29, 2011, and continuing for one 547
year thereafter; 548

(b) Sixty thousand dollars, beginning when the time period 549
described in division (B)(2)(a) of this section expires and 550
continuing for one year thereafter; 551

(c) Seventy-five thousand dollars, beginning when the time 552
period described in division (B)(2)(b) of this section expires. 553

(3) Any new construction of a public improvement that 554
involves roads, streets, alleys, sewers, ditches, and other works 555
connected to road or bridge construction, the total overall 556
project cost of which is fairly estimated to be more than 557
seventy-eight thousand two hundred fifty-eight dollars adjusted 558
biennially by the director of commerce pursuant to section 559
4115.034 of the Revised Code and performed by other than full-time 560
employees who have completed their probationary periods in the 561
classified service of a public authority; 562

(4) Any reconstruction, enlargement, alteration, repair, 563
remodeling, renovation, or painting of a public improvement that 564
involves roads, streets, alleys, sewers, ditches, and other works 565
connected to road or bridge construction, the total overall 566
project cost of which is fairly estimated to be more than 567
twenty-three thousand four hundred forty-seven dollars adjusted 568
biennially by the director of commerce pursuant to section 569
4115.034 of the Revised ~~code~~ Code and performed by other than 570
full-time employees who have completed their probationary periods 571
in the classified service of a public authority. 572

(C) "Public improvement" includes all buildings, roads, 573

streets, alleys, sewers, ditches, sewage disposal plants, water 574
works, and all other structures or works constructed by a public 575
authority of the state or any political subdivision thereof or by 576
any person who, pursuant to a contract with a public authority, 577
constructs any structure for a public authority of the state or a 578
political subdivision thereof. When a public authority rents or 579
leases a newly constructed structure within six months after 580
completion of such construction, all work performed on such 581
structure to suit it for occupancy by a public authority is a 582
"public improvement." "Public improvement" does not include an 583
improvement authorized by section 1515.08 of the Revised Code that 584
is constructed pursuant to a contract with a soil and water 585
conservation district, as defined in section 1515.01 of the 586
Revised Code, or performed as a result of a petition filed 587
pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, 588
wherein no less than seventy-five per cent of the project is 589
located on private land and no less than seventy-five per cent of 590
the cost of the improvement is paid for by private property owners 591
pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised 592
Code. 593

(D) "Locality" means the county wherein the physical work 594
upon any public improvement is being performed. 595

(E) "Prevailing wages" means the sum of the following: 596

(1) The basic hourly rate of pay; 597

(2) The rate of contribution irrevocably made by a contractor 598
or subcontractor to a trustee or to a third person pursuant to a 599
fund, plan, or program; 600

(3) The rate of costs to the contractor or subcontractor 601
which may be reasonably anticipated in providing the following 602
fringe benefits to laborers and mechanics pursuant to an 603
enforceable commitment to carry out a financially responsible plan 604

or program which was communicated in writing to the laborers and	605
mechanics affected:	606
(a) Medical or hospital care or insurance to provide such;	607
(b) Pensions on retirement or death or insurance to provide	608
such;	609
(c) Compensation for injuries or illnesses resulting from	610
occupational activities if it is in addition to that coverage	611
required by Chapters 4121. and 4123. of the Revised Code;	612
(d) Supplemental unemployment benefits that are in addition	613
to those required by Chapter 4141. of the Revised Code;	614
(e) Life insurance;	615
(f) Disability and sickness insurance;	616
(g) Accident insurance;	617
(h) Vacation and holiday pay;	618
(i) Defraying of costs for apprenticeship or other similar	619
training programs which are beneficial only to the laborers and	620
mechanics affected;	621
(j) Other bona fide fringe benefits.	622
None of the benefits enumerated in division (E)(3) of this	623
section may be considered in the determination of prevailing wages	624
if federal, state, or local law requires contractors or	625
subcontractors to provide any of such benefits.	626
(F) "Interested party," with respect to a particular contract	627
for construction of a public improvement, means:	628
(1) Any person who submits a bid for the purpose of securing	629
the award of the contract;	630
(2) Any person acting as a subcontractor of a person	631
described in division (F)(1) of this section;	632

(3) Any bona fide organization of labor which has as members 633
or is authorized to represent employees of a person described in 634
division (F)(1) or (2) of this section and which exists, in whole 635
or in part, for the purpose of negotiating with employers 636
concerning the wages, hours, or terms and conditions of employment 637
of employees; 638

(4) Any association having as members any of the persons 639
described in division (F)(1) or (2) of this section. 640

(G) Except as used in division (A) of this section, "officer" 641
means an individual who has an ownership interest or holds an 642
office of trust, command, or authority in a corporation, business 643
trust, partnership, or association. 644

(H) "Employee" has the same meaning as in section 4175.01 of 645
the Revised Code. 646

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 of 647
the Revised Code: 648

(1) "Place of employment" means every place, whether indoors 649
or out, or underground, and the premises appurtenant thereto, 650
where either temporarily or permanently any industry, trade, or 651
business is carried on, or where any process or operation, 652
directly or indirectly related to any industry, trade, or 653
business, is carried on and where any person is directly or 654
indirectly employed by another for direct or indirect gain or 655
profit, but does not include any place where persons are employed 656
in private domestic service or agricultural pursuits which do not 657
involve the use of mechanical power. 658

(2) "Employment" means any trade, occupation, or process of 659
manufacture or any method of carrying on such trade, occupation, 660
or process of manufacture in which any person may be engaged, 661
except in such private domestic service or agricultural pursuits 662

as do not involve the use of mechanical power. 663

(3) "Employer" means every person, firm, corporation, agent, 664
manager, representative, or other person having control or custody 665
of any employment, place of employment, or employee. 666

(4) "Employee" ~~means every person who may be required or~~ 667
~~directed by any employer, in consideration of direct or indirect~~ 668
~~gain or profit, to engage in any employment, or to go, or work, or~~ 669
~~be at any time in any place of employment~~ has the same meaning as 670
in section 4175.01 of the Revised Code. 671

(5) "Frequenter" means every person, other than an employee, 672
who may go in or be in a place of employment under circumstances 673
which render the person other than a trespasser. 674

(6) "Deputy" means any person employed by the industrial 675
commission or the bureau of workers' compensation, designated as a 676
deputy by the commission or the administrator of workers' 677
compensation, who possesses special, technical, scientific, 678
managerial, professional, or personal abilities or qualities in 679
matters within the jurisdiction of the commission or the bureau, 680
and who may be engaged in the performance of duties under the 681
direction of the commission or the bureau calling for the exercise 682
of such abilities or qualities. 683

(7) "Order" means any decision, rule, regulation, direction, 684
requirement, or standard, or any other determination or decision 685
that the bureau is empowered to and does make. 686

(8) "General order" means an order that applies generally 687
throughout the state to all persons, employments, or places of 688
employment, or all persons, employments, or places of employment 689
of a class under the jurisdiction of the bureau. All other orders 690
shall be considered special orders. 691

(9) "Local order" means any ordinance, order, rule, or 692
determination of the legislative authority of any municipal 693

corporation, or any trustees, or board or officers of any 694
municipal corporation upon any matter over which the bureau has 695
jurisdiction. 696

(10) "Welfare" means comfort, decency, and moral well-being. 697

(11) "Safe" or "safety," as applied to any employment or a 698
place of employment, means such freedom from danger to the life, 699
health, safety, or welfare of employees or frequenters as the 700
nature of the employment will reasonably permit, including 701
requirements as to the hours of labor with relation to the health 702
and welfare of employees. 703

(12) "Employee organization" means any labor or bona fide 704
organization in which employees participate and that exists for 705
the purpose, in whole or in part, of dealing with employers 706
concerning grievances, labor disputes, wages, hours, terms, and 707
other conditions of employment. 708

(B) As used in the Revised Code: 709

(1) "Industrial commission" means the chairperson of the 710
three-member industrial commission created pursuant to section 711
4121.02 of the Revised Code when the context refers to the 712
authority vested in the chairperson as the chief executive officer 713
of the three-member industrial commission pursuant to divisions 714
(A), (B), (C), and (D) of section 4121.03 of the Revised Code. 715

(2) "Industrial commission" means the three-member industrial 716
commission created pursuant to section 4121.02 of the Revised Code 717
when the context refers to the authority vested in the 718
three-member industrial commission pursuant to division (E) of 719
section 4121.03 of the Revised Code. 720

(3) "Industrial commission" means the industrial commission 721
as a state agency when the context refers to the authority vested 722
in the industrial commission as a state agency. 723

Sec. 4123.01. As used in this chapter: 724

(A)(1) "Employee" means: 725

~~(a) Every person in the service of the state, or of any 726
county, municipal corporation, township, or school district 727
therein, including regular members of lawfully constituted police 728
and fire departments of municipal corporations and townships, 729
whether paid or volunteer, and wherever serving within the state 730
or on temporary assignment outside thereof, and executive officers 731
of boards of education, under any appointment or contract of hire, 732
express or implied, oral or written, including any elected 733
official of the state, or of any county, municipal corporation, or 734
township, or members of boards of education. 735~~

~~As used in division (A)(1)(a) of this section, the term 736
"employee" has the same meaning as in section 4175.01 of the 737
Revised Code, except that "employee" also includes the following 738
persons when responding to an inherently dangerous situation that 739
calls for an immediate response on the part of the person, 740
regardless of whether the person is within the limits of the 741
jurisdiction of the person's regular employment or voluntary 742
service when responding, on the condition that the person responds 743
to the situation as the person otherwise would if the person were 744
on duty in the person's jurisdiction: 745~~

~~(i)(a) Off-duty peace officers. As used in division 746
(A)(1)(a)(i) of this section, "peace officer" has the same meaning 747
as in section 2935.01 of the Revised Code. 748~~

~~(ii)(b) Off-duty firefighters, whether paid or volunteer, of 749
a lawfully constituted fire department. 750~~

~~(iii)(c) Off-duty first responders, emergency medical 751
technicians-basic, emergency medical technicians-intermediate, or 752
emergency medical technicians-paramedic, whether paid or 753~~

volunteer, of an ambulance service organization or emergency 754
medical service organization pursuant to Chapter 4765. of the 755
Revised Code. 756

~~(b) Every person in the service of any person, firm, or 757
private corporation, including any public service corporation, 758
that (i) employs one or more persons regularly in the same 759
business or in or about the same establishment under any contract 760
of hire, express or implied, oral or written, including aliens and 761
minors, household workers who earn one hundred sixty dollars or 762
more in cash in any calendar quarter from a single household and 763
casual workers who earn one hundred sixty dollars or more in cash 764
in any calendar quarter from a single employer, or (ii) is bound 765
by any such contract of hire or by any other written contract, to 766
pay into the state insurance fund the premiums provided by this 767
chapter. 768~~

~~(c) Every person who performs labor or provides services 769
pursuant to a construction contract, as defined in section 4123.79 770
of the Revised Code, if at least ten of the following criteria 771
apply: 772~~

~~(i) The person is required to comply with instructions from 773
the other contracting party regarding the manner or method of 774
performing services; 775~~

~~(ii) The person is required by the other contracting party to 776
have particular training; 777~~

~~(iii) The person's services are integrated into the regular 778
functioning of the other contracting party; 779~~

~~(iv) The person is required to perform the work personally; 780~~

~~(v) The person is hired, supervised, or paid by the other 781
contracting party; 782~~

~~(vi) A continuing relationship exists between the person and 783~~

the other contracting party that contemplates continuing or	784
recurring work even if the work is not full time;	785
(vii) The person's hours of work are established by the other	786
contracting party;	787
(viii) The person is required to devote full time to the	788
business of the other contracting party;	789
(ix) The person is required to perform the work on the	790
premises of the other contracting party;	791
(x) The person is required to follow the order of work set by	792
the other contracting party;	793
(xi) The person is required to make oral or written reports	794
of progress to the other contracting party;	795
(xii) The person is paid for services on a regular basis such	796
as hourly, weekly, or monthly;	797
(xiii) The person's expenses are paid for by the other	798
contracting party;	799
(xiv) The person's tools and materials are furnished by the	800
other contracting party;	801
(xv) The person is provided with the facilities used to	802
perform services;	803
(xvi) The person does not realize a profit or suffer a loss	804
as a result of the services provided;	805
(xvii) The person is not performing services for a number of	806
employers at the same time;	807
(xviii) The person does not make the same services available	808
to the general public;	809
(xix) The other contracting party has a right to discharge	810
the person;	811
(xx) The person has the right to end the relationship with	812

~~the other contracting party without incurring liability pursuant to an employment contract or agreement.~~ 813
814

~~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 if a self-insuring employer has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.~~ 815
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~~(d) Every person to whom all of the following apply:~~ 827

~~(i) The person is a resident of a state other than this state and is covered by that other state's workers' compensation law;~~ 828
829

~~(ii) The person performs labor or provides services for that person's employer while temporarily within this state;~~ 830
831

~~(iii) The laws of that other state do not include the provisions described in division (H)(4) of section 4123.54 of the Revised Code.~~ 832
833
834

(2) "Employee" does not mean any of the following: 835

(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry; 836
837
838

(b) Any officer of a family farm corporation; 839

(c) An individual ~~incorporated as a corporation; or~~ 840

~~(d) An individual~~ who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 841
842

4123.15 of the Revised Code on the condition that the 843
administrator of workers' compensation has granted a waiver and 844
exception to the individual's employer under section 4123.15 of 845
the Revised Code. 846

Any employer may elect to include as an "employee" within 847
this chapter, any person excluded from the definition of 848
"employee" pursuant to division (A)(2) of this section. If an 849
employer is a partnership, sole proprietorship, ~~individual~~ 850
~~incorporated as a corporation~~, or family farm corporation, such 851
employer may elect to include as an "employee" within this 852
chapter, any member of such partnership, the owner of the sole 853
proprietorship, ~~the individual incorporated as a corporation~~, or 854
the officers of the family farm corporation. In the event of an 855
election, the employer shall serve upon the bureau of workers' 856
compensation written notice naming the persons to be covered, 857
include such employee's remuneration for premium purposes in all 858
future payroll reports, and no person excluded from the definition 859
of "employee" pursuant to division (A)(2) of this section, 860
proprietor, ~~individual incorporated as a corporation~~, or partner 861
shall be deemed an employee within this division until the 862
employer has served such notice. 863

For informational purposes only, the bureau shall prescribe 864
such language as it considers appropriate, on such of its forms as 865
it considers appropriate, to advise employers of their right to 866
elect to include as an "employee" within this chapter a sole 867
proprietor, any member of a partnership, ~~an individual~~ 868
~~incorporated as a corporation~~, the officers of a family farm 869
corporation, or a person excluded from the definition of 870
"employee" under division (A)(2) of this section, that they should 871
check any health and disability insurance policy, or other form of 872
health and disability plan or contract, presently covering them, 873
or the purchase of which they may be considering, to determine 874

whether such policy, plan, or contract excludes benefits for 875
illness or injury that they might have elected to have covered by 876
workers' compensation. 877

(B) "Employer" means: 878

(1) The state, including state hospitals, each county, 879
municipal corporation, township, school district, and hospital 880
owned by a political subdivision or subdivisions other than the 881
state; 882

(2) Every person, firm, professional employer organization as 883
defined in section 4125.01 of the Revised Code, and private 884
corporation, including any public service corporation, that (a) 885
has in service one or more employees or shared employees regularly 886
in the same business or in or about the same establishment under 887
any contract of hire, express or implied, oral or written, or (b) 888
is bound by any such contract of hire or by any other written 889
contract, to pay into the insurance fund the premiums provided by 890
this chapter. 891

All such employers are subject to this chapter. Any member of 892
a firm or association, who regularly performs manual labor in or 893
about a mine, factory, or other establishment, including a 894
household establishment, shall be considered an employee in 895
determining whether such person, firm, or private corporation, or 896
public service corporation, has in its service, one or more 897
employees and the employer shall report the income derived from 898
such labor to the bureau as part of the payroll of such employer, 899
and such member shall thereupon be entitled to all the benefits of 900
an employee. 901

(C) "Injury" includes any injury, whether caused by external 902
accidental means or accidental in character and result, received 903
in the course of, and arising out of, the injured employee's 904
employment. "Injury" does not include: 905

(1) Psychiatric conditions except where the claimant's 906
psychiatric conditions have arisen from an injury or occupational 907
disease sustained by that claimant or where the claimant's 908
psychiatric conditions have arisen from sexual conduct in which 909
the claimant was forced by threat of physical harm to engage or 910
participate; 911

(2) Injury or disability caused primarily by the natural 912
deterioration of tissue, an organ, or part of the body; 913

(3) Injury or disability incurred in voluntary participation 914
in an employer-sponsored recreation or fitness activity if the 915
employee signs a waiver of the employee's right to compensation or 916
benefits under this chapter prior to engaging in the recreation or 917
fitness activity; 918

