

133rd General Assembly
Regular Session
2019-2020

Sub. H. B. No. 80

A B I L L

To amend sections 4113.21, 4121.01, 4123.01, 1
4123.026, 4123.038, 4123.46, 4123.52, 4123.56, 2
4123.58, 4123.65, 4141.01, and 5747.01 and to 3
enact sections 4121.471 and 4177.01 to 4177.06 of 4
the Revised Code to make changes to the Workers' 5
Compensation Law, to create a generally uniform 6
definition of employee for specified labor laws, 7
to prohibit misclassification under those laws, to 8
make appropriations for the Bureau of Workers' 9
Compensation for the biennium beginning July 1, 10
2019, and ending June 30, 2021, and to provide 11
authorization and conditions for the operation of 12
the Bureau's programs. 13

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

Section 1. All items in this section are hereby appropriated 14
out of any moneys in the state treasury to the credit of the 15
designated fund. For all appropriations made in this act, those in 16
the first column are for fiscal year 2020, and those in the second 17
column are for fiscal year 2021. 18

BWC BUREAU OF WORKERS' COMPENSATION 19

Dedicated Purpose Fund Group 20

7023 855407 Claims, Risk and \$ 120,939,816 \$ 124,329,031 21

Medical Management

7023	855408	Fraud Prevention	\$	14,095,916	\$	14,231,413	22
7023	855409	Administrative Services	\$	117,250,236	\$	116,025,396	23
7023	855410	Attorney General Payments	\$	4,621,850	\$	4,621,850	24
8220	855606	Coal Workers' Fund	\$	186,632	\$	188,487	25
8230	855608	Marine Industry	\$	78,188	\$	78,698	26
8250	855605	Disabled Workers Relief Fund	\$	193,419	\$	195,709	27
8260	855609	Safety and Hygiene Operating	\$	24,079,350	\$	23,745,661	28
8260	855610	Safety Grants	\$	20,000,000	\$	20,000,000	29
8260	855611	Health and Safety Initiative	\$	6,000,000	\$	6,000,000	30
8260	855612	Safety Campaign	\$	1,500,000	\$	1,500,000	31
8260	855613	Research Grants	\$	2,000,000	\$	2,000,000	32
8260	855618	Substance Use Recovery and Workplace Safety Program	\$	5,000,000	\$	10,000,000	33
8260	855619	Safety and Health Center of Excellence	\$	2,000,000	\$	0	34
TOTAL DPF Dedicated Purpose Fund Group			\$	317,945,407	\$	322,916,245	35
Federal Fund Group							36
3490	855601	OSHA Enforcement	\$	1,676,000	\$	1,676,000	37
3FW0	855614	BLS SOII Grant	\$	195,104	\$	195,104	38
3FW0	855615	NIOSH Grant	\$	24,995	\$	0	39
TOTAL FED Federal Fund Group			\$	1,896,099	\$	1,871,104	40
TOTAL ALL BUDGET FUND GROUPS			\$	319,841,506	\$	324,787,349	41
WORKERS' COMPENSATION FRAUD UNIT							42
Of the foregoing appropriation item 855410, Attorney General							43

Payments, \$828,200 in each fiscal year shall be used to fund the 44
expenses of the Workers' Compensation Fraud Unit within the 45
Attorney General's Office. These payments shall be processed at 46
the beginning of each quarter of each fiscal year and deposited 47
into the Workers' Compensation Section Fund (Fund 1950) used by 48
the Attorney General. 49

SAFETY AND HYGIENE 50

Notwithstanding section 4121.37 of the Revised Code, the 51
Treasurer of State shall remit \$24,080,000 cash in fiscal year 52
2020 and \$23,746,000 cash in fiscal year 2021 from the State 53
Insurance Fund to the state treasury to the credit of the Safety 54
and Hygiene Fund (Fund 8260). 55

SAFETY GRANTS 56

Notwithstanding section 4121.37 of the Revised Code, the 57
Treasurer of State shall remit \$20,000,000 in cash in fiscal year 58
2020 and \$20,000,000 in cash in fiscal year 2021 from the State 59
Insurance Fund to the state treasury to the credit of the Safety 60
and Hygiene Fund (Fund 8260) to be used for Safety Grants. 61

HEALTH AND SAFETY INITIATIVE 62

Notwithstanding section 4121.37 of Revised Code, the 63
Treasurer of State shall remit \$6,000,000 in cash in fiscal year 64
2020 and \$6,000,000 in cash in fiscal year 2021 from the State 65
Insurance Fund to the state treasury to the credit of the Safety 66
and Hygiene Fund (Fund 8260). These amounts shall be used under 67
appropriation item 855611, Health and Safety Initiative, for the 68
purpose of creating and operating a health and wellness program. 69

SAFETY CAMPAIGN 70

Notwithstanding section 4121.37 of the Revised Code, the 71
Treasurer of State shall remit \$1,500,000 in cash in fiscal year 72
2020 and \$1,500,000 in cash in fiscal year 2021 from the State 73

Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855612, Safety Campaign, for the purpose of creating and operating a statewide safety awareness and education campaign.

FEDERAL GRANT PROGRAMS

The foregoing appropriation item 855609, Safety and Hygiene Operating, may be used to provide the state match for federal grant funding received by the Division of Safety and Hygiene.

VOCATIONAL REHABILITATION

The Bureau of Workers' Compensation and the Opportunities for Ohioans with Disabilities Agency may enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. The Bureau may provide funds from the State Insurance Fund to fund vocational rehabilitation services and staff in accordance with the interagency agreement.

RESEARCH GRANTS

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$2,000,000 in cash in fiscal year 2020 and \$2,000,000 in cash in fiscal year 2021 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855613, Research Grants, for the purpose of creating and operating the occupational safety and health research program.

SUBSTANCE USE RECOVERY AND WORKPLACE SAFETY PROGRAM

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$5,000,000 in cash in fiscal year 2020 and \$10,000,000 in cash in fiscal year 2021 from the State

Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855618, Substance Use Recovery and Workplace Safety Program, for the purpose of creating and operating the opioid workplace safety program.

SAFETY AND HEALTH CENTER OF EXCELLENCE

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$2,000,000 in cash in fiscal year 2020 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855619, Safety and Health Center of Excellence, for the purpose of creating a center of excellence at the Ohio Center of Occupational Safety and Health.

ADMINISTRATIVE COST FUND

Notwithstanding section 4123.341 of the Revised Code, the Treasurer of State shall remit up to \$25,000,000 cash in fiscal year 2020 and \$25,000,000 cash in fiscal year 2021 from the State Insurance Fund to the state treasury to the credit of the Workers' Compensation (Fund 7023).

Section 2. DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING

To pay for the FY 2020 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission, on July 1, 2019, and January 1, 2020, or as soon as possible thereafter, the Director of Budget and Management shall transfer \$212,500 in cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0).

To pay for the FY 2021 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission, on July 1, 2020, and January 1, 2021, or as soon as

possible thereafter, the Director of Budget and Management shall 134
transfer \$212,500 in cash from the Workers' Compensation Fund 135
(Fund 7023) to the Deputy Inspector General for the Bureau of 136
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 137

If additional amounts are needed, the Inspector General may 138
seek Controlling Board approval for additional transfers of cash 139
and to increase the amount appropriated in appropriation item 140
965604, Deputy Inspector General for the Bureau of Workers' 141
Compensation and Industrial Commission. 142

Section 3. Law contained in the Main Operating Appropriations 143
Act of the 133rd General Assembly that applies generally to the 144
appropriations made in that act also applies generally to the 145
appropriations made in this act. 146

Section 4. The provisions of law contained in this act, and 147
their applications, are severable. If any provision of law 148
contained in this act, or if any application of any provision of 149
law contained in this act, is held invalid, the invalidity does 150
not affect other provisions of law contained in this act and their 151
applications that can be given effect without the invalid 152
provision or application. 153

Section 5. Sections 1 to 5 of this act are exempt from the 154
referendum under Ohio Constitution, Article II, Section 1d and 155
section 1.471 of the Revised Code and therefore take effect 156
immediately when this act becomes law. 157

Section 6. That sections 4113.21, 4121.01, 4123.01, 4123.026, 158
4123.038, 4123.46, 4123.52, 4123.56, 4123.58, 4123.65, 4141.01, 159
and 5747.01 be amended and sections 4121.471, 4177.01, 4177.02, 160
4177.03, 4177.04, 4177.05, and 4177.06 of the Revised Code be 161
enacted to read as follows: 162

Sec. 4113.21. (A) No private employer shall require any 163
prospective employee or applicant for employment to pay the cost 164
of a medical examination required by the employer as a condition 165
of employment. 166

(B) No public employer or private employer furnishing 167
services to a public employer in accordance with a contract 168
subject to the "Service Contract Act of 1965," 41 U.S.C. 6701 et 169
seq., shall require any employee, prospective employee, or 170
applicant for employment to pay the cost of a an initial or any 171
subsequent medical ~~examination~~ examinations required by the public 172
employer or private employer as a condition of employment or 173
continued employment. 174

(C) As used in this section: 175

(1) "Private employer" means any individual, partnership, 176
trust, estate, joint-stock company, insurance company, common 177
carrier, public utility, or corporation, whether domestic or 178
foreign, or the receiver, trustee in bankruptcy, trustee, or the 179
successor thereof, who has in employment three or more individuals 180
at any one time within a calendar year. 181

(2) "Public employer" means the United States, the state, any 182
political subdivision of the state, and any agency of the United 183
States, the state, or a political subdivision of the state. 184

(3) "Employee" means any person who may be permitted, 185
required, or directed by any employer in consideration of direct 186
or indirect gain or profit, to engage in any employment. 187

(D) Any employer who violates this section shall forfeit not 188
more than one hundred dollars for each violation. The bureau of 189
workers' compensation and the public utilities commission shall 190
enforce this section. 191

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 of 192

the Revised Code: 193

(1) "Place of employment" means every place, whether indoors 194
or out, or underground, and the premises appurtenant thereto, 195
where either temporarily or permanently any industry, trade, or 196
business is carried on, or where any process or operation, 197
directly or indirectly related to any industry, trade, or 198
business, is carried on and where any person is directly or 199
indirectly employed by another for direct or indirect gain or 200
profit, but does not include any place where persons are employed 201
in private domestic service or agricultural pursuits which do not 202
involve the use of mechanical power. 203

(2) "Employment" means any trade, occupation, or process of 204
manufacture or any method of carrying on such trade, occupation, 205
or process of manufacture in which any person may be engaged, 206
except in such private domestic service or agricultural pursuits 207
as do not involve the use of mechanical power. 208

(3) "Employer" means every person, firm, corporation, agent, 209
manager, representative, or other person having control or custody 210
of any employment, place of employment, or employee. "Employer" 211
does not include a franchisor with respect to the franchisor's 212
relationship with a franchisee or an employee of a franchisee, 213
unless the franchisor agrees to assume that role in writing or a 214
court of competent jurisdiction determines that the franchisor 215
exercises a type or degree of control over the franchisee or the 216
franchisee's employees that is not customarily exercised by a 217
franchisor for the purpose of protecting the franchisor's 218
trademark, brand, or both. For purposes of this division, 219
"franchisor" and "franchisee" have the same meanings as in 16 220
C.F.R. 436.1. 221

(4)(a) "Employee" means a person who ~~may be required or~~ 222
~~directed by any employer, in consideration of direct or indirect~~ 223

~~gain or profit, to engage in any employment, or to go, or work, or~~ 224
~~be at any time in any place of employment~~ is an employee under the 225
rules adopted by the superintendent of industrial compliance 226
pursuant to section 4177.01 of the Revised Code, including a 227
person described in division (A)(4)(b) of this section if a motor 228
carrier elects to consider the person to be an employee. 229

(b) "Employee" does not include a person who operates a 230
vehicle or vessel in the performance of services for or on behalf 231
of a motor carrier transporting property and to whom all of the 232
following factors apply: 233

(i) The person owns the vehicle or vessel that is used in 234
performing the services for or on behalf of the carrier, or the 235
person leases the vehicle or vessel under a bona fide lease 236
agreement that is not a temporary replacement lease agreement. For 237
purposes of this division, a bona fide lease agreement does not 238
include an agreement between the person and the motor carrier 239
transporting property for which, or on whose behalf, the person 240
provides services. 241

(ii) The person is responsible for supplying the necessary 242
personal services to operate the vehicle or vessel used to provide 243
the service. 244

(iii) The compensation paid to the person is based on factors 245
related to work performed, including on a mileage-based rate or a 246
percentage of any schedule of rates, and not solely on the basis 247
of the hours or time expended. 248

(iv) The person substantially controls the means and manner 249
of performing the services, in conformance with regulatory 250
requirements and specifications of the shipper. 251

(v) The person enters into a written contract with the 252
carrier for whom the person is performing the services that 253
describes the relationship between the person and the carrier to 254

be that of an independent contractor and not that of an employee. 255

(vi) The person is responsible for substantially all of the 256
principal operating costs of the vehicle or vessel and equipment 257
used to provide the services, including maintenance, fuel, 258
repairs, supplies, vehicle or vessel insurance, and personal 259
expenses, except that the person may be paid by the carrier the 260
carrier's fuel surcharge and incidental costs, including tolls, 261
permits, and lumper fees. 262

(vii) The person is responsible for any economic loss or 263
economic gain from the arrangement with the carrier. 264

(5) "Frequenter" means every person, other than an employee, 265
who may go in or be in a place of employment under circumstances 266
which render the person other than a trespasser. 267

(6) "Deputy" means any person employed by the industrial 268
commission or the bureau of workers' compensation, designated as a 269
deputy by the commission or the administrator of workers' 270
compensation, who possesses special, technical, scientific, 271
managerial, professional, or personal abilities or qualities in 272
matters within the jurisdiction of the commission or the bureau, 273
and who may be engaged in the performance of duties under the 274
direction of the commission or the bureau calling for the exercise 275
of such abilities or qualities. 276

(7) "Order" means any decision, rule, regulation, direction, 277
requirement, or standard, or any other determination or decision 278
that the bureau is empowered to and does make. 279

(8) "General order" means an order that applies generally 280
throughout the state to all persons, employments, or places of 281
employment, or all persons, employments, or places of employment 282
of a class under the jurisdiction of the bureau. All other orders 283
shall be considered special orders. 284

(9) "Local order" means any ordinance, order, rule, or 285

determination of the legislative authority of any municipal 286
corporation, or any trustees, or board or officers of any 287
municipal corporation upon any matter over which the bureau has 288
jurisdiction. 289

(10) "Welfare" means comfort, decency, and moral well-being. 290

(11) "Safe" or "safety," as applied to any employment or a 291
place of employment, means such freedom from danger to the life, 292
health, safety, or welfare of employees or frequenters as the 293
nature of the employment will reasonably permit, including 294
requirements as to the hours of labor with relation to the health 295
and welfare of employees. 296

(12) "Employee organization" means any labor or bona fide 297
organization in which employees participate and that exists for 298
the purpose, in whole or in part, of dealing with employers 299
concerning grievances, labor disputes, wages, hours, terms, and 300
other conditions of employment. 301

(13) "Motor carrier" has the same meaning as in section 302
4923.01 of the Revised Code. 303

(B) As used in the Revised Code: 304

(1) "Industrial commission" means the chairperson of the 305
three-member industrial commission created pursuant to section 306
4121.02 of the Revised Code when the context refers to the 307
authority vested in the chairperson as the chief executive officer 308
of the three-member industrial commission pursuant to divisions 309
(A), (B), (C), and (D) of section 4121.03 of the Revised Code. 310

(2) "Industrial commission" means the three-member industrial 311
commission created pursuant to section 4121.02 of the Revised Code 312
when the context refers to the authority vested in the 313
three-member industrial commission pursuant to division (E) of 314
section 4121.03 of the Revised Code. 315

(3) "Industrial commission" means the industrial commission 316
as a state agency when the context refers to the authority vested 317
in the industrial commission as a state agency. 318

Sec. 4121.471. A claim for an additional award under Section 319
35 of Article II, Ohio Constitution, alleging that an injury, 320
occupational disease, or death resulted from an employer's failure 321
to comply with a specific safety rule for the protection of the 322
lives, health, and safety of employees shall be forever barred 323
unless it is filed within one year after the date of the injury, 324
death, or diagnosis of disability due to occupational disease. 325

Sec. 4123.01. As used in this chapter: 326

(A)(1) "Employee" means: 327

(a) ~~Every person in the service of the state, or of any 328~~
~~county, municipal corporation, township, or school district 329~~
~~therein who is an employee under the rules adopted by the 330~~
~~superintendent of industrial compliance pursuant to section 331~~
4177.01 of the Revised Code, including regular members of lawfully 332
constituted police and fire departments of municipal corporations 333
and townships, whether paid or volunteer, and wherever serving 334
within the state or on temporary assignment outside thereof, and 335
executive officers of boards of education, under any appointment 336
or contract of hire, express or implied, oral or written, 337
including any elected official of the state, or of any county, 338
municipal corporation, or township, or members of boards of 339
education. 340

As used in division (A)(1)(a) of this section, the term 341
"employee" includes the following persons when responding to an 342
inherently dangerous situation that calls for an immediate 343
response on the part of the person, regardless of whether the 344
person is within the limits of the jurisdiction of the person's 345

regular employment or voluntary service when responding, on the 346
condition that the person responds to the situation as the person 347
otherwise would if the person were on duty in the person's 348
jurisdiction: 349

~~(i) Off-duty peace officers. As used in division (A)(1)(a)(i) 350
of this section, "peace officer" has the same meaning as in 351
section 2935.01 of the Revised Code.; 352~~

~~(ii) Off-duty firefighters, whether paid or volunteer, of a 353
lawfully constituted fire department.; 354~~

~~(iii) Off-duty first responders, emergency medical 355
technicians basic, emergency medical technicians intermediate, or 356
emergency medical technicians paramedic, whether paid or 357
volunteer, emergency medical workers of an ambulance service 358
organization or emergency medical service organization pursuant to 359
Chapter 4765. of the Revised Code. 360~~

~~(b) Every person in the service of any person, firm, or 361
private corporation, including any public service corporation, 362
that (i) employs one or more persons regularly in the same 363
business or in or about the same establishment under any contract 364
of hire, express or implied, oral or written, including As used in 365
division (A)(1)(a) of this section, the term "employee" includes 366
aliens and minors, household workers who earn one hundred sixty 367
dollars or more in cash in any calendar quarter from a single 368
household, and casual workers who earn one hundred sixty dollars 369
or more in cash in any calendar quarter from a single employer, or 370
(ii) is bound by any such contract of hire or by any other written 371
contract, to pay into the state insurance fund the premiums 372
provided by this chapter. 373~~

