

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 201

Senator Dolan

A BILL

To amend sections 4121.12, 4121.121, 4123.01, 1
4123.26, 4123.291, 4123.32, 4123.341, 4123.35, 2
4141.24, 4740.131, 5733.40, 5747.07, and 5751.01 3
and to enact sections 4133.01, 4133.02, 4133.03, 4
4133.04, 4133.05, 4133.06, 4133.07, 4133.08, 5
4133.09, 4133.10, 4133.11, 4133.12, 4133.13, 6
4133.14, and 4133.99 of the Revised Code to 7
create alternate employer organizations. 8

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

Section 1. That sections 4121.12, 4121.121, 4123.01, 9
4123.26, 4123.291, 4123.32, 4123.341, 4123.35, 4141.24, 10
4740.131, 5733.40, 5747.07, and 5751.01 be amended and sections 11
4133.01, 4133.02, 4133.03, 4133.04, 4133.05, 4133.06, 4133.07, 12
4133.08, 4133.09, 4133.10, 4133.11, 4133.12, 4133.13, 4133.14, 13
and 4133.99 of the Revised Code be enacted to read as follows: 14

Sec. 4121.12. (A) There is hereby created the bureau of 15
workers' compensation board of directors consisting of eleven 16
members to be appointed by the governor with the advice and 17
consent of the senate. One member shall be an individual who, on 18
account of the individual's previous vocation, employment, or 19

affiliations, can be classed as a representative of employees; 20
two members shall be individuals who, on account of their 21
previous vocation, employment, or affiliations, can be classed 22
as representatives of employee organizations and at least one of 23
these two individuals shall be a member of the executive 24
committee of the largest statewide labor federation; three 25
members shall be individuals who, on account of their previous 26
vocation, employment, or affiliations, can be classed as 27
representatives of employers, one of whom represents self- 28
insuring employers, one of whom is a state fund employer who 29
employs one hundred or more employees, and one of whom is a 30
state fund employer who employs less than one hundred employees; 31
two members shall be individuals who, on account of their 32
vocation, employment, or affiliations, can be classed as 33
investment and securities experts who have direct experience in 34
the management, analysis, supervision, or investment of assets 35
and are residents of this state; one member who shall be a 36
certified public accountant; one member who shall be an actuary 37
who is a member in good standing with the American academy of 38
actuaries or who is an associate or fellow with the casualty 39
actuarial society; and one member shall represent the public and 40
also be an individual who, on account of the individual's 41
previous vocation, employment, or affiliations, cannot be 42
classed as either predominantly representative of employees or 43
of employers. The governor shall select the chairperson of the 44
board who shall serve as chairperson at the pleasure of the 45
governor. 46

None of the members of the board, within one year 47
immediately preceding the member's appointment, shall have been 48
employed by the bureau of workers' compensation or by any 49
person, partnership, or corporation that has provided to the 50

bureau services of a financial or investment nature, including 51
the management, analysis, supervision, or investment of assets. 52

(B) Of the initial appointments made to the board, the 53
governor shall appoint the member who represents employees, one 54
member who represents employers, and the member who represents 55
the public to a term ending one year after June 11, 2007; one 56
member who represents employers, one member who represents 57
employee organizations, one member who is an investment and 58
securities expert, and the member who is a certified public 59
accountant to a term ending two years after June 11, 2007; and 60
one member who represents employers, one member who represents 61
employee organizations, one member who is an investment and 62
securities expert, and the member who is an actuary to a term 63
ending three years after June 11, 2007. Thereafter, terms of 64
office shall be for three years, with each term ending on the 65
same day of the same month as did the term that it succeeds. 66
Each member shall hold office from the date of the member's 67
appointment until the end of the term for which the member was 68
appointed. 69

Members may be reappointed. Any member appointed to fill a 70
vacancy occurring prior to the expiration date of the term for 71
which the member's predecessor was appointed shall hold office 72
as a member for the remainder of that term. A member shall 73
continue in office subsequent to the expiration date of the 74
member's term until a successor takes office or until a period 75
of sixty days has elapsed, whichever occurs first. 76

(C) In making appointments to the board, the governor 77
shall select the members from the list of names submitted by the 78
workers' compensation board of directors nominating committee 79
pursuant to this division. The nominating committee shall submit 80

to the governor a list containing four separate names for each 81
of the members on the board. Within fourteen days after the 82
submission of the list, the governor shall appoint individuals 83
from the list. 84

At least thirty days prior to a vacancy occurring as a 85
result of the expiration of a term and within thirty days after 86
other vacancies occurring on the board, the nominating committee 87
shall submit an initial list containing four names for each 88
vacancy. Within fourteen days after the submission of the 89
initial list, the governor either shall appoint individuals from 90
that list or request the nominating committee to submit another 91
list of four names for each member the governor has not 92
appointed from the initial list, which list the nominating 93
committee shall submit to the governor within fourteen days 94
after the governor's request. The governor then shall appoint, 95
within seven days after the submission of the second list, one 96
of the individuals from either list to fill the vacancy for 97
which the governor has not made an appointment from the initial 98
list. If the governor appoints an individual to fill a vacancy 99
occurring as a result of the expiration of a term, the 100
individual appointed shall begin serving as a member of the 101
board when the term for which the individual's predecessor was 102
appointed expires or immediately upon appointment by the 103
governor, whichever occurs later. With respect to the filling of 104
vacancies, the nominating committee shall provide the governor 105
with a list of four individuals who are, in the judgment of the 106
nominating committee, the most fully qualified to accede to 107
membership on the board. 108

In order for the name of an individual to be submitted to 109
the governor under this division, the nominating committee shall 110
approve the individual by an affirmative vote of a majority of 111

its members. 112

(D) All members of the board shall receive their 113
reasonable and necessary expenses pursuant to section 126.31 of 114
the Revised Code while engaged in the performance of their 115
duties as members and also shall receive an annual salary not to 116
exceed sixty thousand dollars in total, payable on the following 117
basis: 118

(1) Except as provided in division (D)(2) of this section, 119
a member shall receive two thousand five hundred dollars during 120
a month in which the member attends one or more meetings of the 121
board and shall receive no payment during a month in which the 122
member attends no meeting of the board. 123

(2) A member may receive no more than thirty thousand 124
dollars per year to compensate the member for attending meetings 125
of the board, regardless of the number of meetings held by the 126
board during a year or the number of meetings in excess of 127
twelve within a year that the member attends. 128

(3) Except as provided in division (D)(4) of this section, 129
if a member serves on the workers' compensation audit committee, 130
workers' compensation actuarial committee, or the workers' 131
compensation investment committee, the member shall receive two 132
thousand five hundred dollars during a month in which the member 133
attends one or more meetings of the committee on which the 134
member serves and shall receive no payment during any month in 135
which the member attends no meeting of that committee. 136

(4) A member may receive no more than thirty thousand 137
dollars per year to compensate the member for attending meetings 138
of any of the committees specified in division (D)(3) of this 139
section, regardless of the number of meetings held by a 140

committee during a year or the number of committees on which a member serves. 141
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The chairperson of the board shall set the meeting dates of the board as necessary to perform the duties of the board under this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code. The board shall meet at least twelve times a year. The administrator of workers' compensation shall provide professional and clerical assistance to the board, as the board considers appropriate. 143
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(E) Before entering upon the duties of office, each appointed member of the board shall take an oath of office as required by sections 3.22 and 3.23 of the Revised Code and file in the office of the secretary of state the bond required under section 4121.127 of the Revised Code. 150
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(F) The board shall: 155

(1) Establish the overall administrative policy for the bureau for the purposes of this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code; 156
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(2) Review progress of the bureau in meeting its cost and quality objectives and in complying with this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code; 159
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(3) Submit an annual report to the president of the senate, the speaker of the house of representatives, and the governor and include all of the following in that report: 163
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(a) An evaluation of the cost and quality objectives of the bureau; 166
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(b) A statement of the net assets available for the 168

provision of compensation and benefits under this chapter and	169
Chapters 4123., 4127., and 4131. of the Revised Code as of the	170
last day of the fiscal year;	171
(c) A statement of any changes that occurred in the net	172
assets available, including employer premiums and net investment	173
income, for the provision of compensation and benefits and	174
payment of administrative expenses, between the first and last	175
day of the fiscal year immediately preceding the date of the	176
report;	177
(d) The following information for each of the six	178
consecutive fiscal years occurring previous to the report:	179
(i) A schedule of the net assets available for	180
compensation and benefits;	181
(ii) The annual cost of the payment of compensation and	182
benefits;	183
(iii) Annual administrative expenses incurred;	184
(iv) Annual employer premiums allocated for the provision	185
of compensation and benefits.	186
(e) A description of any significant changes that occurred	187
during the six years for which the board provided the	188
information required under division (F) (3) (d) of this section	189
that affect the ability of the board to compare that information	190
from year to year.	191
(4) Review all independent financial audits of the bureau.	192
The administrator shall provide access to records of the bureau	193
to facilitate the review required under this division.	194
(5) Study issues as requested by the administrator or the	195
governor;	196

(6) Contract with all of the following:	197
(a) An independent actuarial firm to assist the board in making recommendations to the administrator regarding premium rates;	198 199 200
(b) An outside investment counsel to assist the workers' compensation investment committee in fulfilling its duties;	201 202
(c) An independent fiduciary counsel to assist the board in the performance of its duties.	203 204
(7) Approve the investment policy developed by the workers' compensation investment committee pursuant to section 4121.129 of the Revised Code if the policy satisfies the requirements specified in section 4123.442 of the Revised Code;	205 206 207 208
(8) Review and publish the investment policy no less than annually and make copies available to interested parties;	209 210
(9) Prohibit, on a prospective basis, any specific investment it finds to be contrary to the investment policy approved by the board;	211 212 213
(10) Vote to open each investment class and allow the administrator to invest in an investment class only if the board, by a majority vote, opens that class;	214 215 216
(11) After opening a class but prior to the administrator investing in that class, adopt rules establishing due diligence standards for employees of the bureau to follow when investing in that class and establish policies and procedures to review and monitor the performance and value of each investment class;	217 218 219 220 221
(12) Submit a report annually on the performance and value of each investment class to the governor, the president and minority leader of the senate, and the speaker and minority	222 223 224

leader of the house of representatives-;	225
(13) Advise and consent on all of the following:	226
(a) Administrative rules the administrator submits to it	227
pursuant to division (B) (5) of section 4121.121 of the Revised	228
Code for the classification of occupations or industries, for	229
premium rates and contributions, for the amount to be credited	230
to the surplus fund, for rules and systems of rating, rate	231
revisions, and merit rating;	232
(b) The duties and authority conferred upon the	233
administrator pursuant to section 4121.37 of the Revised Code;	234
(c) Rules the administrator adopts for the health	235
partnership program and the qualified health plan system, as	236
provided in sections 4121.44, 4121.441, and 4121.442 of the	237
Revised Code;	238
(d) Rules the administrator submits to it pursuant to	239
Chapter 4167. of the Revised Code regarding the public	240
employment risk reduction program and the protection of public	241
health care workers from exposure incidents.	242
As used in this division, "public health care worker" and	243
"exposure incident" have the same meanings as in section 4167.25	244
of the Revised Code.	245
(14) Perform all duties required under this chapter and	246
Chapters 4123., 4125., 4127., 4131., <u>4133.</u> , and 4167. of the	247
Revised Code;	248
(15) Meet with the governor on an annual basis to discuss	249
the administrator's performance of the duties specified in this	250
chapter and Chapters 4123., 4125., 4127., 4131., <u>4133.</u> , and	251
4167. of the Revised Code;	252

(16) Develop and participate in a bureau of workers' compensation board of directors education program that consists of all of the following:	253 254 255
(a) An orientation component for newly appointed members;	256
(b) A continuing education component for board members who have served for at least one year;	257 258
(c) A curriculum that includes education about each of the following topics:	259 260
(i) Board member duties and responsibilities;	261
(ii) Compensation and benefits paid pursuant to this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;	262 263 264
(iii) Ethics;	265
(iv) Governance processes and procedures;	266
(v) Actuarial soundness;	267
(vi) Investments;	268
(vii) Any other subject matter the board believes is reasonably related to the duties of a board member.	269 270
(17) Hold all sessions, classes, and other events for the program developed pursuant to division (F)(16) of this section in this state.	271 272 273
(G) The board may do both of the following:	274
(1) Vote to close any investment class;	275
(2) Create any committees in addition to the workers' compensation audit committee, the workers' compensation actuarial committee, and the workers' compensation investment	276 277 278

committee that the board determines are necessary to assist the 279
board in performing its duties. 280

(H) The office of a member of the board who is convicted 281
of or pleads guilty to a felony, a theft offense as defined in 282
section 2913.01 of the Revised Code, or a violation of section 283
102.02, 102.03, 102.04, 2921.02, 2921.11, 2921.13, 2921.31, 284
2921.41, 2921.42, 2921.43, or 2921.44 of the Revised Code shall 285
be deemed vacant. The vacancy shall be filled in the same manner 286
as the original appointment. A person who has pleaded guilty to 287
or been convicted of an offense of that nature is ineligible to 288
be a member of the board. A member who receives a bill of 289
indictment for any of the offenses specified in this section 290
shall be automatically suspended from the board pending 291
resolution of the criminal matter. 292

(I) For the purposes of division (G) (1) of section 121.22 293
of the Revised Code, the meeting between the governor and the 294
board to review the administrator's performance as required 295
under division (F) (15) of this section shall be considered a 296
meeting regarding the employment of the administrator. 297

Sec. 4121.121. (A) There is hereby created the bureau of 298
workers' compensation, which shall be administered by the 299
administrator of workers' compensation. A person appointed to 300
the position of administrator shall possess significant 301
management experience in effectively managing an organization or 302
organizations of substantial size and complexity. A person 303
appointed to the position of administrator also shall possess a 304
minimum of five years of experience in the field of workers' 305
compensation insurance or in another insurance industry, except 306
as otherwise provided when the conditions specified in division 307
(C) of this section are satisfied. The governor shall appoint 308

the administrator as provided in section 121.03 of the Revised Code, and the administrator shall serve at the pleasure of the governor. The governor shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code. The governor shall not appoint to the position of administrator any person who has, or whose spouse has, given a contribution to the campaign committee of the governor in an amount greater than one thousand dollars during the two-year period immediately preceding the date of the appointment of the administrator.

The administrator shall hold no other public office and shall devote full time to the duties of administrator. Before entering upon the duties of the office, the administrator shall take an oath of office as required by sections 3.22 and 3.23 of the Revised Code, and shall file in the office of the secretary of state, a bond signed by the administrator and by surety approved by the governor, for the sum of fifty thousand dollars payable to the state, conditioned upon the faithful performance of the administrator's duties.