(4) A condition that pre-existed an injury unless that 919
pre-existing condition is substantially aggravated by the injury. 920
Such a substantial aggravation must be documented by objective 921
diagnostic findings, objective clinical findings, or objective 922
test results. Subjective complaints may be evidence of such a 923
substantial aggravation. However, subjective complaints without 924
objective diagnostic findings, objective clinical findings, or 925
objective test results are insufficient to substantiate a 926
substantial aggravation. 927

(D) "Child" includes a posthumous child and a child legally 928
adopted prior to the injury. 929

(E) "Family farm corporation" means a corporation founded for 930
the purpose of farming agricultural land in which the majority of 931
the voting stock is held by and the majority of the stockholders 932
are persons or the spouse of persons related to each other within 933
the fourth degree of kinship, according to the rules of the civil 934
law, and at least one of the related persons is residing on or 935
actively operating the farm, and none of whose stockholders are a 936

corporation. A family farm corporation does not cease to qualify 937
under this division where, by reason of any devise, bequest, or 938
the operation of the laws of descent or distribution, the 939
ownership of shares of voting stock is transferred to another 940
person, as long as that person is within the degree of kinship 941
stipulated in this division. 942

(F) "Occupational disease" means a disease contracted in the 943
course of employment, which by its causes and the characteristics 944
of its manifestation or the condition of the employment results in 945
a hazard which distinguishes the employment in character from 946
employment generally, and the employment creates a risk of 947
contracting the disease in greater degree and in a different 948
manner from the public in general. 949

(G) "Self-insuring employer" means an employer who is granted 950
the privilege of paying compensation and benefits directly under 951
section 4123.35 of the Revised Code, including a board of county 952
commissioners for the sole purpose of constructing a sports 953
facility as defined in section 307.696 of the Revised Code, 954
provided that the electors of the county in which the sports 955
facility is to be built have approved construction of a sports 956
facility by ballot election no later than November 6, 1997. 957

(H) "Public employer" means an employer as defined in 958
division (B)(1) of this section. 959

(I) "Sexual conduct" means vaginal intercourse between a male 960
and female; anal intercourse, fellatio, and cunnilingus between 961
persons regardless of gender; and, without privilege to do so, the 962
insertion, however slight, of any part of the body or any 963
instrument, apparatus, or other object into the vaginal or anal 964
cavity of another. Penetration, however slight, is sufficient to 965
complete vaginal or anal intercourse. 966

(J) "Other-states' insurer" means an insurance company that 967

is authorized to provide workers' compensation insurance coverage 968
in any of the states that permit employers to obtain insurance for 969
workers' compensation claims through insurance companies. 970

(K) "Other-states' coverage" means insurance coverage 971
purchased by an employer for workers' compensation claims that 972
arise in a state or states other than this state and that are 973
filed by the employees of the employer or those employee's 974
dependents, as applicable, in that other state or those other 975
states. 976

Sec. 4123.026. (A) The administrator of workers' 977
compensation, or a self-insuring public employer for the peace 978
officers, firefighters, and emergency medical workers employed by 979
or volunteering for that self-insuring public employer, shall pay 980
the costs of conducting post-exposure medical diagnostic services, 981
consistent with the standards of medical care existing at the time 982
of the exposure, to investigate whether an injury or occupational 983
disease was sustained by a peace officer, firefighter, or 984
emergency medical worker when coming into contact with the blood 985
or other body fluid of another person in the course of and arising 986
out of the peace officer's, firefighter's, or emergency medical 987
worker's employment, or when responding to an inherently dangerous 988
situation in the manner described in, and in accordance with the 989
conditions specified under, division (A)(1)~~(a)~~ of section 4123.01 990
of the Revised Code, through any of the following means: 991

(1) Splash or spatter in the eye or mouth, including when 992
received in the course of conducting mouth-to-mouth resuscitation; 993

(2) A puncture in the skin; 994

(3) A cut in the skin or another opening in the skin such as 995
an open sore, wound, lesion, abrasion, or ulcer. 996

(B) As used in this section: 997

(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	998 999
(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.	1000 1001
(3) "Emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.	1002 1003 1004 1005 1006
Sec. 4141.01. As used in this chapter, unless the context otherwise requires:	1007 1008
(A)(1) "Employer" means the state, its instrumentalities, its political subdivisions and their instrumentalities, Indian tribes, and any individual or type of organization including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1971, or in the case of political subdivisions or their instrumentalities, subsequent to December 31, 1973:	1009 1010 1011 1012 1013 1014 1015 1016 1017 1018
(a) Had in employment at least one individual, or in the case of a nonprofit organization, subsequent to December 31, 1973, had not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day; or	1019 1020 1021 1022 1023 1024
(b) Except for a nonprofit organization, had paid for service in employment wages of fifteen hundred dollars or more in any calendar quarter in either the current or preceding calendar year;	1025 1026 1027

or 1028

(c) Had paid, subsequent to December 31, 1977, for employment 1029
in domestic service in a local college club, or local chapter of a 1030
college fraternity or sorority, cash remuneration of one thousand 1031
dollars or more in any calendar quarter in the current calendar 1032
year or the preceding calendar year, or had paid subsequent to 1033
December 31, 1977, for employment in domestic service in a private 1034
home cash remuneration of one thousand dollars in any calendar 1035
quarter in the current calendar year or the preceding calendar 1036
year: 1037

(i) For the purposes of divisions (A)(1)(a) and (b) of this 1038
section, there shall not be taken into account any wages paid to, 1039
or employment of, an individual performing domestic service as 1040
described in this division. 1041

(ii) An employer under this division shall not be an employer 1042
with respect to wages paid for any services other than domestic 1043
service unless the employer is also found to be an employer under 1044
division (A)(1)(a), (b), or (d) of this section. 1045

(d) As a farm operator or a crew leader subsequent to 1046
December 31, 1977, had in employment individuals in agricultural 1047
labor; and 1048

(i) During any calendar quarter in the current calendar year 1049
or the preceding calendar year, paid cash remuneration of twenty 1050
thousand dollars or more for the agricultural labor; or 1051

(ii) Had at least ten individuals in employment in 1052
agricultural labor, not including agricultural workers who are 1053
aliens admitted to the United States to perform agricultural labor 1054
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1055
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1056
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 1057
of the twenty different calendar weeks, in either the current or 1058

preceding calendar year whether or not the same individual was in 1059
employment in each day; or 1060

(e) Is not otherwise an employer as defined under division 1061
(A)(1)(a) or (b) of this section; and 1062

(i) For which, within either the current or preceding 1063
calendar year, service, except for domestic service in a private 1064
home not covered under division (A)(1)(c) of this section, is or 1065
was performed with respect to which such employer is liable for 1066
any federal tax against which credit may be taken for 1067
contributions required to be paid into a state unemployment fund; 1068

(ii) Which, as a condition for approval of this chapter for 1069
full tax credit against the tax imposed by the "Federal 1070
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 1071
required, pursuant to such act to be an employer under this 1072
chapter; or 1073

(iii) Who became an employer by election under division 1074
(A)(4) or (5) of this section and for the duration of such 1075
election; or 1076

(f) In the case of the state, its instrumentalities, its 1077
political subdivisions, and their instrumentalities, and Indian 1078
tribes, had in employment, as defined in divisions (B)(2)(a) and 1079
(B)(2)(1) of this section, at least one individual; 1080

(g) For the purposes of division (A)(1)(a) of this section, 1081
if any week includes both the thirty-first day of December and the 1082
first day of January, the days of that week before the first day 1083
of January shall be considered one calendar week and the days 1084
beginning the first day of January another week. 1085

(2) Each individual employed to perform or to assist in 1086
performing the work of any agent or employee of an employer is 1087
employed by such employer for all the purposes of this chapter, 1088
whether such individual was hired or paid directly by such 1089

employer or by such agent or employee, provided the employer had 1090
actual or constructive knowledge of the work. All individuals 1091
performing services for an employer of any person in this state 1092
who maintains two or more establishments within this state are 1093
employed by a single employer for the purposes of this chapter. 1094

(3) An employer subject to this chapter within any calendar 1095
year is subject to this chapter during the whole of such year and 1096
during the next succeeding calendar year. 1097

(4) An employer not otherwise subject to this chapter who 1098
files with the director of job and family services a written 1099
election to become an employer subject to this chapter for not 1100
less than two calendar years shall, with the written approval of 1101
such election by the director, become an employer subject to this 1102
chapter to the same extent as all other employers as of the date 1103
stated in such approval, and shall cease to be subject to this 1104
chapter as of the first day of January of any calendar year 1105
subsequent to such two calendar years only if at least thirty days 1106
prior to such first day of January the employer has filed with the 1107
director a written notice to that effect. 1108

(5) Any employer for whom services that do not constitute 1109
employment are performed may file with the director a written 1110
election that all such services performed by individuals in the 1111
employer's employ in one or more distinct establishments or places 1112
of business shall be deemed to constitute employment for all the 1113
purposes of this chapter, for not less than two calendar years. 1114
Upon written approval of the election by the director, such 1115
services shall be deemed to constitute employment subject to this 1116
chapter from and after the date stated in such approval. Such 1117
services shall cease to be employment subject to this chapter as 1118
of the first day of January of any calendar year subsequent to 1119
such two calendar years only if at least thirty days prior to such 1120
first day of January such employer has filed with the director a 1121

written notice to that effect. 1122

(B)(1) "Employment" means service performed by an individual 1123
for remuneration under any contract of hire, written or oral, 1124
express or implied, including service performed in interstate 1125
commerce and service performed by an officer of a corporation, 1126
without regard to whether such service is executive, managerial, 1127
or manual in nature, and without regard to whether such officer is 1128
a stockholder or a member of the board of directors of the 1129
corporation, unless it is shown to the satisfaction of the 1130
director that such individual has been and will continue to be 1131
free from direction or control over the performance of such 1132
service, both under a contract of service and in fact. The 1133
director shall adopt rules to define "direction or control." 1134

(2) "Employment" includes: 1135

(a) Service performed after December 31, 1977, by an 1136
individual in the employ of the state or any of its 1137
instrumentalities, or any political subdivision thereof or any of 1138
its instrumentalities or any instrumentality of more than one of 1139
the foregoing or any instrumentality of any of the foregoing and 1140
one or more other states or political subdivisions and without 1141
regard to divisions (A)(1)(a) and (b) of this section, provided 1142
that such service is excluded from employment as defined in the 1143
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 1144
3306(c)(7) and is not excluded under division (B)(3) of this 1145
section; or the services of employees covered by voluntary 1146
election, as provided under divisions (A)(4) and (5) of this 1147
section; 1148

(b) Service performed after December 31, 1971, by an 1149
individual in the employ of a religious, charitable, educational, 1150
or other organization which is excluded from the term "employment" 1151
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 1152
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 1153

3306(c)(8) of that act and is not excluded under division (B)(3) 1154
of this section; 1155

(c) Domestic service performed after December 31, 1977, for 1156
an employer, as provided in division (A)(1)(c) of this section; 1157

(d) Agricultural labor performed after December 31, 1977, for 1158
a farm operator or a crew leader, as provided in division 1159
(A)(1)(d) of this section; 1160

(e) Service not covered under division (B)(1) of this section 1161
which is performed after December 31, 1971: 1162

(i) ~~As an agent driver or commission driver~~ a delivery driver 1163
engaged in distributing meat products, vegetable products, fruit 1164
products, bakery products, beverages ~~other than milk~~, laundry, ~~or~~ 1165
~~parcels, freight~~, dry-cleaning services, ~~for the individual's~~ 1166
~~employer or principal~~ similar products; 1167

(ii) As a traveling or city salesperson, other than as ~~an~~ 1168
~~agent driver or commission driver~~ a delivery driver, engaged on a 1169
full-time basis in the solicitation on behalf of and in the 1170
transmission to the salesperson's employer or principal except for 1171
sideline sales activities on behalf of some other person of orders 1172
from wholesalers, retailers, contractors, or operators of hotels, 1173
restaurants, or other similar establishments for merchandise for 1174
resale, or supplies for use in their business operations, ~~provided~~ 1175
~~that for the purposes of division (B)(2)(c)(ii) of this section,~~ 1176
~~the services shall be deemed employment if the contract of service~~ 1177
~~contemplates that substantially all of the services are to be~~ 1178
~~performed personally by the individual and that the individual~~ 1179
~~does not have a substantial investment in facilities used in~~ 1180
~~connection with the performance of the services other than in~~ 1181
~~facilities for transportation, and the services are not in the~~ 1182
~~nature of a single transaction that is not a part of a continuing~~ 1183
~~relationship with the person for whom the services are performed.~~ 1184

(f) An individual's entire service performed within or both 1185
within and without the state if: 1186

(i) The service is localized in this state. 1187

(ii) The service is not localized in any state, but some of 1188
the service is performed in this state and either the base of 1189
operations, or if there is no base of operations then the place 1190
from which such service is directed or controlled, is in this 1191
state or the base of operations or place from which such service 1192
is directed or controlled is not in any state in which some part 1193
of the service is performed but the individual's residence is in 1194
this state. 1195

(g) Service not covered under division (B)(2)(f)(ii) of this 1196
section and performed entirely without this state, with respect to 1197
no part of which contributions are required and paid under an 1198
unemployment compensation law of any other state, the Virgin 1199
Islands, Canada, or of the United States, if the individual 1200
performing such service is a resident of this state and the 1201
director approves the election of the employer for whom such 1202
services are performed; or, if the individual is not a resident of 1203
this state but the place from which the service is directed or 1204
controlled is in this state, the entire services of such 1205
individual shall be deemed to be employment subject to this 1206
chapter, provided service is deemed to be localized within this 1207
state if the service is performed entirely within this state or if 1208
the service is performed both within and without this state but 1209
the service performed without this state is incidental to the 1210
individual's service within the state, for example, is temporary 1211
or transitory in nature or consists of isolated transactions; 1212

(h) Service of an individual who is a citizen of the United 1213
States, performed outside the United States except in Canada after 1214
December 31, 1971, or the Virgin Islands, after December 31, 1971, 1215
and before the first day of January of the year following that in 1216

which the United States secretary of labor approves the Virgin 1217
Islands law for the first time, in the employ of an American 1218
employer, other than service which is "employment" under divisions 1219
(B)(2)(f) and (g) of this section or similar provisions of another 1220
state's law, if: 1221

(i) The employer's principal place of business in the United 1222
States is located in this state; 1223

(ii) The employer has no place of business in the United 1224
States, but the employer is an individual who is a resident of 1225
this state; or the employer is a corporation which is organized 1226
under the laws of this state, or the employer is a partnership or 1227
a trust and the number of partners or trustees who are residents 1228
of this state is greater than the number who are residents of any 1229
other state; or 1230

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 1231
of this section is met but the employer has elected coverage in 1232
this state or the employer having failed to elect coverage in any 1233
state, the individual has filed a claim for benefits, based on 1234
such service, under this chapter. 1235

(i) For the purposes of division (B)(2)(h) of this section, 1236
the term "American employer" means an employer who is an 1237
individual who is a resident of the United States; or a 1238
partnership, if two-thirds or more of the partners are residents 1239
of the United States; or a trust, if all of the trustees are 1240
residents of the United States; or a corporation organized under 1241
the laws of the United States or of any state, provided the term 1242
"United States" includes the states, the District of Columbia, the 1243
Commonwealth of Puerto Rico, and the Virgin Islands. 1244

(j) Notwithstanding any other provisions of divisions (B)(1) 1245
and (2) of this section, service, except for domestic service in a 1246
private home not covered under division (A)(1)(c) of this section, 1247

with respect to which a tax is required to be paid under any 1248
federal law imposing a tax against which credit may be taken for 1249
contributions required to be paid into a state unemployment fund, 1250
or service, except for domestic service in a private home not 1251
covered under division (A)(1)(c) of this section, which, as a 1252
condition for full tax credit against the tax imposed by the 1253
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1254
3311, is required to be covered under this chapter. 1255

(k) Construction services performed by any individual under a 1256
construction contract, as defined in section 4141.39 of the 1257
Revised Code, ~~if the director determines that the employer for~~ 1258
~~whom services are performed has the right to direct or control the~~ 1259
~~performance of the services and that the individuals who perform~~ 1260
~~the services receive remuneration for the services performed. The~~ 1261
~~director shall presume that the employer for whom services are~~ 1262
~~performed has the right to direct or control the performance of~~ 1263
~~the services if ten or more of the following criteria apply:~~ 1264

~~(i) The employer directs or controls the manner or method by~~ 1265
~~which instructions are given to the individual performing~~ 1266
~~services;~~ 1267

~~(ii) The employer requires particular training for the~~ 1268
~~individual performing services;~~ 1269

~~(iii) Services performed by the individual are integrated~~ 1270
~~into the regular functioning of the employer;~~ 1271

~~(iv) The employer requires that services be provided by a~~ 1272
~~particular individual;~~ 1273

~~(v) The employer hires, supervises, or pays the wages of the~~ 1274
~~individual performing services;~~ 1275