~~(c) Every person who performs labor or provides services 374
pursuant to a construction contract, as defined in section 4123.79 375
of the Revised Code, if at least ten of the following criteria 376~~

apply;	377
(i) The person is required to comply with instructions from	378
the other contracting party regarding the manner or method of	379
performing services;	380
(ii) The person is required by the other contracting party to	381
have particular training;	382
(iii) The person's services are integrated into the regular	383
functioning of the other contracting party;	384
(iv) The person is required to perform the work personally;	385
(v) The person is hired, supervised, or paid by the other	386
contracting party;	387
(vi) A continuing relationship exists between the person and	388
the other contracting party that contemplates continuing or	389
recurring work even if the work is not full time;	390
(vii) The person's hours of work are established by the other	391
contracting party;	392
(viii) The person is required to devote full time to the	393
business of the other contracting party;	394
(ix) The person is required to perform the work on the	395
premises of the other contracting party;	396
(x) The person is required to follow the order of work set by	397
the other contracting party;	398
(xi) The person is required to make oral or written reports	399
of progress to the other contracting party;	400
(xii) The person is paid for services on a regular basis such	401
as hourly, weekly, or monthly;	402
(xiii) The person's expenses are paid for by the other	403
contracting party;	404
(xiv) The person's tools and materials are furnished by the	405

other contracting party;	406
(xv) The person is provided with the facilities used to perform services;	407 408
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	409 410
(xvii) The person is not performing services for a number of employers at the same time;	411 412
(xviii) The person does not make the same services available to the general public;	413 414
(xix) The other contracting party has a right to discharge the person;	415 416
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	417 418 419
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 who is a self-insuring employer and who 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.	420 421 422 423 424 425 426 427 428 429 430 431 432
(d) Every person who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property, unless all of the following factors apply	433 434 435

to the person: 436

(i) The person owns the vehicle or vessel that is used in 437
performing the services for or on behalf of the carrier, or the 438
person leases the vehicle or vessel under a bona fide lease 439
agreement that is not a temporary replacement lease agreement. For 440
purposes of this division, a bona fide lease agreement does not 441
include an agreement between the person and the motor carrier 442
transporting property for which, or on whose behalf, the person 443
provides services. 444

(ii) The person is responsible for supplying the necessary 445
personal services to operate the vehicle or vessel used to provide 446
the service. 447

(iii) The compensation paid to the person is based on factors 448
related to work performed, including on a mileage-based rate or a 449
percentage of any schedule of rates, and not solely on the basis 450
of the hours or time expended. 451

(iv) The person substantially controls the means and manner 452
of performing the services, in conformance with regulatory 453
requirements and specifications of the shipper. 454

(v) The person enters into a written contract with the 455
carrier for whom the person is performing the services that 456
describes the relationship between the person and the carrier to 457
be that of an independent contractor and not that of an employee. 458

(vi) The person is responsible for substantially all of the 459
principal operating costs of the vehicle or vessel and equipment 460
used to provide the services, including maintenance, fuel, 461
repairs, supplies, vehicle or vessel insurance, and personal 462
expenses, except that the person may be paid by the carrier the 463
carrier's fuel surcharge and incidental costs, including tolls, 464
permits, and lumper fees. 465

(vii) The person is responsible for any economic loss or 466

economic gain from the arrangement with the carrier. 467

(2) "Employee" does not mean any of the following: 468

(a) A duly ordained, commissioned, or licensed minister or 469
assistant or associate minister of a church in the exercise of 470
ministry; 471

(b) Any officer of a family farm corporation; 472

(c) An individual incorporated as a corporation; 473

(d) An officer of a nonprofit corporation, as defined in 474
section 1702.01 of the Revised Code, who volunteers the person's 475
services as an officer; 476

(e) An individual who otherwise is an employee of an employer 477
but who signs the waiver and affidavit specified in section 478
4123.15 of the Revised Code on the condition that the 479
administrator has granted a waiver and exception to the 480
individual's employer under section 4123.15 of the Revised Code; 481

(f)(i) A qualifying employee described in division (A)(14)(a) 482
of section 5703.94 of the Revised Code when the qualifying 483
employee is performing disaster work in this state during a 484
disaster response period pursuant to a qualifying solicitation 485
received by the employee's employer; 486

(ii) A qualifying employee described in division (A)(14)(b) 487
of section 5703.94 of the Revised Code when the qualifying 488
employee is performing disaster work in this state during a 489
disaster response period on critical infrastructure owned or used 490
by the employee's employer; 491

(iii) As used in division (A)(2)(f) of this section, 492
"critical infrastructure," "disaster response period," "disaster 493
work," and "qualifying employee" have the same meanings as in 494
section 5703.94 of the Revised Code. 495

Any employer may elect to include as an "employee" within 496

this chapter, any person excluded from the definition of 497
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c), 498
or (e) of this section in accordance with rules adopted by the 499
administrator, with the advice and consent of the bureau of 500
workers' compensation board of directors. If an employer is a 501
partnership, sole proprietorship, individual incorporated as a 502
corporation, or family farm corporation, such employer may elect 503
to include as an "employee" within this chapter, any member of 504
such partnership, the owner of the sole proprietorship, the 505
individual incorporated as a corporation, or the officers of the 506
family farm corporation. Nothing in this section shall prohibit a 507
partner, sole proprietor, or any person excluded from the 508
definition of "employee" pursuant to division (A)(2)(a), (b), (c), 509
or (e) of this section from electing to be included as an 510
"employee" under this chapter in accordance with rules adopted by 511
the administrator, with the advice and consent of the board. 512

In the event of an election, the employer or person electing 513
coverage shall serve upon the bureau of workers' compensation 514
written notice naming the person to be covered and include the 515
person's remuneration for premium purposes in all future payroll 516
reports. No partner, sole proprietor, or person excluded from the 517
definition of "employee" pursuant to division (A)(1)(d) or 518
(A)(2)(a), (b), (c), or (e) of this section, shall receive 519
benefits or compensation under this chapter until the bureau 520
receives written notice of the election permitted by this section. 521

For informational purposes only, the bureau shall prescribe 522
such language as it considers appropriate, on such of its forms as 523
it considers appropriate, to advise employers of their right to 524
elect to include as an "employee" within this chapter a sole 525
proprietor, any member of a partnership, or a person excluded from 526
the definition of "employee" under division (A)(1)(d) or 527
(A)(2)(a), (b), (c), or (e) of this section, that they should 528

check any health and disability insurance policy, or other form of 529
health and disability plan or contract, presently covering them, 530
or the purchase of which they may be considering, to determine 531
whether such policy, plan, or contract excludes benefits for 532
illness or injury that they might have elected to have covered by 533
workers' compensation. 534

(B)(1) "Employer" means: 535

(a) The state, including state hospitals, each county, 536
municipal corporation, township, school district, and hospital 537
owned by a political subdivision or subdivisions other than the 538
state; 539

(b) Every person, firm, professional employer organization, 540
and private corporation, including any public service corporation, 541
that (i) has in service one or more employees or shared employees 542
regularly in the same business or in or about the same 543
establishment under any contract of hire, express or implied, oral 544
or written, or (ii) is bound by any such contract of hire or by 545
any other written contract, to pay into the insurance fund the 546
premiums provided by this chapter. 547

All such employers are subject to this chapter. Any member of 548
a firm or association, who regularly performs manual labor in or 549
about a mine, factory, or other establishment, including a 550
household establishment, shall be considered an employee in 551
determining whether such person, firm, or private corporation, or 552
public service corporation, has in its service, one or more 553
employees and the employer shall report the income derived from 554
such labor to the bureau as part of the payroll of such employer, 555
and such member shall thereupon be entitled to all the benefits of 556
an employee. 557

(2) "Employer" does not include a franchisor with respect to 558
the franchisor's relationship with a franchisee or an employee of 559

a franchisee, unless the franchisor agrees to assume that role in 560
writing or a court of competent jurisdiction determines that the 561
franchisor exercises a type or degree of control over the 562
franchisee or the franchisee's employees that is not customarily 563
exercised by a franchisor for the purpose of protecting the 564
franchisor's trademark, brand, or both. For purposes of this 565
division, "franchisor" and "franchisee" have the same meanings as 566
in 16 C.F.R. 436.1. 567

(C) "Injury" includes any injury, whether caused by external 568
accidental means or accidental in character and result, received 569
in the course of, and arising out of, the injured employee's 570
employment. "Injury" does not include: 571

(1) Psychiatric conditions except ~~where~~ as follows: 572

(a) Where the claimant's psychiatric conditions have arisen 573
from an injury or occupational disease sustained by that claimant 574
~~or where~~; 575

(b) Where the claimant's psychiatric conditions have arisen 576
from sexual conduct in which the claimant was forced by threat of 577
physical harm to engage or participate; 578

(c) Where the claimant is a peace officer, firefighter, or 579
emergency medical worker and is diagnosed with post-traumatic 580
stress disorder that has been received in the course of, and has 581
arisen out of, the claimant's employment as a peace officer, 582
firefighter, or emergency medical worker. 583

(2) Injury or disability caused primarily by the natural 584
deterioration of tissue, an organ, or part of the body; 585

(3) Injury or disability incurred in voluntary participation 586
in an employer-sponsored recreation or fitness activity if the 587
employee signs a waiver of the employee's right to compensation or 588
benefits under this chapter prior to engaging in the recreation or 589
fitness activity; 590

(4) A condition that pre-existed an injury unless that 591
pre-existing condition is substantially aggravated by the injury. 592
Such a substantial aggravation must be documented by objective 593
diagnostic findings, objective clinical findings, or objective 594
test results. Subjective complaints may be evidence of such a 595
substantial aggravation. However, subjective complaints without 596
objective diagnostic findings, objective clinical findings, or 597
objective test results are insufficient to substantiate a 598
substantial aggravation. 599

(D) "Child" includes a posthumous child and a child legally 600
adopted prior to the injury. 601

(E) "Family farm corporation" means a corporation founded for 602
the purpose of farming agricultural land in which the majority of 603
the voting stock is held by and the majority of the stockholders 604
are persons or the spouse of persons related to each other within 605
the fourth degree of kinship, according to the rules of the civil 606
law, and at least one of the related persons is residing on or 607
actively operating the farm, and none of whose stockholders are a 608
corporation. A family farm corporation does not cease to qualify 609
under this division where, by reason of any devise, bequest, or 610
the operation of the laws of descent or distribution, the 611
ownership of shares of voting stock is transferred to another 612
person, as long as that person is within the degree of kinship 613
stipulated in this division. 614

(F) "Occupational disease" means a disease contracted in the 615
course of employment, which by its causes and the characteristics 616
of its manifestation or the condition of the employment results in 617
a hazard which distinguishes the employment in character from 618
employment generally, and the employment creates a risk of 619
contracting the disease in greater degree and in a different 620
manner from the public in general. 621

(G) "Self-insuring employer" means an employer who is granted 622

the privilege of paying compensation and benefits directly under 623
section 4123.35 of the Revised Code, including a board of county 624
commissioners for the sole purpose of constructing a sports 625
facility as defined in section 307.696 of the Revised Code, 626
provided that the electors of the county in which the sports 627
facility is to be built have approved construction of a sports 628
facility by ballot election no later than November 6, 1997. 629

(H) "Private employer" means an employer as defined in 630
division (B)(1)(b) of this section. 631

(I) "Professional employer organization" has the same meaning 632
as in section 4125.01 of the Revised Code. 633

(J) "Public employer" means an employer as defined in 634
division (B)(1)(a) of this section. 635

(K) "Sexual conduct" means vaginal intercourse between a male 636
and female; anal intercourse, fellatio, and cunnilingus between 637
persons regardless of gender; and, without privilege to do so, the 638
insertion, however slight, of any part of the body or any 639
instrument, apparatus, or other object into the vaginal or anal 640
cavity of another. Penetration, however slight, is sufficient to 641
complete vaginal or anal intercourse. 642

(L) "Other-states' insurer" means an insurance company that 643
is authorized to provide workers' compensation insurance coverage 644
in any of the states that permit employers to obtain insurance for 645
workers' compensation claims through insurance companies. 646

(M) "Other-states' coverage" means both of the following: 647

(1) Insurance coverage secured by an eligible employer for 648
workers' compensation claims of employees who are in employment 649
relationships localized in a state other than this state or those 650
employees' dependents; 651

(2) Insurance coverage secured by an eligible employer for 652

workers' compensation claims that arise in a state other than this 653
state where an employer elects to obtain coverage through either 654
the administrator or an other-states' insurer. 655

(N) "Limited other-states coverage" means insurance coverage 656
provided by the administrator to an eligible employer for workers' 657
compensation claims of employees who are in an employment 658
relationship localized in this state but are temporarily working 659
in a state other than this state, or those employees' dependents. 660

(O) "Motor carrier" has the same meaning as in section 661
4923.01 of the Revised Code. 662

(P) "Peace officer" has the same meaning as in section 663
2935.01 of the Revised Code. 664

(O) "Firefighter" means a firefighter, whether paid or 665
volunteer, of a lawfully constituted fire department. 666

(R) "Emergency medical worker" means a first responder, 667
emergency medical technician-basic, emergency medical 668
technician-intermediate, or emergency medical 669
technician-paramedic, certified under Chapter 4765. of the Revised 670
Code, whether paid or volunteer. 671

Sec. 4123.026. (A) The administrator of workers' 672
compensation, ~~or~~ a self-insuring public employer for the peace 673
officers, firefighters, and emergency medical workers employed by 674
or volunteering for that self-insuring public employer, or a 675
detention facility that is a self-insuring employer for the 676
facility's employees, including corrections officers, shall pay 677
the costs of conducting post-exposure medical diagnostic services, 678
consistent with the standards of medical care existing at the time 679
of the exposure, to investigate whether an injury or occupational 680
disease was sustained by a peace officer, firefighter, ~~or~~ 681
emergency medical worker, or detention facility employee, 682

including a corrections officer, when coming into contact with the 683
blood or other body fluid of another person in the course of and 684
arising out of the peace officer's, firefighter's, ~~or~~ emergency 685
medical worker's, or detention facility employee's employment, or 686
when responding to an inherently dangerous situation in the manner 687
described in, and in accordance with the conditions specified 688
under, division (A)(1)(a) of section 4123.01 of the Revised Code, 689
through any of the following means: 690

(1) Splash or spatter in the eye or mouth, including when 691
received in the course of conducting mouth-to-mouth resuscitation; 692

(2) A puncture in the skin; 693

(3) A cut in the skin or another opening in the skin such as 694
an open sore, wound, lesion, abrasion, or ulcer. 695

(B) As used in this section: 696

(1) ~~"Peace officer" has the same meaning as in section 697
2935.01 of the Revised Code.~~ 698

~~(2) "Firefighter" means a firefighter, whether paid or 699
volunteer, of a lawfully constituted fire department.~~ 700

~~(3) "Emergency medical worker" means a first responder, 701
emergency medical technician basic, emergency medical 702
technician intermediate, or emergency medical 703
technician paramedic, certified under Chapter 4765. of the Revised 704
Code, whether paid or volunteer 705~~

"Corrections officer" means a person employed by a detention 706
facility as a corrections officer. 707

(2) "Detention facility" means any public or private place 708
used for the confinement of a person charged with or convicted of 709
any crime in this state or another state or under the laws of the 710
United States or alleged or found to be a delinquent child or 711
unruly child in this state or another state or under the laws of 712

the United States. 713

Sec. 4123.038. As used in this section and section 4123.039 714
of the Revised Code: 715

(A) "Apprentice" and "apprenticeship agreement" have the 716
meaning defined in section ~~4111.25~~ 4139.01 of the Revised Code. 717

(B) "Related and supplemental instructions" means training 718
offered, conducted, supervised, or given under the sponsorship of 719
any joint apprenticeship committee or other sponsoring 720
organization to apprentices, which training is given in addition 721
to the approved schedule of work experience through employment, 722
and which is to be credited towards the minimum hours of related 723
and supplemental instructions required by section 4139.01 of the 724
Revised Code. 725

(C) "Pre-apprentice" means a person who receives formal 726
classroom training designed to provide the person with the basic 727
education, attitudes, skills, trade knowledge, and motivation 728
necessary to enter a formal apprenticeship program. 729

(D) "Entry-level trainee" means a person who possesses 730
experience that would qualify the person as a journeyman but 731
for the existence of certain other disqualifying conditions and 732
who receives on-the-job training accompanied by classroom 733
instruction outside of normal working hours. 734

(E) "Journeyman trainee" means a person with journeyman 735
status in a given trade who receives classroom and laboratory 736
training for the purpose of broadening the person's skills and 737
acquainting the person with new techniques and ideas in the trade. 738

Sec. 4123.46. (A)(1) Except as provided in division (A)(2) of 739
this section, the bureau of workers' compensation shall disburse 740
the state insurance fund to employees of employers who have paid 741
into the fund the premiums applicable to the classes to which they 742

belong when the employees have been injured in the course of their 743
employment, wherever the injuries have occurred, and provided the 744
injuries have not been purposely self-inflicted, or to the 745
dependents of the employees in case death has ensued. 746

(2) As long as injuries have not been purposely 747
self-inflicted, the bureau shall disburse the surplus fund created 748
under section 4123.34 of the Revised Code to off-duty peace 749
officers, firefighters, and emergency medical technicians, ~~and~~ 750
~~first responders~~ workers, or to their dependents if death ensues, 751
who are injured while responding to inherently dangerous 752
situations that call for an immediate response on the part of the 753
person, regardless of whether the person was within the limits of 754
the person's jurisdiction when responding, on the condition that 755
the person responds to the situation as the person otherwise would 756
if the person were on duty in the person's jurisdiction. 757

~~As used in division (A)(2) of this section, "peace officer," 758
"firefighter," "emergency medical technician," "first responder," 759
and "jurisdiction" have the same meanings as in section 4123.01 of 760
the Revised Code. 761~~

(B) All self-insuring employers, in compliance with this 762
chapter, shall pay the compensation to injured employees, or to 763
the dependents of employees who have been killed in the course of 764
their employment, unless the injury or death of the employee was 765
purposely self-inflicted, and shall furnish the medical, surgical, 766
nurse, and hospital care and attention or funeral expenses as 767
would have been paid and furnished by virtue of this chapter under 768
a similar state of facts by the bureau out of the state insurance 769
fund if the employer had paid the premium into the fund. 770

If any rule or regulation of a self-insuring employer 771
provides for or authorizes the payment of greater compensation or 772
more complete or extended medical care, nursing, surgical, and 773
hospital attention, or funeral expenses to the injured employees, 774

or to the dependents of the employees as may be killed, the 775
employer shall pay to the employees, or to the dependents of 776
employees killed, the amount of compensation and furnish the 777
medical care, nursing, surgical, and hospital attention or funeral 778
expenses provided by the self-insuring employer's rules and 779
regulations. 780

(C) Payment to injured employees, or to their dependents in 781
case death has ensued, is in lieu of any and all rights of action 782
against the employer of the injured or killed employees. 783