(B) The administrator is responsible for the management of the bureau and for the discharge of all administrative duties imposed upon the administrator in this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code, and in the discharge thereof shall do all of the following:

(1) Perform all acts and exercise all authorities and powers, discretionary and otherwise that are required of or vested in the bureau or any of its employees in this chapter and

Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the 339
Revised Code, except the acts and the exercise of authority and 340
power that is required of and vested in the bureau of workers' 341
compensation board of directors or the industrial commission 342
pursuant to those chapters. The treasurer of state shall honor 343
all warrants signed by the administrator, or by one or more of 344
the administrator's employees, authorized by the administrator 345
in writing, or bearing the facsimile signature of the 346
administrator or such employee under sections 4123.42 and 347
4123.44 of the Revised Code. 348

(2) Employ, direct, and supervise all employees required 349
in connection with the performance of the duties assigned to the 350
bureau by this chapter and Chapters 4123., 4125., 4127., 4131., 351
4133., and 4167. of the Revised Code, including an actuary, and 352
may establish job classification plans and compensation for all 353
employees of the bureau provided that this grant of authority 354
shall not be construed as affecting any employee for whom the 355
state employment relations board has established an appropriate 356
bargaining unit under section 4117.06 of the Revised Code. All 357
positions of employment in the bureau are in the classified 358
civil service except those employees the administrator may 359
appoint to serve at the administrator's pleasure in the 360
unclassified civil service pursuant to section 124.11 of the 361
Revised Code. The administrator shall fix the salaries of 362
employees the administrator appoints to serve at the 363
administrator's pleasure, including the chief operating officer, 364
staff physicians, and other senior management personnel of the 365
bureau and shall establish the compensation of staff attorneys 366
of the bureau's legal section and their immediate supervisors, 367
and take whatever steps are necessary to provide adequate 368
compensation for other staff attorneys. 369

The administrator may appoint a person who holds a 370
certified position in the classified service within the bureau 371
to a position in the unclassified service within the bureau. A 372
person appointed pursuant to this division to a position in the 373
unclassified service shall retain the right to resume the 374
position and status held by the person in the classified service 375
immediately prior to the person's appointment in the 376
unclassified service, regardless of the number of positions the 377
person held in the unclassified service. An employee's right to 378
resume a position in the classified service may only be 379
exercised when the administrator demotes the employee to a pay 380
range lower than the employee's current pay range or revokes the 381
employee's appointment to the unclassified service. An employee 382
who holds a position in the classified service and who is 383
appointed to a position in the unclassified service on or after 384
January 1, 2016, shall have the right to resume a position in 385
the classified service under this division only within five 386
years after the effective date of the employee's appointment in 387
the unclassified service. An employee forfeits the right to 388
resume a position in the classified service when the employee is 389
removed from the position in the unclassified service due to 390
incompetence, inefficiency, dishonesty, drunkenness, immoral 391
conduct, insubordination, discourteous treatment of the public, 392
neglect of duty, violation of this chapter or Chapter 124., 393
4123., 4125., 4127., 4131., 4133., or 4167. of the Revised Code, 394
violation of the rules of the director of administrative 395
services or the administrator, any other failure of good 396
behavior, any other acts of misfeasance, malfeasance, or 397
nonfeasance in office, or conviction of a felony while employed 398
in the civil service. An employee also forfeits the right to 399
resume a position in the classified service upon transfer to a 400
different agency. 401

Reinstatement to a position in the classified service 402
shall be to a position substantially equal to that position in 403
the classified service held previously, as certified by the 404
department of administrative services. If the position the 405
person previously held in the classified service has been placed 406
in the unclassified service or is otherwise unavailable, the 407
person shall be appointed to a position in the classified 408
service within the bureau that the director of administrative 409
services certifies is comparable in compensation to the position 410
the person previously held in the classified service. Service in 411
the position in the unclassified service shall be counted as 412
service in the position in the classified service held by the 413
person immediately prior to the person's appointment in the 414
unclassified service. When a person is reinstated to a position 415
in the classified service as provided in this division, the 416
person is entitled to all rights, status, and benefits accruing 417
to the position during the person's time of service in the 418
position in the unclassified service. 419

(3) Reorganize the work of the bureau, its sections, 420
departments, and offices to the extent necessary to achieve the 421
most efficient performance of its functions and to that end may 422
establish, change, or abolish positions and assign and reassign 423
duties and responsibilities of every employee of the bureau. All 424
persons employed by the commission in positions that, after 425
November 3, 1989, are supervised and directed by the 426
administrator under this section are transferred to the bureau 427
in their respective classifications but subject to reassignment 428
and reclassification of position and compensation as the 429
administrator determines to be in the interest of efficient 430
administration. The civil service status of any person employed 431
by the commission is not affected by this section. Personnel 432

employed by the bureau or the commission who are subject to 433
Chapter 4117. of the Revised Code shall retain all of their 434
rights and benefits conferred pursuant to that chapter as it 435
presently exists or is hereafter amended and nothing in this 436
chapter or Chapter 4123. of the Revised Code shall be construed 437
as eliminating or interfering with Chapter 4117. of the Revised 438
Code or the rights and benefits conferred under that chapter to 439
public employees or to any bargaining unit. 440

(4) Provide offices, equipment, supplies, and other 441
facilities for the bureau. 442

(5) Prepare and submit to the board information the 443
administrator considers pertinent or the board requires, 444
together with the administrator's recommendations, in the form 445
of administrative rules, for the advice and consent of the 446
board, for classifications of occupations or industries, for 447
premium rates and contributions, for the amount to be credited 448
to the surplus fund, for rules and systems of rating, rate 449
revisions, and merit rating. The administrator shall obtain, 450
prepare, and submit any other information the board requires for 451
the prompt and efficient discharge of its duties. 452

(6) Keep the accounts required by division (A) of section 453
4123.34 of the Revised Code and all other accounts and records 454
necessary to the collection, administration, and distribution of 455
the workers' compensation funds and shall obtain the statistical 456
and other information required by section 4123.19 of the Revised 457
Code. 458

(7) Exercise the investment powers vested in the 459
administrator by section 4123.44 of the Revised Code in 460
accordance with the investment policy approved by the board 461
pursuant to section 4121.12 of the Revised Code and in 462

consultation with the chief investment officer of the bureau of 463
workers' compensation. The administrator shall not engage in any 464
prohibited investment activity specified by the board pursuant 465
to division (F) (9) of section 4121.12 of the Revised Code and 466
shall not invest in any type of investment specified in 467
divisions (B) (1) to (10) of section 4123.442 of the Revised 468
Code. All business shall be transacted, all funds invested, all 469
warrants for money drawn and payments made, and all cash and 470
securities and other property held, in the name of the bureau, 471
or in the name of its nominee, provided that nominees are 472
authorized by the administrator solely for the purpose of 473
facilitating the transfer of securities, and restricted to the 474
administrator and designated employees. 475

(8) In accordance with Chapter 125. of the Revised Code, 476
purchase supplies, materials, equipment, and services. 477

(9) Prepare and submit to the board an annual budget for 478
internal operating purposes for the board's approval. The 479
administrator also shall, separately from the budget the 480
industrial commission submits, prepare and submit to the 481
director of budget and management a budget for each biennium. 482
The budgets submitted to the board and the director shall 483
include estimates of the costs and necessary expenditures of the 484
bureau in the discharge of any duty imposed by law. 485

(10) As promptly as possible in the course of efficient 486
administration, decentralize and relocate such of the personnel 487
and activities of the bureau as is appropriate to the end that 488
the receipt, investigation, determination, and payment of claims 489
may be undertaken at or near the place of injury or the 490
residence of the claimant and for that purpose establish 491
regional offices, in such places as the administrator considers 492

proper, capable of discharging as many of the functions of the 493
bureau as is practicable so as to promote prompt and efficient 494
administration in the processing of claims. All active and 495
inactive lost-time claims files shall be held at the service 496
office responsible for the claim. A claimant, at the claimant's 497
request, shall be provided with information by telephone as to 498
the location of the file pertaining to the claimant's claim. The 499
administrator shall ensure that all service office employees 500
report directly to the director for their service office. 501

(11) Provide a written binder on new coverage where the 502
administrator considers it to be in the best interest of the 503
risk. The administrator, or any other person authorized by the 504
administrator, shall grant the binder upon submission of a 505
request for coverage by the employer. A binder is effective for 506
a period of thirty days from date of issuance and is 507
nonrenewable. Payroll reports and premium charges shall coincide 508
with the effective date of the binder. 509

(12) Set standards for the reasonable and maximum handling 510
time of claims payment functions, ensure, by rules, the 511
impartial and prompt treatment of all claims and employer risk 512
accounts, and establish a secure, accurate method of time 513
stamping all incoming mail and documents hand delivered to 514
bureau employees. 515

(13) Ensure that all employees of the bureau follow the 516
orders and rules of the commission as such orders and rules 517
relate to the commission's overall adjudicatory policy-making 518
and management duties under this chapter and Chapters 4123., 519
4127., and 4131. of the Revised Code. 520

(14) Manage and operate a data processing system with a 521
common data base for the use of both the bureau and the 522

commission and, in consultation with the commission, using 523
electronic data processing equipment, shall develop a claims 524
tracking system that is sufficient to monitor the status of a 525
claim at any time and that lists appeals that have been filed 526
and orders or determinations that have been issued pursuant to 527
section 4123.511 or 4123.512 of the Revised Code, including the 528
dates of such filings and issuances. 529

(15) Establish and maintain a medical section within the 530
bureau. The medical section shall do all of the following: 531

(a) Assist the administrator in establishing standard 532
medical fees, approving medical procedures, and determining 533
eligibility and reasonableness of the compensation payments for 534
medical, hospital, and nursing services, and in establishing 535
guidelines for payment policies which recognize usual, 536
customary, and reasonable methods of payment for covered 537
services; 538

(b) Provide a resource to respond to questions from claims 539
examiners for employees of the bureau; 540

(c) Audit fee bill payments; 541

(d) Implement a program to utilize, to the maximum extent 542
possible, electronic data processing equipment for storage of 543
information to facilitate authorizations of compensation 544
payments for medical, hospital, drug, and nursing services; 545

(e) Perform other duties assigned to it by the 546
administrator. 547

(16) Appoint, as the administrator determines necessary, 548
panels to review and advise the administrator on disputes 549
arising over a determination that a health care service or 550
supply provided to a claimant is not covered under this chapter 551

or Chapter 4123., 4127., or 4131. of the Revised Code or is 552
medically unnecessary. If an individual health care provider is 553
involved in the dispute, the panel shall consist of individuals 554
licensed pursuant to the same section of the Revised Code as 555
such health care provider. 556

(17) Pursuant to section 4123.65 of the Revised Code, 557
approve applications for the final settlement of claims for 558
compensation or benefits under this chapter and Chapters 4123., 559
4127., and 4131. of the Revised Code as the administrator 560
determines appropriate, except in regard to the applications of 561
self-insuring employers and their employees. 562

(18) Comply with section 3517.13 of the Revised Code, and 563
except in regard to contracts entered into pursuant to the 564
authority contained in section 4121.44 of the Revised Code, 565
comply with the competitive bidding procedures set forth in the 566
Revised Code for all contracts into which the administrator 567
enters provided that those contracts fall within the type of 568
contracts and dollar amounts specified in the Revised Code for 569
competitive bidding and further provided that those contracts 570
are not otherwise specifically exempt from the competitive 571
bidding procedures contained in the Revised Code. 572

(19) Adopt, with the advice and consent of the board, 573
rules for the operation of the bureau. 574

(20) Prepare and submit to the board information the 575
administrator considers pertinent or the board requires, 576
together with the administrator's recommendations, in the form 577
of administrative rules, for the advice and consent of the 578
board, for the health partnership program and the qualified 579
health plan system, as provided in sections 4121.44, 4121.441, 580
and 4121.442 of the Revised Code. 581

(C) The administrator, with the advice and consent of the senate, shall appoint a chief operating officer who has a minimum of five years of experience in the field of workers' compensation insurance or in another similar insurance industry if the administrator does not possess such experience. The chief operating officer shall not commence the chief operating officer's duties until after the senate consents to the chief operating officer's appointment. The chief operating officer shall serve in the unclassified civil service of the state.

Sec. 4123.01. As used in this chapter:

(A) (1) "Employee" means:

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

As used in division (A) (1) (a) of this section, the term "employee" includes the following persons when responding to an inherently dangerous situation that calls for an immediate response on the part of the person, regardless of whether the person is within the limits of the jurisdiction of the person's regular employment or voluntary service when responding, on the condition that the person responds to the situation as the person otherwise would if the person were on duty in the

person's jurisdiction: 612

(i) Off-duty peace officers. As used in division (A) (1) (a) 613
(i) of this section, "peace officer" has the same meaning as in 614
section 2935.01 of the Revised Code. 615

(ii) Off-duty firefighters, whether paid or volunteer, of 616
a lawfully constituted fire department. 617

(iii) Off-duty first responders, emergency medical 618
technicians-basic, emergency medical technicians-intermediate, 619
or emergency medical technicians-paramedic, whether paid or 620
volunteer, of an ambulance service organization or emergency 621
medical service organization pursuant to Chapter 4765. of the 622
Revised Code. 623

(b) Every person in the service of any person, firm, or 624
private corporation, including any public service corporation, 625
that (i) employs one or more persons regularly in the same 626
business or in or about the same establishment under any 627
contract of hire, express or implied, oral or written, including 628
aliens and minors, household workers who earn one hundred sixty 629
dollars or more in cash in any calendar quarter from a single 630
household and casual workers who earn one hundred sixty dollars 631
or more in cash in any calendar quarter from a single employer, 632
or (ii) is bound by any such contract of hire or by any other 633
written contract, to pay into the state insurance fund the 634
premiums provided by this chapter. 635

(c) Every person who performs labor or provides services 636
pursuant to a construction contract, as defined in section 637
4123.79 of the Revised Code, if at least ten of the following 638
criteria apply: 639

(i) The person is required to comply with instructions 640

from the other contracting party regarding the manner or method 641
of performing services; 642

(ii) The person is required by the other contracting party 643
to have particular training; 644

(iii) The person's services are integrated into the 645
regular functioning of the other contracting party; 646

(iv) The person is required to perform the work 647
personally; 648

(v) The person is hired, supervised, or paid by the other 649
contracting party; 650

(vi) A continuing relationship exists between the person 651
and the other contracting party that contemplates continuing or 652
recurring work even if the work is not full time; 653

(vii) The person's hours of work are established by the 654
other contracting party; 655

(viii) The person is required to devote full time to the 656
business of the other contracting party; 657

(ix) The person is required to perform the work on the 658
premises of the other contracting party; 659

(x) The person is required to follow the order of work set 660
by the other contracting party; 661

(xi) The person is required to make oral or written 662
reports of progress to the other contracting party; 663

(xii) The person is paid for services on a regular basis 664
such as hourly, weekly, or monthly; 665

(xiii) The person's expenses are paid for by the other 666
contracting party; 667

(xiv) The person's tools and materials are furnished by 668
the other contracting party; 669

(xv) The person is provided with the facilities used to 670
perform services; 671

(xvi) The person does not realize a profit or suffer a 672
loss as a result of the services provided; 673

(xvii) The person is not performing services for a number 674
of employers at the same time; 675

(xviii) The person does not make the same services 676
available to the general public; 677

(xix) The other contracting party has a right to discharge 678
the person; 679

(xx) The person has the right to end the relationship with 680
the other contracting party without incurring liability pursuant 681
to an employment contract or agreement. 682

Every person in the service of any independent contractor 683
or subcontractor who has failed to pay into the state insurance 684
fund the amount of premium determined and fixed by the 685
administrator of workers' compensation for the person's 686
employment or occupation or who is a self-insuring employer and 687
who has failed to pay compensation and benefits directly to the 688
employer's injured and to the dependents of the employer's 689
killed employees as required by section 4123.35 of the Revised 690
Code, shall be considered as the employee of the person who has 691
entered into a contract, whether written or verbal, with such 692
independent contractor unless such employees or their legal 693
representatives or beneficiaries elect, after injury or death, 694
to regard such independent contractor as the employer. 695

(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 to the person:

(i) The person owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the person 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 person and the motor carrier transporting property for which, or on whose behalf, the person provides services.