~~(vi) A continuing relationship between the employer and the~~ 1276
~~individual performing services exists which contemplates~~ 1277
~~continuing or recurring work, even if not full time work;~~ 1278

(vii) The employer requires the individual to perform services during established hours;	1279
	1280
(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;	1281
	1282
	1283
(ix) The employer requires the individual to perform services on the employer's premises;	1284
	1285
(x) The employer requires the individual performing services to follow the order of work established by the employer;	1286
	1287
(xi) The employer requires the individual performing services to make oral or written reports of progress;	1288
	1289
(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;	1290
	1291
(xiii) The employer pays expenses for the individual performing services;	1292
	1293
(xiv) The employer furnishes the tools and materials for use by the individual to perform services;	1294
	1295
(xv) The individual performing services has not invested in the facilities used to perform services;	1296
	1297
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;	1298
	1299
	1300
(xvii) The individual performing services is not performing services for more than two employers simultaneously;	1301
	1302
(xviii) The individual performing services does not make the services available to the general public;	1303
	1304
(xix) The employer has a right to discharge the individual performing services;	1305
	1306
(xx) The individual performing services has the right to end	1307

~~the individual's relationship with the employer without incurring~~ 1308
~~liability pursuant to an employment contract or agreement.~~ 1309

(1) Service performed by an individual in the employ of an 1310
Indian tribe as defined by section 4(e) of the "Indian 1311
Self-Determination and Education Assistance Act," 88 Stat. 2204 1312
(1975), 25 U.S.C.A. 450b(e), including any subdivision, 1313
subsidiary, or business enterprise wholly owned by an Indian tribe 1314
provided that the service is excluded from employment as defined 1315
in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 1316
U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division 1317
(B)(3) of this section. 1318

(3) "Employment" does not include the following services if 1319
they are found not subject to the "Federal Unemployment Tax Act," 1320
84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services 1321
are not required to be included under division (B)(2)(j) of this 1322
section: 1323

(a) Service performed after December 31, 1977, in 1324
agricultural labor, except as provided in division (A)(1)(d) of 1325
this section; 1326

(b) Domestic service performed after December 31, 1977, in a 1327
private home, local college club, or local chapter of a college 1328
fraternity or sorority except as provided in division (A)(1)(c) of 1329
this section; 1330

(c) Service performed after December 31, 1977, for this state 1331
or a political subdivision as described in division (B)(2)(a) of 1332
this section when performed: 1333

(i) As a publicly elected official; 1334

(ii) As a member of a legislative body, or a member of the 1335
judiciary; 1336

(iii) As a military member of the Ohio national guard; 1337

(iv) As an employee, not in the classified service as defined 1338
in section 124.11 of the Revised Code, serving on a temporary 1339
basis in case of fire, storm, snow, earthquake, flood, or similar 1340
emergency; 1341

(v) In a position which, under or pursuant to law, is 1342
designated as a major nontenured policymaking or advisory 1343
position, not in the classified service of the state, or a 1344
policymaking or advisory position the performance of the duties of 1345
which ordinarily does not require more than eight hours per week. 1346

(d) In the employ of any governmental unit or instrumentality 1347
of the United States; 1348

(e) Service performed after December 31, 1971: 1349

(i) Service in the employ of an educational institution or 1350
institution of higher education, including those operated by the 1351
state or a political subdivision, if such service is performed by 1352
a student who is enrolled and is regularly attending classes at 1353
the educational institution or institution of higher education; or 1354

(ii) By an individual who is enrolled at a nonprofit or 1355
public educational institution which normally maintains a regular 1356
faculty and curriculum and normally has a regularly organized body 1357
of students in attendance at the place where its educational 1358
activities are carried on as a student in a full-time program, 1359
taken for credit at the institution, which combines academic 1360
instruction with work experience, if the service is an integral 1361
part of the program, and the institution has so certified to the 1362
employer, provided that this subdivision shall not apply to 1363
service performed in a program established for or on behalf of an 1364
employer or group of employers. 1365

(f) Service performed by an individual in the employ of the 1366
individual's son, daughter, or spouse and service performed by a 1367
child under the age of eighteen in the employ of the child's 1368

father or mother; 1369

(g) ~~Service performed for one or more principals by an~~ 1370
~~individual who is compensated on a commission basis, who in the~~ 1371
~~performance of the work is master of the individual's own time and~~ 1372
~~efforts, and whose remuneration is wholly dependent on the amount~~ 1373
~~of effort the individual chooses to expend, and which service is~~ 1374
~~not subject to the "Federal Unemployment Tax Act," 53 Stat. 183~~ 1375
~~(1939), 26 U.S.C.A. 3301 to 3311. Service performed after December~~ 1376
31, 1971: 1377

(i) By an individual for an employer as an insurance agent or 1378
as an insurance solicitor, if all this service is performed for 1379
remuneration solely by way of commission; 1380

(ii) As a home worker performing work, according to 1381
specifications furnished by the employer for whom the services are 1382
performed, on materials or goods furnished by such employer which 1383
are required to be returned to the employer or to a person 1384
designated for that purpose. 1385

(h) Service performed after December 31, 1971: 1386

(i) In the employ of a church or convention or association of 1387
churches, or in an organization which is operated primarily for 1388
religious purposes and which is operated, supervised, controlled, 1389
or principally supported by a church or convention or association 1390
of churches; 1391

(ii) By a duly ordained, commissioned, or licensed minister 1392
of a church in the exercise of the individual's ministry or by a 1393
member of a religious order in the exercise of duties required by 1394
such order; or 1395

(iii) In a facility conducted for the purpose of carrying out 1396
a program of rehabilitation for individuals whose earning capacity 1397
is impaired by age or physical or mental deficiency or injury, or 1398
providing remunerative work for individuals who because of their 1399

impaired physical or mental capacity cannot be readily absorbed in 1400
the competitive labor market, by an individual receiving such 1401
rehabilitation or remunerative work. 1402

(i) Service performed after June 30, 1939, with respect to 1403
which unemployment compensation is payable under the "Railroad 1404
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1405

(j) Service performed by an individual in the employ of any 1406
organization exempt from income tax under section 501 of the 1407
"Internal Revenue Code of 1954," if the remuneration for such 1408
service does not exceed fifty dollars in any calendar quarter, or 1409
if such service is in connection with the collection of dues or 1410
premiums for a fraternal beneficial society, order, or association 1411
and is performed away from the home office or is ritualistic 1412
service in connection with any such society, order, or 1413
association; 1414

(k) Casual labor not in the course of an employer's trade or 1415
business; incidental service performed by an officer, appraiser, 1416
or member of a finance committee of a bank, building and loan 1417
association, savings and loan association, or savings association 1418
when the remuneration for such incidental service exclusive of the 1419
amount paid or allotted for directors' fees does not exceed sixty 1420
dollars per calendar quarter is casual labor; 1421

(l) Service performed in the employ of a voluntary employees' 1422
beneficial association providing for the payment of life, 1423
sickness, accident, or other benefits to the members of such 1424
association or their dependents or their designated beneficiaries, 1425
if admission to a membership in such association is limited to 1426
individuals who are officers or employees of a municipal or public 1427
corporation, of a political subdivision of the state, or of the 1428
United States and no part of the net earnings of such association 1429
inures, other than through such payments, to the benefit of any 1430
private shareholder or individual; 1431

(m) Service performed by an individual in the employ of a 1432
foreign government, including service as a consular or other 1433
officer or employee or of a nondiplomatic representative; 1434

(n) Service performed in the employ of an instrumentality 1435
wholly owned by a foreign government if the service is of a 1436
character similar to that performed in foreign countries by 1437
employees of the United States or of an instrumentality thereof 1438
and if the director finds that the secretary of state of the 1439
United States has certified to the secretary of the treasury of 1440
the United States that the foreign government, with respect to 1441
whose instrumentality exemption is claimed, grants an equivalent 1442
exemption with respect to similar service performed in the foreign 1443
country by employees of the United States and of instrumentalities 1444
thereof; 1445

(o) Service with respect to which unemployment compensation 1446
is payable under an unemployment compensation system established 1447
by an act of congress; 1448

(p) Service performed as a student nurse in the employ of a 1449
hospital or a nurses' training school by an individual who is 1450
enrolled and is regularly attending classes in a nurses' training 1451
school chartered or approved pursuant to state law, and service 1452
performed as an intern in the employ of a hospital by an 1453
individual who has completed a four years' course in a medical 1454
school chartered or approved pursuant to state law; 1455

(q) Service performed by an individual under the age of 1456
eighteen in the delivery or distribution of newspapers or shopping 1457
news, not including delivery or distribution to any point for 1458
subsequent delivery or distribution; 1459

(r) Service performed in the employ of the United States or 1460
an instrumentality of the United States immune under the 1461
Constitution of the United States from the contributions imposed 1462

by this chapter, except that to the extent that congress permits 1463
states to require any instrumentalities of the United States to 1464
make payments into an unemployment fund under a state unemployment 1465
compensation act, this chapter shall be applicable to such 1466
instrumentalities and to services performed for such 1467
instrumentalities in the same manner, to the same extent, and on 1468
the same terms as to all other employers, individuals, and 1469
services, provided that if this state is not certified for any 1470
year by the proper agency of the United States under section 3304 1471
of the "Internal Revenue Code of 1954," the payments required of 1472
such instrumentalities with respect to such year shall be refunded 1473
by the director from the fund in the same manner and within the 1474
same period as is provided in division (E) of section 4141.09 of 1475
the Revised Code with respect to contributions erroneously 1476
collected; 1477

(s) Service performed by an individual as a member of a band 1478
or orchestra, provided such service does not represent the 1479
principal occupation of such individual, and which service is not 1480
subject to or required to be covered for full tax credit against 1481
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1482
183 (1939), 26 U.S.C.A. 3301 to 3311. 1483

(t) Service performed in the employ of a day camp whose 1484
camping season does not exceed twelve weeks in any calendar year, 1485
and which service is not subject to the "Federal Unemployment Tax 1486
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1487
performed after December 31, 1971: 1488

(i) In the employ of a hospital, if the service is performed 1489
by a patient of the hospital, as defined in division (W) of this 1490
section; 1491

(ii) For a prison or other correctional institution by an 1492
inmate of the prison or correctional institution; 1493

(iii) Service performed after December 31, 1977, by an inmate of a custodial institution operated by the state, a political subdivision, or a nonprofit organization.	1494 1495 1496
(u) Service that is performed by a nonresident alien individual for the period the individual temporarily is present in the United States as a nonimmigrant under division (F), (J), (M), or (Q) of section 101(a)(15) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded under section 3306(c)(19) of the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311.	1497 1498 1499 1500 1501 1502 1503
(v) Notwithstanding any other provisions of division (B)(3) of this section, services that are excluded under divisions (B)(3)(g), (j), (k), and (l) of this section shall not be excluded from employment when performed for a nonprofit organization, as defined in division (X) of this section, or for this state or its instrumentalities, or for a political subdivision or its instrumentalities or for Indian tribes;	1504 1505 1506 1507 1508 1509 1510
(w) Service that is performed by an individual working as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;	1511 1512 1513 1514 1515
(x) Service performed for an elementary or secondary school that is operated primarily for religious purposes, that is described in subsection 501(c)(3) and exempt from federal income taxation under subsection 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501;	1516 1517 1518 1519 1520
(y) Service performed by a person committed to a penal institution.	1521 1522
(z) Service performed for an Indian tribe as described in division (B)(2)(1) of this section when performed in any of the	1523 1524

following manners:	1525
(i) As a publicly elected official;	1526
(ii) As a member of an Indian tribal council;	1527
(iii) As a member of a legislative or judiciary body;	1528
(iv) In a position which, pursuant to Indian tribal law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours of time per week;	1529 1530 1531 1532 1533
(v) As an employee serving on a temporary basis in the case of a fire, storm, snow, earthquake, flood, or similar emergency.	1534 1535
(aa) Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, a political subdivision or its instrumentalities, or an Indian tribe as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision, thereof, by an individual receiving the work-relief or work-training.	1536 1537 1538 1539 1540 1541 1542
(bb) Participation in a learn to earn program as defined in section 4141.293 of the Revised Code.	1543 1544
(4) If the services performed during one half or more of any pay period by an employee for the person employing that employee constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing that employee do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in division (B)(4) of this section, "pay period" means a period, of not more than thirty-one consecutive days, for which payment of	1545 1546 1547 1548 1549 1550 1551 1552 1553 1554

remuneration is ordinarily made to the employee by the person 1555
employing that employee. Division (B)(4) of this section does not 1556
apply to services performed in a pay period by an employee for the 1557
person employing that employee, if any of such service is excepted 1558
by division (B)(3)(o) of this section. 1559

(C) "Benefits" means money payments payable to an individual 1560
who has established benefit rights, as provided in this chapter, 1561
for loss of remuneration due to the individual's unemployment. 1562

(D) "Benefit rights" means the weekly benefit amount and the 1563
maximum benefit amount that may become payable to an individual 1564
within the individual's benefit year as determined by the 1565
director. 1566

(E) "Claim for benefits" means a claim for waiting period or 1567
benefits for a designated week. 1568

(F) "Additional claim" means the first claim for benefits 1569
filed following any separation from employment during a benefit 1570
year; "continued claim" means any claim other than the first claim 1571
for benefits and other than an additional claim. 1572

(G)(1) "Wages" means remuneration paid to an employee by each 1573
of the employee's employers with respect to employment; except 1574
that wages shall not include that part of remuneration paid during 1575
any calendar year to an individual by an employer or such 1576
employer's predecessor in interest in the same business or 1577
enterprise, which in any calendar year is in excess of eight 1578
thousand two hundred fifty dollars on and after January 1, 1992; 1579
eight thousand five hundred dollars on and after January 1, 1993; 1580
eight thousand seven hundred fifty dollars on and after January 1, 1581
1994; and nine thousand dollars on and after January 1, 1995. 1582
Remuneration in excess of such amounts shall be deemed wages 1583
subject to contribution to the same extent that such remuneration 1584
is defined as wages under the "Federal Unemployment Tax Act," 84 1585

Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 1586
remuneration paid an employee by an employer with respect to 1587
employment in another state, upon which contributions were 1588
required and paid by such employer under the unemployment 1589
compensation act of such other state, shall be included as a part 1590
of remuneration in computing the amount specified in this 1591
division. 1592

(2) Notwithstanding division (G)(1) of this section, if, as 1593
of the computation date for any calendar year, the director 1594
determines that the level of the unemployment compensation fund is 1595
sixty per cent or more below the minimum safe level as defined in 1596
section 4141.25 of the Revised Code, then, effective the first day 1597
of January of the following calendar year, wages subject to this 1598
chapter shall not include that part of remuneration paid during 1599
any calendar year to an individual by an employer or such 1600
employer's predecessor in interest in the same business or 1601
enterprise which is in excess of nine thousand dollars. The 1602
increase in the dollar amount of wages subject to this chapter 1603
under this division shall remain in effect from the date of the 1604
director's determination pursuant to division (G)(2) of this 1605
section and thereafter notwithstanding the fact that the level in 1606
the fund may subsequently become less than sixty per cent below 1607
the minimum safe level. 1608

(H)(1) "Remuneration" means all compensation for personal 1609
services, including commissions and bonuses and the cash value of 1610
all compensation in any medium other than cash, except that in the 1611
case of agricultural or domestic service, "remuneration" includes 1612
only cash remuneration. Gratuities customarily received by an 1613
individual in the course of the individual's employment from 1614
persons other than the individual's employer and which are 1615
accounted for by such individual to the individual's employer are 1616
taxable wages. 1617

The reasonable cash value of compensation paid in any medium 1618
other than cash shall be estimated and determined in accordance 1619
with rules prescribed by the director, provided that 1620
"remuneration" does not include: 1621

(a) Payments as provided in divisions (b)(2) to (b)(16) of 1622
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 1623
26 U.S.C.A. 3301 to 3311, as amended; 1624

(b) The payment by an employer, without deduction from the 1625
remuneration of the individual in the employer's employ, of the 1626
tax imposed upon an individual in the employer's employ under 1627
section 3101 of the "Internal Revenue Code of 1954," with respect 1628
to services performed after October 1, 1941. 1629

(2) "Cash remuneration" means all remuneration paid in cash, 1630
including commissions and bonuses, but not including the cash 1631
value of all compensation in any medium other than cash. 1632

(I) "Interested party" means the director and any party to 1633
whom notice of a determination of an application for benefit 1634
rights or a claim for benefits is required to be given under 1635
section 4141.28 of the Revised Code. 1636

(J) "Annual payroll" means the total amount of wages subject 1637
to contributions during a twelve-month period ending with the last 1638
day of the second calendar quarter of any calendar year. 1639

(K) "Average annual payroll" means the average of the last 1640
three annual payrolls of an employer, provided that if, as of any 1641
computation date, the employer has had less than three annual 1642
payrolls in such three-year period, such average shall be based on 1643
the annual payrolls which the employer has had as of such date. 1644