Sec. 4123.52. (A) The jurisdiction of the industrial 784
commission and the authority of the administrator of workers' 785
compensation over each case is continuing, and the commission may 786
make such modification or change with respect to former findings 787
or orders with respect thereto, as, in its opinion is justified. 788
No modification or change nor any finding or award in respect of 789
any claim shall be made with respect to disability, compensation, 790
dependency, or benefits, after five years from the date of injury 791
in the absence of ~~the payment of~~ medical benefits being provided 792
under this chapter or in the absence of payment of compensation 793
under section 4123.57, 4123.58, or division (A) or (B) of section 794
4123.56 of the Revised Code or wages in lieu of compensation in a 795
manner so as to satisfy the requirements of section 4123.84 of the 796
Revised Code, in which event the modification, change, finding, or 797
award shall be made within five years from the date of the last 798
medical services being rendered or the date of the last payment of 799
compensation or from the date of death, nor unless written notice 800
of claim for the specific part or parts of the body injured or 801
disabled has been given as provided in section 4123.84 or 4123.85 802
of the Revised Code. The commission shall not make any 803
modification, change, finding, or award which shall award 804
compensation for a back period in excess of two years prior to the 805
date of filing application therefor. 806

(B) Notwithstanding division (A) of this section, and except 807
as otherwise provided in a rule that shall be adopted by the 808
administrator, with the advice and consent of the bureau of 809
workers' compensation board of directors, neither the 810
administrator nor the commission shall make any finding or award 811
for payment of medical or vocational rehabilitation services 812
submitted for payment more than one year after the date the 813
services were rendered or more than one year after the date the 814
services became payable under division (I) of section 4123.511 of 815
the Revised Code, whichever is later. No medical or vocational 816
rehabilitation provider shall bill a claimant for services 817
rendered if the administrator or commission is prohibited from 818
making that payment under this division. 819

(C) Division (B) of this section does not apply to requests 820
made by the centers for medicare and medicaid services in the 821
United States department of health and human services for 822
reimbursement of conditional payments made pursuant to section 823
1395y(b)(2) of title 42, United States Code (commonly known as the 824
"Medicare Secondary Payer Act"). 825

(D) This section does not affect the right of a claimant to 826
compensation accruing subsequent to the filing of any such 827
application, provided the application is filed within the time 828
limit provided in this section. 829

(E) This section does not deprive the commission of its 830
continuing jurisdiction to determine the questions raised by any 831
application for modification of award which has been filed with 832
the commission after June 1, 1932, and prior to the expiration of 833
the applicable period but in respect to which no award has been 834
granted or denied during the applicable period. 835

(F) The commission may, by general rules, provide for the 836
destruction of files of cases in which no further action may be 837
taken. 838

(G) The commission and administrator of workers' compensation 839
each may, by general rules, provide for the retention and 840
destruction of all other records in their possession or under 841
their control pursuant to section 121.211 and sections 149.34 to 842
149.36 of the Revised Code. The bureau of workers' compensation 843
may purchase or rent required equipment for the document retention 844
media, as determined necessary to preserve the records. 845
Photographs, microphotographs, microfilm, films, or other direct 846
document retention media, when properly identified, have the same 847
effect as the original record and may be offered in like manner 848
and may be received as evidence in proceedings before the 849
industrial commission, staff hearing officers, and district 850
hearing officers, and in any court where the original record could 851
have been introduced. 852

Sec. 4123.56. (A) Except as provided in division (D) of this 853
section, in the case of temporary disability, an employee shall 854
receive sixty-six and two-thirds per cent of the employee's 855
average weekly wage so long as such disability is total, not to 856
exceed a maximum amount of weekly compensation which is equal to 857
the statewide average weekly wage as defined in division (C) of 858
section 4123.62 of the Revised Code, and not less than a minimum 859
amount of compensation which is equal to thirty-three and 860
one-third per cent of the statewide average weekly wage as defined 861
in division (C) of section 4123.62 of the Revised Code unless the 862
employee's wage is less than thirty-three and one-third per cent 863
of the minimum statewide average weekly wage, in which event the 864
employee shall receive compensation equal to the employee's full 865
wages; provided that for the first twelve weeks of total 866
disability the employee shall receive seventy-two per cent of the 867
employee's full weekly wage, but not to exceed a maximum amount of 868
weekly compensation which is equal to the lesser of the statewide 869
average weekly wage as defined in division (C) of section 4123.62 870

of the Revised Code or one hundred per cent of the employee's net 871
take-home weekly wage. In the case of a self-insuring employer, 872
payments shall be for a duration based upon the medical reports of 873
the attending physician. If the employer disputes the attending 874
physician's report, payments may be terminated only upon 875
application and hearing by a district hearing officer pursuant to 876
division (C) of section 4123.511 of the Revised Code. Payments 877
shall continue pending the determination of the matter, however 878
payment shall not be made for the period when any employee has 879
returned to work, when an employee's treating physician has made a 880
written statement that the employee is capable of returning to the 881
employee's former position of employment, when work within the 882
physical capabilities of the employee is made available by the 883
employer or another employer, or when the employee has reached the 884
maximum medical improvement. Where the employee is capable of work 885
activity, but the employee's employer is unable to offer the 886
employee any employment, the employee shall register with the 887
director of job and family services, who shall assist the employee 888
in finding suitable employment. The termination of temporary total 889
disability, whether by order or otherwise, does not preclude the 890
commencement of temporary total disability at another point in 891
time if the employee again becomes temporarily totally disabled. 892

After two hundred weeks of temporary total disability 893
benefits, the medical section of the bureau of workers' 894
compensation shall schedule the claimant for an examination for an 895
evaluation to determine whether or not the temporary disability 896
has become permanent. A self-insuring employer shall notify the 897
bureau immediately after payment of two hundred weeks of temporary 898
total disability and request that the bureau schedule the claimant 899
for such an examination. 900

When the employee is awarded compensation for temporary total 901
disability for a period for which the employee has received 902

benefits under Chapter 4141. of the Revised Code, the bureau shall 903
pay an amount equal to the amount received from the award to the 904
director of job and family services and the director shall credit 905
the amount to the accounts of the employers to whose accounts the 906
payment of benefits was charged or is chargeable to the extent it 907
was charged or is chargeable. 908

If any compensation under this section has been paid for the 909
same period or periods for which temporary nonoccupational 910
accident and sickness insurance is or has been paid pursuant to an 911
insurance policy or program to which the employer has made the 912
entire contribution or payment for providing insurance or under a 913
nonoccupational accident and sickness program fully funded by the 914
employer, except as otherwise provided in this division 915
compensation paid under this section for the period or periods 916
shall be paid only to the extent by which the payment or payments 917
exceeds the amount of the nonoccupational insurance or program 918
paid or payable. Offset of the compensation shall be made only 919
upon the prior order of the bureau or industrial commission or 920
agreement of the claimant. If an employer provides supplemental 921
sick leave benefits in addition to temporary total disability 922
compensation paid under this section, and if the employer and an 923
employee agree in writing to the payment of the supplemental sick 924
leave benefits, temporary total disability benefits may be paid 925
without an offset for those supplemental sick leave benefits. 926

Except as otherwise provided in a collective bargaining 927
agreement, if an employee's temporary total disability 928
compensation is offset by an amount paid to the employee for 929
accrued sick leave, the employer shall do either of the following: 930

(1) Reinstate the sick leave that offset the employee's 931
temporary total disability compensation; 932

(2) Pay the employee the amount by which the employee's 933
temporary total compensation was offset by the sick leave. 934

As used in this division, "net take-home weekly wage" means 935
the amount obtained by dividing an employee's total remuneration, 936
as defined in section 4141.01 of the Revised Code, paid to or 937
earned by the employee during the first four of the last five 938
completed calendar quarters which immediately precede the first 939
day of the employee's entitlement to benefits under this division, 940
by the number of weeks during which the employee was paid or 941
earned remuneration during those four quarters, less the amount of 942
local, state, and federal income taxes deducted for each such 943
week. 944

(B)(1) If an employee in a claim allowed under this chapter 945
suffers a wage loss as a result of returning to employment other 946
than the employee's former position of employment due to an injury 947
or occupational disease, the employee shall receive compensation 948
at sixty-six and two-thirds per cent of the difference between the 949
employee's average weekly wage and the employee's present earnings 950
not to exceed the statewide average weekly wage. The payments may 951
continue for up to a maximum of two hundred weeks, but the 952
payments shall be reduced by the corresponding number of weeks in 953
which the employee receives payments pursuant to division (A)(2) 954
of section 4121.67 of the Revised Code. 955

(2) If an employee in a claim allowed under this chapter 956
suffers a wage loss as a result of being unable to find employment 957
consistent with the employee's disability resulting from the 958
employee's injury or occupational disease, the employee shall 959
receive compensation at sixty-six and two-thirds per cent of the 960
difference between the employee's average weekly wage and the 961
employee's present earnings, not to exceed the statewide average 962
weekly wage. The payments may continue for up to a maximum of 963
fifty-two weeks. The first twenty-six weeks of payments under 964
division (B)(2) of this section shall be in addition to the 965
maximum of two hundred weeks of payments allowed under division 966

(B)(1) of this section. If an employee in a claim allowed under 967
this chapter receives compensation under division (B)(2) of this 968
section in excess of twenty-six weeks, the number of weeks of 969
compensation allowable under division (B)(1) of this section shall 970
be reduced by the corresponding number of weeks in excess of 971
twenty-six, and up to fifty-two, that is allowable under division 972
(B)(1) of this section. 973

(3) The number of weeks of wage loss payable to an employee 974
under divisions (B)(1) and (2) of this section shall not exceed 975
two hundred and twenty-six weeks in the aggregate. 976

(C) In the event an employee of a professional sports 977
franchise domiciled in this state is disabled as the result of an 978
injury or occupational disease, the total amount of payments made 979
under a contract of hire or collective bargaining agreement to the 980
employee during a period of disability is deemed an advanced 981
payment of compensation payable under sections 4123.56 to 4123.58 982
of the Revised Code. The employer shall be reimbursed the total 983
amount of the advanced payments out of any award of compensation 984
made pursuant to sections 4123.56 to 4123.58 of the Revised Code. 985

(D) If an employee receives temporary total disability 986
benefits pursuant to division (A) of this section and social 987
security retirement benefits pursuant to the "Social Security 988
Act," the weekly benefit amount under division (A) of this section 989
shall not exceed sixty-six and two-thirds per cent of the 990
statewide average weekly wage as defined in division (C) of 991
section 4123.62 of the Revised Code. 992

(E) If an employee is eligible for compensation under 993
division (A) of this section, but the employee's full weekly wage 994
has not been determined at the time payments are to commence under 995
division (H) of section 4123.511 of the Revised Code, the employee 996
shall receive thirty-three and one-third per cent of the statewide 997
average weekly wage as defined in division (C) of section 4123.62 998

of the Revised Code. On determination of the employee's full 999
weekly wage, the compensation an employee receives shall be 1000
adjusted pursuant to division (A) of this section. 1001

If the amount of compensation an employee receives under this 1002
division is greater than the adjusted amount the employee receives 1003
under division (A) of this section that is based on the employee's 1004
full weekly wage, the excess amount shall be recovered in the 1005
manner provided in division (K) of section 4123.511 of the Revised 1006
Code. If the amount of compensation an employee receives under 1007
this division is less than the adjusted amount the employee 1008
receives under that division that is based on the employee's full 1009
weekly wage, the employee shall receive the difference between 1010
those two amounts. 1011

(F) If an employee is unable to work or suffers a wage loss 1012
as the direct result of a disability arising from an injury or 1013
occupational disease, the employee is entitled to receive 1014
compensation under this section, provided the employee is 1015
otherwise qualified. If an employee is not working or has suffered 1016
a wage loss as the direct result of something other than a 1017
disability arising from an injury or occupational disease, the 1018
employee is not eligible to receive compensation under this 1019
section. It is the intent of the general assembly to supersede any 1020
previous judicial decision that applied the doctrine of voluntary 1021
abandonment to a claim brought under this section in a manner that 1022
is inconsistent with this division. 1023

Sec. 4123.58. (A) In cases of permanent total disability, the 1024
employee shall receive an award to continue until the employee's 1025
death in the amount of sixty-six and two-thirds per cent of the 1026
employee's average weekly wage, but, except as otherwise provided 1027
in division (B) of this section, not more than a maximum amount of 1028
weekly compensation which is equal to sixty-six and two-thirds per 1029

cent of the statewide average weekly wage as defined in division 1030
(C) of section 4123.62 of the Revised Code in effect on the date 1031
of injury or on the date the disability due to the occupational 1032
disease begins, nor not less than a minimum amount of weekly 1033
compensation which is equal to fifty per cent of the statewide 1034
average weekly wage as defined in division (C) of section 4123.62 1035
of the Revised Code in effect on the date of injury or on the date 1036
the disability due to the occupational disease begins, unless the 1037
employee's average weekly wage is less than fifty per cent of the 1038
statewide average weekly wage at the time of the injury, in which 1039
event the employee shall receive compensation in an amount equal 1040
to the employee's average weekly wage. 1041

(B) In the event the weekly workers' compensation amount when 1042
combined with disability benefits received pursuant to the Social 1043
Security Act is less than the statewide average weekly wage as 1044
defined in division (C) of section 4123.62 of the Revised Code, 1045
then the maximum amount of weekly compensation shall be the 1046
statewide average weekly wage as defined in division (C) of 1047
section 4123.62 of the Revised Code. At any time that social 1048
security disability benefits terminate or are reduced, the 1049
workers' compensation award shall be recomputed to pay the maximum 1050
amount permitted under this division. 1051

(C) Permanent total disability shall be compensated according 1052
to this section only when at least one of the following applies to 1053
the claimant: 1054

(1) The claimant has lost, or lost the use of both hands or 1055
both arms, or both feet or both legs, or both eyes, or of any two 1056
thereof; however, the loss or loss of use of one limb does not 1057
constitute the loss or loss of use of two body parts; 1058

(2) The impairment resulting from the employee's injury or 1059
occupational disease prevents the employee from engaging in 1060
1061

sustained remunerative employment utilizing the employment skills 1062
that the employee has or may reasonably be expected to develop. 1063

(D) Permanent total disability shall not be compensated when 1064
the reason the employee is unable to engage in sustained 1065
remunerative employment is due to any of the following reasons, 1066
whether individually or in combination: 1067

(1) Impairments of the employee that are not the result of an 1068
allowed injury or occupational disease; 1069

(2) Solely the employee's age or aging; 1070

(3) The employee retired ~~or otherwise voluntarily abandoned~~ 1071
~~the workforce for reasons unrelated to the allowed injury or~~ 1072
~~occupational disease.~~ 1073

(4) The employee has not engaged in educational or 1074
rehabilitative efforts to enhance the employee's employability, 1075
unless such efforts are determined to be in vain; 1076

(5) The employee is unable to engage in sustained 1077
remunerative employment as the direct result of something other 1078
than a disability arising from an injury or occupational disease. 1079

(E) Compensation payable under this section for permanent 1080
total disability is in addition to benefits payable under division 1081
(B) of section 4123.57 of the Revised Code. 1082

(F) If an employee is awarded compensation for permanent 1083
total disability under this section because the employee sustained 1084
a traumatic brain injury, the employee is entitled to that 1085
compensation regardless of the employee's employment in a 1086
sheltered workshop subsequent to the award, on the condition that 1087
the employee does not receive income, compensation, or 1088
remuneration from that employment in excess of two thousand 1089
dollars in any calendar quarter. As used in this division, 1090
"sheltered workshop" means a state agency or nonprofit 1091

organization established to carry out a program of rehabilitation 1092
for handicapped individuals or to provide these individuals with 1093
remunerative employment or other occupational rehabilitating 1094
activity. 1095

Sec. 4123.65. (A) A state fund employer or the employee of 1096
such an employer may file an application with the administrator of 1097
workers' compensation for approval of a final settlement of a 1098
claim under this chapter. The application shall include the 1099
settlement agreement, and except as otherwise specified in this 1100
division, be signed by the claimant and employer, and clearly set 1101
forth the circumstances by reason of which the proposed settlement 1102
is deemed desirable and that the parties agree to the terms of the 1103
settlement agreement. A claimant may file an application without 1104
an employer's signature in the following situations: 1105

(1) The employer is no longer doing business in Ohio; 1106

(2) The claim no longer is in the employer's industrial 1107
accident or occupational disease experience as provided in 1108
division (B) of section 4123.34 of the Revised Code and the 1109
claimant no longer is employed with that employer; 1110

(3) The employer has failed to comply with section 4123.35 of 1111
the Revised Code. 1112

If a claimant files an application without an employer's 1113
signature, and the employer still is doing business in this state, 1114
the administrator shall send written notice of the application to 1115
the employer immediately upon receipt of the application. If the 1116
employer fails to respond to the notice within thirty days after 1117
the notice is sent, the application need not contain the 1118
employer's signature. 1119

If a state fund employer or an employee of such an employer 1120
has not filed an application for a final settlement under this 1121

division, the administrator may file an application on behalf of 1122
the employer or the employee, provided that the administrator 1123
gives notice of the filing to the employer and the employee and to 1124
the representative of record of the employer and of the employee 1125
immediately upon the filing. An application filed by the 1126
administrator shall contain all of the information and signatures 1127
required of an employer or an employee who files an application 1128
under this division. Every self-insuring employer that enters into 1129
a final settlement agreement with an employee shall mail, within 1130
seven days of executing the agreement, a copy of the agreement to 1131
the administrator and the employee's representative. The 1132
administrator shall place the agreement into the claimant's file. 1133

(B) Except as provided in divisions (C) and (D) of this 1134
section, a settlement agreed to under this section is binding upon 1135
all parties thereto and as to items, injuries, and occupational 1136
diseases to which the settlement applies. 1137

(C) No settlement agreed to under division (A) of this 1138
section or agreed to by a self-insuring employer and the 1139
self-insuring employer's employee shall take effect until thirty 1140
days after the administrator approves the settlement for state 1141
fund employees and employers, or after the self-insuring employer 1142
and employee sign the final settlement agreement. ~~During~~ Except as 1143
otherwise provided in division (G) of this section, during the 1144
thirty-day period, the employer, employee, or administrator, for 1145
state fund settlements, and the employer or employee, for 1146
self-insuring settlements, may withdraw consent to the settlement 1147
by an employer providing written notice to the employer's employee 1148
and the administrator or by an employee providing written notice 1149
to the employee's employer and the administrator, or by the 1150
administrator providing written notice to the state fund employer 1151
and employee. If an employee dies during the thirty-day waiting 1152
period following the approval of a settlement, the settlement can 1153

be voided by any party for good cause shown. 1154

(D) At the time of agreement to any final settlement 1155
agreement under division (A) of this section or agreement between 1156
a self-insuring employer and the self-insuring employer's 1157
employee, the administrator, for state fund settlements, and the 1158
self-insuring employer, for self-insuring settlements, immediately 1159
shall send a copy of the agreement to the industrial commission 1160
who shall assign the matter to a staff hearing officer. The staff 1161
hearing officer shall determine, within the time limitations 1162
specified in division (C) of this section, whether the settlement 1163
agreement is or is not a gross miscarriage of justice. If the 1164
staff hearing officer determines within that time period that the 1165
settlement agreement is clearly unfair, the staff hearing officer 1166
shall issue an order disapproving the settlement agreement. If the 1167
staff hearing officer determines that the settlement agreement is 1168
not clearly unfair or fails to act within those time limits, the 1169
settlement agreement is approved. 1170