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

(iii) The compensation paid to the person 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.

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

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

(vi) The person is responsible for substantially all of the principal operating costs of the vehicle or vessel and

equipment used to provide the services, including maintenance, 725
fuel, repairs, supplies, vehicle or vessel insurance, and 726
personal expenses, except that the person may be paid by the 727
carrier the carrier's fuel surcharge and incidental costs, 728
including tolls, permits, and lumper fees. 729

(vii) The person is responsible for any economic loss or 730
economic gain from the arrangement with the carrier. 731

(2) "Employee" does not mean any of the following: 732

(a) A duly ordained, commissioned, or licensed minister or 733
assistant or associate minister of a church in the exercise of 734
ministry; 735

(b) Any officer of a family farm corporation; 736

(c) An individual incorporated as a corporation; 737

(d) An officer of a nonprofit corporation, as defined in 738
section 1702.01 of the Revised Code, who volunteers the person's 739
services as an officer; 740

(e) An individual who otherwise is an employee of an 741
employer but who signs the waiver and affidavit specified in 742
section 4123.15 of the Revised Code on the condition that the 743
administrator has granted a waiver and exception to the 744
individual's employer under section 4123.15 of the Revised Code; 745

(f) (i) A qualifying employee described in division (A) (14) 746
(a) of section 5703.94 of the Revised Code when the qualifying 747
employee is performing disaster work in this state during a 748
disaster response period pursuant to a qualifying solicitation 749
received by the employee's employer; 750

(ii) A qualifying employee described in division (A) (14) 751
(b) of section 5703.94 of the Revised Code when the qualifying 752

employee is performing disaster work in this state during a 753
disaster response period on critical infrastructure owned or 754
used by the employee's employer; 755

(iii) As used in division (A) (2) (f) of this section, 756
"critical infrastructure," "disaster response period," "disaster 757
work," and "qualifying employee" have the same meanings as in 758
section 5703.94 of the Revised Code. 759

Any employer may elect to include as an "employee" within 760
this chapter, any person excluded from the definition of 761
"employee" pursuant to division (A) (1) (d) or (A) (2) (a), (b), 762
(c), or (e) of this section in accordance with rules adopted by 763
the administrator, with the advice and consent of the bureau of 764
workers' compensation board of directors. If an employer is a 765
partnership, sole proprietorship, individual incorporated as a 766
corporation, or family farm corporation, such employer may elect 767
to include as an "employee" within this chapter, any member of 768
such partnership, the owner of the sole proprietorship, the 769
individual incorporated as a corporation, or the officers of the 770
family farm corporation. Nothing in this section shall prohibit 771
a partner, sole proprietor, or any person excluded from the 772
definition of "employee" pursuant to division (A) (2) (a), (b), 773
(c), or (e) of this section from electing to be included as an 774
"employee" under this chapter in accordance with rules adopted 775
by the administrator, with the advice and consent of the board. 776

In the event of an election, the employer or person 777
electing coverage shall serve upon the bureau of workers' 778
compensation written notice naming the person to be covered and 779
include the person's remuneration for premium purposes in all 780
future payroll reports. No partner, sole proprietor, or person 781
excluded from the definition of "employee" pursuant to division 782

(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, shall 783
receive benefits or compensation under this chapter until the 784
bureau receives written notice of the election permitted by this 785
section. 786

For informational purposes only, the bureau shall 787
prescribe such language as it considers appropriate, on such of 788
its forms as it considers appropriate, to advise employers of 789
their right to elect to include as an "employee" within this 790
chapter a sole proprietor, any member of a partnership, or a 791
person excluded from the definition of "employee" under division 792
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, that 793
they should check any health and disability insurance policy, or 794
other form of health and disability plan or contract, presently 795
covering them, or the purchase of which they may be considering, 796
to determine whether such policy, plan, or contract excludes 797
benefits for illness or injury that they might have elected to 798
have covered by workers' compensation. 799

(B) (1) "Employer" means: 800

(a) The state, including state hospitals, each county, 801
municipal corporation, township, school district, and hospital 802
owned by a political subdivision or subdivisions other than the 803
state; 804

(b) Every person, firm, professional employer 805
organization, alternate employer organization, and private 806
corporation, including any public service corporation, that (i) 807
has in service one or more employees or shared employees 808
regularly in the same business or in or about the same 809
establishment under any contract of hire, express or implied, 810
oral or written, or (ii) is bound by any such contract of hire 811
or by any other written contract, to pay into the insurance fund 812

the premiums provided by this chapter. 813

All such employers are subject to this chapter. Any member 814
of a firm or association, who regularly performs manual labor in 815
or about a mine, factory, or other establishment, including a 816
household establishment, shall be considered an employee in 817
determining whether such person, firm, or private corporation, 818
or public service corporation, has in its service, one or more 819
employees and the employer shall report the income derived from 820
such labor to the bureau as part of the payroll of such 821
employer, and such member shall thereupon be entitled to all the 822
benefits of an employee. 823

(2) "Employer" does not include a franchisor with respect 824
to the franchisor's relationship with a franchisee or an 825
employee of a franchisee, unless the franchisor agrees to assume 826
that role in writing or a court of competent jurisdiction 827
determines that the franchisor exercises a type or degree of 828
control over the franchisee or the franchisee's employees that 829
is not customarily exercised by a franchisor for the purpose of 830
protecting the franchisor's trademark, brand, or both. For 831
purposes of this division, "franchisor" and "franchisee" have 832
the same meanings as in 16 C.F.R. 436.1. 833

(C) "Injury" includes any injury, whether caused by 834
external accidental means or accidental in character and result, 835
received in the course of, and arising out of, the injured 836
employee's employment. "Injury" does not include: 837

(1) Psychiatric conditions except where the claimant's 838
psychiatric conditions have arisen from an injury or 839
occupational disease sustained by that claimant or where the 840
claimant's psychiatric conditions have arisen from sexual 841
conduct in which the claimant was forced by threat of physical 842

harm to engage or participate;	843
(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;	844 845
(3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity;	846 847 848 849 850
(4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.	851 852 853 854 855 856 857 858 859
(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.	860 861
(E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouse of persons related to each other within the fourth degree of kinship, according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of whose stockholders are a corporation. A family farm corporation does not cease to qualify under this division where, by reason of any devise, bequest, or the operation of the laws of descent or	862 863 864 865 866 867 868 869 870 871

distribution, the ownership of shares of voting stock is 872
transferred to another person, as long as that person is within 873
the degree of kinship stipulated in this division. 874

(F) "Occupational disease" means a disease contracted in 875
the course of employment, which by its causes and the 876
characteristics of its manifestation or the condition of the 877
employment results in a hazard which distinguishes the 878
employment in character from employment generally, and the 879
employment creates a risk of contracting the disease in greater 880
degree and in a different manner from the public in general. 881

(G) "Self-insuring employer" means an employer who is 882
granted the privilege of paying compensation and benefits 883
directly under section 4123.35 of the Revised Code, including a 884
board of county commissioners for the sole purpose of 885
constructing a sports facility as defined in section 307.696 of 886
the Revised Code, provided that the electors of the county in 887
which the sports facility is to be built have approved 888
construction of a sports facility by ballot election no later 889
than November 6, 1997. 890

(H) "Private employer" means an employer as defined in 891
division (B) (1) (b) of this section. 892

(I) "Professional employer organization" has the same 893
meaning as in section 4125.01 of the Revised Code. 894

(J) "Public employer" means an employer as defined in 895
division (B) (1) (a) of this section. 896

(K) "Sexual conduct" means vaginal intercourse between a 897
male and female; anal intercourse, fellatio, and cunnilingus 898
between persons regardless of gender; and, without privilege to 899
do so, the insertion, however slight, of any part of the body or 900

any instrument, apparatus, or other object into the vaginal or 901
anal cavity of another. Penetration, however slight, is 902
sufficient to complete vaginal or anal intercourse. 903

(L) "Other-states' insurer" means an insurance company 904
that is authorized to provide workers' compensation insurance 905
coverage in any of the states that permit employers to obtain 906
insurance for workers' compensation claims through insurance 907
companies. 908

(M) "Other-states' coverage" means both of the following: 909

(1) Insurance coverage secured by an eligible employer for 910
workers' compensation claims of employees who are in employment 911
relationships localized in a state other than this state or 912
those employees' dependents; 913

(2) Insurance coverage secured by an eligible employer for 914
workers' compensation claims that arise in a state other than 915
this state where an employer elects to obtain coverage through 916
either the administrator or an other-states' insurer. 917

(N) "Limited other-states coverage" means insurance 918
coverage provided by the administrator to an eligible employer 919
for workers' compensation claims of employees who are in an 920
employment relationship localized in this state but are 921
temporarily working in a state other than this state, or those 922
employees' dependents. 923

(O) "Motor carrier" has the same meaning as in section 924
4923.01 of the Revised Code. 925

(P) "Alternate employer organization" has the same meaning 926
as in section 4133.01 of the Revised Code. 927

Sec. 4123.26. (A) Every employer shall keep records of, 928

and furnish to the bureau of workers' compensation upon request, 929
all information required by the administrator of workers' 930
compensation to carry out this chapter. 931

(B) Except as otherwise provided in division (C) of this 932
section, every private employer employing one or more employees 933
regularly in the same business, or in or about the same 934
establishment, shall submit a payroll report to the bureau. 935
Until the policy year commencing July 1, 2015, a private 936
employer shall submit the payroll report in January of each 937
year. For a policy year commencing on or after July 1, 2015, the 938
employer shall submit the payroll report on or before August 939
fifteenth of each year unless otherwise specified by the 940
administrator in rules the administrator adopts. The employer 941
shall include all of the following information in the payroll 942
report, as applicable: 943

(1) For payroll reports submitted prior to July 1, 2015, 944
the number of employees employed during the preceding year from 945
the first day of January through the thirty-first day of 946
December who are localized in this state; 947

(2) For payroll reports submitted on or after July 1, 948
2015, the number of employees localized in this state employed 949
during the preceding policy year from the first day of July 950
through the thirtieth day of June; 951

(3) The number of such employees localized in this state 952
employed at each kind of employment and the aggregate amount of 953
wages paid to such employees; 954

(4) ~~(a)~~ If an employer elects to secure other-states' 955
coverage or limited other-states' coverage pursuant to section 956
4123.292 of the Revised Code through either the administrator, 957

if the administrator elects to offer such coverage, or an other- 958
states' insurer the information required under divisions (B) (1) 959
to (3) of this section and any additional information required 960
by the administrator in rules the administrator adopts, with the 961
advice and consent of the bureau of workers' compensation board 962
of directors, to allow the employer to secure other-states' 963
coverage or limited other-states' coverage. 964

(5) (a) In accordance with the rules adopted by the 965
administrator pursuant to division (C) of section 4123.32 of the 966
Revised Code, if the employer employs employees who are covered 967
under the federal "Longshore and Harbor Workers' Compensation 968
Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., and under this 969
chapter and Chapter 4121. of the Revised Code, both of the 970
following amounts: 971

(i) The amount of wages the employer pays to those 972
employees when the employees perform labor and provide services 973
for which the employees are eligible to receive compensation and 974
benefits under the federal "Longshore and Harbor Workers' 975
Compensation Act"; 976

(ii) The amount of wages the employer pays to those 977
employees when the employees perform labor and provide services 978
for which the employees are eligible to receive compensation and 979
benefits under this chapter and Chapter 4121. of the Revised 980
Code. 981

(b) The allocation of wages identified by the employer 982
pursuant to divisions (B) (5) (a) (i) and (ii) of this section 983
shall not be presumed to be an indication of the law under which 984
an employee is eligible to receive compensation and benefits. 985

(C) ~~Beginning August 1, 2015, each~~ Each employer that is 986

recognized by the administrator as a professional employer 987
organization or alternate employer organization shall submit a 988
monthly payroll report containing the number of employees 989
employed during the preceding calendar month, the number of 990
those employees employed at each kind of employment, and the 991
aggregate amount of wages paid to those employees. 992

(D) An employer described in division (B) of this section 993
shall submit the payroll report required under this section to 994
the bureau on a form prescribed by the bureau. The bureau may 995
require that the information required to be furnished be 996
verified under oath. The bureau or any person employed by the 997
bureau for that purpose, may examine, under oath, any employer, 998
or the officer, agent, or employee thereof, for the purpose of 999
ascertaining any information which the employer is required to 1000
furnish to the bureau. 1001

(E) No private employer shall fail to furnish to the 1002
bureau the payroll report required by this section, nor shall 1003
any employer fail to keep records of or furnish such other 1004
information as may be required by the bureau under this section. 1005

(F) The administrator may adopt rules setting forth 1006
penalties for failure to submit the payroll report required by 1007
this section, including but not limited to exclusion from 1008
alternative rating plans and discount programs. 1009

Sec. 4123.291. (A) An adjudicating committee appointed by 1010
the administrator of workers' compensation to hear any matter 1011
specified in divisions (B) (1) to (7) of this section shall hear 1012
the matter within sixty days of the date on which an employer 1013
files the request, protest, or petition. An employer desiring to 1014
file a request, protest, or petition regarding any matter 1015
specified in divisions (B) (1) to (7) of this section shall file 1016

the request, protest, or petition to the adjudicating committee 1017
on or before twenty-four months after the administrator sends 1018
notice of the determination about which the employer is filing 1019
the request, protest, or petition. 1020