(L)(1) "Contributions" means the money payments to the state 1645
unemployment compensation fund required of employers by section 1646
4141.25 of the Revised Code and of the state and any of its 1647
political subdivisions electing to pay contributions under section 1648

4141.242 of the Revised Code. Employers paying contributions shall 1649
be described as "contributory employers." 1650

(2) "Payments in lieu of contributions" means the money 1651
payments to the state unemployment compensation fund required of 1652
reimbursing employers under sections 4141.241 and 4141.242 of the 1653
Revised Code. 1654

(M) An individual is "totally unemployed" in any week during 1655
which the individual performs no services and with respect to such 1656
week no remuneration is payable to the individual. 1657

(N) An individual is "partially unemployed" in any week if, 1658
due to involuntary loss of work, the total remuneration payable to 1659
the individual for such week is less than the individual's weekly 1660
benefit amount. 1661

(O) "Week" means the calendar week ending at midnight 1662
Saturday unless an equivalent week of seven consecutive calendar 1663
days is prescribed by the director. 1664

(1) "Qualifying week" means any calendar week in an 1665
individual's base period with respect to which the individual 1666
earns or is paid remuneration in employment subject to this 1667
chapter. A calendar week with respect to which an individual earns 1668
remuneration but for which payment was not made within the base 1669
period, when necessary to qualify for benefit rights, may be 1670
considered to be a qualifying week. The number of qualifying weeks 1671
which may be established in a calendar quarter shall not exceed 1672
the number of calendar weeks in the quarter. 1673

(2) "Average weekly wage" means the amount obtained by 1674
dividing an individual's total remuneration for all qualifying 1675
weeks during the base period by the number of such qualifying 1676
weeks, provided that if the computation results in an amount that 1677
is not a multiple of one dollar, such amount shall be rounded to 1678
the next lower multiple of one dollar. 1679

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

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

(2) If an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period shall be the four most recently completed calendar quarters preceding the first day of the individual's benefit year. Such base period shall be known as the "alternate base period." If information as to weeks and wages for the most recent quarter of the alternate base period is not available to the director from the regular quarterly reports of wage information, which are systematically accessible, the director may, consistent with the provisions of section 4141.28 of the Revised Code, base the determination of eligibility for benefits on the affidavit of the claimant with respect to weeks and wages for that calendar quarter. The claimant shall furnish payroll documentation, where available, in support of the affidavit. The determination based upon the alternate base period as it relates to the claimant's benefit rights, shall be amended when the quarterly report of wage information from the employer is timely received and that information causes a change in the determination. As provided in division (B) of section 4141.28 of the Revised Code, any benefits paid and charged to an employer's account, based upon a claimant's affidavit, shall be adjusted effective as of the beginning of the claimant's benefit year. No calendar quarter in a base period or alternate base period shall be used to establish a subsequent benefit year.

(3) The "base period" of a combined wage claim, as described

in division (H) of section 4141.43 of the Revised Code, shall be 1712
the base period prescribed by the law of the state in which the 1713
claim is allowed. 1714

(4) For purposes of determining the weeks that comprise a 1715
completed calendar quarter under this division, only those weeks 1716
ending at midnight Saturday within the calendar quarter shall be 1717
utilized. 1718

(R)(1) "Benefit year" with respect to an individual means the 1719
fifty-two week period beginning with the first day of that week 1720
with respect to which the individual first files a valid 1721
application for determination of benefit rights, and thereafter 1722
the fifty-two week period beginning with the first day of that 1723
week with respect to which the individual next files a valid 1724
application for determination of benefit rights after the 1725
termination of the individual's last preceding benefit year, 1726
except that the application shall not be considered valid unless 1727
the individual has had employment in six weeks that is subject to 1728
this chapter or the unemployment compensation act of another 1729
state, or the United States, and has, since the beginning of the 1730
individual's previous benefit year, in the employment earned three 1731
times the average weekly wage determined for the previous benefit 1732
year. The "benefit year" of a combined wage claim, as described in 1733
division (H) of section 4141.43 of the Revised Code, shall be the 1734
benefit year prescribed by the law of the state in which the claim 1735
is allowed. Any application for determination of benefit rights 1736
made in accordance with section 4141.28 of the Revised Code is 1737
valid if the individual filing such application is unemployed, has 1738
been employed by an employer or employers subject to this chapter 1739
in at least twenty qualifying weeks within the individual's base 1740
period, and has earned or been paid remuneration at an average 1741
weekly wage of not less than twenty-seven and one-half per cent of 1742
the statewide average weekly wage for such weeks. For purposes of 1743

determining whether an individual has had sufficient employment 1744
since the beginning of the individual's previous benefit year to 1745
file a valid application, "employment" means the performance of 1746
services for which remuneration is payable. 1747

(2) Effective for benefit years beginning on and after 1748
December 26, 2004, any application for determination of benefit 1749
rights made in accordance with section 4141.28 of the Revised Code 1750
is valid if the individual satisfies the criteria described in 1751
division (R)(1) of this section, and if the reason for the 1752
individual's separation from employment is not disqualifying 1753
pursuant to division (D)(2) of section 4141.29 or section 4141.291 1754
of the Revised Code. A disqualification imposed pursuant to 1755
division (D)(2) of section 4141.29 or section 4141.291 of the 1756
Revised Code must be removed as provided in those sections as a 1757
requirement of establishing a valid application for benefit years 1758
beginning on and after December 26, 2004. 1759

(3) The statewide average weekly wage shall be calculated by 1760
the director once a year based on the twelve-month period ending 1761
the thirtieth day of June, as set forth in division (B)(3) of 1762
section 4141.30 of the Revised Code, rounded down to the nearest 1763
dollar. Increases or decreases in the amount of remuneration 1764
required to have been earned or paid in order for individuals to 1765
have filed valid applications shall become effective on Sunday of 1766
the calendar week in which the first day of January occurs that 1767
follows the twelve-month period ending the thirtieth day of June 1768
upon which the calculation of the statewide average weekly wage 1769
was based. 1770

(4) As used in this division, an individual is "unemployed" 1771
if, with respect to the calendar week in which such application is 1772
filed, the individual is "partially unemployed" or "totally 1773
unemployed" as defined in this section or if, prior to filing the 1774
application, the individual was separated from the individual's 1775

most recent work for any reason which terminated the individual's 1776
employee-employer relationship, or was laid off indefinitely or 1777
for a definite period of seven or more days. 1778

(S) "Calendar quarter" means the period of three consecutive 1779
calendar months ending on the thirty-first day of March, the 1780
thirtieth day of June, the thirtieth day of September, and the 1781
thirty-first day of December, or the equivalent thereof as the 1782
director prescribes by rule. 1783

(T) "Computation date" means the first day of the third 1784
calendar quarter of any calendar year. 1785

(U) "Contribution period" means the calendar year beginning 1786
on the first day of January of any year. 1787

(V) "Agricultural labor," for the purpose of this division, 1788
means any service performed prior to January 1, 1972, which was 1789
agricultural labor as defined in this division prior to that date, 1790
and service performed after December 31, 1971: 1791

(1) On a farm, in the employ of any person, in connection 1792
with cultivating the soil, or in connection with raising or 1793
harvesting any agricultural or horticultural commodity, including 1794
the raising, shearing, feeding, caring for, training, and 1795
management of livestock, bees, poultry, and fur-bearing animals 1796
and wildlife; 1797

(2) In the employ of the owner or tenant or other operator of 1798
a farm in connection with the operation, management, conservation, 1799
improvement, or maintenance of such farm and its tools and 1800
equipment, or in salvaging timber or clearing land of brush and 1801
other debris left by hurricane, if the major part of such service 1802
is performed on a farm; 1803

(3) In connection with the production or harvesting of any 1804
commodity defined as an agricultural commodity in section 15 (g) 1805
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1806

U.S.C. 1141j, as amended, or in connection with the ginning of 1807
cotton, or in connection with the operation or maintenance of 1808
ditches, canals, reservoirs, or waterways, not owned or operated 1809
for profit, used exclusively for supplying and storing water for 1810
farming purposes; 1811

(4) In the employ of the operator of a farm in handling, 1812
planting, drying, packing, packaging, processing, freezing, 1813
grading, storing, or delivering to storage or to market or to a 1814
carrier for transportation to market, in its unmanufactured state, 1815
any agricultural or horticultural commodity, but only if the 1816
operator produced more than one half of the commodity with respect 1817
to which such service is performed; 1818

(5) In the employ of a group of operators of farms, or a 1819
cooperative organization of which the operators are members, in 1820
the performance of service described in division (V)(4) of this 1821
section, but only if the operators produced more than one-half of 1822
the commodity with respect to which the service is performed; 1823

(6) Divisions (V)(4) and (5) of this section shall not be 1824
deemed to be applicable with respect to service performed: 1825

(a) In connection with commercial canning or commercial 1826
freezing or in connection with any agricultural or horticultural 1827
commodity after its delivery to a terminal market for distribution 1828
for consumption; or 1829

(b) On a farm operated for profit if the service is not in 1830
the course of the employer's trade or business. 1831

As used in division (V) of this section, "farm" includes 1832
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 1833
plantations, ranches, nurseries, ranges, greenhouses, or other 1834
similar structures used primarily for the raising of agricultural 1835
or horticultural commodities and orchards. 1836

(W) "Hospital" means an institution which has been registered 1837

or licensed by the Ohio department of health as a hospital. 1838

(X) "Nonprofit organization" means an organization, or group 1839
of organizations, described in section 501(c)(3) of the "Internal 1840
Revenue Code of 1954," and exempt from income tax under section 1841
501(a) of that code. 1842

(Y) "Institution of higher education" means a public or 1843
nonprofit educational institution, including an educational 1844
institution operated by an Indian tribe, which: 1845

(1) Admits as regular students only individuals having a 1846
certificate of graduation from a high school, or the recognized 1847
equivalent; 1848

(2) Is legally authorized in this state or by the Indian 1849
tribe to provide a program of education beyond high school; and 1850

(3) Provides an educational program for which it awards a 1851
bachelor's or higher degree, or provides a program which is 1852
acceptable for full credit toward such a degree, a program of 1853
post-graduate or post-doctoral studies, or a program of training 1854
to prepare students for gainful employment in a recognized 1855
occupation. 1856

For the purposes of this division, all colleges and 1857
universities in this state are institutions of higher education. 1858

(Z) For the purposes of this chapter, "states" includes the 1859
District of Columbia, the Commonwealth of Puerto Rico, and the 1860
Virgin Islands. 1861

(AA) "Alien" means, for the purposes of division (A)(1)(d) of 1862
this section, an individual who is an alien admitted to the United 1863
States to perform service in agricultural labor pursuant to 1864
sections 214 (c) and 101 (a)(15)(H) of the "Immigration and 1865
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 1866

(BB)(1) "Crew leader" means an individual who furnishes 1867

individuals to perform agricultural labor for any other employer 1868
or farm operator, and: 1869

(a) Pays, either on the individual's own behalf or on behalf 1870
of the other employer or farm operator, the individuals so 1871
furnished by the individual for the service in agricultural labor 1872
performed by them; 1873

(b) Has not entered into a written agreement with the other 1874
employer or farm operator under which the agricultural worker is 1875
designated as in the employ of the other employer or farm 1876
operator. 1877

(2) For the purposes of this chapter, any individual who is a 1878
member of a crew furnished by a crew leader to perform service in 1879
agricultural labor for any other employer or farm operator shall 1880
be treated as an employee of the crew leader if: 1881

(a) The crew leader holds a valid certificate of registration 1882
under the "Farm Labor Contractor Registration Act of 1963," 90 1883
Stat. 2668, 7 U.S.C. 2041; or 1884

(b) Substantially all the members of the crew operate or 1885
maintain tractors, mechanized harvesting or crop-dusting 1886
equipment, or any other mechanized equipment, which is provided by 1887
the crew leader; and 1888

(c) If the individual is not in the employment of the other 1889
employer or farm operator within the meaning of division (B)(1) of 1890
this section. 1891

(3) For the purposes of this division, any individual who is 1892
furnished by a crew leader to perform service in agricultural 1893
labor for any other employer or farm operator and who is not 1894
treated as in the employment of the crew leader under division 1895
(BB)(2) of this section shall be treated as the employee of the 1896
other employer or farm operator and not of the crew leader. The 1897
other employer or farm operator shall be treated as having paid 1898

cash remuneration to the individual in an amount equal to the 1899
amount of cash remuneration paid to the individual by the crew 1900
leader, either on the crew leader's own behalf or on behalf of the 1901
other employer or farm operator, for the service in agricultural 1902
labor performed for the other employer or farm operator. 1903

(CC) "Educational institution" means an institution other 1904
than an institution of higher education as defined in division (Y) 1905
of this section, including an educational institution operated by 1906
an Indian tribe, which: 1907

(1) Offers participants, trainees, or students an organized 1908
course of study or training designed to transfer to them 1909
knowledge, skills, information, doctrines, attitudes, or abilities 1910
from, by, or under the guidance of an instructor or teacher; and 1911

(2) Is approved, chartered, or issued a permit to operate as 1912
a school by the state board of education, other government agency, 1913
or Indian tribe that is authorized within the state to approve, 1914
charter, or issue a permit for the operation of a school. 1915

For the purposes of this division, the courses of study or 1916
training which the institution offers may be academic, technical, 1917
trade, or preparation for gainful employment in a recognized 1918
occupation. 1919

(DD) "Cost savings day" means any unpaid day off from work in 1920
which employees continue to accrue employee benefits which have a 1921
determinable value including, but not limited to, vacation, 1922
pension contribution, sick time, and life and health insurance. 1923

(EE) "Employee" has the same meaning as in section 4175.01 of 1924
the Revised Code, unless the services performed by the individual 1925
do not constitute "employment" as defined in division (B) of this 1926
section. 1927

Sec. 4175.01. As used in this chapter: 1928

<u>(A) "Aggrieved party" means any of the following entities</u>	1929
<u>that believes that the entity has been injured by an employer's</u>	1930
<u>alleged violation of section 4175.02 of the Revised Code:</u>	1931
<u>(1) An employee;</u>	1932
<u>(2) An employer association;</u>	1933
<u>(3) An interested party;</u>	1934
<u>(4) A labor organization.</u>	1935
<u>(B) "Construction" means any constructing, altering,</u>	1936
<u>reconstructing, repairing, rehabilitating, refinishing,</u>	1937
<u>refurbishing, remodeling, remediating, renovating, custom</u>	1938
<u>fabricating, maintenance, landscaping, improving, wrecking,</u>	1939
<u>painting, decorating, demolishing, and adding to or subtracting</u>	1940
<u>from any building, structure, highway, roadway, street, bridge,</u>	1941
<u>alley, sewer, ditch, sewage disposal plant, water works, parking</u>	1942
<u>facility, railroad, excavation, or other structure, project,</u>	1943
<u>development, real property or improvement, or to do any part</u>	1944
<u>thereof, regardless of whether the performance of the work</u>	1945
<u>involves the addition to or fabrication of any material or article</u>	1946
<u>of merchandise into any structure, project, development, real</u>	1947
<u>property, or improvement. "Construction" includes moving</u>	1948
<u>construction-related materials to the job site and removing</u>	1949
<u>construction-related materials from the job site.</u>	1950
<u>(C) "Contractor" means any sole proprietorship, partnership,</u>	1951
<u>firm, corporation, limited liability company, association, or</u>	1952
<u>other entity permitted by law to do business within this state</u>	1953
<u>that engages in construction. "Contractor" does not include either</u>	1954
<u>of the following:</u>	1955
<u>(1) The state or its officers, agencies, or political</u>	1956
<u>subdivisions;</u>	1957
<u>(2) The federal government.</u>	1958

<u>(D)(1) "Employee" means an individual who performs services</u>	1959
<u>for compensation for an employer.</u>	1960
<u>(2) "Employee" does not mean an individual who performs</u>	1961
<u>services for an employer and to whom all of the following</u>	1962
<u>conditions apply:</u>	1963
<u>(a) The individual has been and continues to be free from</u>	1964
<u>control and direction in connection with the performance of the</u>	1965
<u>service.</u>	1966
<u>(b) The individual customarily is engaged in an independently</u>	1967
<u>established trade, occupation, profession, or business of the same</u>	1968
<u>nature of the trade, occupation, profession, or business involved</u>	1969
<u>in the service performed.</u>	1970
<u>(c) The individual is a separate and distinct business entity</u>	1971
<u>from the entity for which the service is being performed or, if</u>	1972
<u>the individual is providing construction services and is a sole</u>	1973
<u>proprietorship or a partner in a partnership, the individual is a</u>	1974
<u>legitimate sole proprietorship or a partner in a legitimate</u>	1975
<u>partnership to which section 4175.04 of the Revised Code applies,</u>	1976
<u>as applicable.</u>	1977
<u>(d) The individual incurs the main expenses and has</u>	1978
<u>continuing or recurring business liabilities related to the</u>	1979
<u>service performed.</u>	1980
<u>(e) The individual is liable for breach of contract for</u>	1981
<u>failure to complete the service.</u>	1982
<u>(f) An agreement, written or oral, express or implied, exists</u>	1983
<u>describing the service to be performed, the payment the individual</u>	1984
<u>will receive for performance of the service, and the time frame</u>	1985
<u>for completion of the service.</u>	1986
<u>(g) The service performed by the individual is outside of the</u>	1987
<u>usual course of business of the employer.</u>	1988