(E) A settlement entered into under this section may pertain 1171
to one or more claims of a claimant, or one or more parts of a 1172
claim, or the compensation or benefits pertaining to either, or 1173
any combination thereof, provided that nothing in this section 1174
shall be interpreted to require a claimant to enter into a 1175
settlement agreement for every claim that has been filed with the 1176
bureau of workers' compensation by that claimant under Chapter 1177
4121., 4123., 4127., or 4131. of the Revised Code. 1178

(F) A settlement entered into under this section is not 1179
appealable under section 4123.511 or 4123.512 of the Revised Code. 1180

(G) Notwithstanding any provision of the Revised Code to the 1181
contrary, if a settlement application is filed under this section 1182
regarding a claim that is no longer in an employer's industrial 1183
accident or occupational disease experience as provided in 1184
division (B) of section 4123.34 of the Revised Code, the employer 1185

shall not deny consent or withdraw consent regarding that 1186
settlement application. 1187

(H) An employer shall not require an employee to terminate 1188
the employee's employment with the employer as a condition of 1189
entering into a settlement agreement under this section. 1190

Sec. 4141.01. As used in this chapter, unless the context 1191
otherwise requires: 1192

(A)(1) "Employer" means the state, its instrumentalities, its 1193
political subdivisions and their instrumentalities, Indian tribes, 1194
and any individual or type of organization including any 1195
partnership, limited liability company, association, trust, 1196
estate, joint-stock company, insurance company, or corporation, 1197
whether domestic or foreign, or the receiver, trustee in 1198
bankruptcy, trustee, or the successor thereof, or the legal 1199
representative of a deceased person who subsequent to December 31, 1200
1971, or in the case of political subdivisions or their 1201
instrumentalities, subsequent to December 31, 1973: 1202

(a) Had in employment at least one individual, or in the case 1203
of a nonprofit organization, subsequent to December 31, 1973, had 1204
not less than four individuals in employment for some portion of a 1205
day in each of twenty different calendar weeks, in either the 1206
current or the preceding calendar year whether or not the same 1207
individual was in employment in each such day; or 1208

(b) Except for a nonprofit organization, had paid for service 1209
in employment wages of fifteen hundred dollars or more in any 1210
calendar quarter in either the current or preceding calendar year; 1211
or 1212

(c) Had paid, subsequent to December 31, 1977, for employment 1213
in domestic service in a local college club, or local chapter of a 1214
college fraternity or sorority, cash remuneration of one thousand 1215

dollars or more in any calendar quarter in the current calendar 1216
year or the preceding calendar year, or had paid subsequent to 1217
December 31, 1977, for employment in domestic service in a private 1218
home cash remuneration of one thousand dollars in any calendar 1219
quarter in the current calendar year or the preceding calendar 1220
year: 1221

(i) For the purposes of divisions (A)(1)(a) and (b) of this 1222
section, there shall not be taken into account any wages paid to, 1223
or employment of, an individual performing domestic service as 1224
described in this division. 1225

(ii) An employer under this division shall not be an employer 1226
with respect to wages paid for any services other than domestic 1227
service unless the employer is also found to be an employer under 1228
division (A)(1)(a), (b), or (d) of this section. 1229

(d) As a farm operator or a crew leader subsequent to 1230
December 31, 1977, had in employment individuals in agricultural 1231
labor; and 1232

(i) During any calendar quarter in the current calendar year 1233
or the preceding calendar year, paid cash remuneration of twenty 1234
thousand dollars or more for the agricultural labor; or 1235

(ii) Had at least ten individuals in employment in 1236
agricultural labor, not including agricultural workers who are 1237
aliens admitted to the United States to perform agricultural labor 1238
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1239
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1240
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 1241
of the twenty different calendar weeks, in either the current or 1242
preceding calendar year whether or not the same individual was in 1243
employment in each day; or 1244

(e) Is not otherwise an employer as defined under division 1245
(A)(1)(a) or (b) of this section; and 1246

(i) For which, within either the current or preceding 1247
calendar year, service, except for domestic service in a private 1248
home not covered under division (A)(1)(c) of this section, is or 1249
was performed with respect to which such employer is liable for 1250
any federal tax against which credit may be taken for 1251
contributions required to be paid into a state unemployment fund; 1252

(ii) Which, as a condition for approval of this chapter for 1253
full tax credit against the tax imposed by the "Federal 1254
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 1255
required, pursuant to such act to be an employer under this 1256
chapter; or 1257

(iii) Who became an employer by election under division 1258
(A)(4) or (5) of this section and for the duration of such 1259
election; or 1260

(f) In the case of the state, its instrumentalities, its 1261
political subdivisions, and their instrumentalities, and Indian 1262
tribes, had in employment, as defined in divisions (B)(2)(a) and 1263
(B)(2)(1) of this section, at least one individual; 1264

(g) For the purposes of division (A)(1)(a) of this section, 1265
if any week includes both the thirty-first day of December and the 1266
first day of January, the days of that week before the first day 1267
of January shall be considered one calendar week and the days 1268
beginning the first day of January another week. 1269

(2) Each individual employed to perform or to assist in 1270
performing the work of any agent or employee of an employer is 1271
employed by such employer for all the purposes of this chapter, 1272
whether such individual was hired or paid directly by such 1273
employer or by such agent or employee, provided the employer had 1274
actual or constructive knowledge of the work. All individuals 1275
performing services for an employer of any person in this state 1276
who maintains two or more establishments within this state are 1277

employed by a single employer for the purposes of this chapter. 1278

(3) An employer subject to this chapter within any calendar 1279
year is subject to this chapter during the whole of such year and 1280
during the next succeeding calendar year. 1281

(4) An employer not otherwise subject to this chapter who 1282
files with the director of job and family services a written 1283
election to become an employer subject to this chapter for not 1284
less than two calendar years shall, with the written approval of 1285
such election by the director, become an employer subject to this 1286
chapter to the same extent as all other employers as of the date 1287
stated in such approval, and shall cease to be subject to this 1288
chapter as of the first day of January of any calendar year 1289
subsequent to such two calendar years only if at least thirty days 1290
prior to such first day of January the employer has filed with the 1291
director a written notice to that effect. 1292

(5) Any employer for whom services that do not constitute 1293
employment are performed may file with the director a written 1294
election that all such services performed by individuals in the 1295
employer's employ in one or more distinct establishments or places 1296
of business shall be deemed to constitute employment for all the 1297
purposes of this chapter, for not less than two calendar years. 1298
Upon written approval of the election by the director, such 1299
services shall be deemed to constitute employment subject to this 1300
chapter from and after the date stated in such approval. Such 1301
services shall cease to be employment subject to this chapter as 1302
of the first day of January of any calendar year subsequent to 1303
such two calendar years only if at least thirty days prior to such 1304
first day of January such employer has filed with the director a 1305
written notice to that effect. 1306

(6) "Employer" does not include a franchisor with respect to 1307
the franchisor's relationship with a franchisee or an employee of 1308
a franchisee, unless the franchisor agrees to assume that role in 1309

writing or a court of competent jurisdiction determines that the 1310
franchisor exercises a type or degree of control over the 1311
franchisee or the franchisee's employees that is not customarily 1312
exercised by a franchisor for the purpose of protecting the 1313
franchisor's trademark, brand, or both. For purposes of this 1314
division, "franchisor" and "franchisee" have the same meanings as 1315
in 16 C.F.R. 436.1. 1316

(B)(1) "Employment" means service performed by an individual 1317
for remuneration under any contract of hire, written or oral, 1318
express or implied, including service performed in interstate 1319
commerce and service performed by an officer of a corporation, 1320
without regard to whether such service is executive, managerial, 1321
or manual in nature, and without regard to whether such officer is 1322
a stockholder or a member of the board of directors of the 1323
corporation, unless it is shown to the satisfaction of the 1324
director, based upon a determination made by the superintendent of 1325
industrial compliance under Chapter 4177. of the Revised Code, 1326
that such individual has been and will continue to be free from 1327
direction or control over the performance of such service, both 1328
under a contract of service and in fact. ~~The director shall adopt~~ 1329
~~rules to define "direction or control."~~ 1330

(2) "Employment" includes: 1331

(a) Service performed after December 31, 1977, by an 1332
individual in the employ of the state or any of its 1333
instrumentalities, or any political subdivision thereof or any of 1334
its instrumentalities or any instrumentality of more than one of 1335
the foregoing or any instrumentality of any of the foregoing and 1336
one or more other states or political subdivisions and without 1337
regard to divisions (A)(1)(a) and (b) of this section, provided 1338
that such service is excluded from employment as defined in the 1339
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 1340
3306(c)(7) and is not excluded under division (B)(3) of this 1341

section; or the services of employees covered by voluntary 1342
election, as provided under divisions (A)(4) and (5) of this 1343
section; 1344

(b) Service performed after December 31, 1971, by an 1345
individual in the employ of a religious, charitable, educational, 1346
or other organization which is excluded from the term "employment" 1347
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 1348
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 1349
3306(c)(8) of that act and is not excluded under division (B)(3) 1350
of this section; 1351

(c) Domestic service performed after December 31, 1977, for 1352
an employer, as provided in division (A)(1)(c) of this section; 1353

(d) Agricultural labor performed after December 31, 1977, for 1354
a farm operator or a crew leader, as provided in division 1355
(A)(1)(d) of this section; 1356

(e) Subject to division (B)(2)(m) of this section, service 1357
not covered under division (B)(1) of this section which is 1358
performed after December 31, 1971: 1359

(i) As an agent-driver or commission-driver engaged in 1360
distributing meat products, vegetable products, fruit products, 1361
bakery products, beverages other than milk, laundry, or 1362
dry-cleaning services, for the individual's employer or principal; 1363

(ii) As a traveling or city salesperson, other than as an 1364
agent-driver or commission-driver, engaged on a full-time basis in 1365
the solicitation on behalf of and in the transmission to the 1366
salesperson's employer or principal except for sideline sales 1367
activities on behalf of some other person of orders from 1368
wholesalers, retailers, contractors, or operators of hotels, 1369
restaurants, or other similar establishments for merchandise for 1370
resale, or supplies for use in their business operations, provided 1371
that for the purposes of division (B)(2)(e)(ii) of this section, 1372

the services shall be deemed employment if the contract of service 1373
contemplates that substantially all of the services are to be 1374
performed personally by the individual and that the individual 1375
does not have a substantial investment in facilities used in 1376
connection with the performance of the services other than in 1377
facilities for transportation, and the services are not in the 1378
nature of a single transaction that is not a part of a continuing 1379
relationship with the person for whom the services are performed. 1380

(f) An individual's entire service performed within or both 1381
within and without the state if: 1382

(i) The service is localized in this state. 1383

(ii) The service is not localized in any state, but some of 1384
the service is performed in this state and either the base of 1385
operations, or if there is no base of operations then the place 1386
from which such service is directed or controlled, is in this 1387
state or the base of operations or place from which such service 1388
is directed or controlled is not in any state in which some part 1389
of the service is performed but the individual's residence is in 1390
this state. 1391

(g) Service not covered under division (B)(2)(f)(ii) of this 1392
section and performed entirely without this state, with respect to 1393
no part of which contributions are required and paid under an 1394
unemployment compensation law of any other state, the Virgin 1395
Islands, Canada, or of the United States, if the individual 1396
performing such service is a resident of this state and the 1397
director approves the election of the employer for whom such 1398
services are performed; or, if the individual is not a resident of 1399
this state but the place from which the service is directed or 1400
controlled is in this state, the entire services of such 1401
individual shall be deemed to be employment subject to this 1402
chapter, provided service is deemed to be localized within this 1403
state if the service is performed entirely within this state or if 1404

the service is performed both within and without this state but 1405
the service performed without this state is incidental to the 1406
individual's service within the state, for example, is temporary 1407
or transitory in nature or consists of isolated transactions; 1408

(h) Service of an individual who is a citizen of the United 1409
States, performed outside the United States except in Canada after 1410
December 31, 1971, or the Virgin Islands, after December 31, 1971, 1411
and before the first day of January of the year following that in 1412
which the United States secretary of labor approves the Virgin 1413
Islands law for the first time, in the employ of an American 1414
employer, other than service which is "employment" under divisions 1415
(B)(2)(f) and (g) of this section or similar provisions of another 1416
state's law, if: 1417

(i) The employer's principal place of business in the United 1418
States is located in this state; 1419

(ii) The employer has no place of business in the United 1420
States, but the employer is an individual who is a resident of 1421
this state; or the employer is a corporation which is organized 1422
under the laws of this state, or the employer is a partnership or 1423
a trust and the number of partners or trustees who are residents 1424
of this state is greater than the number who are residents of any 1425
other state; or 1426

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 1427
of this section is met but the employer has elected coverage in 1428
this state or the employer having failed to elect coverage in any 1429
state, the individual has filed a claim for benefits, based on 1430
such service, under this chapter. 1431

(i) For the purposes of division (B)(2)(h) of this section, 1432
the term "American employer" means an employer who is an 1433
individual who is a resident of the United States; or a 1434
partnership, if two-thirds or more of the partners are residents 1435

of the United States; or a trust, if all of the trustees are 1436
residents of the United States; or a corporation organized under 1437
the laws of the United States or of any state, provided the term 1438
"United States" includes the states, the District of Columbia, the 1439
Commonwealth of Puerto Rico, and the Virgin Islands. 1440

(j) Notwithstanding any other provisions of divisions (B)(1) 1441
and (2) of this section, service, except for domestic service in a 1442
private home not covered under division (A)(1)(c) of this section, 1443
with respect to which a tax is required to be paid under any 1444
federal law imposing a tax against which credit may be taken for 1445
contributions required to be paid into a state unemployment fund, 1446
or service, except for domestic service in a private home not 1447
covered under division (A)(1)(c) of this section, which, as a 1448
condition for full tax credit against the tax imposed by the 1449
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1450
3311, is required to be covered under this chapter. 1451

(k) Construction services performed by any individual under a 1452
construction contract, as defined in section 4141.39 of the 1453
Revised Code, ~~if the director determines that the employer for~~ 1454
~~whom services are performed has the right to direct or control the~~ 1455
~~performance of the services and that the individuals who perform~~ 1456
~~the services receive remuneration for the services performed. The~~ 1457
~~director shall presume that the employer for whom services are~~ 1458
~~performed has the right to direct or control the performance of~~ 1459
~~the services if ten or more of the following criteria apply:~~ 1460

~~(i) The employer directs or controls the manner or method by~~ 1461
~~which instructions are given to the individual performing~~ 1462
~~services;~~ 1463

~~(ii) The employer requires particular training for the~~ 1464
~~individual performing services;~~ 1465

~~(iii) Services performed by the individual are integrated~~ 1466

into the regular functioning of the employer;	1467
(iv) The employer requires that services be provided by a particular individual;	1468
(v) The employer hires, supervises, or pays the wages of the individual performing services;	1470
(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full time work;	1471
(vii) The employer requires the individual to perform services during established hours;	1472
(viii) The employer requires that the individual performing services be devoted on a full time basis to the business of the employer;	1473
(ix) The employer requires the individual to perform services on the employer's premises;	1474
(x) The employer requires the individual performing services to follow the order of work established by the employer;	1475
(xi) The employer requires the individual performing services to make oral or written reports of progress;	1476
(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;	1477
(xiii) The employer pays expenses for the individual performing services;	1478
(xiv) The employer furnishes the tools and materials for use by the individual to perform services;	1479
(xv) The individual performing services has not invested in the facilities used to perform services;	1480
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the	1481

services;	1496
(xvii) The individual performing services is not performing services for more than two employers simultaneously;	1497
(xviii) The individual performing services does not make the services available to the general public;	1498
(xix) The employer has a right to discharge the individual performing services;	1499
(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.;	1500
(1) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division (B)(3) of this section.	1501
(m) Service performed by an individual for or on behalf of a motor carrier transporting property as an operator of a vehicle or vessel, unless all of the following factors apply to the individual and the motor carrier has not elected to consider the individual's service as employment:	1502
(i) The individual owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the individual leases the vehicle or vessel under a bona fide lease agreement that is not a temporary replacement lease agreement. For purposes of this division, a bona fide lease agreement does not include an agreement between the individual and the motor carrier transporting property for which, or on whose behalf, the	1503
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individual provides services.	1527
(ii) The individual is responsible for supplying the necessary personal services to operate the vehicle or vessel used to provide the service.	1528 1529 1530
(iii) The compensation paid to the individual is based on factors related to work performed, including on a mileage-based rate or a percentage of any schedule of rates, and not solely on the basis of the hours or time expended.	1531 1532 1533 1534
(iv) The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.	1535 1536 1537
(v) The individual enters into a written contract with the carrier for whom the individual is performing the services that describes the relationship between the individual and the carrier to be that of an independent contractor and not that of an employee.	1538 1539 1540 1541 1542
(vi) The individual is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the individual may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.	1543 1544 1545 1546 1547 1548 1549
(vii) The individual is responsible for any economic loss or economic gain from the arrangement with the carrier.	1550 1551
(viii) The individual is not performing services described in 26 U.S.C. 3306(c)(7) or (8).	1552 1553
(3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services	1554 1555 1556

are not required to be included under division (B)(2)(j) of this section: 1557
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(a) Service performed after December 31, 1977, in agricultural labor, except as provided in division (A)(1)(d) of this section; 1559
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(b) Domestic service performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority except as provided in division (A)(1)(c) of this section; 1562
1563
1564
1565

(c) Service performed after December 31, 1977, for this state or a political subdivision as described in division (B)(2)(a) of this section when performed: 1566
1567
1568

(i) As a publicly elected official; 1569

(ii) As a member of a legislative body, or a member of the judiciary; 1570
1571

(iii) As a military member of the Ohio national guard; 1572

(iv) As an employee, not in the classified service as defined in section 124.11 of the Revised Code, serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; 1573
1574
1575
1576

(v) In a position which, under or pursuant to law, is designated as a major nontenured policymaking or advisory position, not in the classified service of the state, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week. 1577
1578
1579
1580
1581