(B) An employer who is adversely affected by a decision of 1021
an adjudicating committee appointed by the administrator may 1022
appeal the decision of the committee to the administrator or the 1023
administrator's designee. The employer shall file the appeal in 1024
writing within thirty days after the employer receives the 1025
decision of the adjudicating committee. Except as otherwise 1026
provided in this division, the administrator or the designee 1027
shall hold a hearing and consider and issue a decision on the 1028
appeal if the decision of the adjudicating committee relates to 1029
one of the following: 1030

(1) An employer request for a waiver of a default in the 1031
payment of premiums pursuant to section 4123.37 of the Revised 1032
Code; 1033

(2) An employer request for the settlement of liability as 1034
a noncomplying employer under section 4123.75 of the Revised 1035
Code; 1036

(3) An employer petition objecting to an assessment made 1037
pursuant to section 4123.37 of the Revised Code and the rules 1038
adopted pursuant to that section; 1039

(4) An employer request for the abatement of penalties 1040
assessed pursuant to section 4123.32 of the Revised Code and the 1041
rules adopted pursuant to that section; 1042

(5) An employer protest relating to an audit finding or a 1043
determination of a manual classification, experience rating, or 1044
transfer or combination of risk experience; 1045

(6) Any decision relating to any other risk premium matter 1046
under Chapters 4121., 4123., and 4131. of the Revised Code; 1047

(7) An employer petition objecting to the amount of 1048
security required under division (D) of section 4125.05 of the 1049
Revised Code and the rules adopted pursuant to that section or 1050
under division (D) of section 4133.07 of the Revised Code and 1051
the rules adopted pursuant to that section. 1052

An employer may request, in writing, that the 1053
administrator waive the hearing before the administrator or the 1054
administrator's designee. The administrator shall decide whether 1055
to grant or deny a request to waive a hearing. 1056

(C) The bureau of workers' compensation board of 1057
directors, based upon recommendations of the workers' 1058
compensation actuarial committee, shall establish the policy for 1059
all adjudicating committee procedures, including, but not 1060
limited to, specific criteria for manual premium rate 1061
adjustment. 1062

Sec. 4123.32. The administrator of workers' compensation, 1063
with the advice and consent of the bureau of workers' 1064
compensation board of directors, shall adopt rules with respect 1065
to the collection, maintenance, and disbursements of the state 1066
insurance fund including all of the following: 1067

(A) A rule providing for ascertaining the correctness of 1068
any employer's report of estimated or actual expenditure of 1069
wages and the determination and adjustment of proper premiums 1070
and the payment of those premiums by the employer; 1071

(B) Such special rules as the administrator considers 1072
necessary to safeguard the fund and that are just in the 1073
circumstances, covering the rates to be applied where one 1074

employer takes over the occupation or industry of another or 1075
where an employer first makes application for state insurance, 1076
and the administrator may require that if any employer transfers 1077
a business in whole or in part or otherwise reorganizes the 1078
business, the successor in interest shall assume, in proportion 1079
to the extent of the transfer, as determined by the 1080
administrator, the employer's account and shall continue the 1081
payment of all contributions due under this chapter; 1082

(C) A rule providing that an employer who employs an 1083
employee covered under the federal "Longshore and Harbor 1084
Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et 1085
seq., and this chapter and Chapter 4121. of the Revised Code 1086
shall be assessed a premium in accordance with the expenditure 1087
of wages, payroll, or both attributable to only labor performed 1088
and services provided by such an employee when the employee 1089
performs labor and provides services for which the employee is 1090
not eligible to receive compensation and benefits under that 1091
federal act. 1092

(D) A rule providing for all of the following: 1093

(1) If an employer fails to file a report of the 1094
employer's actual payroll expenditures pursuant to section 1095
4123.26 of the Revised Code for private employers or pursuant to 1096
section 4123.41 of the Revised Code for public employers, the 1097
premium and assessments due from the employer for the period 1098
shall be calculated based on the estimated payroll of the 1099
employer used in calculating the estimated premium due, 1100
increased by ten per cent; 1101

(2) (a) If an employer fails to pay the premium or 1102
assessments when due for a policy year commencing prior to July 1103
1, 2015, the administrator may add a late fee penalty of not 1104

more than thirty dollars to the premium plus an additional 1105
penalty amount as follows: 1106

(i) For a premium from sixty-one to ninety days past due, 1107
the prime interest rate, multiplied by the premium due; 1108

(ii) For a premium from ninety-one to one hundred twenty 1109
days past due, the prime interest rate plus two per cent, 1110
multiplied by the premium due; 1111

(iii) For a premium from one hundred twenty-one to one 1112
hundred fifty days past due, the prime interest rate plus four 1113
per cent, multiplied by the premium due; 1114

(iv) For a premium from one hundred fifty-one to one 1115
hundred eighty days past due, the prime interest rate plus six 1116
per cent, multiplied by the premium due; 1117

(v) For a premium from one hundred eighty-one to two 1118
hundred ten days past due, the prime interest rate plus eight 1119
per cent, multiplied by the premium due; 1120

(vi) For each additional thirty-day period or portion 1121
thereof that a premium remains past due after it has remained 1122
past due for more than two hundred ten days, the prime interest 1123
rate plus eight per cent, multiplied by the premium due. 1124

(b) For purposes of division (D) (2) (a) of this section, 1125
"prime interest rate" means the average bank prime rate, and the 1126
administrator shall determine the prime interest rate in the 1127
same manner as a county auditor determines the average bank 1128
prime rate under section 929.02 of the Revised Code. 1129

(c) If an employer fails to pay the premium or assessments 1130
when due for a policy year commencing on or after July 1, 2015, 1131
the administrator may assess a penalty at the interest rate 1132

established by the state tax commissioner pursuant to section 1133
5703.47 of the Revised Code. 1134

(3) Notwithstanding the interest rates specified in 1135
division (D) (2) (a) or (c) of this section, at no time shall the 1136
additional penalty amount assessed under division (D) (2) (a) or 1137
(c) of this section exceed fifteen per cent of the premium due. 1138

(4) If an employer recognized by the administrator as a 1139
professional employer organization or alternate employer 1140
organization fails to make a timely payment of premiums or 1141
assessments as required by section 4123.35 of the Revised Code, 1142
the administrator shall revoke the ~~professional employer~~ 1143
organization's registration pursuant to section 4125.06 or 1144
4133.09 of the Revised Code, as applicable. 1145

(5) An employer may appeal a late fee penalty or 1146
additional penalty to an adjudicating committee pursuant to 1147
section 4123.291 of the Revised Code. 1148

(6) If the employer files an appropriate payroll report 1149
within the time provided by law, the employer shall not be in 1150
default and division (D) (2) of this section shall not apply if 1151
the employer pays the premiums within fifteen days after being 1152
first notified by the administrator of the amount due. 1153

(7) Any deficiencies in the amounts of the premium 1154
security deposit paid by an employer prior to July 1, 2015, 1155
shall be subject to an interest charge of six per cent per annum 1156
from the date the premium obligation is incurred. In determining 1157
the interest due on deficiencies in premium security deposit 1158
payments, a charge in each case shall be made against the 1159
employer in an amount equal to interest at the rate of six per 1160
cent per annum on the premium security deposit due but remaining 1161

unpaid sixty days after notice by the administrator. 1162

(8) Any interest charges or penalties provided for in 1163
divisions (D) (2) and (7) of this section shall be credited to 1164
the employer's account for rating purposes in the same manner as 1165
premiums. 1166

(E) A rule providing that each employer, on the occasion 1167
of instituting coverage under this chapter for an effective date 1168
prior to July 1, 2015, shall submit a premium security deposit. 1169
The deposit shall be calculated equivalent to thirty per cent of 1170
the semiannual premium obligation of the employer based upon the 1171
employer's estimated expenditure for wages for the ensuing six- 1172
month period plus thirty per cent of an additional adjustment 1173
period of two months but only up to a maximum of one thousand 1174
dollars and not less than ten dollars. The administrator shall 1175
review the security deposit of every employer who has submitted 1176
a deposit which is less than the one-thousand-dollar maximum. 1177
The administrator may require any such employer to submit 1178
additional money up to the maximum of one thousand dollars that, 1179
in the administrator's opinion, reflects the employer's current 1180
payroll expenditure for an eight-month period. 1181

(F) A rule providing that each employer, on the occasion 1182
of instituting coverage under this chapter, shall submit an 1183
application fee and an application for coverage that completely 1184
provides all of the information required for the administrator 1185
to establish coverage for that employer, and that the employer's 1186
failure to pay the application fee or to provide all of the 1187
information requested on the application may be grounds for the 1188
administrator to deny coverage for that employer. 1189

(G) A rule providing that, in addition to any other 1190
remedies permitted in this chapter, the administrator may 1191

discontinue an employer's coverage if the employer fails to pay 1192
the premium due on or before the premium's due date. 1193

(H) A rule providing that if after a final adjudication it 1194
is determined that an employer has failed to pay an obligation, 1195
billing, account, or assessment that is greater than one 1196
thousand dollars on or before its due date, the administrator 1197
may discontinue the employer's coverage in addition to any other 1198
remedies permitted in this chapter, and that the administrator 1199
shall not discontinue an employer's coverage pursuant to this 1200
division prior to a final adjudication regarding the employer's 1201
failure to pay such obligation, billing, account, or assessment 1202
on or before its due date. 1203

(I) As used in divisions (G) and (H) of this section: 1204

(1) "Employer" has the same meaning as in section 4123.01 1205
of the Revised Code except that "employer" does not include the 1206
state, a state hospital, or a state university or college. 1207

(2) "State university or college" has the same meaning as 1208
in section 3345.12 of the Revised Code and also includes the 1209
Ohio agricultural research and development center and OSU 1210
extension. 1211

(3) "State hospital" means the Ohio state university 1212
hospital and its ancillary facilities and the medical university 1213
of Ohio at Toledo hospital. 1214

Sec. 4123.341. The administrative costs of the industrial 1215
commission, the bureau of workers' compensation board of 1216
directors, and the bureau of workers' compensation shall be 1217
those costs and expenses that are incident to the discharge of 1218
the duties and performance of the activities of the industrial 1219
commission, the board, and the bureau under this chapter and 1220

Chapters 4121., 4125., 4127., 4131., 4133., and 4167. of the 1221
Revised Code, and all such costs shall be borne by the state and 1222
by other employers amenable to this chapter as follows: 1223

(A) In addition to the contribution required of the state 1224
under sections 4123.39 and 4123.40 of the Revised Code, the 1225
state shall contribute the sum determined to be necessary under 1226
section 4123.342 of the Revised Code. 1227

(B) The director of budget and management may allocate the 1228
state's share of contributions in the manner the director finds 1229
most equitably apportions the costs. 1230

(C) The counties and taxing districts therein shall 1231
contribute such sum as may be required under section 4123.342 of 1232
the Revised Code. 1233

(D) The private employers shall contribute the sum 1234
required under section 4123.342 of the Revised Code. 1235

Sec. 4123.35. (A) Except as provided in this section, and 1236
until the policy year commencing July 1, 2015, every private 1237
employer and every publicly owned utility shall pay semiannually 1238
in the months of January and July into the state insurance fund 1239
the amount of annual premium the administrator of workers' 1240
compensation fixes for the employment or occupation of the 1241
employer, the amount of which premium to be paid by each 1242
employer to be determined by the classifications, rules, and 1243
rates made and published by the administrator. The employer 1244
shall pay semiannually a further sum of money into the state 1245
insurance fund as may be ascertained to be due from the employer 1246
by applying the rules of the administrator. 1247

Except as otherwise provided in this section, for a policy 1248
year commencing on or after July 1, 2015, every private employer 1249

and every publicly owned utility shall pay annually in the month 1250
of June immediately preceding the policy year into the state 1251
insurance fund the amount of estimated annual premium the 1252
administrator fixes for the employment or occupation of the 1253
employer, the amount of which estimated premium to be paid by 1254
each employer to be determined by the classifications, rules, 1255
and rates made and published by the administrator. The employer 1256
shall pay a further sum of money into the state insurance fund 1257
as may be ascertained to be due from the employer by applying 1258
the rules of the administrator. Upon receipt of the payroll 1259
report required by division (B) of section 4123.26 of the 1260
Revised Code, the administrator shall adjust the premium and 1261
assessments charged to each employer for the difference between 1262
estimated gross payrolls and actual gross payrolls, and any 1263
balance due to the administrator shall be immediately paid by 1264
the employer. Any balance due the employer shall be credited to 1265
the employer's account. 1266

For a policy year commencing on or after July 1, 2015, 1267
each employer that is recognized by the administrator as a 1268
professional employer organization or alternate employer 1269
organization shall pay monthly into the state insurance fund the 1270
amount of premium the administrator fixes for the employer for 1271
the prior month based on the actual payroll of the employer 1272
reported pursuant to division (C) of section 4123.26 of the 1273
Revised Code. 1274

A receipt certifying that payment has been made shall be 1275
issued to the employer by the bureau of workers' compensation. 1276
The receipt is prima-facie evidence of the payment of the 1277
premium. The administrator shall provide each employer written 1278
proof of workers' compensation coverage as is required in 1279
section 4123.83 of the Revised Code. Proper posting of the 1280

notice constitutes the employer's compliance with the notice 1281
requirement mandated in section 4123.83 of the Revised Code. 1282

The bureau shall verify with the secretary of state the 1283
existence of all corporations and organizations making 1284
application for workers' compensation coverage and shall require 1285
every such application to include the employer's federal 1286
identification number. 1287

A private employer who has contracted with a subcontractor 1288
is liable for the unpaid premium due from any subcontractor with 1289
respect to that part of the payroll of the subcontractor that is 1290
for work performed pursuant to the contract with the employer. 1291

Division (A) of this section providing for the payment of 1292
premiums semiannually does not apply to any employer who was a 1293
subscriber to the state insurance fund prior to January 1, 1914, 1294
or, until July 1, 2015, who may first become a subscriber to the 1295
fund in any month other than January or July. Instead, the 1296
semiannual premiums shall be paid by those employers from time 1297
to time upon the expiration of the respective periods for which 1298
payments into the fund have been made by them. After July 1, 1299
2015, an employer who first becomes a subscriber to the fund on 1300
any day other than the first day of July shall pay premiums 1301
according to rules adopted by the administrator, with the advice 1302
and consent of the bureau of workers' compensation board of 1303
directors, for the remainder of the policy year for which the 1304
coverage is effective. 1305

The administrator, with the advice and consent of the 1306
board, shall adopt rules to permit employers to make periodic 1307
payments of the premium and assessment due under this division. 1308
The rules shall include provisions for the assessment of 1309
interest charges, where appropriate, and for the assessment of 1310

penalties when an employer fails to make timely premium 1311
payments. The administrator, in the rules the administrator 1312
adopts, may set an administrative fee for these periodic 1313
payments. An employer who timely pays the amounts due under this 1314
division is entitled to all of the benefits and protections of 1315
this chapter. Upon receipt of payment, the bureau shall issue a 1316
receipt to the employer certifying that payment has been made, 1317
which receipt is prima-facie evidence of payment. Workers' 1318
compensation coverage under this chapter continues uninterrupted 1319
upon timely receipt of payment under this division. 1320