<u>(E) "Employer" means any person, the state, any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality thereof that engages an individual to perform services.</u>	1989
	1990
	1991
	1992
	1993
<u>(F) "Interested party" means any of the following entities:</u>	1994
<u>(1) Any contractor who submits a bid for the purpose of securing the award of a contract for construction of a public improvement as that term is defined in section 4115.03 of the Revised Code;</u>	1995
	1996
	1997
	1998
<u>(2) Any person acting as a subcontractor of a contractor described in division (F)(1) of this section;</u>	1999
	2000
<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>	2001
	2002
	2003
<u>(4) Any association having as members any of the persons described in division (F)(1) or (2) of this section.</u>	2004
	2005
<u>(G) "Labor organization" has the same meaning as in section 3517.01 of the Revised Code.</u>	2006
	2007
<u>(H) "State agency" has the same meaning as in section 1.60 of the Revised Code.</u>	2008
	2009
<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>	2010
	2011
	2012
<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</u>	2013
	2014
	2015
	2016
	2017
	2018

include remuneration paid to an individual for purposes of section 2019
4123.26 or 4141.20 of the Revised Code when making a determination 2020
as to whether the employer violated this division. The director 2021
shall not use an individual's election to obtain workers' 2022
compensation coverage as a sole proprietor or a partnership in 2023
making a determination as to whether the individual has violated 2024
this division. The burden of proof is on the party asserting that 2025
an individual is not an employee. 2026

(B) No employer shall retaliate through discharge, or in any 2027
other manner, against any individual for exercising any rights 2028
granted under this chapter. 2029

(C) No employer shall retaliate against an individual if the 2030
individual does any of the following: 2031

(1) Makes a complaint to an employer, coworker, community 2032
organization, or to a federal or state agency or at a public 2033
hearing, stating that provisions of this chapter allegedly have 2034
been violated; 2035

(2) Causes to be instituted any proceeding under or related 2036
to this chapter; 2037

(3) Testifies or prepares to testify in an investigation or 2038
proceeding under this chapter; 2039

(4) Opposes misclassification. 2040

(D) No employer shall attempt to cause or cause an individual 2041
to waive the provisions of this chapter or to enter into a 2042
predispute waiver. 2043

(E) No employer shall violate a rule adopted by the director 2044
pursuant to section 4175.06 of the Revised Code. 2045

(F) No person shall require or request an individual to enter 2046
into an agreement or sign a document that results in the 2047
misclassification of the individual as an independent contractor 2048

or otherwise does not accurately reflect the individual's 2049
relationship with an employer. 2050

Sec. 4175.03. This chapter shall apply only to determinations 2051
as to whether an individual is an employer for purposes of section 2052
4111.02, 4111.14, 4113.15, or 4115.03 of the Revised Code or 2053
Chapter 4121., 4123., 4141., or 5747. of the Revised Code. Nothing 2054
in this chapter shall be construed as to limit the application of 2055
any other remedies available at law or in equity. 2056

Sec. 4175.04. An employer and the director of commerce shall 2057
consider a sole proprietorship or partnership that performs 2058
construction services for the employer to be a legitimate sole 2059
proprietorship or a legitimate partnership if the employer 2060
demonstrates all of the following: 2061

(A) The sole proprietorship or partnership performs the 2062
construction service free from the direction or control of the 2063
employer over the means and manner of providing the service, 2064
subject only to the right of the employer for whom the service is 2065
provided to specify the desired result. 2066

(B) The sole proprietorship or partnership is not subject to 2067
cancellation or destruction upon severance of the relationship 2068
with the employer. 2069

(C) The owner of the sole proprietorship or the partners in 2070
the partnership have a substantial investment of capital in the 2071
sole proprietorship or partnership beyond ordinary tools and 2072
equipment and a personal vehicle. 2073

(D) The sole proprietorship or partnership owns the capital 2074
goods, gains the profits, and bears the losses of the sole 2075
proprietorship or partnership. 2076

(E) The sole proprietorship or partnership makes its 2077
construction services available to the general public or the 2078

business community on a continuing basis. 2079

(F) The sole proprietorship or partnership reported a profit 2080
or loss or earnings from self-employment on the sole 2081
proprietorship or partnership's federal income tax schedule. 2082

(G) The sole proprietorship or partnership performs 2083
construction services for the employer under the name of the sole 2084
proprietorship or partnership. 2085

(H) If the construction services the sole proprietorship or 2086
partnership provides to the employer require a license or permit 2087
in order to provide those services, the sole proprietorship or 2088
partnership obtains the appropriate license or permit in the name 2089
of the sole proprietorship or partnership name and directly pays 2090
for the appropriate license or permit. 2091

(I) The sole proprietorship or partnership furnishes the 2092
tools and equipment necessary for the sole proprietorship or 2093
partnership to provide the construction service for the employer. 2094

(J) If necessary, the sole proprietorship or partnership 2095
hires its own employees without obtaining approval from the 2096
employer, pays those employees without direct reimbursement from 2097
the employer, and reports the employees' income to the internal 2098
revenue service. 2099

(K) The employer does not represent the sole proprietorship 2100
or the partners of the partnership as an employee of the employer 2101
to the employer's customers. 2102

(L) The sole proprietorship or partnership performs similar 2103
construction services for others on whatever basis and whenever 2104
the sole proprietorship or partnership chooses. 2105

If the director of commerce, using the factors listed in this 2106
section, determines that a sole proprietorship or partnership 2107
performing construction services for an employer is not a 2108

legitimate sole proprietorship or a legitimate partnership, the 2109
director shall consider the owner of the sole proprietorship, each 2110
partner of the partnership, and each of the employees of the sole 2111
proprietorship or partnership, as applicable, as an employee of 2112
the employer for the purposes of this chapter. 2113

Sec. 4175.05. The provisions of this chapter apply to all 2114
subcontractors or lower tier subcontractors. 2115

A contractor is liable under this chapter for the failure of 2116
any subcontractor or lower tier subcontractor to properly classify 2117
individuals performing services related to construction as 2118
employees. A subcontractor is liable under this chapter for the 2119
failure of any lower tier subcontractor to properly classify 2120
individuals performing services related to construction as 2121
employees. 2122

Sec. 4175.06. The director of commerce shall enforce this 2123
chapter. The director shall hire as many investigators and other 2124
personnel as the director determines are necessary to administer 2125
and enforce this chapter. The director may adopt reasonable rules 2126
in accordance with Chapter 119. of the Revised Code to implement 2127
and administer this chapter. 2128

Sec. 4175.07. (A) Any aggrieved party may file a complaint 2129
with the director of commerce against an employer if the aggrieved 2130
party reasonably believes that the employer is in violation of 2131
section 4175.02 of the Revised Code. The director shall conduct 2132
investigations in connection with the administration and 2133
enforcement of this chapter. 2134

(B) Any investigator employed by the division of industrial 2135
compliance within the department of commerce is authorized to do 2136
both of the following: 2137

(1) Visit and inspect, at all reasonable times, all of the offices and job sites maintained by the employer who is the subject of the complaint; 2138
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(2) Inspect and audit, at all reasonable times, all documents necessary to determine whether an individual performing services for the employer is an employee. 2141
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(C) The director may compel, by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in any investigation, and may administer oaths to witnesses. 2144
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(D) Upon completion of an investigation under this section, the investigator shall submit the results of the investigator's investigation to the superintendent of industrial compliance. 2148
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Sec. 4175.08. If, after receiving the results of an investigation conducted pursuant to section 4175.07 of the Revised Code, the superintendent of industrial compliance determines that reasonable evidence exists that an employer has violated section 4175.02 of the Revised Code, the superintendent shall send a written notice to the director of commerce informing the director of the superintendent's determination. 2151
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Within seven days after the director receives a written report from the superintendent, the director shall send a written notice to the employer who is the subject of the investigation in the same manner as prescribed in section 119.07 of the Revised Code for licensees, except that the notice shall specify that a hearing will be held and shall specify the date, time, and place of the hearing. The director shall hold a hearing regarding the alleged violation in the same manner prescribed for an adjudication hearing under section 119.09 of the Revised Code. If the director, after the hearing, determines a violation has occurred, the director may discipline the employer in accordance 2158
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with section 4175.09 of the Revised Code. The director's 2169
determination is an order that the person may appeal in accordance 2170
with section 119.12 of the Revised Code. If an employer who 2171
allegedly committed a violation of section 4175.02 of the Revised 2172
Code fails to appear for a hearing, the director may request the 2173
court of common pleas of the county where the alleged violation 2174
occurred to compel the person to appear before the director for a 2175
hearing. 2176

Sec. 4175.09. (A) If, after a hearing held in accordance with 2177
section 4175.08 of the Revised Code, the director of commerce 2178
determines that an employer violated section 4175.02 of the 2179
Revised Code, the director may do any of the following: 2180

(1) Issue and cause to be served on any party an order to 2181
cease and desist from further violation of that section; 2182

(2) Take affirmative or other action the director considers 2183
reasonable to eliminate the effect of the violation; 2184

(3) Collect the amount of any wages, salary, employment 2185
benefits, or other compensation denied or lost to an individual 2186
because the employer misclassified the individual; 2187

(4) Assess any civil penalty allowed under section 4175.10 or 2188
4175.11 of the Revised Code. 2189

(B) If the director assesses an employer a civil penalty for 2190
a violation of section 4175.02 of the Revised Code and the 2191
employer fails to pay that civil penalty within the time period 2192
prescribed by the director, the director shall forward to the 2193
attorney general the name of the employer and the amount of the 2194
civil penalty for the purpose of collecting that civil penalty. In 2195
addition to the civil penalty assessed pursuant to this section, 2196
the employer also shall pay any fee assessed by the attorney 2197
general for collection of the civil penalty. 2198

(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. 2199
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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. 2202
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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 employer has committed a violation of section 4175.02 of the Revised Code and that violation occurred within five years after the date the director made a determination that resulted in the director assessing the employer a civil penalty under division (A) or (B) of this section, the employer is subject to a civil penalty not less than one thousand five hundred dollars or more than two thousand five hundred dollars for each violation found by the director that occurred during that five-year period. 2209
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(C) For purposes of this section, each violation of section 4175.02 of the Revised Code constitutes a separate violation for each individual or rule involved and for each day the violation continues. 2220
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(D) The director shall base the amount of the civil penalty assessed under this section upon the director's determination of the gravity of the violations committed by the employer. 2224
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Sec. 4175.11. (A) Whoever knowingly violates section 4175.02 of the Revised Code, or whoever obstructs the director of commerce 2227
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or any other person authorized to inspect places of employment 2229
pursuant to section 4175.07 of the Revised Code is liable for 2230
penalties up to double the amount specified in section 4175.10 of 2231
the Revised Code. 2232

(B) An employer who is liable under division (A) of this 2233
section because the employer knowingly violated section 4175.02 of 2234
the Revised Code also is liable to the employee who was injured by 2235
the employer's violation for punitive damages in an amount equal 2236
to the amount of the penalties assessed against the employer 2237
pursuant to division (A) of this section. 2238

(C) The director shall impose the penalties described in 2239
divisions (A) and (B) of this section if a preponderance of the 2240
evidence demonstrates that the employer acted knowingly when 2241
committing the violation. 2242

Sec. 4175.12. If the director of commerce determines that an 2243
alleged violation of this chapter has occurred that may result in 2244
a penalty assessed pursuant to section 4175.99 of the Revised 2245
Code, the director shall refer the matter to the appropriate 2246
prosecutorial authority. 2247

Sec. 4175.13. If the director of commerce believes that any 2248
employer allegedly has violated a valid order issued by the 2249
director pursuant to section 4175.09 of the Revised Code, the 2250
director may commence an action in the court of common pleas in 2251
the county where the alleged violation has occurred and obtain 2252
from the court an order compelling the employer to obey the order 2253
of the director or be found guilty of contempt of court and 2254
punished in accordance with Chapter 2705. of the Revised Code. 2255

Sec. 4175.14. (A) An aggrieved party may bring a civil action 2256
in the court of common pleas in the county where the alleged 2257

violation occurred or where any individual who is party to the 2258
action resides, without regard to exhaustion of any alternative 2259
administrative remedies provided in this chapter. An aggrieved 2260
party may bring a civil action on behalf of the aggrieved party or 2261
on behalf of any other individual who is similarly situated to the 2262
aggrieved party. If a court or a jury in a civil action brought 2263
pursuant to this division determines that a violation of section 2264
4175.02 of the Revised Code has occurred, the court shall award to 2265
the plaintiff all of the following: 2266

(1) The amount of any wages, salary, employment benefits, or 2267
other compensation denied or lost to an individual by reason of 2268
the violation, plus an equal amount in liquidated damages; 2269

(2) Compensatory damages and an amount up to five hundred 2270
dollars for each violation of section 4175.02 of the Revised Code; 2271

(3) In the case of a violation of division (B) or (C) of 2272
section 4175.02 of the Revised Code, all legal or equitable relief 2273
that the court determines appropriate; 2274

(4) Attorney's fees and costs. 2275

(B) An aggrieved party shall bring an action under division 2276
(A) of this section not later than three years after the last day 2277
the aggrieved individual or individual for whom the aggrieved 2278
party is bringing the action performed services for an employer 2279
who has allegedly violated section 4175.02 of the Revised Code. 2280
The three-year period specified in this division is tolled if the 2281
employer has deterred the ability of an individual to bring an 2282
action under this section or to file a complaint under section 2283
4175.07 of the Revised Code. 2284

(C) If the director of commerce has determined under section 2285
4175.09 of the Revised Code that an employer is subject to a civil 2286
penalty under section 4175.10 or 4175.11 of the Revised Code for a 2287

violation of section 4175.02 of the Revised Code, an aggrieved party, within ninety days after the director issues that determination, may bring a civil action in the court of common pleas in the county where the violation occurred to enforce that penalty. If an aggrieved party elects to bring such an action, the aggrieved party shall notify the director of that election in writing. During that ninety-day period, the attorney general shall not bring an action to enforce that penalty. After the ninety-day period expires, only the attorney general, on behalf of the director and in accordance with this chapter, may bring an action to collect the civil penalty. In any civil action brought by an aggrieved party pursuant to this division, the court shall award the aggrieved party ten per cent of the amount of the penalty owed by the employer, and the remaining amount recovered shall be awarded to the director. 2288
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Sec. 4175.15. (A) The director of commerce shall create a summary of the requirements of this chapter in English and Spanish and shall post that summary on the official web site maintained by the department of commerce and on the bulletin boards located in each of the offices of the department. 2303
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(B) If an employer engages an individual to perform services and that individual is not considered an employee, that employer shall post and keep posted, in a conspicuous place on each job site where that individual performs services and in each of the employer's offices, the notice prepared by the director pursuant to division (A) of this section. The director shall furnish copies of the notice without charge to an employer upon request. 2308
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Sec. 4175.16. The director of commerce shall create a list of employers who have committed multiple violations of section 4175.02 of the Revised Code. The director shall add an employer's name to the list if the director assesses against the employer the 2315
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civil penalty described in division (B) of section 4175.10 of the 2319
Revised Code. The list shall include the name of the employer and 2320
the date that the employer committed the employer's most recent 2321
violation. The director shall notify an employer that the employer 2322
will be added to this list within five days after the director 2323
determines that the employer will be added to the list. The 2324
director shall publish the list on the web site maintained by the 2325
department of commerce. No state agency shall enter into a 2326
contract with an employer included in that list for a period of 2327
four years after the date of the employer's most recent violation. 2328
The director shall remove an employer's name and information from 2329
the list upon expiration of the time period of the employer's 2330
debarment. 2331