(d) In the employ of any governmental unit or instrumentality of the United States; 1582
1583

(e) Service performed after December 31, 1971: 1584

(i) Service in the employ of an educational institution or institution of higher education, including those operated by the 1585
1586

state or a political subdivision, if such service is performed by 1587
a student who is enrolled and is regularly attending classes at 1588
the educational institution or institution of higher education; or 1589

(ii) By an individual who is enrolled at a nonprofit or 1590
public educational institution which normally maintains a regular 1591
faculty and curriculum and normally has a regularly organized body 1592
of students in attendance at the place where its educational 1593
activities are carried on as a student in a full-time program, 1594
taken for credit at the institution, which combines academic 1595
instruction with work experience, if the service is an integral 1596
part of the program, and the institution has so certified to the 1597
employer, provided that this subdivision shall not apply to 1598
service performed in a program established for or on behalf of an 1599
employer or group of employers. 1600

(f) Service performed by an individual in the employ of the 1601
individual's son, daughter, or spouse and service performed by a 1602
child under the age of eighteen in the employ of the child's 1603
father or mother; 1604

(g) Service performed for one or more principals by an 1605
individual who is compensated on a commission basis, who in the 1606
performance of the work is master of the individual's own time and 1607
efforts, and whose remuneration is wholly dependent on the amount 1608
of effort the individual chooses to expend, and which service is 1609
not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 1610
(1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 1611
31, 1971: 1612

(i) By an individual for an employer as an insurance agent or 1613
as an insurance solicitor, if all this service is performed for 1614
remuneration solely by way of commission; 1615

(ii) As a home worker performing work, according to 1616
specifications furnished by the employer for whom the services are 1617

performed, on materials or goods furnished by such employer which 1618
are required to be returned to the employer or to a person 1619
designated for that purpose. 1620

(h) Service performed after December 31, 1971: 1621

(i) In the employ of a church or convention or association of 1622
churches, or in an organization which is operated primarily for 1623
religious purposes and which is operated, supervised, controlled, 1624
or principally supported by a church or convention or association 1625
of churches; 1626

(ii) By a duly ordained, commissioned, or licensed minister 1627
of a church in the exercise of the individual's ministry or by a 1628
member of a religious order in the exercise of duties required by 1629
such order; or 1630

(iii) In a facility conducted for the purpose of carrying out 1631
a program of rehabilitation for individuals whose earning capacity 1632
is impaired by age or physical or mental deficiency or injury, or 1633
providing remunerative work for individuals who because of their 1634
impaired physical or mental capacity cannot be readily absorbed in 1635
the competitive labor market, by an individual receiving such 1636
rehabilitation or remunerative work. 1637

(i) Service performed after June 30, 1939, with respect to 1638
which unemployment compensation is payable under the "Railroad 1639
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1640

(j) Service performed by an individual in the employ of any 1641
organization exempt from income tax under section 501 of the 1642
"Internal Revenue Code of 1954," if the remuneration for such 1643
service does not exceed fifty dollars in any calendar quarter, or 1644
if such service is in connection with the collection of dues or 1645
premiums for a fraternal beneficial society, order, or association 1646
and is performed away from the home office or is ritualistic 1647
service in connection with any such society, order, or 1648

association; 1649

(k) Casual labor not in the course of an employer's trade or 1650
business; incidental service performed by an officer, appraiser, 1651
or member of a finance committee of a bank, building and loan 1652
association, savings and loan association, or savings association 1653
when the remuneration for such incidental service exclusive of the 1654
amount paid or allotted for directors' fees does not exceed sixty 1655
dollars per calendar quarter is casual labor; 1656

(l) Service performed in the employ of a voluntary employees' 1657
beneficial association providing for the payment of life, 1658
sickness, accident, or other benefits to the members of such 1659
association or their dependents or their designated beneficiaries, 1660
if admission to a membership in such association is limited to 1661
individuals who are officers or employees of a municipal or public 1662
corporation, of a political subdivision of the state, or of the 1663
United States and no part of the net earnings of such association 1664
inures, other than through such payments, to the benefit of any 1665
private shareholder or individual; 1666

(m) Service performed by an individual in the employ of a 1667
foreign government, including service as a consular or other 1668
officer or employee or of a nondiplomatic representative; 1669

(n) Service performed in the employ of an instrumentality 1670
wholly owned by a foreign government if the service is of a 1671
character similar to that performed in foreign countries by 1672
employees of the United States or of an instrumentality thereof 1673
and if the director finds that the secretary of state of the 1674
United States has certified to the secretary of the treasury of 1675
the United States that the foreign government, with respect to 1676
whose instrumentality exemption is claimed, grants an equivalent 1677
exemption with respect to similar service performed in the foreign 1678
country by employees of the United States and of instrumentalities 1679
thereof; 1680

(o) Service with respect to which unemployment compensation 1681
is payable under an unemployment compensation system established 1682
by an act of congress; 1683

(p) Service performed as a student nurse in the employ of a 1684
hospital or a nurses' training school by an individual who is 1685
enrolled and is regularly attending classes in a nurses' training 1686
school chartered or approved pursuant to state law, and service 1687
performed as an intern in the employ of a hospital by an 1688
individual who has completed a four years' course in a medical 1689
school chartered or approved pursuant to state law; 1690

(q) Service performed by an individual under the age of 1691
eighteen in the delivery or distribution of newspapers or shopping 1692
news, not including delivery or distribution to any point for 1693
subsequent delivery or distribution; 1694

(r) Service performed in the employ of the United States or 1695
an instrumentality of the United States immune under the 1696
Constitution of the United States from the contributions imposed 1697
by this chapter, except that to the extent that congress permits 1698
states to require any instrumentalities of the United States to 1699
make payments into an unemployment fund under a state unemployment 1700
compensation act, this chapter shall be applicable to such 1701
instrumentalities and to services performed for such 1702
instrumentalities in the same manner, to the same extent, and on 1703
the same terms as to all other employers, individuals, and 1704
services, provided that if this state is not certified for any 1705
year by the proper agency of the United States under section 3304 1706
of the "Internal Revenue Code of 1954," the payments required of 1707
such instrumentalities with respect to such year shall be refunded 1708
by the director from the fund in the same manner and within the 1709
same period as is provided in division (E) of section 4141.09 of 1710
the Revised Code with respect to contributions erroneously 1711
collected; 1712

(s) Service performed by an individual as a member of a band 1713
or orchestra, provided such service does not represent the 1714
principal occupation of such individual, and which service is not 1715
subject to or required to be covered for full tax credit against 1716
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1717
183 (1939), 26 U.S.C.A. 3301 to 3311. 1718

(t) Service performed in the employ of a day camp whose 1719
camping season does not exceed twelve weeks in any calendar year, 1720
and which service is not subject to the "Federal Unemployment Tax 1721
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1722
performed after December 31, 1971: 1723

(i) In the employ of a hospital, if the service is performed 1724
by a patient of the hospital, as defined in division (W) of this 1725
section; 1726

(ii) For a prison or other correctional institution by an 1727
inmate of the prison or correctional institution; 1728

(iii) Service performed after December 31, 1977, by an inmate 1729
of a custodial institution operated by the state, a political 1730
subdivision, or a nonprofit organization. 1731

(u) Service that is performed by a nonresident alien 1732
individual for the period the individual temporarily is present in 1733
the United States as a nonimmigrant under division (F), (J), (M), 1734
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1735
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1736
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1737
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1738

(v) Notwithstanding any other provisions of division (B)(3) 1739
of this section, services that are excluded under divisions 1740
(B)(3)(g), (j), (k), and (l) of this section shall not be excluded 1741
from employment when performed for a nonprofit organization, as 1742
defined in division (X) of this section, or for this state or its 1743

instrumentalities, or for a political subdivision or its	1744
instrumentalities or for Indian tribes;	1745
(w) Service that is performed by an individual working as an	1746
election official or election worker if the amount of remuneration	1747
received by the individual during the calendar year for services	1748
as an election official or election worker is less than one	1749
thousand dollars;	1750
(x) Service performed for an elementary or secondary school	1751
that is operated primarily for religious purposes, that is	1752
described in subsection 501(c)(3) and exempt from federal income	1753
taxation under subsection 501(a) of the Internal Revenue Code, 26	1754
U.S.C.A. 501;	1755
(y) Service performed by a person committed to a penal	1756
institution.	1757
(z) Service performed for an Indian tribe as described in	1758
division (B)(2)(1) of this section when performed in any of the	1759
following manners:	1760
(i) As a publicly elected official;	1761
(ii) As a member of an Indian tribal council;	1762
(iii) As a member of a legislative or judiciary body;	1763
(iv) In a position which, pursuant to Indian tribal law, is	1764
designated as a major nontenured policymaking or advisory	1765
position, or a policymaking or advisory position where the	1766
performance of the duties ordinarily does not require more than	1767
eight hours of time per week;	1768
(v) As an employee serving on a temporary basis in the case	1769
of a fire, storm, snow, earthquake, flood, or similar emergency.	1770
(aa) Service performed after December 31, 1971, for a	1771
nonprofit organization, this state or its instrumentalities, a	1772
political subdivision or its instrumentalities, or an Indian tribe	1773

as part of an unemployment work-relief or work-training program 1774
assisted or financed in whole or in part by any federal agency or 1775
an agency of a state or political subdivision, thereof, by an 1776
individual receiving the work-relief or work-training. 1777

(bb) Participation in a learn to earn program as defined in 1778
section 4141.293 of the Revised Code. 1779

(4) If the services performed during one half or more of any 1780
pay period by an employee for the person employing that employee 1781
constitute employment, all the services of such employee for such 1782
period shall be deemed to be employment; but if the services 1783
performed during more than one half of any such pay period by an 1784
employee for the person employing that employee do not constitute 1785
employment, then none of the services of such employee for such 1786
period shall be deemed to be employment. As used in division 1787
(B)(4) of this section, "pay period" means a period, of not more 1788
than thirty-one consecutive days, for which payment of 1789
remuneration is ordinarily made to the employee by the person 1790
employing that employee. Division (B)(4) of this section does not 1791
apply to services performed in a pay period by an employee for the 1792
person employing that employee, if any of such service is excepted 1793
by division (B)(3)(o) of this section. 1794

(C) "Benefits" means money payments payable to an individual 1795
who has established benefit rights, as provided in this chapter, 1796
for loss of remuneration due to the individual's unemployment. 1797

(D) "Benefit rights" means the weekly benefit amount and the 1798
maximum benefit amount that may become payable to an individual 1799
within the individual's benefit year as determined by the 1800
director. 1801

(E) "Claim for benefits" means a claim for waiting period or 1802
benefits for a designated week. 1803

(F) "Additional claim" means the first claim for benefits 1804

filed following any separation from employment during a benefit 1805
year; "continued claim" means any claim other than the first claim 1806
for benefits and other than an additional claim. 1807

(G) "Wages" means remuneration paid to an employee by each of 1808
the employee's employers with respect to employment; except that 1809
wages shall not include that part of remuneration paid during any 1810
calendar year to an individual by an employer or such employer's 1811
predecessor in interest in the same business or enterprise, which 1812
in any calendar year is in excess of nine thousand dollars on and 1813
after January 1, 1995; nine thousand five hundred dollars on and 1814
after January 1, 2018; and nine thousand dollars on and after 1815
January 1, 2020. Remuneration in excess of such amounts shall be 1816
deemed wages subject to contribution to the same extent that such 1817
remuneration is defined as wages under the "Federal Unemployment 1818
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1819
amended. The remuneration paid an employee by an employer with 1820
respect to employment in another state, upon which contributions 1821
were required and paid by such employer under the unemployment 1822
compensation act of such other state, shall be included as a part 1823
of remuneration in computing the amount specified in this 1824
division. 1825

(H)(1) "Remuneration" means all compensation for personal 1826
services, including commissions and bonuses and the cash value of 1827
all compensation in any medium other than cash, except that in the 1828
case of agricultural or domestic service, "remuneration" includes 1829
only cash remuneration. Gratuities customarily received by an 1830
individual in the course of the individual's employment from 1831
persons other than the individual's employer and which are 1832
accounted for by such individual to the individual's employer are 1833
taxable wages. 1834

The reasonable cash value of compensation paid in any medium 1835
other than cash shall be estimated and determined in accordance 1836

with rules prescribed by the director, provided that 1837
"remuneration" does not include: 1838

(a) Payments as provided in divisions (b)(2) to (b)(20) of 1839
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 1840
26 U.S.C.A. 3301 to 3311, as amended; 1841

(b) The payment by an employer, without deduction from the 1842
remuneration of the individual in the employer's employ, of the 1843
tax imposed upon an individual in the employer's employ under 1844
section 3101 of the "Internal Revenue Code of 1954," with respect 1845
to services performed after October 1, 1941. 1846

(2) "Cash remuneration" means all remuneration paid in cash, 1847
including commissions and bonuses, but not including the cash 1848
value of all compensation in any medium other than cash. 1849

(I) "Interested party" means the director and any party to 1850
whom notice of a determination of an application for benefit 1851
rights or a claim for benefits is required to be given under 1852
section 4141.28 of the Revised Code. 1853

(J) "Annual payroll" means the total amount of wages subject 1854
to contributions during a twelve-month period ending with the last 1855
day of the second calendar quarter of any calendar year. 1856

(K) "Average annual payroll" means the average of the last 1857
three annual payrolls of an employer, provided that if, as of any 1858
computation date, the employer has had less than three annual 1859
payrolls in such three-year period, such average shall be based on 1860
the annual payrolls which the employer has had as of such date. 1861

(L)(1) "Contributions" means the money payments to the state 1862
unemployment compensation fund required of employers by section 1863
4141.25 of the Revised Code and of the state and any of its 1864
political subdivisions electing to pay contributions under section 1865
4141.242 of the Revised Code. Employers paying contributions shall 1866
be described as "contributory employers." 1867

(2) "Payments in lieu of contributions" means the money 1868
payments to the state unemployment compensation fund required of 1869
reimbursing employers under sections 4141.241 and 4141.242 of the 1870
Revised Code. 1871

(M) An individual is "totally unemployed" in any week during 1872
which the individual performs no services and with respect to such 1873
week no remuneration is payable to the individual. 1874

(N) An individual is "partially unemployed" in any week if, 1875
due to involuntary loss of work, the total remuneration payable to 1876
the individual for such week is less than the individual's weekly 1877
benefit amount. 1878

(O) "Week" means the calendar week ending at midnight 1879
Saturday unless an equivalent week of seven consecutive calendar 1880
days is prescribed by the director. 1881

(1) "Qualifying week" means any calendar week in an 1882
individual's base period with respect to which the individual 1883
earns or is paid remuneration in employment subject to this 1884
chapter. A calendar week with respect to which an individual earns 1885
remuneration but for which payment was not made within the base 1886
period, when necessary to qualify for benefit rights, may be 1887
considered to be a qualifying week. The number of qualifying weeks 1888
which may be established in a calendar quarter shall not exceed 1889
the number of calendar weeks in the quarter. 1890

(2) "Average weekly wage" means the amount obtained by 1891
dividing an individual's total remuneration for all qualifying 1892
weeks during the base period by the number of such qualifying 1893
weeks, provided that if the computation results in an amount that 1894
is not a multiple of one dollar, such amount shall be rounded to 1895
the next lower multiple of one dollar. 1896

(P) "Weekly benefit amount" means the amount of benefits an 1897
individual would be entitled to receive for one week of total 1898

unemployment. 1899

(Q)(1) "Base period" means the first four of the last five 1900
completed calendar quarters immediately preceding the first day of 1901
an individual's benefit year, except as provided in division 1902
(Q)(2) of this section. 1903

(2) If an individual does not have sufficient qualifying 1904
weeks and wages in the base period to qualify for benefit rights, 1905
the individual's base period shall be the four most recently 1906
completed calendar quarters preceding the first day of the 1907
individual's benefit year. Such base period shall be known as the 1908
"alternate base period." If information as to weeks and wages for 1909
the most recent quarter of the alternate base period is not 1910
available to the director from the regular quarterly reports of 1911
wage information, which are systematically accessible, the 1912
director may, consistent with the provisions of section 4141.28 of 1913
the Revised Code, base the determination of eligibility for 1914
benefits on the affidavit of the claimant with respect to weeks 1915
and wages for that calendar quarter. The claimant shall furnish 1916
payroll documentation, where available, in support of the 1917
affidavit. The determination based upon the alternate base period 1918
as it relates to the claimant's benefit rights, shall be amended 1919
when the quarterly report of wage information from the employer is 1920
timely received and that information causes a change in the 1921
determination. As provided in division (B) of section 4141.28 of 1922
the Revised Code, any benefits paid and charged to an employer's 1923
account, based upon a claimant's affidavit, shall be adjusted 1924
effective as of the beginning of the claimant's benefit year. No 1925
calendar quarter in a base period or alternate base period shall 1926
be used to establish a subsequent benefit year. 1927

(3) The "base period" of a combined wage claim, as described 1928
in division (H) of section 4141.43 of the Revised Code, shall be 1929
the base period prescribed by the law of the state in which the 1930

claim is allowed. 1931

(4) For purposes of determining the weeks that comprise a 1932
completed calendar quarter under this division, only those weeks 1933
ending at midnight Saturday within the calendar quarter shall be 1934
utilized. 1935

(R)(1) "Benefit year" with respect to an individual means the 1936
fifty-two week period beginning with the first day of that week 1937
with respect to which the individual first files a valid 1938
application for determination of benefit rights, and thereafter 1939
the fifty-two week period beginning with the first day of that 1940
week with respect to which the individual next files a valid 1941
application for determination of benefit rights after the 1942
termination of the individual's last preceding benefit year, 1943
except that the application shall not be considered valid unless 1944
the individual has had employment in six weeks that is subject to 1945
this chapter or the unemployment compensation act of another 1946
state, or the United States, and has, since the beginning of the 1947
individual's previous benefit year, in the employment earned three 1948
times the average weekly wage determined for the previous benefit 1949
year. The "benefit year" of a combined wage claim, as described in 1950
division (H) of section 4141.43 of the Revised Code, shall be the 1951
benefit year prescribed by the law of the state in which the claim 1952
is allowed. Any application for determination of benefit rights 1953
made in accordance with section 4141.28 of the Revised Code is 1954
valid if the individual filing such application is unemployed, has 1955
been employed by an employer or employers subject to this chapter 1956
in at least twenty qualifying weeks within the individual's base 1957
period, and has earned or been paid remuneration at an average 1958
weekly wage of not less than twenty-seven and one-half per cent of 1959
the statewide average weekly wage for such weeks. For purposes of 1960
determining whether an individual has had sufficient employment 1961
since the beginning of the individual's previous benefit year to 1962

file a valid application, "employment" means the performance of 1963
services for which remuneration is payable. 1964