Every public employer, except public employers that are 1321
self-insuring employers under this section, shall comply with 1322
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 1323
regard to the contribution of moneys to the public insurance 1324
fund. 1325

(B) Employers who will abide by the rules of the 1326
administrator and who may be of sufficient financial ability to 1327
render certain the payment of compensation to injured employees 1328
or the dependents of killed employees, and the furnishing of 1329
medical, surgical, nursing, and hospital attention and services 1330
and medicines, and funeral expenses, equal to or greater than is 1331
provided for in sections 4123.52, 4123.55 to 4123.62, and 1332
4123.64 to 4123.67 of the Revised Code, and who do not desire to 1333
insure the payment thereof or indemnify themselves against loss 1334
sustained by the direct payment thereof, upon a finding of such 1335
facts by the administrator, may be granted the privilege to pay 1336
individually compensation, and furnish medical, surgical, 1337
nursing, and hospital services and attention and funeral 1338
expenses directly to injured employees or the dependents of 1339
killed employees, thereby being granted status as a self- 1340
insuring employer. The administrator may charge employers who 1341

apply for the status as a self-insuring employer a reasonable 1342
application fee to cover the bureau's costs in connection with 1343
processing and making a determination with respect to an 1344
application. 1345

All employers granted status as self-insuring employers 1346
shall demonstrate sufficient financial and administrative 1347
ability to assure that all obligations under this section are 1348
promptly met. The administrator shall deny the privilege where 1349
the employer is unable to demonstrate the employer's ability to 1350
promptly meet all the obligations imposed on the employer by 1351
this section. 1352

(1) The administrator shall consider, but is not limited 1353
to, the following factors, where applicable, in determining the 1354
employer's ability to meet all of the obligations imposed on the 1355
employer by this section: 1356

(a) The employer has operated in this state for a minimum 1357
of two years, provided that an employer who has purchased, 1358
acquired, or otherwise succeeded to the operation of a business, 1359
or any part thereof, situated in this state that has operated 1360
for at least two years in this state, also shall qualify; 1361

(b) Where the employer previously contributed to the state 1362
insurance fund or is a successor employer as defined by bureau 1363
rules, the amount of the buyout, as defined by bureau rules; 1364

(c) The sufficiency of the employer's assets located in 1365
this state to insure the employer's solvency in paying 1366
compensation directly; 1367

(d) The financial records, documents, and data, certified 1368
by a certified public accountant, necessary to provide the 1369
employer's full financial disclosure. The records, documents, 1370

and data include, but are not limited to, balance sheets and 1371
profit and loss history for the current year and previous four 1372
years. 1373

(e) The employer's organizational plan for the 1374
administration of the workers' compensation law; 1375

(f) The employer's proposed plan to inform employees of 1376
the change from a state fund insurer to a self-insuring 1377
employer, the procedures the employer will follow as a self- 1378
insuring employer, and the employees' rights to compensation and 1379
benefits; and 1380

(g) The employer has either an account in a financial 1381
institution in this state, or if the employer maintains an 1382
account with a financial institution outside this state, ensures 1383
that workers' compensation checks are drawn from the same 1384
account as payroll checks or the employer clearly indicates that 1385
payment will be honored by a financial institution in this 1386
state. 1387

The administrator may waive the requirements of division 1388
(B) (1) (a) of this section and the requirement of division (B) (1) 1389
(d) of this section that the financial records, documents, and 1390
data be certified by a certified public accountant. The 1391
administrator shall adopt rules establishing the criteria that 1392
an employer shall meet in order for the administrator to waive 1393
the requirements of divisions (B) (1) (a) and (d) of this section. 1394
Such rules may require additional security of that employer 1395
pursuant to division (E) of section 4123.351 of the Revised 1396
Code. 1397

The administrator shall not grant the status of self- 1398
insuring employer to the state, except that the administrator 1399

may grant the status of self-insuring employer to a state 1400
institution of higher education, including its hospitals, that 1401
meets the requirements of division (B) (2) of this section. 1402

(2) When considering the application of a public employer, 1403
except for a board of county commissioners described in division 1404
(G) of section 4123.01 of the Revised Code, a board of a county 1405
hospital, or a publicly owned utility, the administrator shall 1406
verify that the public employer satisfies all of the following 1407
requirements as the requirements apply to that public employer: 1408

(a) For the two-year period preceding application under 1409
this section, the public employer has maintained an unvoted debt 1410
capacity equal to at least two times the amount of the current 1411
annual premium established by the administrator under this 1412
chapter for that public employer for the year immediately 1413
preceding the year in which the public employer makes 1414
application under this section. 1415

(b) For each of the two fiscal years preceding application 1416
under this section, the unreserved and undesignated year-end 1417
fund balance in the public employer's general fund is equal to 1418
at least five per cent of the public employer's general fund 1419
revenues for the fiscal year computed in accordance with 1420
generally accepted accounting principles. 1421

(c) For the five-year period preceding application under 1422
this section, the public employer, to the extent applicable, has 1423
complied fully with the continuing disclosure requirements 1424
established in rules adopted by the United States securities and 1425
exchange commission under 17 C.F.R. 240.15c 2-12. 1426

(d) For the five-year period preceding application under 1427
this section, the public employer has not had its local 1428

government fund distribution withheld on account of the public 1429
employer being indebted or otherwise obligated to the state. 1430

(e) For the five-year period preceding application under 1431
this section, the public employer has not been under a fiscal 1432
watch or fiscal emergency pursuant to section 118.023, 118.04, 1433
or 3316.03 of the Revised Code. 1434

(f) For the public employer's fiscal year preceding 1435
application under this section, the public employer has obtained 1436
an annual financial audit as required under section 117.10 of 1437
the Revised Code, which has been released by the auditor of 1438
state within seven months after the end of the public employer's 1439
fiscal year. 1440

(g) On the date of application, the public employer holds 1441
a debt rating of Aa3 or higher according to Moody's investors 1442
service, inc., or a comparable rating by an independent rating 1443
agency similar to Moody's investors service, inc. 1444

(h) The public employer agrees to generate an annual 1445
accumulating book reserve in its financial statements reflecting 1446
an actuarially generated reserve adequate to pay projected 1447
claims under this chapter for the applicable period of time, as 1448
determined by the administrator. 1449

(i) For a public employer that is a hospital, the public 1450
employer shall submit audited financial statements showing the 1451
hospital's overall liquidity characteristics, and the 1452
administrator shall determine, on an individual basis, whether 1453
the public employer satisfies liquidity standards equivalent to 1454
the liquidity standards of other public employers. 1455

(j) Any additional criteria that the administrator adopts 1456
by rule pursuant to division (E) of this section. 1457

The administrator may adopt rules establishing the 1458
criteria that a public employer shall satisfy in order for the 1459
administrator to waive any of the requirements listed in 1460
divisions (B) (2) (a) to (j) of this section. The rules may 1461
require additional security from that employer pursuant to 1462
division (E) of section 4123.351 of the Revised Code. The 1463
administrator shall not waive any of the requirements listed in 1464
divisions (B) (2) (a) to (j) of this section for a public employer 1465
who does not satisfy the criteria established in the rules the 1466
administrator adopts. 1467

(C) A board of county commissioners described in division 1468
(G) of section 4123.01 of the Revised Code, as an employer, that 1469
will abide by the rules of the administrator and that may be of 1470
sufficient financial ability to render certain the payment of 1471
compensation to injured employees or the dependents of killed 1472
employees, and the furnishing of medical, surgical, nursing, and 1473
hospital attention and services and medicines, and funeral 1474
expenses, equal to or greater than is provided for in sections 1475
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the 1476
Revised Code, and that does not desire to insure the payment 1477
thereof or indemnify itself against loss sustained by the direct 1478
payment thereof, upon a finding of such facts by the 1479
administrator, may be granted the privilege to pay individually 1480
compensation, and furnish medical, surgical, nursing, and 1481
hospital services and attention and funeral expenses directly to 1482
injured employees or the dependents of killed employees, thereby 1483
being granted status as a self-insuring employer. The 1484
administrator may charge a board of county commissioners 1485
described in division (G) of section 4123.01 of the Revised Code 1486
that applies for the status as a self-insuring employer a 1487
reasonable application fee to cover the bureau's costs in 1488

connection with processing and making a determination with 1489
respect to an application. All employers granted such status 1490
shall demonstrate sufficient financial and administrative 1491
ability to assure that all obligations under this section are 1492
promptly met. The administrator shall deny the privilege where 1493
the employer is unable to demonstrate the employer's ability to 1494
promptly meet all the obligations imposed on the employer by 1495
this section. The administrator shall consider, but is not 1496
limited to, the following factors, where applicable, in 1497
determining the employer's ability to meet all of the 1498
obligations imposed on the board as an employer by this section: 1499

(1) The board has operated in this state for a minimum of 1500
two years; 1501

(2) Where the board previously contributed to the state 1502
insurance fund or is a successor employer as defined by bureau 1503
rules, the amount of the buyout, as defined by bureau rules; 1504

(3) The sufficiency of the board's assets located in this 1505
state to insure the board's solvency in paying compensation 1506
directly; 1507

(4) The financial records, documents, and data, certified 1508
by a certified public accountant, necessary to provide the 1509
board's full financial disclosure. The records, documents, and 1510
data include, but are not limited to, balance sheets and profit 1511
and loss history for the current year and previous four years. 1512

(5) The board's organizational plan for the administration 1513
of the workers' compensation law; 1514

(6) The board's proposed plan to inform employees of the 1515
proposed self-insurance, the procedures the board will follow as 1516
a self-insuring employer, and the employees' rights to 1517

compensation and benefits; 1518

(7) The board has either an account in a financial 1519
institution in this state, or if the board maintains an account 1520
with a financial institution outside this state, ensures that 1521
workers' compensation checks are drawn from the same account as 1522
payroll checks or the board clearly indicates that payment will 1523
be honored by a financial institution in this state; 1524

(8) The board shall provide the administrator a surety 1525
bond in an amount equal to one hundred twenty-five per cent of 1526
the projected losses as determined by the administrator. 1527

(D) The administrator shall require a surety bond from all 1528
self-insuring employers, issued pursuant to section 4123.351 of 1529
the Revised Code, that is sufficient to compel, or secure to 1530
injured employees, or to the dependents of employees killed, the 1531
payment of compensation and expenses, which shall in no event be 1532
less than that paid or furnished out of the state insurance fund 1533
in similar cases to injured employees or to dependents of killed 1534
employees whose employers contribute to the fund, except when an 1535
employee of the employer, who has suffered the loss of a hand, 1536
arm, foot, leg, or eye prior to the injury for which 1537
compensation is to be paid, and thereafter suffers the loss of 1538
any other of the members as the result of any injury sustained 1539
in the course of and arising out of the employee's employment, 1540
the compensation to be paid by the self-insuring employer is 1541
limited to the disability suffered in the subsequent injury, 1542
additional compensation, if any, to be paid by the bureau out of 1543
the surplus created by section 4123.34 of the Revised Code. 1544

(E) In addition to the requirements of this section, the 1545
administrator shall make and publish rules governing the manner 1546
of making application and the nature and extent of the proof 1547

required to justify a finding of fact by the administrator as to 1548
granting the status of a self-insuring employer, which rules 1549
shall be general in their application, one of which rules shall 1550
provide that all self-insuring employers shall pay into the 1551
state insurance fund such amounts as are required to be credited 1552
to the surplus fund in division (B) of section 4123.34 of the 1553
Revised Code. The administrator may adopt rules establishing 1554
requirements in addition to the requirements described in 1555
division (B) (2) of this section that a public employer shall 1556
meet in order to qualify for self-insuring status. 1557

Employers shall secure directly from the bureau central 1558
offices application forms upon which the bureau shall stamp a 1559
designating number. Prior to submission of an application, an 1560
employer shall make available to the bureau, and the bureau 1561
shall review, the information described in division (B) (1) of 1562
this section, and public employers shall make available, and the 1563
bureau shall review, the information necessary to verify whether 1564
the public employer meets the requirements listed in division 1565
(B) (2) of this section. An employer shall file the completed 1566
application forms with an application fee, which shall cover the 1567
costs of processing the application, as established by the 1568
administrator, by rule, with the bureau at least ninety days 1569
prior to the effective date of the employer's new status as a 1570
self-insuring employer. The application form is not deemed 1571
complete until all the required information is attached thereto. 1572
The bureau shall only accept applications that contain the 1573
required information. 1574

(F) The bureau shall review completed applications within 1575
a reasonable time. If the bureau determines to grant an employer 1576
the status as a self-insuring employer, the bureau shall issue a 1577
statement, containing its findings of fact, that is prepared by 1578

the bureau and signed by the administrator. If the bureau 1579
determines not to grant the status as a self-insuring employer, 1580
the bureau shall notify the employer of the determination and 1581
require the employer to continue to pay its full premium into 1582
the state insurance fund. The administrator also shall adopt 1583
rules establishing a minimum level of performance as a criterion 1584
for granting and maintaining the status as a self-insuring 1585
employer and fixing time limits beyond which failure of the 1586
self-insuring employer to provide for the necessary medical 1587
examinations and evaluations may not delay a decision on a 1588
claim. 1589

(G) The administrator shall adopt rules setting forth 1590
procedures for auditing the program of self-insuring employers. 1591
The bureau shall conduct the audit upon a random basis or 1592
whenever the bureau has grounds for believing that a self- 1593
insuring employer is not in full compliance with bureau rules or 1594
this chapter. 1595

The administrator shall monitor the programs conducted by 1596
self-insuring employers, to ensure compliance with bureau 1597
requirements and for that purpose, shall develop and issue to 1598
self-insuring employers standardized forms for use by the self- 1599
insuring employer in all aspects of the self-insuring employers' 1600
direct compensation program and for reporting of information to 1601
the bureau. 1602

The bureau shall receive and transmit to the self-insuring 1603
employer all complaints concerning any self-insuring employer. 1604
In the case of a complaint against a self-insuring employer, the 1605
administrator shall handle the complaint through the self- 1606
insurance division of the bureau. The bureau shall maintain a 1607
file by employer of all complaints received that relate to the 1608

employer. The bureau shall evaluate each complaint and take 1609
appropriate action. 1610

The administrator shall adopt as a rule a prohibition 1611
against any self-insuring employer from harassing, dismissing, 1612
or otherwise disciplining any employee making a complaint, which 1613
rule shall provide for a financial penalty to be levied by the 1614
administrator payable by the offending self-insuring employer. 1615