Sec. 4175.17. The director of commerce, the director of job 2332
and family services, the tax commissioner, and the administrator 2333
of workers' compensation shall share information concerning any 2334
suspected misclassification by an employer or entity of one or 2335
more of the employer's employees as independent contractors in 2336
violation of section 4175.02 of the Revised Code. Upon determining 2337
that an employer has misclassified an employee as an independent 2338
contractor in violation of division (A) of that section, the 2339
director of commerce shall notify the director of job and family 2340
services, the tax commissioner, and the administrator, each of 2341
whom shall determine whether the employer's violation of section 2342
4175.02 of the Revised Code results in the employer not complying 2343
with the requirements of Chapter 4121., 4123., 4127., 4131., 2344
4141., or 5747. of the Revised Code, as applicable. The director 2345
of commerce shall make that determination with respect to sections 2346
4111.02, 4111.14, 4113.15, or 4115.03 to 4115.21 of the Revised 2347
Code. The determination made by the director of commerce that an 2348
employer has misclassified an employee as an independent 2349

contractor is binding on the director of job and family services, 2350
the tax commissioner, and the administrator unless the individual 2351
is otherwise not considered an employee under the applicable law. 2352
Notwithstanding any provision of this section to the contrary, 2353
nothing in this chapter shall be construed to limit or otherwise 2354
constrain the duties and powers of the administrator under 2355
Chapters 4121., 4123., 4127., and 4131. of the Revised Code, the 2356
director of job and family services under Chapter 4141. of the 2357
Revised Code, or the tax commissioner under Chapter 5747. of the 2358
Revised Code. 2359

Sec. 4175.18. There is hereby created in the state treasury 2360
the employee classification fund. The director of commerce shall 2361
deposit all moneys the director receives under this chapter, 2362
including civil penalties, into the fund. The director shall use 2363
the fund for the administration, investigation, and other expenses 2364
incurred in carrying out the director's powers and duties under 2365
this chapter. If, at the end of a fiscal year, the director 2366
determines that excess moneys exist in the fund, the director 2367
shall coordinate with the director of budget and management to 2368
transfer the excess funds to the division of administration fund 2369
created under section 121.08 of the Revised Code. 2370

Sec. 4175.99. (A) An employer or person that knowingly 2371
violates division (A), (B), (C), (E), or (F) of section 4175.02 of 2372
the Revised Code, for the first offense, is guilty of a 2373
misdemeanor of the fourth degree, and for any subsequent violation 2374
of division (A), (B), (C), (E), or (F) of section 4175.02 of the 2375
Revised Code committed within a five-year period beginning on the 2376
date the employer or person previously was convicted of or pleaded 2377
guilty to the first violation, the employer or entity is guilty of 2378
a felony of the fifth degree. 2379

(B) Whoever violates division (D) of section 4175.02 of the 2380
Revised Code is guilty of a misdemeanor of the fourth degree. 2381

Sec. 5747.01. Except as otherwise expressly provided or 2382
clearly appearing from the context, any term used in this chapter 2383
that is not otherwise defined in this section has the same meaning 2384
as when used in a comparable context in the laws of the United 2385
States relating to federal income taxes or if not used in a 2386
comparable context in those laws, has the same meaning as in 2387
section 5733.40 of the Revised Code. Any reference in this chapter 2388
to the Internal Revenue Code includes other laws of the United 2389
States relating to federal income taxes. 2390

As used in this chapter: 2391

(A) "Adjusted gross income" or "Ohio adjusted gross income" 2392
means federal adjusted gross income, as defined and used in the 2393
Internal Revenue Code, adjusted as provided in this section: 2394

(1) Add interest or dividends on obligations or securities of 2395
any state or of any political subdivision or authority of any 2396
state, other than this state and its subdivisions and authorities. 2397

(2) Add interest or dividends on obligations of any 2398
authority, commission, instrumentality, territory, or possession 2399
of the United States to the extent that the interest or dividends 2400
are exempt from federal income taxes but not from state income 2401
taxes. 2402

(3) Deduct interest or dividends on obligations of the United 2403
States and its territories and possessions or of any authority, 2404
commission, or instrumentality of the United States to the extent 2405
that the interest or dividends are included in federal adjusted 2406
gross income but exempt from state income taxes under the laws of 2407
the United States. 2408

(4) Deduct disability and survivor's benefits to the extent 2409

included in federal adjusted gross income. 2410

(5) Deduct benefits under Title II of the Social Security Act 2411
and tier 1 railroad retirement benefits to the extent included in 2412
federal adjusted gross income under section 86 of the Internal 2413
Revenue Code. 2414

(6) In the case of a taxpayer who is a beneficiary of a trust 2415
that makes an accumulation distribution as defined in section 665 2416
of the Internal Revenue Code, add, for the beneficiary's taxable 2417
years beginning before 2002, the portion, if any, of such 2418
distribution that does not exceed the undistributed net income of 2419
the trust for the three taxable years preceding the taxable year 2420
in which the distribution is made to the extent that the portion 2421
was not included in the trust's taxable income for any of the 2422
trust's taxable years beginning in 2002 or thereafter. 2423

"Undistributed net income of a trust" means the taxable income of 2424
the trust increased by (a)(i) the additions to adjusted gross 2425
income required under division (A) of this section and (ii) the 2426
personal exemptions allowed to the trust pursuant to section 2427
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 2428
deductions to adjusted gross income required under division (A) of 2429
this section, (ii) the amount of federal income taxes attributable 2430
to such income, and (iii) the amount of taxable income that has 2431
been included in the adjusted gross income of a beneficiary by 2432
reason of a prior accumulation distribution. Any undistributed net 2433
income included in the adjusted gross income of a beneficiary 2434
shall reduce the undistributed net income of the trust commencing 2435
with the earliest years of the accumulation period. 2436

(7) Deduct the amount of wages and salaries, if any, not 2437
otherwise allowable as a deduction but that would have been 2438
allowable as a deduction in computing federal adjusted gross 2439
income for the taxable year, had the targeted jobs credit allowed 2440
and determined under sections 38, 51, and 52 of the Internal 2441

Revenue Code not been in effect. 2442

(8) Deduct any interest or interest equivalent on public 2443
obligations and purchase obligations to the extent that the 2444
interest or interest equivalent is included in federal adjusted 2445
gross income. 2446

(9) Add any loss or deduct any gain resulting from the sale, 2447
exchange, or other disposition of public obligations to the extent 2448
that the loss has been deducted or the gain has been included in 2449
computing federal adjusted gross income. 2450

(10) Deduct or add amounts, as provided under section 5747.70 2451
of the Revised Code, related to contributions to variable college 2452
savings program accounts made or tuition units purchased pursuant 2453
to Chapter 3334. of the Revised Code. 2454

(11)(a) Deduct, to the extent not otherwise allowable as a 2455
deduction or exclusion in computing federal or Ohio adjusted gross 2456
income for the taxable year, the amount the taxpayer paid during 2457
the taxable year for medical care insurance and qualified 2458
long-term care insurance for the taxpayer, the taxpayer's spouse, 2459
and dependents. No deduction for medical care insurance under 2460
division (A)(11) of this section shall be allowed either to any 2461
taxpayer who is eligible to participate in any subsidized health 2462
plan maintained by any employer of the taxpayer or of the 2463
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2464
application would be entitled to, benefits under part A of Title 2465
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 2466
301, as amended. For the purposes of division (A)(11)(a) of this 2467
section, "subsidized health plan" means a health plan for which 2468
the employer pays any portion of the plan's cost. The deduction 2469
allowed under division (A)(11)(a) of this section shall be the net 2470
of any related premium refunds, related premium reimbursements, or 2471
related insurance premium dividends received during the taxable 2472
year. 2473

(b) Deduct, to the extent not otherwise deducted or excluded 2474
in computing federal or Ohio adjusted gross income during the 2475
taxable year, the amount the taxpayer paid during the taxable 2476
year, not compensated for by any insurance or otherwise, for 2477
medical care of the taxpayer, the taxpayer's spouse, and 2478
dependents, to the extent the expenses exceed seven and one-half 2479
per cent of the taxpayer's federal adjusted gross income. 2480

(c) Deduct, to the extent not otherwise deducted or excluded 2481
in computing federal or Ohio adjusted gross income, any amount 2482
included in federal adjusted gross income under section 105 or not 2483
excluded under section 106 of the Internal Revenue Code solely 2484
because it relates to an accident and health plan for a person who 2485
otherwise would be a "qualifying relative" and thus a "dependent" 2486
under section 152 of the Internal Revenue Code but for the fact 2487
that the person fails to meet the income and support limitations 2488
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 2489

(d) For purposes of division (A)(11) of this section, 2490
"medical care" has the meaning given in section 213 of the 2491
Internal Revenue Code, subject to the special rules, limitations, 2492
and exclusions set forth therein, and "qualified long-term care" 2493
has the same meaning given in section 7702B(c) of the Internal 2494
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 2495
of this section, "dependent" includes a person who otherwise would 2496
be a "qualifying relative" and thus a "dependent" under section 2497
152 of the Internal Revenue Code but for the fact that the person 2498
fails to meet the income and support limitations under section 2499
152(d)(1)(B) and (C) of the Internal Revenue Code. 2500

(12)(a) Deduct any amount included in federal adjusted gross 2501
income solely because the amount represents a reimbursement or 2502
refund of expenses that in any year the taxpayer had deducted as 2503
an itemized deduction pursuant to section 63 of the Internal 2504
Revenue Code and applicable United States department of the 2505

treasury regulations. The deduction otherwise allowed under 2506
division (A)(12)(a) of this section shall be reduced to the extent 2507
the reimbursement is attributable to an amount the taxpayer 2508
deducted under this section in any taxable year. 2509

(b) Add any amount not otherwise included in Ohio adjusted 2510
gross income for any taxable year to the extent that the amount is 2511
attributable to the recovery during the taxable year of any amount 2512
deducted or excluded in computing federal or Ohio adjusted gross 2513
income in any taxable year. 2514

(13) Deduct any portion of the deduction described in section 2515
1341(a)(2) of the Internal Revenue Code, for repaying previously 2516
reported income received under a claim of right, that meets both 2517
of the following requirements: 2518

(a) It is allowable for repayment of an item that was 2519
included in the taxpayer's adjusted gross income for a prior 2520
taxable year and did not qualify for a credit under division (A) 2521
or (B) of section 5747.05 of the Revised Code for that year; 2522

(b) It does not otherwise reduce the taxpayer's adjusted 2523
gross income for the current or any other taxable year. 2524

(14) Deduct an amount equal to the deposits made to, and net 2525
investment earnings of, a medical savings account during the 2526
taxable year, in accordance with section 3924.66 of the Revised 2527
Code. The deduction allowed by division (A)(14) of this section 2528
does not apply to medical savings account deposits and earnings 2529
otherwise deducted or excluded for the current or any other 2530
taxable year from the taxpayer's federal adjusted gross income. 2531

(15)(a) Add an amount equal to the funds withdrawn from a 2532
medical savings account during the taxable year, and the net 2533
investment earnings on those funds, when the funds withdrawn were 2534
used for any purpose other than to reimburse an account holder 2535
for, or to pay, eligible medical expenses, in accordance with 2536

section 3924.66 of the Revised Code;	2537
(b) Add the amounts distributed from a medical savings	2538
account under division (A)(2) of section 3924.68 of the Revised	2539
Code during the taxable year.	2540
(16) Add any amount claimed as a credit under section	2541
5747.059 or 5747.65 of the Revised Code to the extent that such	2542
amount satisfies either of the following:	2543
(a) The amount was deducted or excluded from the computation	2544
of the taxpayer's federal adjusted gross income as required to be	2545
reported for the taxpayer's taxable year under the Internal	2546
Revenue Code;	2547
(b) The amount resulted in a reduction of the taxpayer's	2548
federal adjusted gross income as required to be reported for any	2549
of the taxpayer's taxable years under the Internal Revenue Code.	2550
(17) Deduct the amount contributed by the taxpayer to an	2551
individual development account program established by a county	2552
department of job and family services pursuant to sections 329.11	2553
to 329.14 of the Revised Code for the purpose of matching funds	2554
deposited by program participants. On request of the tax	2555
commissioner, the taxpayer shall provide any information that, in	2556
the tax commissioner's opinion, is necessary to establish the	2557
amount deducted under division (A)(17) of this section.	2558
(18) Beginning in taxable year 2001 but not for any taxable	2559
year beginning after December 31, 2005, if the taxpayer is married	2560
and files a joint return and the combined federal adjusted gross	2561
income of the taxpayer and the taxpayer's spouse for the taxable	2562
year does not exceed one hundred thousand dollars, or if the	2563
taxpayer is single and has a federal adjusted gross income for the	2564
taxable year not exceeding fifty thousand dollars, deduct amounts	2565
paid during the taxable year for qualified tuition and fees paid	2566
to an eligible institution for the taxpayer, the taxpayer's	2567

spouse, or any dependent of the taxpayer, who is a resident of 2568
this state and is enrolled in or attending a program that 2569
culminates in a degree or diploma at an eligible institution. The 2570
deduction may be claimed only to the extent that qualified tuition 2571
and fees are not otherwise deducted or excluded for any taxable 2572
year from federal or Ohio adjusted gross income. The deduction may 2573
not be claimed for educational expenses for which the taxpayer 2574
claims a credit under section 5747.27 of the Revised Code. 2575

(19) Add any reimbursement received during the taxable year 2576
of any amount the taxpayer deducted under division (A)(18) of this 2577
section in any previous taxable year to the extent the amount is 2578
not otherwise included in Ohio adjusted gross income. 2579

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and 2580
(v) of this section, add five-sixths of the amount of depreciation 2581
expense allowed by subsection (k) of section 168 of the Internal 2582
Revenue Code, including the taxpayer's proportionate or 2583
distributive share of the amount of depreciation expense allowed 2584
by that subsection to a pass-through entity in which the taxpayer 2585
has a direct or indirect ownership interest. 2586

(ii) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of 2587
this section, add five-sixths of the amount of qualifying section 2588
179 depreciation expense, including the taxpayer's proportionate 2589
or distributive share of the amount of qualifying section 179 2590
depreciation expense allowed to any pass-through entity in which 2591
the taxpayer has a direct or indirect ownership interest. 2592

(iii) Subject to division (A)(20)(a)(v) of this section, for 2593
taxable years beginning in 2012 or thereafter, if the increase in 2594
income taxes withheld by the taxpayer is equal to or greater than 2595
ten per cent of income taxes withheld by the taxpayer during the 2596
taxpayer's immediately preceding taxable year, "two-thirds" shall 2597
be substituted for "five-sixths" for the purpose of divisions 2598
(A)(20)(a)(i) and (ii) of this section. 2599

(iv) Subject to division (A)(20)(a)(v) of this section, for taxable years beginning in 2012 or thereafter, a taxpayer is not required to add an amount under division (A)(20) of this section if the increase in income taxes withheld by the taxpayer and by any pass-through entity in which the taxpayer has a direct or indirect ownership interest is equal to or greater than the sum of (I) the amount of qualifying section 179 depreciation expense and (II) the amount of depreciation expense allowed to the taxpayer by subsection (k) of section 168 of the Internal Revenue Code, and including the taxpayer's proportionate or distributive shares of such amounts allowed to any such pass-through entities.

(v) If a taxpayer directly or indirectly incurs a net operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code and by qualifying section 179 depreciation expense, "the entire" shall be substituted for "five-sixths of the" for the purpose of divisions (A)(20)(a)(i) and (ii) of this section.