(2) Effective for benefit years beginning on and after 1965
December 26, 2004, any application for determination of benefit 1966
rights made in accordance with section 4141.28 of the Revised Code 1967
is valid if the individual satisfies the criteria described in 1968
division (R)(1) of this section, and if the reason for the 1969
individual's separation from employment is not disqualifying 1970
pursuant to division (D)(2) of section 4141.29 or section 4141.291 1971
of the Revised Code. A disqualification imposed pursuant to 1972
division (D)(2) of section 4141.29 or section 4141.291 of the 1973
Revised Code must be removed as provided in those sections as a 1974
requirement of establishing a valid application for benefit years 1975
beginning on and after December 26, 2004. 1976

(3) The statewide average weekly wage shall be calculated by 1977
the director once a year based on the twelve-month period ending 1978
the thirtieth day of June, as set forth in division (B)(3) of 1979
section 4141.30 of the Revised Code, rounded down to the nearest 1980
dollar. Increases or decreases in the amount of remuneration 1981
required to have been earned or paid in order for individuals to 1982
have filed valid applications shall become effective on Sunday of 1983
the calendar week in which the first day of January occurs that 1984
follows the twelve-month period ending the thirtieth day of June 1985
upon which the calculation of the statewide average weekly wage 1986
was based. 1987

(4) As used in this division, an individual is "unemployed" 1988
if, with respect to the calendar week in which such application is 1989
filed, the individual is "partially unemployed" or "totally 1990
unemployed" as defined in this section or if, prior to filing the 1991
application, the individual was separated from the individual's 1992
most recent work for any reason which terminated the individual's 1993
employee-employer relationship, or was laid off indefinitely or 1994

for a definite period of seven or more days. 1995

(S) "Calendar quarter" means the period of three consecutive 1996
calendar months ending on the thirty-first day of March, the 1997
thirtieth day of June, the thirtieth day of September, and the 1998
thirty-first day of December, or the equivalent thereof as the 1999
director prescribes by rule. 2000

(T) "Computation date" means the first day of the third 2001
calendar quarter of any calendar year. 2002

(U) "Contribution period" means the calendar year beginning 2003
on the first day of January of any year. 2004

(V) "Agricultural labor," for the purpose of this division, 2005
means any service performed prior to January 1, 1972, which was 2006
agricultural labor as defined in this division prior to that date, 2007
and service performed after December 31, 1971: 2008

(1) On a farm, in the employ of any person, in connection 2009
with cultivating the soil, or in connection with raising or 2010
harvesting any agricultural or horticultural commodity, including 2011
the raising, shearing, feeding, caring for, training, and 2012
management of livestock, bees, poultry, and fur-bearing animals 2013
and wildlife; 2014

(2) In the employ of the owner or tenant or other operator of 2015
a farm in connection with the operation, management, conservation, 2016
improvement, or maintenance of such farm and its tools and 2017
equipment, or in salvaging timber or clearing land of brush and 2018
other debris left by hurricane, if the major part of such service 2019
is performed on a farm; 2020

(3) In connection with the production or harvesting of any 2021
commodity defined as an agricultural commodity in section 15 (g) 2022
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 2023
U.S.C. 1141j, as amended, or in connection with the ginning of 2024
cotton, or in connection with the operation or maintenance of 2025

ditches, canals, reservoirs, or waterways, not owned or operated 2026
for profit, used exclusively for supplying and storing water for 2027
farming purposes; 2028

(4) In the employ of the operator of a farm in handling, 2029
planting, drying, packing, packaging, processing, freezing, 2030
grading, storing, or delivering to storage or to market or to a 2031
carrier for transportation to market, in its unmanufactured state, 2032
any agricultural or horticultural commodity, but only if the 2033
operator produced more than one half of the commodity with respect 2034
to which such service is performed; 2035

(5) In the employ of a group of operators of farms, or a 2036
cooperative organization of which the operators are members, in 2037
the performance of service described in division (V)(4) of this 2038
section, but only if the operators produced more than one-half of 2039
the commodity with respect to which the service is performed; 2040

(6) Divisions (V)(4) and (5) of this section shall not be 2041
deemed to be applicable with respect to service performed: 2042

(a) In connection with commercial canning or commercial 2043
freezing or in connection with any agricultural or horticultural 2044
commodity after its delivery to a terminal market for distribution 2045
for consumption; or 2046

(b) On a farm operated for profit if the service is not in 2047
the course of the employer's trade or business. 2048

As used in division (V) of this section, "farm" includes 2049
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 2050
plantations, ranches, nurseries, ranges, greenhouses, or other 2051
similar structures used primarily for the raising of agricultural 2052
or horticultural commodities and orchards. 2053

(W) "Hospital" means an institution which has been registered 2054
or licensed by the Ohio department of health as a hospital. 2055

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

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

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

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

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

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

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

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

(BB)(1) "Crew leader" means an individual who furnishes individuals to perform agricultural labor for any other employer

or farm operator, and: 2086

(a) Pays, either on the individual's own behalf or on behalf 2087
of the other employer or farm operator, the individuals so 2088
furnished by the individual for the service in agricultural labor 2089
performed by them; 2090

(b) Has not entered into a written agreement with the other 2091
employer or farm operator under which the agricultural worker is 2092
designated as in the employ of the other employer or farm 2093
operator. 2094

(2) For the purposes of this chapter, any individual who is a 2095
member of a crew furnished by a crew leader to perform service in 2096
agricultural labor for any other employer or farm operator shall 2097
be treated as an employee of the crew leader if: 2098

(a) The crew leader holds a valid certificate of registration 2099
under the "Farm Labor Contractor Registration Act of 1963," 90 2100
Stat. 2668, 7 U.S.C. 2041; or 2101

(b) Substantially all the members of the crew operate or 2102
maintain tractors, mechanized harvesting or crop-dusting 2103
equipment, or any other mechanized equipment, which is provided by 2104
the crew leader; and 2105

(c) If the individual is not in the employment of the other 2106
employer or farm operator within the meaning of division (B)(1) of 2107
this section. 2108

(3) For the purposes of this division, any individual who is 2109
furnished by a crew leader to perform service in agricultural 2110
labor for any other employer or farm operator and who is not 2111
treated as in the employment of the crew leader under division 2112
(BB)(2) of this section shall be treated as the employee of the 2113
other employer or farm operator and not of the crew leader. The 2114
other employer or farm operator shall be treated as having paid 2115
cash remuneration to the individual in an amount equal to the 2116

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

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

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

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

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

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

(EE) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code.

(FF) "Employee" means every person who is an employee under the rules adopted by the superintendent of industrial compliance pursuant to section 4177.01 of the Revised Code, unless the services performed by the individual do not constitute "employment" as defined in division (B) of this section.

Sec. 4177.01. The superintendent of industrial compliance 2148
shall adopt rules to establish a test to determine whether an 2149
individual is an employee or independent contractor for purposes 2150
of Chapters 4121., 4123., 4127., 4131., 4141., and 5747. of the 2151
Revised Code, consistent with the common law rules for determining 2152
an employer-employee relationship used by the United States 2153
internal revenue service pursuant to section 3121(d)(2) of the 2154
"Internal Revenue Code of 1986," 26 U.S.C. 3121(d)(2). 2155

Sec. 4177.02. No employer shall fail to consider an 2156
individual who is an employee under the rules adopted by the 2157
superintendent of industrial compliance pursuant to section 2158
4177.01 of the Revised Code to be an employee for purposes of 2159
Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the Revised 2160
Code, unless the individual is otherwise not considered an 2161
employee under the applicable law. 2162

Sec. 4177.03. The superintendent of industrial compliance 2163
shall enforce this chapter. The superintendent shall adopt rules 2164
in accordance with Chapter 119. of the Revised Code to implement 2165
and administer this chapter. 2166

Sec. 4177.04. (A) An individual may file a complaint with the 2167
superintendent of industrial compliance against an employer if the 2168
individual reasonably believes that the employer is in violation 2169
of section 4177.02 of the Revised Code. On receipt of a complaint, 2170
the superintendent shall conduct an investigation into whether the 2171
employer violated section 4177.02 of the Revised Code. 2172

(B) If, after an investigation pursuant to division (A) of 2173
this section, the superintendent determines that reasonable 2174
evidence exists that an employer has violated section 4177.02 of 2175
the Revised Code, the superintendent shall send written notice to 2176

the employer and hold a hearing regarding the alleged violation in 2177
accordance with Chapter 119. of the Revised Code. 2178

(C) If the superintendent determines, after the hearing, that 2179
an employer has misclassified an employee as an independent 2180
contractor, that determination is binding on the administrator of 2181
workers' compensation, the director of job and family services, 2182
and the tax commissioner unless the individual is otherwise not 2183
considered an employee under the applicable law. Notwithstanding 2184
any provision of this section to the contrary, nothing in this 2185
chapter shall be construed to limit or otherwise constrain the 2186
duties and powers of the administrator under Chapter 4121., 4123., 2187
4127., or 4131. of the Revised Code, the director under Chapter 2188
4141. of the Revised Code, or the tax commissioner under Chapter 2189
5703. or 5747. of the Revised Code. 2190

(D) The superintendent's determination is an order that the 2191
employer may appeal in accordance with section 119.12 of the 2192
Revised Code. 2193

Sec. 4177.05. (A) If, after a hearing held in accordance with 2194
section 4177.04 of the Revised Code, the superintendent of 2195
industrial compliance determines that an employer violated section 2196
4177.02 of the Revised Code, the superintendent shall do both of 2197
the following: 2198

(1) Notify the administrator of workers' compensation, the 2199
director of job and family services, and the tax commissioner, 2200
each of whom shall determine whether the employer's violation of 2201
section 4177.02 of the Revised Code results in the employer not 2202
complying with the requirements of Chapter 4121., 4123., 4127., 2203
4131., 4141., or 5747. of the Revised Code, as applicable; 2204

(2) For each day after a complaint was filed under division 2205
(A) of section 4177.04 of the Revised Code, assess against the 2206
employer a penalty of five hundred dollars for each employee the 2207

employer misclassified as an independent contractor in violation 2208
of section 4177.02 of the Revised Code. 2209

(B) The superintendent shall not assess a penalty against an 2210
employer under division (A)(2) of this section if the employer 2211
voluntarily comes into compliance with section 4177.02 of the 2212
Revised Code before the hearing is held pursuant to section 2213
4177.04 of the Revised Code. 2214

(C) Regardless of the superintendent's determination, the 2215
superintendent shall notify the child support enforcement agency 2216
in the county in which the employee or independent contractor 2217
resides of each individual who is receiving income. 2218

Sec. 4177.06. There is hereby created in the state treasury 2219
the employee classification fund. The superintendent of industrial 2220
compliance shall deposit all moneys the superintendent receives 2221
under this chapter into the fund. The superintendent shall use the 2222
fund for the administration, investigation, and other expenses 2223
incurred in carrying out the superintendent's powers and duties 2224
under this chapter. 2225

Sec. 5747.01. Except as otherwise expressly provided or 2226
clearly appearing from the context, any term used in this chapter 2227
that is not otherwise defined in this section has the same meaning 2228
as when used in a comparable context in the laws of the United 2229
States relating to federal income taxes or if not used in a 2230
comparable context in those laws, has the same meaning as in 2231
section 5733.40 of the Revised Code. Any reference in this chapter 2232
to the Internal Revenue Code includes other laws of the United 2233
States relating to federal income taxes. 2234

As used in this chapter: 2235

(A) "Adjusted gross income" or "Ohio adjusted gross income" 2236
means federal adjusted gross income, as defined and used in the 2237

Internal Revenue Code, adjusted as provided in this section:	2238
(1) Add interest or dividends 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.	2239 2240 2241
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.	2242 2243 2244 2245 2246
(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.	2247 2248 2249 2250 2251 2252
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	2253 2254
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	2255 2256 2257 2258
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter.	2259 2260 2261 2262 2263 2264 2265 2266 2267
"Undistributed net income of a trust" means the taxable income of	2268

the trust increased by (a)(i) the additions to adjusted gross 2269
income required under division (A) of this section and (ii) the 2270
personal exemptions allowed to the trust pursuant to section 2271
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 2272
deductions to adjusted gross income required under division (A) of 2273
this section, (ii) the amount of federal income taxes attributable 2274
to such income, and (iii) the amount of taxable income that has 2275
been included in the adjusted gross income of a beneficiary by 2276
reason of a prior accumulation distribution. Any undistributed net 2277
income included in the adjusted gross income of a beneficiary 2278
shall reduce the undistributed net income of the trust commencing 2279
with the earliest years of the accumulation period. 2280

(7) Deduct the amount of wages and salaries, if any, not 2281
otherwise allowable as a deduction but that would have been 2282
allowable as a deduction in computing federal adjusted gross 2283
income for the taxable year, had the targeted jobs credit allowed 2284
and determined under sections 38, 51, and 52 of the Internal 2285
Revenue Code not been in effect. 2286

(8) Deduct any interest or interest equivalent on public 2287
obligations and purchase obligations to the extent that the 2288
interest or interest equivalent is included in federal adjusted 2289
gross income. 2290

(9) Add any loss or deduct any gain resulting from the sale, 2291
exchange, or other disposition of public obligations to the extent 2292
that the loss has been deducted or the gain has been included in 2293
computing federal adjusted gross income. 2294

(10) Deduct or add amounts, as provided under section 5747.70 2295
of the Revised Code, related to contributions to variable college 2296
savings program accounts made or tuition units purchased pursuant 2297
to Chapter 3334. of the Revised Code. 2298

(11)(a) Deduct, to the extent not otherwise allowable as a 2299

deduction or exclusion in computing federal or Ohio adjusted gross 2300
income for the taxable year, the amount the taxpayer paid during 2301
the taxable year for medical care insurance and qualified 2302
long-term care insurance for the taxpayer, the taxpayer's spouse, 2303
and dependents. No deduction for medical care insurance under 2304
division (A)(11) of this section shall be allowed either to any 2305
taxpayer who is eligible to participate in any subsidized health 2306
plan maintained by any employer of the taxpayer or of the 2307
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2308
application would be entitled to, benefits under part A of Title 2309
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 2310
301, as amended. For the purposes of division (A)(11)(a) of this 2311
section, "subsidized health plan" means a health plan for which 2312
the employer pays any portion of the plan's cost. The deduction 2313
allowed under division (A)(11)(a) of this section shall be the net 2314
of any related premium refunds, related premium reimbursements, or 2315
related insurance premium dividends received during the taxable 2316
year. 2317

(b) Deduct, to the extent not otherwise deducted or excluded 2318
in computing federal or Ohio adjusted gross income during the 2319
taxable year, the amount the taxpayer paid during the taxable 2320
year, not compensated for by any insurance or otherwise, for 2321
medical care of the taxpayer, the taxpayer's spouse, and 2322
dependents, to the extent the expenses exceed seven and one-half 2323
per cent of the taxpayer's federal adjusted gross income. 2324

(c) Deduct, to the extent not otherwise deducted or excluded 2325
in computing federal or Ohio adjusted gross income, any amount 2326
included in federal adjusted gross income under section 105 or not 2327
excluded under section 106 of the Internal Revenue Code solely 2328
because it relates to an accident and health plan for a person who 2329
otherwise would be a "qualifying relative" and thus a "dependent" 2330
under section 152 of the Internal Revenue Code but for the fact 2331

that the person fails to meet the income and support limitations 2332
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 2333

(d) For purposes of division (A)(11) of this section, 2334
"medical care" has the meaning given in section 213 of the 2335
Internal Revenue Code, subject to the special rules, limitations, 2336
and exclusions set forth therein, and "qualified long-term care" 2337
has the same meaning given in section 7702B(c) of the Internal 2338
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 2339
of this section, "dependent" includes a person who otherwise would 2340
be a "qualifying relative" and thus a "dependent" under section 2341
152 of the Internal Revenue Code but for the fact that the person 2342
fails to meet the income and support limitations under section 2343
152(d)(1)(B) and (C) of the Internal Revenue Code. 2344

(12)(a) Deduct any amount included in federal adjusted gross 2345
income solely because the amount represents a reimbursement or 2346
refund of expenses that in any year the taxpayer had deducted as 2347
an itemized deduction pursuant to section 63 of the Internal 2348
Revenue Code and applicable United States department of the 2349
treasury regulations. The deduction otherwise allowed under 2350
division (A)(12)(a) of this section shall be reduced to the extent 2351
the reimbursement is attributable to an amount the taxpayer 2352
deducted under this section in any taxable year. 2353

(b) Add any amount not otherwise included in Ohio adjusted 2354
gross income for any taxable year to the extent that the amount is 2355
attributable to the recovery during the taxable year of any amount 2356
deducted or excluded in computing federal or Ohio adjusted gross 2357
income in any taxable year. 2358

(13) Deduct any portion of the deduction described in section 2359
1341(a)(2) of the Internal Revenue Code, for repaying previously 2360
reported income received under a claim of right, that meets both 2361
of the following requirements: 2362

(a) It is allowable for repayment of an item that was 2363
included in the taxpayer's adjusted gross income for a prior 2364
taxable year and did not qualify for a credit under division (A) 2365
or (B) of section 5747.05 of the Revised Code for that year; 2366

(b) It does not otherwise reduce the taxpayer's adjusted 2367
gross income for the current or any other taxable year. 2368

(14) Deduct an amount equal to the deposits made to, and net 2369
investment earnings of, a medical savings account during the 2370
taxable year, in accordance with section 3924.66 of the Revised 2371
Code. The deduction allowed by division (A)(14) of this section 2372
does not apply to medical savings account deposits and earnings 2373
otherwise deducted or excluded for the current or any other 2374
taxable year from the taxpayer's federal adjusted gross income. 2375

(15)(a) Add an amount equal to the funds withdrawn from a 2376
medical savings account during the taxable year, and the net 2377
investment earnings on those funds, when the funds withdrawn were 2378
used for any purpose other than to reimburse an account holder 2379
for, or to pay, eligible medical expenses, in accordance with 2380
section 3924.66 of the Revised Code; 2381

(b) Add the amounts distributed from a medical savings 2382
account under division (A)(2) of section 3924.68 of the Revised 2383
Code during the taxable year. 2384

(16) Add any amount claimed as a credit under section 2385
5747.059 or 5747.65 of the Revised Code to the extent that such 2386
amount satisfies either of the following: 2387

(a) The amount was deducted or excluded from the computation 2388
of the taxpayer's federal adjusted gross income as required to be 2389
reported for the taxpayer's taxable year under the Internal 2390
Revenue Code; 2391

(b) The amount resulted in a reduction of the taxpayer's 2392
federal adjusted gross income as required to be reported for any 2393

of the taxpayer's taxable years under the Internal Revenue Code. 2394

(17) Deduct the amount contributed by the taxpayer to an 2395
individual development account program established by a county 2396
department of job and family services pursuant to sections 329.11 2397
to 329.14 of the Revised Code for the purpose of matching funds 2398
deposited by program participants. On request of the tax 2399
commissioner, the taxpayer shall provide any information that, in 2400
the tax commissioner's opinion, is necessary to establish the 2401
amount deducted under division (A)(17) of this section. 2402

(18) Beginning in taxable year 2001 but not for any taxable 2403
year beginning after December 31, 2005, if the taxpayer is married 2404
and files a joint return and the combined federal adjusted gross 2405
income of the taxpayer and the taxpayer's spouse for the taxable 2406
year does not exceed one hundred thousand dollars, or if the 2407
taxpayer is single and has a federal adjusted gross income for the 2408
taxable year not exceeding fifty thousand dollars, deduct amounts 2409
paid during the taxable year for qualified tuition and fees paid 2410
to an eligible institution for the taxpayer, the taxpayer's 2411
spouse, or any dependent of the taxpayer, who is a resident of 2412
this state and is enrolled in or attending a program that 2413
culminates in a degree or diploma at an eligible institution. The 2414
deduction may be claimed only to the extent that qualified tuition 2415
and fees are not otherwise deducted or excluded for any taxable 2416
year from federal or Ohio adjusted gross income. The deduction may 2417
not be claimed for educational expenses for which the taxpayer 2418
claims a credit under section 5747.27 of the Revised Code. 2419

(19) Add any reimbursement received during the taxable year 2420
of any amount the taxpayer deducted under division (A)(18) of this 2421
section in any previous taxable year to the extent the amount is 2422
not otherwise included in Ohio adjusted gross income. 2423

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and 2424
(v) of this section, add five-sixths of the amount of depreciation 2425

expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or indirect ownership interest.