(H) For the purpose of making determinations as to whether 1616
to grant status as a self-insuring employer, the administrator 1617
may subscribe to and pay for a credit reporting service that 1618
offers financial and other business information about individual 1619
employers. The costs in connection with the bureau's 1620
subscription or individual reports from the service about an 1621
applicant may be included in the application fee charged 1622
employers under this section. 1623

(I) A self-insuring employer that returns to the state 1624
insurance fund as a state fund employer shall provide the 1625
administrator with medical costs and indemnity costs by claim, 1626
and payroll by manual classification and year, and such other 1627
information the administrator may require. The self-insuring 1628
employer shall submit this information by dates and in a format 1629
determined by the administrator. The administrator shall develop 1630
a state fund experience modification factor for a self-insuring 1631
employer that returns to the state insurance fund based in whole 1632
or in part on the employer's self-insured experience and the 1633
information submitted. 1634

(J) On the first day of July of each year, the 1635
administrator shall calculate separately each self-insuring 1636
employer's assessments for the safety and hygiene fund, 1637
administrative costs pursuant to section 4123.342 of the Revised 1638

Code, and for the surplus fund under division (B) of section 1639
4123.34 of the Revised Code, on the basis of the paid 1640
compensation attributable to the individual self-insuring 1641
employer according to the following calculation: 1642

(1) The total assessment against all self-insuring 1643
employers as a class for each fund and for the administrative 1644
costs for the year that the assessment is being made, as 1645
determined by the administrator, divided by the total amount of 1646
paid compensation for the previous calendar year attributable to 1647
all amenable self-insuring employers; 1648

(2) Multiply the quotient in division (J)(1) of this 1649
section by the total amount of paid compensation for the 1650
previous calendar year that is attributable to the individual 1651
self-insuring employer for whom the assessment is being 1652
determined. Each self-insuring employer shall pay the assessment 1653
that results from this calculation, unless the assessment 1654
resulting from this calculation falls below a minimum 1655
assessment, which minimum assessment the administrator shall 1656
determine on the first day of July of each year with the advice 1657
and consent of the bureau of workers' compensation board of 1658
directors, in which event, the self-insuring employer shall pay 1659
the minimum assessment. 1660

In determining the total amount due for the total 1661
assessment against all self-insuring employers as a class for 1662
each fund and the administrative assessment, the administrator 1663
shall reduce proportionately the total for each fund and 1664
assessment by the amount of money in the self-insurance 1665
assessment fund as of the date of the computation of the 1666
assessment. 1667

The administrator shall calculate the assessment for the 1668

portion of the surplus fund under division (B) of section 1669
4123.34 of the Revised Code that is used for reimbursement to a 1670
self-insuring employer under division (H) of section 4123.512 of 1671
the Revised Code in the same manner as set forth in divisions 1672
(J) (1) and (2) of this section except that the administrator 1673
shall calculate the total assessment for this portion of the 1674
surplus fund only on the basis of those self-insuring employers 1675
that retain participation in reimbursement to the self-insuring 1676
employer under division (H) of section 4123.512 of the Revised 1677
Code and the individual self-insuring employer's proportion of 1678
paid compensation shall be calculated only for those self- 1679
insuring employers who retain participation in reimbursement to 1680
the self-insuring employer under division (H) of section 1681
4123.512 of the Revised Code. 1682

An employer who no longer is a self-insuring employer in 1683
this state or who no longer is operating in this state, shall 1684
continue to pay assessments for administrative costs and for the 1685
surplus fund under division (B) of section 4123.34 of the 1686
Revised Code based upon paid compensation attributable to claims 1687
that occurred while the employer was a self-insuring employer 1688
within this state. 1689

(K) There is hereby created in the state treasury the 1690
self-insurance assessment fund. All investment earnings of the 1691
fund shall be deposited in the fund. The administrator shall use 1692
the money in the self-insurance assessment fund only for 1693
administrative costs as specified in section 4123.341 of the 1694
Revised Code. 1695

(L) Every self-insuring employer shall certify, in 1696
affidavit form subject to the penalty for perjury, to the bureau 1697
the amount of the self-insuring employer's paid compensation for 1698

the previous calendar year. In reporting paid compensation paid 1699
for the previous year, a self-insuring employer shall exclude 1700
from the total amount of paid compensation any reimbursement the 1701
self-insuring employer receives in the previous calendar year 1702
from the surplus fund pursuant to section 4123.512 of the 1703
Revised Code for any paid compensation. The self-insuring 1704
employer also shall exclude from the paid compensation reported 1705
any amount recovered under section 4123.931 of the Revised Code 1706
and any amount that is determined not to have been payable to or 1707
on behalf of a claimant in any final administrative or judicial 1708
proceeding. The self-insuring employer shall exclude such 1709
amounts from the paid compensation reported in the reporting 1710
period subsequent to the date the determination is made. The 1711
administrator shall adopt rules, in accordance with Chapter 119. 1712
of the Revised Code, that provide for all of the following: 1713

(1) Establishing the date by which self-insuring employers 1714
must submit such information and the amount of the assessments 1715
provided for in division (J) of this section for employers who 1716
have been granted self-insuring status within the last calendar 1717
year; 1718

(2) If an employer fails to pay the assessment when due, 1719
the administrator may add a late fee penalty of not more than 1720
five hundred dollars to the assessment plus an additional 1721
penalty amount as follows: 1722

(a) For an assessment from sixty-one to ninety days past 1723
due, the prime interest rate, multiplied by the assessment due; 1724

(b) For an assessment from ninety-one to one hundred 1725
twenty days past due, the prime interest rate plus two per cent, 1726
multiplied by the assessment due; 1727

(c) For an assessment from one hundred twenty-one to one hundred fifty days past due, the prime interest rate plus four per cent, multiplied by the assessment due;

(d) For an assessment from one hundred fifty-one to one hundred eighty days past due, the prime interest rate plus six per cent, multiplied by the assessment due;

(e) For an assessment from one hundred eighty-one to two hundred ten days past due, the prime interest rate plus eight per cent, multiplied by the assessment due;

(f) For each additional thirty-day period or portion thereof that an assessment remains past due after it has remained past due for more than two hundred ten days, the prime interest rate plus eight per cent, multiplied by the assessment due.

(3) An employer may appeal a late fee penalty and penalty assessment to the administrator.

For purposes of division (L) (2) of this section, "prime interest rate" means the average bank prime rate, and the administrator shall determine the prime interest rate in the same manner as a county auditor determines the average bank prime rate under section 929.02 of the Revised Code.

The administrator shall include any assessment and penalties that remain unpaid for previous assessment periods in the calculation and collection of any assessments due under this division or division (J) of this section.

(M) As used in this section, "paid compensation" means all amounts paid by a self-insuring employer for living maintenance benefits, all amounts for compensation paid pursuant to sections 4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60,

and 4123.64 of the Revised Code, all amounts paid as wages in 1757
lieu of such compensation, all amounts paid in lieu of such 1758
compensation under a nonoccupational accident and sickness 1759
program fully funded by the self-insuring employer, and all 1760
amounts paid by a self-insuring employer for a violation of a 1761
specific safety standard pursuant to Section 35 of Article II, 1762
Ohio Constitution and section 4121.47 of the Revised Code. 1763

(N) Should any section of this chapter or Chapter 4121. of 1764
the Revised Code providing for self-insuring employers' 1765
assessments based upon compensation paid be declared 1766
unconstitutional by a final decision of any court, then that 1767
section of the Revised Code declared unconstitutional shall 1768
revert back to the section in existence prior to November 3, 1769
1989, providing for assessments based upon payroll. 1770

(O) The administrator may grant a self-insuring employer 1771
the privilege to self-insure a construction project entered into 1772
by the self-insuring employer that is scheduled for completion 1773
within six years after the date the project begins, and the 1774
total cost of which is estimated to exceed one hundred million 1775
dollars or, for employers described in division (R) of this 1776
section, if the construction project is estimated to exceed 1777
twenty-five million dollars. The administrator may waive such 1778
cost and time criteria and grant a self-insuring employer the 1779
privilege to self-insure a construction project regardless of 1780
the time needed to complete the construction project and 1781
provided that the cost of the construction project is estimated 1782
to exceed fifty million dollars. A self-insuring employer who 1783
desires to self-insure a construction project shall submit to 1784
the administrator an application listing the dates the 1785
construction project is scheduled to begin and end, the 1786
estimated cost of the construction project, the contractors and 1787

subcontractors whose employees are to be self-insured by the 1788
self-insuring employer, the provisions of a safety program that 1789
is specifically designed for the construction project, and a 1790
statement as to whether a collective bargaining agreement 1791
governing the rights, duties, and obligations of each of the 1792
parties to the agreement with respect to the construction 1793
project exists between the self-insuring employer and a labor 1794
organization. 1795

A self-insuring employer may apply to self-insure the 1796
employees of either of the following: 1797

(1) All contractors and subcontractors who perform labor 1798
or work or provide materials for the construction project; 1799

(2) All contractors and, at the administrator's 1800
discretion, a substantial number of all the subcontractors who 1801
perform labor or work or provide materials for the construction 1802
project. 1803

Upon approval of the application, the administrator shall 1804
mail a certificate granting the privilege to self-insure the 1805
construction project to the self-insuring employer. The 1806
certificate shall contain the name of the self-insuring employer 1807
and the name, address, and telephone number of the self-insuring 1808
employer's representatives who are responsible for administering 1809
workers' compensation claims for the construction project. The 1810
self-insuring employer shall post the certificate in a 1811
conspicuous place at the site of the construction project. 1812

The administrator shall maintain a record of the 1813
contractors and subcontractors whose employees are covered under 1814
the certificate issued to the self-insured employer. A self- 1815
insuring employer immediately shall notify the administrator 1816

when any contractor or subcontractor is added or eliminated from 1817
inclusion under the certificate. 1818

Upon approval of the application, the self-insuring 1819
employer is responsible for the administration and payment of 1820
all claims under this chapter and Chapter 4121. of the Revised 1821
Code for the employees of the contractor and subcontractors 1822
covered under the certificate who receive injuries or are killed 1823
in the course of and arising out of employment on the 1824
construction project, or who contract an occupational disease in 1825
the course of employment on the construction project. For 1826
purposes of this chapter and Chapter 4121. of the Revised Code, 1827
a claim that is administered and paid in accordance with this 1828
division is considered a claim against the self-insuring 1829
employer listed in the certificate. A contractor or 1830
subcontractor included under the certificate shall report to the 1831
self-insuring employer listed in the certificate, all claims 1832
that arise under this chapter and Chapter 4121. of the Revised 1833
Code in connection with the construction project for which the 1834
certificate is issued. 1835

A self-insuring employer who complies with this division 1836
is entitled to the protections provided under this chapter and 1837
Chapter 4121. of the Revised Code with respect to the employees 1838
of the contractors and subcontractors covered under a 1839
certificate issued under this division for death or injuries 1840
that arise out of, or death, injuries, or occupational diseases 1841
that arise in the course of, those employees' employment on that 1842
construction project, as if the employees were employees of the 1843
self-insuring employer, provided that the self-insuring employer 1844
also complies with this section. No employee of the contractors 1845
and subcontractors covered under a certificate issued under this 1846
division shall be considered the employee of the self-insuring 1847

employer listed in that certificate for any purposes other than 1848
this chapter and Chapter 4121. of the Revised Code. Nothing in 1849
this division gives a self-insuring employer authority to 1850
control the means, manner, or method of employment of the 1851
employees of the contractors and subcontractors covered under a 1852
certificate issued under this division. 1853

The contractors and subcontractors included under a 1854
certificate issued under this division are entitled to the 1855
protections provided under this chapter and Chapter 4121. of the 1856
Revised Code with respect to the contractor's or subcontractor's 1857
employees who are employed on the construction project which is 1858
the subject of the certificate, for death or injuries that arise 1859
out of, or death, injuries, or occupational diseases that arise 1860
in the course of, those employees' employment on that 1861
construction project. 1862

The contractors and subcontractors included under a 1863
certificate issued under this division shall identify in their 1864
payroll records the employees who are considered the employees 1865
of the self-insuring employer listed in that certificate for 1866
purposes of this chapter and Chapter 4121. of the Revised Code, 1867
and the amount that those employees earned for employment on the 1868
construction project that is the subject of that certificate. 1869
Notwithstanding any provision to the contrary under this chapter 1870
and Chapter 4121. of the Revised Code, the administrator shall 1871
exclude the payroll that is reported for employees who are 1872
considered the employees of the self-insuring employer listed in 1873
that certificate, and that the employees earned for employment 1874
on the construction project that is the subject of that 1875
certificate, when determining those contractors' or 1876
subcontractors' premiums or assessments required under this 1877
chapter and Chapter 4121. of the Revised Code. A self-insuring 1878

employer issued a certificate under this division shall include 1879
in the amount of paid compensation it reports pursuant to 1880
division (L) of this section, the amount of paid compensation 1881
the self-insuring employer paid pursuant to this division for 1882
the previous calendar year. 1883

Nothing in this division shall be construed as altering 1884
the rights of employees under this chapter and Chapter 4121. of 1885
the Revised Code as those rights existed prior to September 17, 1886
1996. Nothing in this division shall be construed as altering 1887
the rights devolved under sections 2305.31 and 4123.82 of the 1888
Revised Code as those rights existed prior to September 17, 1889
1996. 1890

As used in this division, "privilege to self-insure a 1891
construction project" means privilege to pay individually 1892
compensation, and to furnish medical, surgical, nursing, and 1893
hospital services and attention and funeral expenses directly to 1894
injured employees or the dependents of killed employees. 1895

(P) A self-insuring employer whose application is granted 1896
under division (O) of this section shall designate a safety 1897
professional to be responsible for the administration and 1898
enforcement of the safety program that is specifically designed 1899
for the construction project that is the subject of the 1900
application. 1901

A self-insuring employer whose application is granted 1902
under division (O) of this section shall employ an ombudsperson 1903
for the construction project that is the subject of the 1904
application. The ombudsperson shall have experience in workers' 1905
compensation or the construction industry, or both. The 1906
ombudsperson shall perform all of the following duties: 1907

(1) Communicate with and provide information to employees 1908
who are injured in the course of, or whose injury arises out of 1909
employment on the construction project, or who contract an 1910
occupational disease in the course of employment on the 1911
construction project; 1912

(2) Investigate the status of a claim upon the request of 1913
an employee to do so; 1914

(3) Provide information to claimants, third party 1915
administrators, employers, and other persons to assist those 1916
persons in protecting their rights under this chapter and 1917
Chapter 4121. of the Revised Code. 1918

A self-insuring employer whose application is granted 1919
under division (O) of this section shall post the name of the 1920
safety professional and the ombudsperson and instructions for 1921
contacting the safety professional and the ombudsperson in a 1922
conspicuous place at the site of the construction project. 1923

(Q) The administrator may consider all of the following 1924
when deciding whether to grant a self-insuring employer the 1925
privilege to self-insure a construction project as provided 1926
under division (O) of this section: 1927