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

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

(c) To the extent the add-back required under division (A)(20)(a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative

methods of apportionment enumerated in section 5747.21 of the Revised Code. 2632
2633

(d) For the purposes of division (A)(20)(a)(v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount. 2634
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(e) For the purposes of divisions (A)(20) and (21) of this section: 2641
2642

(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year. 2643
2644
2645

(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year. 2646
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(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002. 2651
2652
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(21)(a) If the taxpayer was required to add an amount under division (A)(20)(a) of this section for a taxable year, deduct one of the following: 2658
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2660

(i) One-fifth of the amount so added for each of the five succeeding taxable years if the amount so added was five-sixths of 2661
2662

qualifying section 179 depreciation expense or depreciation 2663
expense allowed by subsection (k) of section 168 of the Internal 2664
Revenue Code; 2665

(ii) One-half of the amount so added for each of the two 2666
succeeding taxable years if the amount so added was two-thirds of 2667
such depreciation expense; 2668

(iii) One-sixth of the amount so added for each of the six 2669
succeeding taxable years if the entire amount of such depreciation 2670
expense was so added. 2671

(b) If the amount deducted under division (A)(21)(a) of this 2672
section is attributable to an add-back allocated under division 2673
(A)(20)(c) of this section, the amount deducted shall be sitused 2674
to the same location. Otherwise, the add-back shall be apportioned 2675
using the apportionment factors for the taxable year in which the 2676
deduction is taken, subject to one or more of the four alternative 2677
methods of apportionment enumerated in section 5747.21 of the 2678
Revised Code. 2679

(c) No deduction is available under division (A)(21)(a) of 2680
this section with regard to any depreciation allowed by section 2681
168(k) of the Internal Revenue Code and by the qualifying section 2682
179 depreciation expense amount to the extent that such 2683
depreciation results in or increases a federal net operating loss 2684
carryback or carryforward. If no such deduction is available for a 2685
taxable year, the taxpayer may carry forward the amount not 2686
deducted in such taxable year to the next taxable year and add 2687
that amount to any deduction otherwise available under division 2688
(A)(21)(a) of this section for that next taxable year. The 2689
carryforward of amounts not so deducted shall continue until the 2690
entire addition required by division (A)(20)(a) of this section 2691
has been deducted. 2692

(d) No refund shall be allowed as a result of adjustments 2693

made by division (A)(21) of this section. 2694

(22) Deduct, to the extent not otherwise deducted or excluded 2695
in computing federal or Ohio adjusted gross income for the taxable 2696
year, the amount the taxpayer received during the taxable year as 2697
reimbursement for life insurance premiums under section 5919.31 of 2698
the Revised Code. 2699

(23) Deduct, to the extent not otherwise deducted or excluded 2700
in computing federal or Ohio adjusted gross income for the taxable 2701
year, the amount the taxpayer received during the taxable year as 2702
a death benefit paid by the adjutant general under section 5919.33 2703
of the Revised Code. 2704

(24) Deduct, to the extent included in federal adjusted gross 2705
income and not otherwise allowable as a deduction or exclusion in 2706
computing federal or Ohio adjusted gross income for the taxable 2707
year, military pay and allowances received by the taxpayer during 2708
the taxable year for active duty service in the United States 2709
army, air force, navy, marine corps, or coast guard or reserve 2710
components thereof or the national guard. The deduction may not be 2711
claimed for military pay and allowances received by the taxpayer 2712
while the taxpayer is stationed in this state. 2713

(25) Deduct, to the extent not otherwise allowable as a 2714
deduction or exclusion in computing federal or Ohio adjusted gross 2715
income for the taxable year and not otherwise compensated for by 2716
any other source, the amount of qualified organ donation expenses 2717
incurred by the taxpayer during the taxable year, not to exceed 2718
ten thousand dollars. A taxpayer may deduct qualified organ 2719
donation expenses only once for all taxable years beginning with 2720
taxable years beginning in 2007. 2721

For the purposes of division (A)(25) of this section: 2722

(a) "Human organ" means all or any portion of a human liver, 2723
pancreas, kidney, intestine, or lung, and any portion of human 2724

bone marrow. 2725

(b) "Qualified organ donation expenses" means travel 2726
expenses, lodging expenses, and wages and salary forgone by a 2727
taxpayer in connection with the taxpayer's donation, while living, 2728
of one or more of the taxpayer's human organs to another human 2729
being. 2730

(26) Deduct, to the extent not otherwise deducted or excluded 2731
in computing federal or Ohio adjusted gross income for the taxable 2732
year, amounts received by the taxpayer as retired personnel pay 2733
for service in the uniformed services or reserve components 2734
thereof, or the national guard, or received by the surviving 2735
spouse or former spouse of such a taxpayer under the survivor 2736
benefit plan on account of such a taxpayer's death. If the 2737
taxpayer receives income on account of retirement paid under the 2738
federal civil service retirement system or federal employees 2739
retirement system, or under any successor retirement program 2740
enacted by the congress of the United States that is established 2741
and maintained for retired employees of the United States 2742
government, and such retirement income is based, in whole or in 2743
part, on credit for the taxpayer's uniformed service, the 2744
deduction allowed under this division shall include only that 2745
portion of such retirement income that is attributable to the 2746
taxpayer's uniformed service, to the extent that portion of such 2747
retirement income is otherwise included in federal adjusted gross 2748
income and is not otherwise deducted under this section. Any 2749
amount deducted under division (A)(26) of this section is not 2750
included in a taxpayer's adjusted gross income for the purposes of 2751
section 5747.055 of the Revised Code. No amount may be deducted 2752
under division (A)(26) of this section on the basis of which a 2753
credit was claimed under section 5747.055 of the Revised Code. 2754

(27) Deduct, to the extent not otherwise deducted or excluded 2755
in computing federal or Ohio adjusted gross income for the taxable 2756

year, the amount the taxpayer received during the taxable year 2757
from the military injury relief fund created in section 5101.98 of 2758
the Revised Code. 2759

(28) Deduct, to the extent not otherwise deducted or excluded 2760
in computing federal or Ohio adjusted gross income for the taxable 2761
year, the amount the taxpayer received as a veterans bonus during 2762
the taxable year from the Ohio department of veterans services as 2763
authorized by Section 2r of Article VIII, Ohio Constitution. 2764

(29) Deduct, to the extent not otherwise deducted or excluded 2765
in computing federal or Ohio adjusted gross income for the taxable 2766
year, any income derived from a transfer agreement or from the 2767
enterprise transferred under that agreement under section 4313.02 2768
of the Revised Code. 2769

(30) Deduct, to the extent not otherwise deducted or excluded 2770
in computing federal or Ohio adjusted gross income for the taxable 2771
year, Ohio college opportunity or federal Pell grant amounts 2772
received by the taxpayer or the taxpayer's spouse or dependent 2773
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 2774
1070a, et seq., and used to pay room or board furnished by the 2775
educational institution for which the grant was awarded at the 2776
institution's facilities, including meal plans administered by the 2777
institution. For the purposes of this division, receipt of a grant 2778
includes the distribution of a grant directly to an educational 2779
institution and the crediting of the grant to the enrollee's 2780
account with the institution. 2781

(31) Deduct one-half of the taxpayer's Ohio small business 2782
investor income, the deduction not to exceed sixty-two thousand 2783
five hundred dollars for each spouse if spouses file separate 2784
returns under section 5747.08 of the Revised Code or one hundred 2785
twenty-five thousand dollars for all other taxpayers. No 2786
pass-through entity may claim a deduction under this division. 2787

For the purposes of this division, "Ohio small business investor income" means the portion of a taxpayer's adjusted gross income that is business income reduced by deductions from business income and apportioned or allocated to this state under sections 5747.21 and 5747.22 of the Revised Code, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year.

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

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

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

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

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

(G) "Individual" means any natural person.

(H) "Internal Revenue Code" means the "Internal Revenue Code

of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2819

(I) "Resident" means any of the following, provided that 2820
division (I)(3) of this section applies only to taxable years of a 2821
trust beginning in 2002 or thereafter: 2822

(1) An individual who is domiciled in this state, subject to 2823
section 5747.24 of the Revised Code; 2824

(2) The estate of a decedent who at the time of death was 2825
domiciled in this state. The domicile tests of section 5747.24 of 2826
the Revised Code are not controlling for purposes of division 2827
(I)(2) of this section. 2828

(3) A trust that, in whole or part, resides in this state. If 2829
only part of a trust resides in this state, the trust is a 2830
resident only with respect to that part. 2831

For the purposes of division (I)(3) of this section: 2832

(a) A trust resides in this state for the trust's current 2833
taxable year to the extent, as described in division (I)(3)(d) of 2834
this section, that the trust consists directly or indirectly, in 2835
whole or in part, of assets, net of any related liabilities, that 2836
were transferred, or caused to be transferred, directly or 2837
indirectly, to the trust by any of the following: 2838

(i) A person, a court, or a governmental entity or 2839
instrumentality on account of the death of a decedent, but only if 2840
the trust is described in division (I)(3)(e)(i) or (ii) of this 2841
section; 2842

(ii) A person who was domiciled in this state for the 2843
purposes of this chapter when the person directly or indirectly 2844
transferred assets to an irrevocable trust, but only if at least 2845
one of the trust's qualifying beneficiaries is domiciled in this 2846
state for the purposes of this chapter during all or some portion 2847
of the trust's current taxable year; 2848

(iii) A person who was domiciled in this state for the 2849
purposes of this chapter when the trust document or instrument or 2850
part of the trust document or instrument became irrevocable, but 2851
only if at least one of the trust's qualifying beneficiaries is a 2852
resident domiciled in this state for the purposes of this chapter 2853
during all or some portion of the trust's current taxable year. If 2854
a trust document or instrument became irrevocable upon the death 2855
of a person who at the time of death was domiciled in this state 2856
for purposes of this chapter, that person is a person described in 2857
division (I)(3)(a)(iii) of this section. 2858

(b) A trust is irrevocable to the extent that the transferor 2859
is not considered to be the owner of the net assets of the trust 2860
under sections 671 to 678 of the Internal Revenue Code. 2861

(c) With respect to a trust other than a charitable lead 2862
trust, "qualifying beneficiary" has the same meaning as "potential 2863
current beneficiary" as defined in section 1361(e)(2) of the 2864
Internal Revenue Code, and with respect to a charitable lead trust 2865
"qualifying beneficiary" is any current, future, or contingent 2866
beneficiary, but with respect to any trust "qualifying 2867
beneficiary" excludes a person or a governmental entity or 2868
instrumentality to any of which a contribution would qualify for 2869
the charitable deduction under section 170 of the Internal Revenue 2870
Code. 2871

(d) For the purposes of division (I)(3)(a) of this section, 2872
the extent to which a trust consists directly or indirectly, in 2873
whole or in part, of assets, net of any related liabilities, that 2874
were transferred directly or indirectly, in whole or part, to the 2875
trust by any of the sources enumerated in that division shall be 2876
ascertained by multiplying the fair market value of the trust's 2877
assets, net of related liabilities, by the qualifying ratio, which 2878
shall be computed as follows: 2879

(i) The first time the trust receives assets, the numerator 2880

of the qualifying ratio is the fair market value of those assets 2881
at that time, net of any related liabilities, from sources 2882
enumerated in division (I)(3)(a) of this section. The denominator 2883
of the qualifying ratio is the fair market value of all the 2884
trust's assets at that time, net of any related liabilities. 2885

(ii) Each subsequent time the trust receives assets, a 2886
revised qualifying ratio shall be computed. The numerator of the 2887
revised qualifying ratio is the sum of (1) the fair market value 2888
of the trust's assets immediately prior to the subsequent 2889
transfer, net of any related liabilities, multiplied by the 2890
qualifying ratio last computed without regard to the subsequent 2891
transfer, and (2) the fair market value of the subsequently 2892
transferred assets at the time transferred, net of any related 2893
liabilities, from sources enumerated in division (I)(3)(a) of this 2894
section. The denominator of the revised qualifying ratio is the 2895
fair market value of all the trust's assets immediately after the 2896
subsequent transfer, net of any related liabilities. 2897

(iii) Whether a transfer to the trust is by or from any of 2898
the sources enumerated in division (I)(3)(a) of this section shall 2899
be ascertained without regard to the domicile of the trust's 2900
beneficiaries. 2901

(e) For the purposes of division (I)(3)(a)(i) of this 2902
section: 2903

(i) A trust is described in division (I)(3)(e)(i) of this 2904
section if the trust is a testamentary trust and the testator of 2905
that testamentary trust was domiciled in this state at the time of 2906
the testator's death for purposes of the taxes levied under 2907
Chapter 5731. of the Revised Code. 2908

(ii) A trust is described in division (I)(3)(e)(ii) of this 2909
section if the transfer is a qualifying transfer described in any 2910
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 2911

irrevocable inter vivos trust, and at least one of the trust's 2912
qualifying beneficiaries is domiciled in this state for purposes 2913
of this chapter during all or some portion of the trust's current 2914
taxable year. 2915

(f) For the purposes of division (I)(3)(e)(ii) of this 2916
section, a "qualifying transfer" is a transfer of assets, net of 2917
any related liabilities, directly or indirectly to a trust, if the 2918
transfer is described in any of the following: 2919

(i) The transfer is made to a trust, created by the decedent 2920
before the decedent's death and while the decedent was domiciled 2921
in this state for the purposes of this chapter, and, prior to the 2922
death of the decedent, the trust became irrevocable while the 2923
decedent was domiciled in this state for the purposes of this 2924
chapter. 2925

(ii) The transfer is made to a trust to which the decedent, 2926
prior to the decedent's death, had directly or indirectly 2927
transferred assets, net of any related liabilities, while the 2928
decedent was domiciled in this state for the purposes of this 2929
chapter, and prior to the death of the decedent the trust became 2930
irrevocable while the decedent was domiciled in this state for the 2931
purposes of this chapter. 2932

(iii) The transfer is made on account of a contractual 2933
relationship existing directly or indirectly between the 2934
transferor and either the decedent or the estate of the decedent 2935
at any time prior to the date of the decedent's death, and the 2936
decedent was domiciled in this state at the time of death for 2937
purposes of the taxes levied under Chapter 5731. of the Revised 2938
Code. 2939

(iv) The transfer is made to a trust on account of a 2940
contractual relationship existing directly or indirectly between 2941
the transferor and another person who at the time of the 2942

decedent's death was domiciled in this state for purposes of this 2943
chapter. 2944

(v) The transfer is made to a trust on account of the will of 2945
a testator who was domiciled in this state at the time of the 2946
testator's death for purposes of the taxes levied under Chapter 2947
5731. of the Revised Code. 2948

(vi) The transfer is made to a trust created by or caused to 2949
be created by a court, and the trust was directly or indirectly 2950
created in connection with or as a result of the death of an 2951
individual who, for purposes of the taxes levied under Chapter 2952
5731. of the Revised Code, was domiciled in this state at the time 2953
of the individual's death. 2954

(g) The tax commissioner may adopt rules to ascertain the 2955
part of a trust residing in this state. 2956

(J) "Nonresident" means an individual or estate that is not a 2957
resident. An individual who is a resident for only part of a 2958
taxable year is a nonresident for the remainder of that taxable 2959
year. 2960

(K) "Pass-through entity" has the same meaning as in section 2961
5733.04 of the Revised Code. 2962

(L) "Return" means the notifications and reports required to 2963
be filed pursuant to this chapter for the purpose of reporting the 2964
tax due and includes declarations of estimated tax when so 2965
required. 2966

(M) "Taxable year" means the calendar year or the taxpayer's 2967
fiscal year ending during the calendar year, or fractional part 2968
thereof, upon which the adjusted gross income is calculated 2969
pursuant to this chapter. 2970

(N) "Taxpayer" means any person subject to the tax imposed by 2971
section 5747.02 of the Revised Code or any pass-through entity 2972

that makes the election under division (D) of section 5747.08 of
the Revised Code.

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

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

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

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

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

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

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

(1) Add interest or dividends, net of ordinary, necessary,
and reasonable expenses not deducted in computing federal taxable
income, on obligations or securities of any state or of any
political subdivision or authority of any state, other than this
state and its subdivisions and authorities, but only to the extent

that such net amount is not otherwise includible in Ohio taxable 3003
income and is described in either division (S)(1)(a) or (b) of 3004
this section: 3005

(a) The net amount is not attributable to the S portion of an 3006
electing small business trust and has not been distributed to 3007
beneficiaries for the taxable year; 3008

(b) The net amount is attributable to the S portion of an 3009
electing small business trust for the taxable year. 3010

(2) Add interest or dividends, net of ordinary, necessary, 3011
and reasonable expenses not deducted in computing federal taxable 3012
income, on obligations of any authority, commission, 3013
instrumentality, territory, or possession of the United States to 3014
the extent that the interest or dividends are exempt from federal 3015
income taxes but not from state income taxes, but only to the 3016
extent that such net amount is not otherwise includible in Ohio 3017
taxable income and is described in either division (S)(1)(a) or 3018
(b) of this section; 3019

(3) Add the amount of personal exemption allowed to the 3020
estate pursuant to section 642(b) of the Internal Revenue Code; 3021

(4) Deduct interest or dividends, net of related expenses 3022
deducted in computing federal taxable income, on obligations of 3023
the United States and its territories and possessions or of any 3024
authority, commission, or instrumentality of the United States to 3025
the extent that the interest or dividends are exempt from state 3026
taxes under the laws of the United States, but only to the extent 3027
that such amount is included in federal taxable income and is 3028
described in either division (S)(1)(a) or (b) of this section; 3029

(5) Deduct the amount of wages and salaries, if any, not 3030
otherwise allowable as a deduction but that would have been 3031
allowable as a deduction in computing federal taxable income for 3032
the taxable year, had the targeted jobs credit allowed under 3033

sections 38, 51, and 52 of the Internal Revenue Code not been in 3034
effect, but only to the extent such amount relates either to 3035
income included in federal taxable income for the taxable year or 3036
to income of the S portion of an electing small business trust for 3037
the taxable year; 3038

(6) Deduct any interest or interest equivalent, net of 3039
related expenses deducted in computing federal taxable income, on 3040
public obligations and purchase obligations, but only to the 3041
extent that such net amount relates either to income included in 3042
federal taxable income for the taxable year or to income of the S 3043
portion of an electing small business trust for the taxable year; 3044

(7) Add any loss or deduct any gain resulting from sale, 3045
exchange, or other disposition of public obligations to the extent 3046
that such loss has been deducted or such gain has been included in 3047
computing either federal taxable income or income of the S portion 3048
of an electing small business trust for the taxable year; 3049

(8) Except in the case of the final return of an estate, add 3050
any amount deducted by the taxpayer on both its Ohio estate tax 3051
return pursuant to section 5731.14 of the Revised Code, and on its 3052
federal income tax return in determining federal taxable income; 3053