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

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

(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 2458
Revenue Code and by qualifying section 179 depreciation expense, 2459
"the entire" shall be substituted for "five-sixths of the" for the 2460
purpose of divisions (A)(20)(a)(i) and (ii) of this section. 2461

The tax commissioner, under procedures established by the 2462
commissioner, may waive the add-backs related to a pass-through 2463
entity if the taxpayer owns, directly or indirectly, less than 2464
five per cent of the pass-through entity. 2465

(b) Nothing in division (A)(20) of this section shall be 2466
construed to adjust or modify the adjusted basis of any asset. 2467

(c) To the extent the add-back required under division 2468
(A)(20)(a) of this section is attributable to property generating 2469
nonbusiness income or loss allocated under section 5747.20 of the 2470
Revised Code, the add-back shall be situated to the same location 2471
as the nonbusiness income or loss generated by the property for 2472
the purpose of determining the credit under division (A) of 2473
section 5747.05 of the Revised Code. Otherwise, the add-back shall 2474
be apportioned, subject to one or more of the four alternative 2475
methods of apportionment enumerated in section 5747.21 of the 2476
Revised Code. 2477

(d) For the purposes of division (A)(20)(a)(v) of this 2478
section, net operating loss carryback and carryforward shall not 2479
include the allowance of any net operating loss deduction 2480
carryback or carryforward to the taxable year to the extent such 2481
loss resulted from depreciation allowed by section 168(k) of the 2482
Internal Revenue Code and by the qualifying section 179 2483
depreciation expense amount. 2484

(e) For the purposes of divisions (A)(20) and (21) of this 2485
section: 2486

(i) "Income taxes withheld" means the total amount withheld 2487
and remitted under sections 5747.06 and 5747.07 of the Revised 2488

Code by an employer during the employer's taxable year. 2489

(ii) "Increase in income taxes withheld" means the amount by 2490
which the amount of income taxes withheld by an employer during 2491
the employer's current taxable year exceeds the amount of income 2492
taxes withheld by that employer during the employer's immediately 2493
preceding taxable year. 2494

(iii) "Qualifying section 179 depreciation expense" means the 2495
difference between (I) the amount of depreciation expense directly 2496
or indirectly allowed to a taxpayer under section 179 of the 2497
Internal Revised Code, and (II) the amount of depreciation expense 2498
directly or indirectly allowed to the taxpayer under section 179 2499
of the Internal Revenue Code as that section existed on December 2500
31, 2002. 2501

(21)(a) If the taxpayer was required to add an amount under 2502
division (A)(20)(a) of this section for a taxable year, deduct one 2503
of the following: 2504

(i) One-fifth of the amount so added for each of the five 2505
succeeding taxable years if the amount so added was five-sixths of 2506
qualifying section 179 depreciation expense or depreciation 2507
expense allowed by subsection (k) of section 168 of the Internal 2508
Revenue Code; 2509

(ii) One-half of the amount so added for each of the two 2510
succeeding taxable years if the amount so added was two-thirds of 2511
such depreciation expense; 2512

(iii) One-sixth of the amount so added for each of the six 2513
succeeding taxable years if the entire amount of such depreciation 2514
expense was so added. 2515

(b) If the amount deducted under division (A)(21)(a) of this 2516
section is attributable to an add-back allocated under division 2517
(A)(20)(c) of this section, the amount deducted shall be situated 2518
to the same location. Otherwise, the add-back shall be apportioned 2519

using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

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

(d) No refund shall be allowed as a result of adjustments made by division (A)(21) of this section.

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

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

(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in

computing federal or Ohio adjusted gross income for the taxable 2551
year, military pay and allowances received by the taxpayer during 2552
the taxable year for active duty service in the United States 2553
army, air force, navy, marine corps, or coast guard or reserve 2554
components thereof or the national guard. The deduction may not be 2555
claimed for military pay and allowances received by the taxpayer 2556
while the taxpayer is stationed in this state. 2557

(25) Deduct, to the extent not otherwise allowable as a 2558
deduction or exclusion in computing federal or Ohio adjusted gross 2559
income for the taxable year and not otherwise compensated for by 2560
any other source, the amount of qualified organ donation expenses 2561
incurred by the taxpayer during the taxable year, not to exceed 2562
ten thousand dollars. A taxpayer may deduct qualified organ 2563
donation expenses only once for all taxable years beginning with 2564
taxable years beginning in 2007. 2565

For the purposes of division (A)(25) of this section: 2566

(a) "Human organ" means all or any portion of a human liver, 2567
pancreas, kidney, intestine, or lung, and any portion of human 2568
bone marrow. 2569

(b) "Qualified organ donation expenses" means travel 2570
expenses, lodging expenses, and wages and salary forgone by a 2571
taxpayer in connection with the taxpayer's donation, while living, 2572
of one or more of the taxpayer's human organs to another human 2573
being. 2574

(26) Deduct, to the extent not otherwise deducted or excluded 2575
in computing federal or Ohio adjusted gross income for the taxable 2576
year, amounts received by the taxpayer as retired personnel pay 2577
for service in the uniformed services or reserve components 2578
thereof, or the national guard, or received by the surviving 2579
spouse or former spouse of such a taxpayer under the survivor 2580
benefit plan on account of such a taxpayer's death. If the 2581

taxpayer receives income on account of retirement paid under the 2582
federal civil service retirement system or federal employees 2583
retirement system, or under any successor retirement program 2584
enacted by the congress of the United States that is established 2585
and maintained for retired employees of the United States 2586
government, and such retirement income is based, in whole or in 2587
part, on credit for the taxpayer's uniformed service, the 2588
deduction allowed under this division shall include only that 2589
portion of such retirement income that is attributable to the 2590
taxpayer's uniformed service, to the extent that portion of such 2591
retirement income is otherwise included in federal adjusted gross 2592
income and is not otherwise deducted under this section. Any 2593
amount deducted under division (A)(26) of this section is not 2594
included in a taxpayer's adjusted gross income for the purposes of 2595
section 5747.055 of the Revised Code. No amount may be deducted 2596
under division (A)(26) of this section on the basis of which a 2597
credit was claimed under section 5747.055 of the Revised Code. 2598

(27) Deduct, to the extent not otherwise deducted or excluded 2599
in computing federal or Ohio adjusted gross income for the taxable 2600
year, the amount the taxpayer received during the taxable year 2601
from the military injury relief fund created in section 5902.05 of 2602
the Revised Code. 2603

(28) Deduct, to the extent not otherwise deducted or excluded 2604
in computing federal or Ohio adjusted gross income for the taxable 2605
year, the amount the taxpayer received as a veterans bonus during 2606
the taxable year from the Ohio department of veterans services as 2607
authorized by Section 2r of Article VIII, Ohio Constitution. 2608

(29) Deduct, to the extent not otherwise deducted or excluded 2609
in computing federal or Ohio adjusted gross income for the taxable 2610
year, any income derived from a transfer agreement or from the 2611
enterprise transferred under that agreement under section 4313.02 2612
of the Revised Code. 2613

(30) Deduct, to the extent not otherwise deducted or excluded 2614
in computing federal or Ohio adjusted gross income for the taxable 2615
year, Ohio college opportunity or federal Pell grant amounts 2616
received by the taxpayer or the taxpayer's spouse or dependent 2617
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 2618
1070a, et seq., and used to pay room or board furnished by the 2619
educational institution for which the grant was awarded at the 2620
institution's facilities, including meal plans administered by the 2621
institution. For the purposes of this division, receipt of a grant 2622
includes the distribution of a grant directly to an educational 2623
institution and the crediting of the grant to the enrollee's 2624
account with the institution. 2625

(31)(a) For taxable years beginning in 2015, deduct from the 2626
portion of an individual's adjusted gross income that is business 2627
income, to the extent not otherwise deducted or excluded in 2628
computing federal or Ohio adjusted gross income for the taxable 2629
year, the lesser of the following amounts: 2630

(i) Seventy-five per cent of the individual's business 2631
income; 2632

(ii) Ninety-three thousand seven hundred fifty dollars for 2633
each spouse if spouses file separate returns under section 5747.08 2634
of the Revised Code or one hundred eighty-seven thousand five 2635
hundred dollars for all other individuals. 2636

(b) For taxable years beginning in 2016 or thereafter, deduct 2637
from the portion of an individual's adjusted gross income that is 2638
business income, to the extent not otherwise deducted or excluded 2639
in computing federal adjusted gross income for the taxable year, 2640
one hundred twenty-five thousand dollars for each spouse if 2641
spouses file separate returns under section 5747.08 of the Revised 2642
Code or two hundred fifty thousand dollars for all other 2643
individuals. 2644

(32) Deduct, as provided under section 5747.78 of the Revised Code, contributions to ABLE savings accounts made in accordance with sections 113.50 to 113.56 of the Revised Code.

(33)(a) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, all of the following:

(i) Compensation paid to a qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code to the extent such compensation is for disaster work conducted in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(ii) Compensation paid to a qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code to the extent such compensation is for disaster work conducted in this state by the employee during the disaster response period on critical infrastructure owned or used by the employee's employer;

(iii) Income received by an out-of-state disaster business for disaster work conducted in this state during a disaster response period, or, if the out-of-state disaster business is a pass-through entity, a taxpayer's distributive share of the pass-through entity's income from the business conducting disaster work in this state during a disaster response period, if, in either case, the disaster work is conducted pursuant to a qualifying solicitation received by the business.

(b) All terms used in division (A)(33) of this section have the same meanings as in section 5703.94 of the Revised Code.

(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 2676
trade or business operation. "Business income" includes income, 2677
including gain or loss, from a partial or complete liquidation of 2678
a business, including, but not limited to, gain or loss from the 2679
sale or other disposition of goodwill. 2680

(C) "Nonbusiness income" means all income other than business 2681
income and may include, but is not limited to, compensation, rents 2682
and royalties from real or tangible personal property, capital 2683
gains, interest, dividends and distributions, patent or copyright 2684
royalties, or lottery winnings, prizes, and awards. 2685

(D) "Compensation" means any form of remuneration paid to an 2686
employee for personal services. 2687

(E) "Fiduciary" means a guardian, trustee, executor, 2688
administrator, receiver, conservator, or any other person acting 2689
in any fiduciary capacity for any individual, trust, or estate. 2690

(F) "Fiscal year" means an accounting period of twelve months 2691
ending on the last day of any month other than December. 2692

(G) "Individual" means any natural person. 2693

(H) "Internal Revenue Code" means the "Internal Revenue Code 2694
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2695

(I) "Resident" means any of the following, provided that 2696
division (I)(3) of this section applies only to taxable years of a 2697
trust beginning in 2002 or thereafter: 2698

(1) An individual who is domiciled in this state, subject to 2699
section 5747.24 of the Revised Code; 2700

(2) The estate of a decedent who at the time of death was 2701
domiciled in this state. The domicile tests of section 5747.24 of 2702
the Revised Code are not controlling for purposes of division 2703
(I)(2) of this section. 2704

(3) A trust that, in whole or part, resides in this state. If 2705

only part of a trust resides in this state, the trust is a 2706
resident only with respect to that part. 2707

For the purposes of division (I)(3) of this section: 2708

(a) A trust resides in this state for the trust's current 2709
taxable year to the extent, as described in division (I)(3)(d) of 2710
this section, that the trust consists directly or indirectly, in 2711
whole or in part, of assets, net of any related liabilities, that 2712
were transferred, or caused to be transferred, directly or 2713
indirectly, to the trust by any of the following: 2714

(i) A person, a court, or a governmental entity or 2715
instrumentality on account of the death of a decedent, but only if 2716
the trust is described in division (I)(3)(e)(i) or (ii) of this 2717
section; 2718

(ii) A person who was domiciled in this state for the 2719
purposes of this chapter when the person directly or indirectly 2720
transferred assets to an irrevocable trust, but only if at least 2721
one of the trust's qualifying beneficiaries is domiciled in this 2722
state for the purposes of this chapter during all or some portion 2723
of the trust's current taxable year; 2724

(iii) A person who was domiciled in this state for the 2725
purposes of this chapter when the trust document or instrument or 2726
part of the trust document or instrument became irrevocable, but 2727
only if at least one of the trust's qualifying beneficiaries is a 2728
resident domiciled in this state for the purposes of this chapter 2729
during all or some portion of the trust's current taxable year. If 2730
a trust document or instrument became irrevocable upon the death 2731
of a person who at the time of death was domiciled in this state 2732
for purposes of this chapter, that person is a person described in 2733
division (I)(3)(a)(iii) of this section. 2734

(b) A trust is irrevocable to the extent that the transferor 2735
is not considered to be the owner of the net assets of the trust 2736

under sections 671 to 678 of the Internal Revenue Code. 2737

(c) With respect to a trust other than a charitable lead 2738
trust, "qualifying beneficiary" has the same meaning as "potential 2739
current beneficiary" as defined in section 1361(e)(2) of the 2740
Internal Revenue Code, and with respect to a charitable lead trust 2741
"qualifying beneficiary" is any current, future, or contingent 2742
beneficiary, but with respect to any trust "qualifying 2743
beneficiary" excludes a person or a governmental entity or 2744
instrumentality to any of which a contribution would qualify for 2745
the charitable deduction under section 170 of the Internal Revenue 2746
Code. 2747

(d) For the purposes of division (I)(3)(a) of this section, 2748
the extent to which a trust consists directly or indirectly, in 2749
whole or in part, of assets, net of any related liabilities, that 2750
were transferred directly or indirectly, in whole or part, to the 2751
trust by any of the sources enumerated in that division shall be 2752
ascertained by multiplying the fair market value of the trust's 2753
assets, net of related liabilities, by the qualifying ratio, which 2754
shall be computed as follows: 2755

(i) The first time the trust receives assets, the numerator 2756
of the qualifying ratio is the fair market value of those assets 2757
at that time, net of any related liabilities, from sources 2758
enumerated in division (I)(3)(a) of this section. The denominator 2759
of the qualifying ratio is the fair market value of all the 2760
trust's assets at that time, net of any related liabilities. 2761

(ii) Each subsequent time the trust receives assets, a 2762
revised qualifying ratio shall be computed. The numerator of the 2763
revised qualifying ratio is the sum of (1) the fair market value 2764
of the trust's assets immediately prior to the subsequent 2765
transfer, net of any related liabilities, multiplied by the 2766
qualifying ratio last computed without regard to the subsequent 2767
transfer, and (2) the fair market value of the subsequently 2768

transferred assets at the time transferred, net of any related 2769
liabilities, from sources enumerated in division (I)(3)(a) of this 2770
section. The denominator of the revised qualifying ratio is the 2771
fair market value of all the trust's assets immediately after the 2772
subsequent transfer, net of any related liabilities. 2773

(iii) Whether a transfer to the trust is by or from any of 2774
the sources enumerated in division (I)(3)(a) of this section shall 2775
be ascertained without regard to the domicile of the trust's 2776
beneficiaries. 2777

(e) For the purposes of division (I)(3)(a)(i) of this 2778
section: 2779

(i) A trust is described in division (I)(3)(e)(i) of this 2780
section if the trust is a testamentary trust and the testator of 2781
that testamentary trust was domiciled in this state at the time of 2782
the testator's death for purposes of the taxes levied under 2783
Chapter 5731. of the Revised Code. 2784

(ii) A trust is described in division (I)(3)(e)(ii) of this 2785
section if the transfer is a qualifying transfer described in any 2786
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 2787
irrevocable inter vivos trust, and at least one of the trust's 2788
qualifying beneficiaries is domiciled in this state for purposes 2789
of this chapter during all or some portion of the trust's current 2790
taxable year. 2791

(f) For the purposes of division (I)(3)(e)(ii) of this 2792
section, a "qualifying transfer" is a transfer of assets, net of 2793
any related liabilities, directly or indirectly to a trust, if the 2794
transfer is described in any of the following: 2795

(i) The transfer is made to a trust, created by the decedent 2796
before the decedent's death and while the decedent was domiciled 2797
in this state for the purposes of this chapter, and, prior to the 2798
death of the decedent, the trust became irrevocable while the 2799

decedent was domiciled in this state for the purposes of this 2800
chapter. 2801

(ii) The transfer is made to a trust to which the decedent, 2802
prior to the decedent's death, had directly or indirectly 2803
transferred assets, net of any related liabilities, while the 2804
decedent was domiciled in this state for the purposes of this 2805
chapter, and prior to the death of the decedent the trust became 2806
irrevocable while the decedent was domiciled in this state for the 2807
purposes of this chapter. 2808

(iii) The transfer is made on account of a contractual 2809
relationship existing directly or indirectly between the 2810
transferor and either the decedent or the estate of the decedent 2811
at any time prior to the date of the decedent's death, and the 2812
decedent was domiciled in this state at the time of death for 2813
purposes of the taxes levied under Chapter 5731. of the Revised 2814
Code. 2815

(iv) The transfer is made to a trust on account of a 2816
contractual relationship existing directly or indirectly between 2817
the transferor and another person who at the time of the 2818
decedent's death was domiciled in this state for purposes of this 2819
chapter. 2820

(v) The transfer is made to a trust on account of the will of 2821
a testator who was domiciled in this state at the time of the 2822
testator's death for purposes of the taxes levied under Chapter 2823
5731. of the Revised Code. 2824