(1) Whether the self-insuring employer has an 1928
organizational plan for the administration of the workers' 1929
compensation law; 1930

(2) Whether the safety program that is specifically 1931
designed for the construction project provides for the safety of 1932
employees employed on the construction project, is applicable to 1933
all contractors and subcontractors who perform labor or work or 1934
provide materials for the construction project, and has as a 1935
component, a safety training program that complies with 1936

standards adopted pursuant to the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and	1937
provides for continuing management and employee involvement;	1938
	1939
(3) Whether granting the privilege to self-insure the construction project will reduce the costs of the construction project;	1940
	1941
	1942
(4) Whether the self-insuring employer has employed an ombudsperson as required under division (P) of this section;	1943
	1944
(5) Whether the self-insuring employer has sufficient surety to secure the payment of claims for which the self-insuring employer would be responsible pursuant to the granting of the privilege to self-insure a construction project under division (O) of this section.	1945
	1946
	1947
	1948
	1949
(R) As used in divisions (O), (P), and (Q), "self-insuring employer" includes the following employers, whether or not they have been granted the status of being a self-insuring employer under division (B) of this section:	1950
	1951
	1952
	1953
(1) A state institution of higher education;	1954
(2) A school district;	1955
(3) A county school financing district;	1956
(4) An educational service center;	1957
(5) A community school established under Chapter 3314. of the Revised Code;	1958
	1959
(6) A municipal power agency as defined in section 3734.058 of the Revised Code.	1960
	1961
(S) As used in this section:	1962
(1) "Unvoted debt capacity" means the amount of money that	1963

a public employer may borrow without voter approval of a tax
levy; 1964
1965

(2) "State institution of higher education" means the 1966
state universities listed in section 3345.011 of the Revised 1967
Code, community colleges created pursuant to Chapter 3354. of 1968
the Revised Code, university branches created pursuant to 1969
Chapter 3355. of the Revised Code, technical colleges created 1970
pursuant to Chapter 3357. of the Revised Code, and state 1971
community colleges created pursuant to Chapter 3358. of the 1972
Revised Code. 1973

Sec. 4133.01. As used in this chapter: 1974

(A) "Alternate employer organization" means a sole 1975
proprietor, partnership, association, limited liability company, 1976
or corporation that enters into an agreement with one or more 1977
client employers for purposes of providing human resource 1978
management services and sharing employer responsibility and 1979
liability. 1980

(B) "Alternate employer organization agreement" means a 1981
written contract between a client employer and an alternate 1982
employer organization to provide human resource management 1983
services and to share employer responsibilities and liabilities. 1984

(C) "Client employer" means a sole proprietor, 1985
partnership, association, limited liability company, or 1986
corporation that enters into an alternate employer organization 1987
agreement and shares employer responsibility and liability with 1988
the alternate employer organization. 1989

(D) "Trade secret" has the same meaning as in section 1990
1333.61 of the Revised Code. 1991

(E) "Working capital" means the excess of current assets 1992

over current liabilities as determined by generally accepted 1993
accounting principles. 1994

(F) "Worksite employee" means an individual assigned to a 1995
client employer on a permanent basis, not as a temporary 1996
supplement to the client employer's workforce, and who is 1997
employed by both an alternate employer organization and a client 1998
employer pursuant to an alternate employer organization 1999
agreement. 2000

Sec. 4133.02. The administrator of workers' compensation 2001
shall adopt rules in accordance with Chapter 119. of the Revised 2002
Code to administer and enforce this chapter, including rules to 2003
administer and enforce division (E) of section 4133.03 of the 2004
Revised Code. 2005

The administrator may adopt rules for the acceptance of 2006
electronic filings in accordance with Chapter 1306. of the 2007
Revised Code for applications, documents, reports, and other 2008
filings required by this chapter. 2009

Sec. 4133.03. (A) The alternate employer organization with 2010
whom a worksite employee is employed shall do all of the 2011
following: 2012

(1) Process and pay all wages and applicable state and 2013
federal payroll taxes associated with the worksite employee, 2014
irrespective of payments made by the client employer, pursuant 2015
to the terms and conditions of compensation in the alternate 2016
employer organization agreement between the alternate employer 2017
organization and the client employer; 2018

(2) Pay all related payroll taxes associated with a 2019
worksite employee independent of the terms and conditions 2020
contained in the alternate employer organization agreement 2021

<u>between the alternate employer organization and the client</u>	2022
<u>employer;</u>	2023
<u>(3) Maintain workers' compensation coverage, pay all</u>	2024
<u>workers' compensation premiums, and manage all workers'</u>	2025
<u>compensation claims, filings, and related procedures associated</u>	2026
<u>with a worksite employee in compliance with Chapters 4121. and</u>	2027
<u>4123. of the Revised Code, except that when worksite employees</u>	2028
<u>include family farm officers, ordained ministers, or corporate</u>	2029
<u>officers of the client employer, payroll reports shall include</u>	2030
<u>the entire amount of payroll associated with those persons;</u>	2031
<u>(4) Provide written notice to each worksite employee it</u>	2032
<u>assigns to perform services to a client employer of the</u>	2033
<u>relationship between and the responsibilities of the alternate</u>	2034
<u>employer organization and the client employer;</u>	2035
<u>(5) Maintain complete records separately listing the</u>	2036
<u>manual classifications of each client employer and the payroll</u>	2037
<u>reported to each manual classification for each client employer</u>	2038
<u>for each payroll reporting period during the time period covered</u>	2039
<u>in the alternate employer organization agreement;</u>	2040
<u>(6) Maintain a record of workers' compensation claims for</u>	2041
<u>each client employer;</u>	2042
<u>(7) Make periodic reports, as determined by the</u>	2043
<u>administrator of workers' compensation, of client employers and</u>	2044
<u>total workforce to the administrator;</u>	2045
<u>(8) Report individual client employer payroll, claims, and</u>	2046
<u>classification data under a separate and unique subaccount to</u>	2047
<u>the administrator;</u>	2048
<u>(9) Within fourteen days after receiving notice from the</u>	2049
<u>bureau of workers' compensation that a refund or rebate will be</u>	2050

applied to workers' compensation premiums, provide a copy of 2051
that notice to any client employer to whom that notice is 2052
relevant. 2053

(B) In any alternate employer organization agreement 2054
between an alternate employer organization and a client 2055
employer, the client employer shall be listed as the employer on 2056
the W-2 forms of the worksite employees, but the alternate 2057
employer organization remains jointly and severally liable for 2058
all applicable local, state, and federal withholding and 2059
employer-paid taxes with respect to the worksite employees. 2060

(C) An alternate employer organization shall file federal 2061
payroll taxes entirely under the tax identification number of 2062
the client employer, but shall remain jointly and severally 2063
liable for all wages and payroll taxes associated with worksite 2064
employees. In addition, if any of the alternate employer 2065
organization's clients fail to transmit payment to the alternate 2066
employer organization sufficient to cover payment of all wages 2067
and employer-paid taxes, the alternate employer organization 2068
shall keep a record of the nonpayment or underpayment and a 2069
record that the alternate employer organization nonetheless paid 2070
the wages and taxes owed. 2071

(D) An alternate employer organization may not provide 2072
partial or split workers' compensation coverage for worksite 2073
employees in which the client employer provides that coverage 2074
for some, but not all, of the client employer's worksite 2075
employees. On entering into an alternate employer organization 2076
agreement, all worksite employees shall be covered under the 2077
workers' compensation policy of the alternate employer 2078
organization. 2079

(E) The alternate employer organization with whom a 2080

worksite employee is employed shall provide a list of all of the 2081
following information to the client employer on the written 2082
request of the client employer: 2083

(1) All workers' compensation claims, premiums, and 2084
payroll associated with that client employer; 2085

(2) Compensation and benefits paid and reserves 2086
established for each claim listed under division (E)(1) of this 2087
section; 2088

(3) Any other information available to the alternate 2089
employer organization from the bureau of workers' compensation 2090
regarding that client employer. 2091

(F)(1) An alternate employer organization shall provide 2092
the information required under division (E) of this section in 2093
writing to the requesting client employer within forty-five days 2094
after receiving a written request from the client employer. 2095

(2) For purposes of division (F) of this section, an 2096
alternate employer organization has provided the required 2097
information to the client employer when the information is 2098
received by the United States postal service or when the 2099
information is personally delivered, in writing, directly to the 2100
client employer. 2101

(G) Except as provided in section 4133.11 of the Revised 2102
Code and unless otherwise agreed to in the alternate employer 2103
organization agreement, the alternate employer organization with 2104
whom a worksite employee is employed has a right of direction 2105
and control over each worksite employee assigned to a client 2106
employer's location. However, a client employer shall retain 2107
sufficient direction and control over a worksite employee as is 2108
necessary to do any of the following: 2109

<u>(1) Conduct the client employer's business, including</u>	2110
<u>training and supervising worksite employees;</u>	2111
<u>(2) Ensure the quality, adequacy, and safety of the goods</u>	2112
<u>or services produced or sold in the client employer's business;</u>	2113
<u>(3) Discharge any fiduciary responsibility that the client</u>	2114
<u>employer may have;</u>	2115
<u>(4) Comply with any applicable licensure, regulatory, or</u>	2116
<u>statutory requirement of the client employer.</u>	2117
<u>(H) Unless otherwise agreed to in the alternate employer</u>	2118
<u>organization agreement, liability for acts, errors, and</u>	2119
<u>omissions shall be determined as follows:</u>	2120
<u>(1) An alternate employer organization shall not be liable</u>	2121
<u>for the acts, errors, and omissions of a client employer or a</u>	2122
<u>worksite employee when those acts, errors, and omissions occur</u>	2123
<u>under the direction and control of the client employer.</u>	2124
<u>(2) A client employer shall not be liable for the acts,</u>	2125
<u>errors, and omissions of an alternate employer organization or a</u>	2126
<u>worksite employee when those acts, errors, and omissions occur</u>	2127
<u>under the direction and control of the alternate employer</u>	2128
<u>organization.</u>	2129
<u>(I) Nothing in divisions (G) and (H) of this section shall</u>	2130
<u>be construed to limit any liability or obligation specifically</u>	2131
<u>agreed to in the alternate employer organization agreement.</u>	2132
<u>(J) An alternate employer organization is not, and shall</u>	2133
<u>not be considered, a professional employer organization, as</u>	2134
<u>defined in section 4125.01 of the Revised Code. An alternate</u>	2135
<u>employer organization may not hold itself out, advertise, or</u>	2136
<u>otherwise identify itself in any way as a professional employer</u>	2137

organization. 2138

(K) In an alternate employer organization agreement, both 2139
the client employer and alternate employer organization are 2140
jointly and severally liable for the payment of employee wages 2141
and taxes. The alternate employer organization and client 2142
employer share in the employer responsibilities and liabilities 2143
with respect to a worksite employee, pursuant to the alternate 2144
employer organization agreement. 2145

Sec. 4133.04. (A) When a client employer enters into an 2146
alternate employer organization agreement with an alternate 2147
employer organization, the alternate employer organization is 2148
the employer of record and the succeeding employer for the 2149
purposes of determining a workers' compensation experience 2150
rating pursuant to Chapter 4123. of the Revised Code. 2151

(B) Pursuant to Section 35 of Article II, Ohio 2152
Constitution, and section 4123.74 of the Revised Code, the 2153
exclusive remedy for a worksite employee to recover for 2154
injuries, diseases, or death incurred in the course of and 2155
arising out of the employment relationship against either the 2156
alternate employer organization or the client employer are those 2157
benefits provided under Chapters 4121. and 4123. of the Revised 2158
Code. 2159

Sec. 4133.05. A worksite employee under an alternate 2160
employer organization agreement shall not, solely as a result of 2161
being a worksite employee, be considered an employee of the 2162
alternate employer organization for purposes of general 2163
liability insurance, fidelity bonds, surety bonds, employer 2164
liability not otherwise covered by Chapters 4121. and 4123. of 2165
the Revised Code, or liquor liability insurance carried by the 2166
alternate employer organization, unless the alternate employer 2167

organization agreement and applicable prearranged employment 2168
contract, insurance contract, or bond specifically states 2169
otherwise. 2170

Sec. 4133.06. (A) For purposes of determining tax credits 2171
and other economic incentives that are provided by this state or 2172
any political subdivision and based on employment, worksite 2173
employees under an alternate employer organization agreement 2174
shall be considered employees solely of the client employer. 2175

(1) A client employer shall be entitled to the benefit of 2176
any tax credit, economic incentive, or similar benefit arising 2177
as the result of the client employer's employment of worksite 2178
employees. If the grant or amount of any tax credit, economic 2179
incentive, or other benefit is based on number of employees, 2180
each client employer shall be treated as employing only those 2181
worksite employees employed by the client employer. Worksite 2182
employees working for other client employers of the alternate 2183
employer organization shall not be counted as employees for that 2184
purpose. 2185

(2) Upon request by a client employer or an agency or 2186
department of this state, an alternate employer organization 2187
shall provide employment information reasonably required by the 2188
agency or department responsible for administration of the tax 2189
credit or economic incentive and necessary to support any 2190
request, claim, application, or other action by a client 2191
employer seeking the tax credit or economic incentive. 2192

(B) Worksite employees whose services are subject to sales 2193
tax shall be considered the employees of the client employer for 2194
purposes of collecting and levying sales tax on the services 2195
performed by the worksite employee. Nothing contained in this 2196
chapter shall relieve a client employer or alternate employer 2197

organization of any sales tax liability with respect to its 2198
goods or services. 2199

(C) Any tax assessed on a per capita or per employee basis 2200
shall be assessed against the client employer for worksite 2201
employees and against the alternate employer organization for 2202
employees of the alternate employer organization who are not 2203
worksite employees employed with a client employer. 2204

(D) For purposes of computing any tax that is imposed or 2205
calculated upon the basis of total payroll, the alternate 2206
employer organization shall be eligible to use any small 2207
business allowance or exemption based solely on the employees of 2208
the alternate employer organization who are not worksite 2209
employees with any client employer. The eligibility of a client 2210
employer for the allowance or exemption shall be based solely 2211
upon the payroll of the employees of the client employer, 2212
including any worksite employees employed by the client 2213
employer. 2214

Sec. 4133.07. (A) Not later than thirty days after its 2215
formation, an alternate employer organization operating in this 2216
state shall register with the administrator of workers' 2217
compensation on forms provided by the administrator. Following 2218
initial registration, each alternate employer organization shall 2219
register with the administrator annually on or before the 2220
thirty-first day of December. 2221

(B) Initial registration and each annual registration 2222
renewal shall include all of the following: 2223

(1) A list of each of the alternate employer 2224
organization's client employers current as of the date of 2225
registration for purposes of initial registration or current as 2226

of the date of annual registration renewal, or within fourteen 2227
days of adding or releasing a client, that includes the client 2228
employer's name, address, federal tax identification number, and 2229
bureau of workers' compensation risk number; 2230