(9)(a) Deduct any amount included in federal taxable income 3054
solely because the amount represents a reimbursement or refund of 3055
expenses that in a previous year the decedent had deducted as an 3056
itemized deduction pursuant to section 63 of the Internal Revenue 3057
Code and applicable treasury regulations. The deduction otherwise 3058
allowed under division (S)(9)(a) of this section shall be reduced 3059
to the extent the reimbursement is attributable to an amount the 3060
taxpayer or decedent deducted under this section in any taxable 3061
year. 3062

(b) Add any amount not otherwise included in Ohio taxable 3063
income for any taxable year to the extent that the amount is 3064

attributable to the recovery during the taxable year of any amount 3065
deducted or excluded in computing federal or Ohio taxable income 3066
in any taxable year, but only to the extent such amount has not 3067
been distributed to beneficiaries for the taxable year. 3068

(10) Deduct any portion of the deduction described in section 3069
1341(a)(2) of the Internal Revenue Code, for repaying previously 3070
reported income received under a claim of right, that meets both 3071
of the following requirements: 3072

(a) It is allowable for repayment of an item that was 3073
included in the taxpayer's taxable income or the decedent's 3074
adjusted gross income for a prior taxable year and did not qualify 3075
for a credit under division (A) or (B) of section 5747.05 of the 3076
Revised Code for that year. 3077

(b) It does not otherwise reduce the taxpayer's taxable 3078
income or the decedent's adjusted gross income for the current or 3079
any other taxable year. 3080

(11) Add any amount claimed as a credit under section 3081
5747.059 or 5747.65 of the Revised Code to the extent that the 3082
amount satisfies either of the following: 3083

(a) The amount was deducted or excluded from the computation 3084
of the taxpayer's federal taxable income as required to be 3085
reported for the taxpayer's taxable year under the Internal 3086
Revenue Code; 3087

(b) The amount resulted in a reduction in the taxpayer's 3088
federal taxable income as required to be reported for any of the 3089
taxpayer's taxable years under the Internal Revenue Code. 3090

(12) Deduct any amount, net of related expenses deducted in 3091
computing federal taxable income, that a trust is required to 3092
report as farm income on its federal income tax return, but only 3093
if the assets of the trust include at least ten acres of land 3094
satisfying the definition of "land devoted exclusively to 3095

agricultural use" under section 5713.30 of the Revised Code, 3096
regardless of whether the land is valued for tax purposes as such 3097
land under sections 5713.30 to 5713.38 of the Revised Code. If the 3098
trust is a pass-through entity investor, section 5747.231 of the 3099
Revised Code applies in ascertaining if the trust is eligible to 3100
claim the deduction provided by division (S)(12) of this section 3101
in connection with the pass-through entity's farm income. 3102

Except for farm income attributable to the S portion of an 3103
electing small business trust, the deduction provided by division 3104
(S)(12) of this section is allowed only to the extent that the 3105
trust has not distributed such farm income. Division (S)(12) of 3106
this section applies only to taxable years of a trust beginning in 3107
2002 or thereafter. 3108

(13) Add the net amount of income described in section 641(c) 3109
of the Internal Revenue Code to the extent that amount is not 3110
included in federal taxable income. 3111

(14) Add or deduct the amount the taxpayer would be required 3112
to add or deduct under division (A)(20) or (21) of this section if 3113
the taxpayer's Ohio taxable income were computed in the same 3114
manner as an individual's Ohio adjusted gross income is computed 3115
under this section. In the case of a trust, division (S)(14) of 3116
this section applies only to any of the trust's taxable years 3117
beginning in 2002 or thereafter. 3118

(T) "School district income" and "school district income tax" 3119
have the same meanings as in section 5748.01 of the Revised Code. 3120

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 3121
of this section, "public obligations," "purchase obligations," and 3122
"interest or interest equivalent" have the same meanings as in 3123
section 5709.76 of the Revised Code. 3124

(V) "Limited liability company" means any limited liability 3125
company formed under Chapter 1705. of the Revised Code or under 3126

the laws of any other state. 3127

(W) "Pass-through entity investor" means any person who, 3128
during any portion of a taxable year of a pass-through entity, is 3129
a partner, member, shareholder, or equity investor in that 3130
pass-through entity. 3131

(X) "Banking day" has the same meaning as in section 1304.01 3132
of the Revised Code. 3133

(Y) "Month" means a calendar month. 3134

(Z) "Quarter" means the first three months, the second three 3135
months, the third three months, or the last three months of the 3136
taxpayer's taxable year. 3137

(AA)(1) "Eligible institution" means a state university or 3138
state institution of higher education as defined in section 3139
3345.011 of the Revised Code, or a private, nonprofit college, 3140
university, or other post-secondary institution located in this 3141
state that possesses a certificate of authorization issued by the 3142
Ohio board of regents pursuant to Chapter 1713. of the Revised 3143
Code or a certificate of registration issued by the state board of 3144
career colleges and schools under Chapter 3332. of the Revised 3145
Code. 3146

(2) "Qualified tuition and fees" means tuition and fees 3147
imposed by an eligible institution as a condition of enrollment or 3148
attendance, not exceeding two thousand five hundred dollars in 3149
each of the individual's first two years of post-secondary 3150
education. If the individual is a part-time student, "qualified 3151
tuition and fees" includes tuition and fees paid for the academic 3152
equivalent of the first two years of post-secondary education 3153
during a maximum of five taxable years, not exceeding a total of 3154
five thousand dollars. "Qualified tuition and fees" does not 3155
include: 3156

(a) Expenses for any course or activity involving sports, 3157

games, or hobbies unless the course or activity is part of the 3158
individual's degree or diploma program; 3159

(b) The cost of books, room and board, student activity fees, 3160
athletic fees, insurance expenses, or other expenses unrelated to 3161
the individual's academic course of instruction; 3162

(c) Tuition, fees, or other expenses paid or reimbursed 3163
through an employer, scholarship, grant in aid, or other 3164
educational benefit program. 3165

(BB)(1) "Modified business income" means the business income 3166
included in a trust's Ohio taxable income after such taxable 3167
income is first reduced by the qualifying trust amount, if any. 3168

(2) "Qualifying trust amount" of a trust means capital gains 3169
and losses from the sale, exchange, or other disposition of equity 3170
or ownership interests in, or debt obligations of, a qualifying 3171
investee to the extent included in the trust's Ohio taxable 3172
income, but only if the following requirements are satisfied: 3173

(a) The book value of the qualifying investee's physical 3174
assets in this state and everywhere, as of the last day of the 3175
qualifying investee's fiscal or calendar year ending immediately 3176
prior to the date on which the trust recognizes the gain or loss, 3177
is available to the trust. 3178

(b) The requirements of section 5747.011 of the Revised Code 3179
are satisfied for the trust's taxable year in which the trust 3180
recognizes the gain or loss. 3181

Any gain or loss that is not a qualifying trust amount is 3182
modified business income, qualifying investment income, or 3183
modified nonbusiness income, as the case may be. 3184

(3) "Modified nonbusiness income" means a trust's Ohio 3185
taxable income other than modified business income, other than the 3186
qualifying trust amount, and other than qualifying investment 3187

income, as defined in section 5747.012 of the Revised Code, to the 3188
extent such qualifying investment income is not otherwise part of 3189
modified business income. 3190

(4) "Modified Ohio taxable income" applies only to trusts, 3191
and means the sum of the amounts described in divisions (BB)(4)(a) 3192
to (c) of this section: 3193

(a) The fraction, calculated under section 5747.013, and 3194
applying section 5747.231 of the Revised Code, multiplied by the 3195
sum of the following amounts: 3196

(i) The trust's modified business income; 3197

(ii) The trust's qualifying investment income, as defined in 3198
section 5747.012 of the Revised Code, but only to the extent the 3199
qualifying investment income does not otherwise constitute 3200
modified business income and does not otherwise constitute a 3201
qualifying trust amount. 3202

(b) The qualifying trust amount multiplied by a fraction, the 3203
numerator of which is the sum of the book value of the qualifying 3204
investee's physical assets in this state on the last day of the 3205
qualifying investee's fiscal or calendar year ending immediately 3206
prior to the day on which the trust recognizes the qualifying 3207
trust amount, and the denominator of which is the sum of the book 3208
value of the qualifying investee's total physical assets 3209
everywhere on the last day of the qualifying investee's fiscal or 3210
calendar year ending immediately prior to the day on which the 3211
trust recognizes the qualifying trust amount. If, for a taxable 3212
year, the trust recognizes a qualifying trust amount with respect 3213
to more than one qualifying investee, the amount described in 3214
division (BB)(4)(b) of this section shall equal the sum of the 3215
products so computed for each such qualifying investee. 3216

(c)(i) With respect to a trust or portion of a trust that is 3217
a resident as ascertained in accordance with division (I)(3)(d) of 3218

this section, its modified nonbusiness income. 3219

(ii) With respect to a trust or portion of a trust that is 3220
not a resident as ascertained in accordance with division 3221
(I)(3)(d) of this section, the amount of its modified nonbusiness 3222
income satisfying the descriptions in divisions (B)(2) to (5) of 3223
section 5747.20 of the Revised Code, except as otherwise provided 3224
in division (BB)(4)(c)(ii) of this section. With respect to a 3225
trust or portion of a trust that is not a resident as ascertained 3226
in accordance with division (I)(3)(d) of this section, the trust's 3227
portion of modified nonbusiness income recognized from the sale, 3228
exchange, or other disposition of a debt interest in or equity 3229
interest in a section 5747.212 entity, as defined in section 3230
5747.212 of the Revised Code, without regard to division (A) of 3231
that section, shall not be allocated to this state in accordance 3232
with section 5747.20 of the Revised Code but shall be apportioned 3233
to this state in accordance with division (B) of section 5747.212 3234
of the Revised Code without regard to division (A) of that 3235
section. 3236

If the allocation and apportionment of a trust's income under 3237
divisions (BB)(4)(a) and (c) of this section do not fairly 3238
represent the modified Ohio taxable income of the trust in this 3239
state, the alternative methods described in division (C) of 3240
section 5747.21 of the Revised Code may be applied in the manner 3241
and to the same extent provided in that section. 3242

(5)(a) Except as set forth in division (BB)(5)(b) of this 3243
section, "qualifying investee" means a person in which a trust has 3244
an equity or ownership interest, or a person or unit of government 3245
the debt obligations of either of which are owned by a trust. For 3246
the purposes of division (BB)(2)(a) of this section and for the 3247
purpose of computing the fraction described in division (BB)(4)(b) 3248
of this section, all of the following apply: 3249

(i) If the qualifying investee is a member of a qualifying 3250

controlled group on the last day of the qualifying investee's 3251
fiscal or calendar year ending immediately prior to the date on 3252
which the trust recognizes the gain or loss, then "qualifying 3253
investee" includes all persons in the qualifying controlled group 3254
on such last day. 3255

(ii) If the qualifying investee, or if the qualifying 3256
investee and any members of the qualifying controlled group of 3257
which the qualifying investee is a member on the last day of the 3258
qualifying investee's fiscal or calendar year ending immediately 3259
prior to the date on which the trust recognizes the gain or loss, 3260
separately or cumulatively own, directly or indirectly, on the 3261
last day of the qualifying investee's fiscal or calendar year 3262
ending immediately prior to the date on which the trust recognizes 3263
the qualifying trust amount, more than fifty per cent of the 3264
equity of a pass-through entity, then the qualifying investee and 3265
the other members are deemed to own the proportionate share of the 3266
pass-through entity's physical assets which the pass-through 3267
entity directly or indirectly owns on the last day of the 3268
pass-through entity's calendar or fiscal year ending within or 3269
with the last day of the qualifying investee's fiscal or calendar 3270
year ending immediately prior to the date on which the trust 3271
recognizes the qualifying trust amount. 3272

(iii) For the purposes of division (BB)(5)(a)(iii) of this 3273
section, "upper level pass-through entity" means a pass-through 3274
entity directly or indirectly owning any equity of another 3275
pass-through entity, and "lower level pass-through entity" means 3276
that other pass-through entity. 3277

An upper level pass-through entity, whether or not it is also 3278
a qualifying investee, is deemed to own, on the last day of the 3279
upper level pass-through entity's calendar or fiscal year, the 3280
proportionate share of the lower level pass-through entity's 3281
physical assets that the lower level pass-through entity directly 3282

or indirectly owns on the last day of the lower level pass-through 3283
entity's calendar or fiscal year ending within or with the last 3284
day of the upper level pass-through entity's fiscal or calendar 3285
year. If the upper level pass-through entity directly and 3286
indirectly owns less than fifty per cent of the equity of the 3287
lower level pass-through entity on each day of the upper level 3288
pass-through entity's calendar or fiscal year in which or with 3289
which ends the calendar or fiscal year of the lower level 3290
pass-through entity and if, based upon clear and convincing 3291
evidence, complete information about the location and cost of the 3292
physical assets of the lower pass-through entity is not available 3293
to the upper level pass-through entity, then solely for purposes 3294
of ascertaining if a gain or loss constitutes a qualifying trust 3295
amount, the upper level pass-through entity shall be deemed as 3296
owning no equity of the lower level pass-through entity for each 3297
day during the upper level pass-through entity's calendar or 3298
fiscal year in which or with which ends the lower level 3299
pass-through entity's calendar or fiscal year. Nothing in division 3300
(BB)(5)(a)(iii) of this section shall be construed to provide for 3301
any deduction or exclusion in computing any trust's Ohio taxable 3302
income. 3303

(b) With respect to a trust that is not a resident for the 3304
taxable year and with respect to a part of a trust that is not a 3305
resident for the taxable year, "qualifying investee" for that 3306
taxable year does not include a C corporation if both of the 3307
following apply: 3308

(i) During the taxable year the trust or part of the trust 3309
recognizes a gain or loss from the sale, exchange, or other 3310
disposition of equity or ownership interests in, or debt 3311
obligations of, the C corporation. 3312

(ii) Such gain or loss constitutes nonbusiness income. 3313

(6) "Available" means information is such that a person is 3314

able to learn of the information by the due date plus extensions, 3315
if any, for filing the return for the taxable year in which the 3316
trust recognizes the gain or loss. 3317

(CC) "Qualifying controlled group" has the same meaning as in 3318
section 5733.04 of the Revised Code. 3319

(DD) "Related member" has the same meaning as in section 3320
5733.042 of the Revised Code. 3321

(EE)(1) For the purposes of division (EE) of this section: 3322

(a) "Qualifying person" means any person other than a 3323
qualifying corporation. 3324

(b) "Qualifying corporation" means any person classified for 3325
federal income tax purposes as an association taxable as a 3326
corporation, except either of the following: 3327

(i) A corporation that has made an election under subchapter 3328
S, chapter one, subtitle A, of the Internal Revenue Code for its 3329
taxable year ending within, or on the last day of, the investor's 3330
taxable year; 3331

(ii) A subsidiary that is wholly owned by any corporation 3332
that has made an election under subchapter S, chapter one, 3333
subtitle A of the Internal Revenue Code for its taxable year 3334
ending within, or on the last day of, the investor's taxable year. 3335

(2) For the purposes of this chapter, unless expressly stated 3336
otherwise, no qualifying person indirectly owns any asset directly 3337
or indirectly owned by any qualifying corporation. 3338

(FF) For purposes of this chapter and Chapter 5751. of the 3339
Revised Code: 3340

(1) "Trust" does not include a qualified pre-income tax 3341
trust. 3342

(2) A "qualified pre-income tax trust" is any pre-income tax 3343
trust that makes a qualifying pre-income tax trust election as 3344

described in division (FF)(3) of this section. 3345

(3) A "qualifying pre-income tax trust election" is an 3346
election by a pre-income tax trust to subject to the tax imposed 3347
by section 5751.02 of the Revised Code the pre-income tax trust 3348
and all pass-through entities of which the trust owns or controls, 3349
directly, indirectly, or constructively through related interests, 3350
five per cent or more of the ownership or equity interests. The 3351
trustee shall notify the tax commissioner in writing of the 3352
election on or before April 15, 2006. The election, if timely 3353
made, shall be effective on and after January 1, 2006, and shall 3354
apply for all tax periods and tax years until revoked by the 3355
trustee of the trust. 3356

(4) A "pre-income tax trust" is a trust that satisfies all of 3357
the following requirements: 3358

(a) The document or instrument creating the trust was 3359
executed by the grantor before January 1, 1972; 3360

(b) The trust became irrevocable upon the creation of the 3361
trust; and 3362

(c) The grantor was domiciled in this state at the time the 3363
trust was created. 3364

(GG) "Uniformed services" has the same meaning as in 10 3365
U.S.C. 101. 3366

(HH) "Employee" has the same meaning as in section 4175.01 of 3367
the Revised Code, unless the internal revenue service has accepted 3368
the classification an individual as an independent contractor made 3369
by the individual and the individual's payer. 3370

Section 2. That existing sections 121.083, 1349.61, 4111.02, 3371
4111.14, 4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 4141.01, 3372
and 5747.01 of the Revised Code are hereby repealed. 3373