(vi) The transfer is made to a trust created by or caused to 2825
be created by a court, and the trust was directly or indirectly 2826
created in connection with or as a result of the death of an 2827
individual who, for purposes of the taxes levied under Chapter 2828
5731. of the Revised Code, was domiciled in this state at the time 2829
of the individual's death. 2830

(g) The tax commissioner may adopt rules to ascertain the 2831
part of a trust residing in this state. 2832

(J) "Nonresident" means an individual or estate that is not a 2833
resident. An individual who is a resident for only part of a 2834
taxable year is a nonresident for the remainder of that taxable 2835
year. 2836

(K) "Pass-through entity" has the same meaning as in section 2837
5733.04 of the Revised Code. 2838

(L) "Return" means the notifications and reports required to 2839
be filed pursuant to this chapter for the purpose of reporting the 2840
tax due and includes declarations of estimated tax when so 2841
required. 2842

(M) "Taxable year" means the calendar year or the taxpayer's 2843
fiscal year ending during the calendar year, or fractional part 2844
thereof, upon which the adjusted gross income is calculated 2845
pursuant to this chapter. 2846

(N) "Taxpayer" means any person subject to the tax imposed by 2847
section 5747.02 of the Revised Code or any pass-through entity 2848
that makes the election under division (D) of section 5747.08 of 2849
the Revised Code. 2850

(O) "Dependents" means dependents as defined in the Internal 2851
Revenue Code and as claimed in the taxpayer's federal income tax 2852
return for the taxable year or which the taxpayer would have been 2853
permitted to claim had the taxpayer filed a federal income tax 2854
return. 2855

(P) "Principal county of employment" means, in the case of a 2856
nonresident, the county within the state in which a taxpayer 2857
performs services for an employer or, if those services are 2858
performed in more than one county, the county in which the major 2859
portion of the services are performed. 2860

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:	2861 2862
(1) "Subdivision" means any county, municipal corporation, park district, or township.	2863 2864
(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.	2865 2866 2867 2868
(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.	2869 2870
(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:	2871 2872 2873
(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 income and is described in either division (S)(1)(a) or (b) of this section:	2874 2875 2876 2877 2878 2879 2880 2881
(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;	2882 2883 2884
(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.	2885 2886
(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to	2887 2888 2889 2890

the extent that the interest or dividends are exempt from federal 2891
income taxes but not from state income taxes, but only to the 2892
extent that such net amount is not otherwise includible in Ohio 2893
taxable income and is described in either division (S)(1)(a) or 2894
(b) of this section; 2895

(3) Add the amount of personal exemption allowed to the 2896
estate pursuant to section 642(b) of the Internal Revenue Code; 2897

(4) Deduct interest or dividends, net of related expenses 2898
deducted in computing federal taxable income, on obligations of 2899
the United States and its territories and possessions or of any 2900
authority, commission, or instrumentality of the United States to 2901
the extent that the interest or dividends are exempt from state 2902
taxes under the laws of the United States, but only to the extent 2903
that such amount is included in federal taxable income and is 2904
described in either division (S)(1)(a) or (b) of this section; 2905

(5) Deduct the amount of wages and salaries, if any, not 2906
otherwise allowable as a deduction but that would have been 2907
allowable as a deduction in computing federal taxable income for 2908
the taxable year, had the targeted jobs credit allowed under 2909
sections 38, 51, and 52 of the Internal Revenue Code not been in 2910
effect, but only to the extent such amount relates either to 2911
income included in federal taxable income for the taxable year or 2912
to income of the S portion of an electing small business trust for 2913
the taxable year; 2914

(6) Deduct any interest or interest equivalent, net of 2915
related expenses deducted in computing federal taxable income, on 2916
public obligations and purchase obligations, but only to the 2917
extent that such net amount relates either to income included in 2918
federal taxable income for the taxable year or to income of the S 2919
portion of an electing small business trust for the taxable year; 2920

(7) Add any loss or deduct any gain resulting from sale, 2921

exchange, or other disposition of public obligations to the extent 2922
that such loss has been deducted or such gain has been included in 2923
computing either federal taxable income or income of the S portion 2924
of an electing small business trust for the taxable year; 2925

(8) Except in the case of the final return of an estate, add 2926
any amount deducted by the taxpayer on both its Ohio estate tax 2927
return pursuant to section 5731.14 of the Revised Code, and on its 2928
federal income tax return in determining federal taxable income; 2929

(9)(a) Deduct any amount included in federal taxable income 2930
solely because the amount represents a reimbursement or refund of 2931
expenses that in a previous year the decedent had deducted as an 2932
itemized deduction pursuant to section 63 of the Internal Revenue 2933
Code and applicable treasury regulations. The deduction otherwise 2934
allowed under division (S)(9)(a) of this section shall be reduced 2935
to the extent the reimbursement is attributable to an amount the 2936
taxpayer or decedent deducted under this section in any taxable 2937
year. 2938

(b) Add any amount not otherwise included in Ohio taxable 2939
income for any taxable year to the extent that the amount is 2940
attributable to the recovery during the taxable year of any amount 2941
deducted or excluded in computing federal or Ohio taxable income 2942
in any taxable year, but only to the extent such amount has not 2943
been distributed to beneficiaries for the taxable year. 2944

(10) Deduct any portion of the deduction described in section 2945
1341(a)(2) of the Internal Revenue Code, for repaying previously 2946
reported income received under a claim of right, that meets both 2947
of the following requirements: 2948

(a) It is allowable for repayment of an item that was 2949
included in the taxpayer's taxable income or the decedent's 2950
adjusted gross income for a prior taxable year and did not qualify 2951
for a credit under division (A) or (B) of section 5747.05 of the 2952

Revised Code for that year. 2953

(b) It does not otherwise reduce the taxpayer's taxable 2954
income or the decedent's adjusted gross income for the current or 2955
any other taxable year. 2956

(11) Add any amount claimed as a credit under section 2957
5747.059 or 5747.65 of the Revised Code to the extent that the 2958
amount satisfies either of the following: 2959

(a) The amount was deducted or excluded from the computation 2960
of the taxpayer's federal taxable income as required to be 2961
reported for the taxpayer's taxable year under the Internal 2962
Revenue Code; 2963

(b) The amount resulted in a reduction in the taxpayer's 2964
federal taxable income as required to be reported for any of the 2965
taxpayer's taxable years under the Internal Revenue Code. 2966

(12) Deduct any amount, net of related expenses deducted in 2967
computing federal taxable income, that a trust is required to 2968
report as farm income on its federal income tax return, but only 2969
if the assets of the trust include at least ten acres of land 2970
satisfying the definition of "land devoted exclusively to 2971
agricultural use" under section 5713.30 of the Revised Code, 2972
regardless of whether the land is valued for tax purposes as such 2973
land under sections 5713.30 to 5713.38 of the Revised Code. If the 2974
trust is a pass-through entity investor, section 5747.231 of the 2975
Revised Code applies in ascertaining if the trust is eligible to 2976
claim the deduction provided by division (S)(12) of this section 2977
in connection with the pass-through entity's farm income. 2978

Except for farm income attributable to the S portion of an 2979
electing small business trust, the deduction provided by division 2980
(S)(12) of this section is allowed only to the extent that the 2981
trust has not distributed such farm income. Division (S)(12) of 2982
this section applies only to taxable years of a trust beginning in 2983

2002 or thereafter.	2984
(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income.	2985 2986 2987
(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.	2988 2989 2990 2991 2992 2993 2994
(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.	2995 2996
(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.	2997 2998 2999 3000
(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.	3001 3002 3003
(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.	3004 3005 3006 3007
(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.	3008 3009
(Y) "Month" means a calendar month.	3010
(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.	3011 3012 3013

(AA)(1) "Eligible institution" means a state university or 3014
state institution of higher education as defined in section 3015
3345.011 of the Revised Code, or a private, nonprofit college, 3016
university, or other post-secondary institution located in this 3017
state that possesses a certificate of authorization issued by the 3018
chancellor of higher education pursuant to Chapter 1713. of the 3019
Revised Code or a certificate of registration issued by the state 3020
board of career colleges and schools under Chapter 3332. of the 3021
Revised Code. 3022

(2) "Qualified tuition and fees" means tuition and fees 3023
imposed by an eligible institution as a condition of enrollment or 3024
attendance, not exceeding two thousand five hundred dollars in 3025
each of the individual's first two years of post-secondary 3026
education. If the individual is a part-time student, "qualified 3027
tuition and fees" includes tuition and fees paid for the academic 3028
equivalent of the first two years of post-secondary education 3029
during a maximum of five taxable years, not exceeding a total of 3030
five thousand dollars. "Qualified tuition and fees" does not 3031
include: 3032

(a) Expenses for any course or activity involving sports, 3033
games, or hobbies unless the course or activity is part of the 3034
individual's degree or diploma program; 3035

(b) The cost of books, room and board, student activity fees, 3036
athletic fees, insurance expenses, or other expenses unrelated to 3037
the individual's academic course of instruction; 3038

(c) Tuition, fees, or other expenses paid or reimbursed 3039
through an employer, scholarship, grant in aid, or other 3040
educational benefit program. 3041

(BB)(1) "Modified business income" means the business income 3042
included in a trust's Ohio taxable income after such taxable 3043
income is first reduced by the qualifying trust amount, if any. 3044

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

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

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

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

(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.

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

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

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in

section 5747.012 of the Revised Code, but only to the extent the 3075
qualifying investment income does not otherwise constitute 3076
modified business income and does not otherwise constitute a 3077
qualifying trust amount. 3078

(b) The qualifying trust amount multiplied by a fraction, the 3079
numerator of which is the sum of the book value of the qualifying 3080
investee's physical assets in this state on the last day of the 3081
qualifying investee's fiscal or calendar year ending immediately 3082
prior to the day on which the trust recognizes the qualifying 3083
trust amount, and the denominator of which is the sum of the book 3084
value of the qualifying investee's total physical assets 3085
everywhere on the last day of the qualifying investee's fiscal or 3086
calendar year ending immediately prior to the day on which the 3087
trust recognizes the qualifying trust amount. If, for a taxable 3088
year, the trust recognizes a qualifying trust amount with respect 3089
to more than one qualifying investee, the amount described in 3090
division (BB)(4)(b) of this section shall equal the sum of the 3091
products so computed for each such qualifying investee. 3092

(c)(i) With respect to a trust or portion of a trust that is 3093
a resident as ascertained in accordance with division (I)(3)(d) of 3094
this section, its modified nonbusiness income. 3095

(ii) With respect to a trust or portion of a trust that is 3096
not a resident as ascertained in accordance with division 3097
(I)(3)(d) of this section, the amount of its modified nonbusiness 3098
income satisfying the descriptions in divisions (B)(2) to (5) of 3099
section 5747.20 of the Revised Code, except as otherwise provided 3100
in division (BB)(4)(c)(ii) of this section. With respect to a 3101
trust or portion of a trust that is not a resident as ascertained 3102
in accordance with division (I)(3)(d) of this section, the trust's 3103
portion of modified nonbusiness income recognized from the sale, 3104
exchange, or other disposition of a debt interest in or equity 3105
interest in a section 5747.212 entity, as defined in section 3106

5747.212 of the Revised Code, without regard to division (A) of 3107
that section, shall not be allocated to this state in accordance 3108
with section 5747.20 of the Revised Code but shall be apportioned 3109
to this state in accordance with division (B) of section 5747.212 3110
of the Revised Code without regard to division (A) of that 3111
section. 3112

If the allocation and apportionment of a trust's income under 3113
divisions (BB)(4)(a) and (c) of this section do not fairly 3114
represent the modified Ohio taxable income of the trust in this 3115
state, the alternative methods described in division (C) of 3116
section 5747.21 of the Revised Code may be applied in the manner 3117
and to the same extent provided in that section. 3118

(5)(a) Except as set forth in division (BB)(5)(b) of this 3119
section, "qualifying investee" means a person in which a trust has 3120
an equity or ownership interest, or a person or unit of government 3121
the debt obligations of either of which are owned by a trust. For 3122
the purposes of division (BB)(2)(a) of this section and for the 3123
purpose of computing the fraction described in division (BB)(4)(b) 3124
of this section, all of the following apply: 3125

(i) If the qualifying investee is a member of a qualifying 3126
controlled group on the last day of the qualifying investee's 3127
fiscal or calendar year ending immediately prior to the date on 3128
which the trust recognizes the gain or loss, then "qualifying 3129
investee" includes all persons in the qualifying controlled group 3130
on such last day. 3131

(ii) If the qualifying investee, or if the qualifying 3132
investee and any members of the qualifying controlled group of 3133
which the qualifying investee is a member on the last day of the 3134
qualifying investee's fiscal or calendar year ending immediately 3135
prior to the date on which the trust recognizes the gain or loss, 3136
separately or cumulatively own, directly or indirectly, on the 3137
last day of the qualifying investee's fiscal or calendar year 3138

ending immediately prior to the date on which the trust recognizes 3139
the qualifying trust amount, more than fifty per cent of the 3140
equity of a pass-through entity, then the qualifying investee and 3141
the other members are deemed to own the proportionate share of the 3142
pass-through entity's physical assets which the pass-through 3143
entity directly or indirectly owns on the last day of the 3144
pass-through entity's calendar or fiscal year ending within or 3145
with the last day of the qualifying investee's fiscal or calendar 3146
year ending immediately prior to the date on which the trust 3147
recognizes the qualifying trust amount. 3148

(iii) For the purposes of division (BB)(5)(a)(iii) of this 3149
section, "upper level pass-through entity" means a pass-through 3150
entity directly or indirectly owning any equity of another 3151
pass-through entity, and "lower level pass-through entity" means 3152
that other pass-through entity. 3153

An upper level pass-through entity, whether or not it is also 3154
a qualifying investee, is deemed to own, on the last day of the 3155
upper level pass-through entity's calendar or fiscal year, the 3156
proportionate share of the lower level pass-through entity's 3157
physical assets that the lower level pass-through entity directly 3158
or indirectly owns on the last day of the lower level pass-through 3159
entity's calendar or fiscal year ending within or with the last 3160
day of the upper level pass-through entity's fiscal or calendar 3161
year. If the upper level pass-through entity directly and 3162
indirectly owns less than fifty per cent of the equity of the 3163
lower level pass-through entity on each day of the upper level 3164
pass-through entity's calendar or fiscal year in which or with 3165
which ends the calendar or fiscal year of the lower level 3166
pass-through entity and if, based upon clear and convincing 3167
evidence, complete information about the location and cost of the 3168
physical assets of the lower pass-through entity is not available 3169
to the upper level pass-through entity, then solely for purposes 3170

of ascertaining if a gain or loss constitutes a qualifying trust 3171
amount, the upper level pass-through entity shall be deemed as 3172
owning no equity of the lower level pass-through entity for each 3173
day during the upper level pass-through entity's calendar or 3174
fiscal year in which or with which ends the lower level 3175
pass-through entity's calendar or fiscal year. Nothing in division 3176
(BB)(5)(a)(iii) of this section shall be construed to provide for 3177
any deduction or exclusion in computing any trust's Ohio taxable 3178
income. 3179

(b) With respect to a trust that is not a resident for the 3180
taxable year and with respect to a part of a trust that is not a 3181
resident for the taxable year, "qualifying investee" for that 3182
taxable year does not include a C corporation if both of the 3183
following apply: 3184

(i) During the taxable year the trust or part of the trust 3185
recognizes a gain or loss from the sale, exchange, or other 3186
disposition of equity or ownership interests in, or debt 3187
obligations of, the C corporation. 3188

(ii) Such gain or loss constitutes nonbusiness income. 3189

(6) "Available" means information is such that a person is 3190
able to learn of the information by the due date plus extensions, 3191
if any, for filing the return for the taxable year in which the 3192
trust recognizes the gain or loss. 3193

(CC) "Qualifying controlled group" has the same meaning as in 3194
section 5733.04 of the Revised Code. 3195

(DD) "Related member" has the same meaning as in section 3196
5733.042 of the Revised Code. 3197

(EE)(1) For the purposes of division (EE) of this section: 3198

(a) "Qualifying person" means any person other than a 3199
qualifying corporation. 3200

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

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

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

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

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

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

(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (FF)(3) of this section.

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

trustee of the trust. 3232

(4) A "pre-income tax trust" is a trust that satisfies all of 3233
the following requirements: 3234

(a) The document or instrument creating the trust was 3235
executed by the grantor before January 1, 1972; 3236

(b) The trust became irrevocable upon the creation of the 3237
trust; and 3238

(c) The grantor was domiciled in this state at the time the 3239
trust was created. 3240

(GG) "Uniformed services" has the same meaning as in 10 3241
U.S.C. 101. 3242

(HH) "Taxable business income" means the amount by which an 3243
individual's business income that is included in federal adjusted 3244
gross income exceeds the amount of business income the individual 3245
is authorized to deduct under division (A)(31) of this section for 3246
the taxable year. 3247

(II) "Employer" does not include a franchisor with respect to 3248
the franchisor's relationship with a franchisee or an employee of 3249
a franchisee, unless the franchisor agrees to assume that role in 3250
writing or a court of competent jurisdiction determines that the 3251
franchisor exercises a type or degree of control over the 3252
franchisee or the franchisee's employees that is not customarily 3253
exercised by a franchisor for the purpose of protecting the 3254
franchisor's trademark, brand, or both. For purposes of this 3255
division, "franchisor" and "franchisee" have the same meanings as 3256
in 16 C.F.R. 436.1. 3257

(JJ) "Employee" means an individual who is an employee under 3258
the rules adopted by the superintendent of industrial compliance 3259
pursuant to section 4177.01 of the Revised Code. 3260

Section 7. That existing sections 4113.21, 4121.01, 4123.01, 3261

4123.026, 4123.038, 4123.46, 4123.52, 4123.56, 4123.58, 4123.65, 3262
4141.01, and 5747.01 of the Revised Code are hereby repealed. 3263

Section 8. Sections 4121.471, 4123.01, 4123.026, 4123.46, 3264
4123.52, 4123.56, 4123.58, and 4123.65 of the Revised Code, as 3265
amended or enacted by Section 6 of this act, apply to claims under 3266
Chapter 4121., 4123., 4127., or 4131. of the Revised Code arising 3267
on or after the effective date of this section, except that 3268
division (F) of section 4123.56 and section 4123.58 of the Revised 3269
Code as amended by Section 6 of this act also apply to claims that 3270
are pending on the effective date of this section. 3271

Section 9. Division (A) of section 4123.512 of the Revised 3272
Code, as amended by Sub. H.B. 27 of the 132nd General Assembly, 3273
applies to claims under Chapter 4121., 4123., 4127., or 4131. of 3274
the Revised Code pending on or arising after September 29, 2017. 3275