(2) A fee as determined by the administrator; 2231

(3) The name or names under which the alternate employer 2232
organization conducts business; 2233

(4) The address of the alternate employer organization's 2234
principal place of business and the address of each office it 2235
maintains in this state; 2236

(5) The alternate employer organization's taxpayer or 2237
employer identification number; 2238

(6) A list of each state in which the alternate employer 2239
organization has operated in the preceding five years, and the 2240
name, corresponding with each state, under which the alternate 2241
employer organization operated in each state, including any 2242
alternative names, names of predecessors, and if known, 2243
successor business entities; 2244

(7) The most recent financial statement prepared and 2245
audited pursuant to division (B) of section 4133.08 of the 2246
Revised Code; 2247

(8) A bond or letter of credit in accordance with division 2248
(D) (1) of this section; 2249

(9) An attestation of the accuracy of the data submissions 2250
from the chief executive officer, president, or other individual 2251
who serves as the controlling person of the alternate employer 2252
organization. 2253

(C) Upon terms and for periods that the administrator 2254

considers appropriate, the administrator may issue a limited 2255
registration to an alternate employer organization that provides 2256
all of the following items: 2257

(1) A properly executed request for limited registration 2258
on a form provided by the administrator; 2259

(2) All information and materials required for 2260
registration in divisions (B)(1) to (6) of this section; 2261

(3) Information and documentation necessary to show that 2262
the alternate employer organization satisfies all of the 2263
following criteria: 2264

(a) It is domiciled outside of this state. 2265

(b) It is licensed or registered as an alternate employer 2266
organization in another state. 2267

(c) It does not maintain an office in this state. 2268

(d) It does not participate in direct solicitations for 2269
client employers located or domiciled in this state. 2270

(e) It has fifty or fewer worksite employees employed or 2271
domiciled in this state on any given day. 2272

(D) (1) An alternate employer organization shall provide 2273
security in the form of a bond or letter of credit assignable to 2274
the Ohio bureau of workers' compensation in an amount necessary 2275
to meet the financial obligations of the alternate employer 2276
organization pursuant to this chapter and Chapters 4121. and 2277
4123. of the Revised Code. The administrator shall determine the 2278
amount of the bond required under this division for each 2279
registrant, which shall be at least one million dollars. 2280

(2) An alternate employer organization may appeal the 2281

amount of the security required pursuant to rules adopted under 2282
division (D) (1) of this section in accordance with section 2283
4123.291 of the Revised Code. 2284

(3) An alternate employer organization shall pay premiums 2285
and assessments for purposes of Chapters 4121. and 4123. of the 2286
Revised Code on a monthly basis pursuant to division (A) of 2287
section 4123.35 of the Revised Code. 2288

(E) Notwithstanding division (D) of this section, an 2289
alternate employer organization that qualifies for self- 2290
insurance or retrospective rating under section 4123.29 or 2291
4123.35 of the Revised Code shall abide by the financial 2292
disclosure and security requirements pursuant to those sections 2293
and the rules adopted under those sections in place of the 2294
requirements specified in division (D) of this section or 2295
specified in rules adopted pursuant to that division. 2296

(F) Except to the extent necessary for the administrator 2297
to administer the statutory duties of the administrator and for 2298
employees of the state to perform their official duties, all 2299
records, reports, client lists, and other information obtained 2300
from an alternate employer organization under divisions (A), 2301
(B), and (C) of this section are confidential and shall be 2302
considered trade secrets and shall not be published or open to 2303
public inspection. 2304

(G) The list described in division (B) (1) of this section 2305
shall be considered a trade secret. 2306

(H) The administrator shall establish the fee described in 2307
division (B) (2) of this section in an amount that does not 2308
exceed the cost of the administration of the initial and renewal 2309
registration process. 2310

(I) A financial statement required under division (B) (7) 2311
of this section for initial registration shall be the most 2312
recent financial statement of the alternate employer 2313
organization and shall not be older than thirteen months. For 2314
each registration renewal, the alternate employer organization 2315
shall file the required financial statement within one hundred 2316
eighty days after the end of the alternate employer 2317
organization's entity's fiscal year. An alternate employer 2318
organization may apply to the administrator for an extension 2319
beyond that time if the alternate employer organization provides 2320
the administrator with a letter from the alternate employer 2321
organization's auditor stating the reason for delay and the 2322
anticipated completion date. 2323

(J) Multiple, unrelated alternate employer organizations 2324
shall not combine together for purposes of obtaining workers' 2325
compensation coverage or for forming any type of self-insurance 2326
arrangement available under this chapter. 2327

(K) The administrator shall maintain a list of alternate 2328
employer organizations registered under this section that is 2329
readily available to the public by electronic or other means. 2330

Sec. 4133.08. (A) An alternate employer organization shall 2331
maintain positive working capital at initial or annual 2332
registration, as reflected in the financial statements submitted 2333
to the bureau of workers' compensation. If a deficit in working 2334
capital is reflected in the financial statements submitted to 2335
the bureau, the alternate employer organization shall submit to 2336
the administrator of workers' compensation a quarterly financial 2337
statement for each calendar quarter during which there is a 2338
deficit in working capital, accompanied by an attestation of the 2339
chief executive officer, president, or other individual who 2340

serves as the controlling person of the alternate employer 2341
organization that all wages, taxes, workers' compensation 2342
premiums, and employee benefits have been paid by the alternate 2343
employer organization. The bond or letter of credit required 2344
under division (D) (1) of section 4133.07 of the Revised Code 2345
shall be held by a depository designated by the administrator 2346
and shall secure payment by the alternate employer organization 2347
of all taxes, wages, benefits, or other entitlements due or 2348
otherwise pertaining to worksite employees, if the alternate 2349
employer organization does not make those payments when due. 2350

(B) An alternate employer organization shall prepare 2351
financial statements in accordance with generally accepted 2352
accounting principles and submit them for registration and 2353
registration renewal under section 4133.07 of the Revised Code. 2354
The financial statements shall be audited by an independent 2355
alternate public accountant authorized to practice in the 2356
jurisdiction in which that accountant is located. 2357

(1) The resulting report of the auditor shall not include 2358
either of the following: 2359

(a) A qualification or disclaimer of opinion as to 2360
adherence to generally accepted accounting principles; 2361

(b) A statement expressing substantial doubt about the 2362
ability of the alternate employer organization to continue as a 2363
going concern. 2364

(2) However, if an alternate employer organization does 2365
not have at least twelve months of operating history on which to 2366
base financial statements, the financial statements shall be 2367
reviewed by a certified public accountant. 2368

(3) Notwithstanding division (B) (1) (a) of this section, if 2369

an alternate employer organization is a subsidiary or is related 2370
to a variable interest entity, the alternate employer 2371
organization or alternate employer organization entity may 2372
submit financial statements of the alternate employer 2373
organization. 2374

(C) The bureau shall deny initial or annual registration 2375
to an applicant that does not meet the requirements of this 2376
section. 2377

Sec. 4133.09. (A) In accordance with Chapter 119. of the 2378
Revised Code, the administrator of the bureau of workers' 2379
compensation may deny registration or revoke the registration of 2380
an alternate employer organization and rescind its status as an 2381
employer upon a finding that the alternate employer organization 2382
has done any of the following: 2383

(1) Obtained or attempted to obtain registration through 2384
misrepresentation, misstatement of a material fact, or fraud; 2385

(2) Misappropriated any funds of the client employer; 2386

(3) Used fraudulent or coercive practices to obtain or 2387
retain business or demonstrated financial irresponsibility; 2388

(4) Failed to appear, without reasonable cause or excuse, 2389
in response to a subpoena lawfully issued by the administrator; 2390

(5) Failed to comply with the requirements of this 2391
chapter. 2392

(B) The administrator's decision to deny or revoke an 2393
alternate employer organization's registration or to rescind its 2394
status as an employer is stayed pending the exhaustion of all 2395
administrative appeals by the alternate employer organization. 2396

The administrator shall adopt rules that require that when 2397

an employer contacts the bureau of workers' compensation to 2398
determine whether a particular alternate employer organization 2399
is registered, if the administrator has denied or revoked that 2400
alternate employer organization's registration or rescinded its 2401
status as an employer, and if all administrative appeals are not 2402
yet exhausted when the employer inquires, the appropriate bureau 2403
personnel shall inform the inquiring employer of the denial, 2404
revocation, or rescission and the fact that the alternate 2405
employer organization has the right to appeal the 2406
administrator's decision. 2407

(C) Upon revocation of the registration of an alternate 2408
employer organization, each client employer associated with that 2409
alternate employer organization shall file payroll reports and 2410
pay workers' compensation premiums directly to the administrator 2411
on its own behalf at a rate determined by the administrator 2412
based solely on the claims experience of the client employer. 2413

(D) Upon revocation of an alternate employer 2414
organization's registration, each client employer associated 2415
with that alternate employer organization shall file on its own 2416
behalf the appropriate documents or data with all state and 2417
federal agencies as required by law with respect to any worksite 2418
employee the client employer and the alternate employer 2419
organization shared. 2420

Sec. 4133.10. (A) As used in this section, "self-insuring 2421
employer" has the same meaning as in section 4123.01 of the 2422
Revised Code. 2423

(B) Not later than thirty calendar days after the date on 2424
which an alternate employer organization agreement is 2425
terminated, the alternate employer organization is adjudged 2426
bankrupt, the alternate employer organization ceases operations 2427

within the state of Ohio, or the registration of the alternate 2428
employer organization is revoked, the alternate employer 2429
organization shall submit to the administrator of workers' 2430
compensation and each client employer associated with that 2431
alternate employer organization a completed workers' 2432
compensation lease termination notice form provided by the 2433
administrator. The completed form shall include all client 2434
payroll and claim information listed in a format specified by 2435
the administrator and notice of all workers' compensation claims 2436
that have been reported to the alternate employer organization 2437
in accordance with its internal reporting policies. 2438

(C) (1) If a alternate employer organization that is a 2439
self-insuring employer is required to submit a workers' 2440
compensation lease termination notice form under division (B) of 2441
this section, not later than thirty calendar days after the 2442
lease termination the alternate employer organization shall 2443
submit all of the following to the administrator for any years 2444
necessary for the administrator to develop a state fund 2445
experience modification factor for each client employer involved 2446
in the lease termination: 2447

(a) The payroll of each client employer involved in the 2448
lease termination, organized by manual classification and year; 2449

(b) The medical and indemnity costs of each client 2450
employer involved in the lease termination, organized by claim; 2451

(c) Any other information the administrator may require to 2452
develop a state fund experience modification factor for each 2453
client employer involved in the lease termination. 2454

(2) The administrator may require an alternate employer 2455
organization to submit the information required under division 2456

(C) (1) of this section at additional times after the initial 2457
submission if the administrator determines that the information 2458
is necessary for the administrator to develop a state fund 2459
experience modification factor. 2460

(3) The administrator may revoke or refuse to renew an 2461
alternate employer organization's status as a self-insuring 2462
employer if the alternate employer organization fails to provide 2463
information requested by the administrator under division (C) (1) 2464
or (2) of this section. 2465

(D) The administrator shall use the information provided 2466
under division (C) of this section to develop a state fund 2467
experience modification factor for each client employer involved 2468
in a lease termination with an alternate employer organization 2469
that is a self-insuring employer. 2470

(E) An alternate employer organization shall report any 2471
transfer of employees between related alternate employer 2472
organization entities to the administrator within fourteen 2473
calendar days after the date of the transfer on a form 2474
prescribed by the administrator. The alternate employer 2475
organization shall include in the form all client payroll and 2476
claim information regarding the transferred employees listed in 2477
a format specified by the administrator and a notice of all 2478
workers' compensation claims that have been reported to the 2479
alternate employer organization in accordance with the internal 2480
reporting policies of the alternate employer organization. 2481

(F) Prior to entering into an alternate employer 2482
organization agreement with a client employer, an alternate 2483
employer organization shall disclose in writing to the client 2484
employer the reporting requirements that apply to the alternate 2485
employer organization under division (C) of this section and 2486

that the administrator must develop a state fund experience 2487
modification factor for each client employer involved in a lease 2488
termination with an alternate employer organization that is a 2489
self-insuring employer. 2490

Sec. 4133.11. Nothing in this chapter exempts an alternate 2491
employer organization, client employer, or worksite employee 2492
from any applicable federal, state, or local licensing, 2493
registration, or certification statutes or regulations. An 2494
individual required to obtain and maintain a license, 2495
registration, or certification under law and who is a worksite 2496
employee of an alternate employer organization and a client 2497
employer is an employee of the client employer for purposes of 2498
obtaining and maintaining the appropriate license, registration, 2499
or certification as required by law. An alternate employer 2500
organization does not engage in any occupation, trade, or 2501
profession that requires a license, certification, or 2502
registration solely by entering into an alternate employer 2503
organization agreement with a client employer or employing a 2504
worksite employee. 2505

A client employer shall have the sole right of direction 2506
and control of the professional or licensed activities of 2507
worksite employees and of the client employer's business. The 2508
worksite employees and client employers shall remain subject to 2509
regulation by the board, commission, or agency responsible for 2510
licensing, registration, or certification of the worksite 2511
employees or client employers. 2512

Sec. 4133.12. Nothing contained in this chapter or in any 2513
alternate employer organization agreement shall affect, modify, 2514
or amend any collective bargaining agreement that exists on the 2515
effective date of this section. Nothing in this chapter shall 2516

alter the rights or obligations of any client employer, 2517
alternate employer organization, or worksite employee under the 2518
"National Labor Relations Act," 49 Stat. 449, 29 U.S.C. 151 et 2519
seq., the "Railway Labor Act," 44 Stat. 577, 45 U.S.C. 151, or 2520
any other applicable federal or state law. 2521

Sec. 4133.13. Nothing contained in this chapter or in any 2522
alternate employer organization agreement shall do any of the 2523
following: 2524

(A) Diminish, abolish, or remove the rights and 2525
obligations of client employers and worksite employees existing 2526
prior to the effective date of the alternate employer 2527
organization agreement; 2528

(B) Affect, modify, or amend any contractual relationship 2529
or restrictive covenant between a worksite employee and any 2530
client employer in effect at the time an alternate employer 2531
organization agreement becomes effective; 2532

(C) Prohibit or amend any contractual relationship or 2533
restrictive covenant between a client employer and a worksite 2534
employee that is entered into after the alternate employer 2535
organization agreement becomes effective; 2536

(D) Create any new or additional enforcement right of a 2537
worksite employee against an alternate employer organization 2538
that is not specifically provided by the alternate employer 2539
organization agreement or this chapter. 2540

An alternate employer organization shall have no 2541
responsibility or liability in connection with, or arising out 2542
of, any contractual relationship or restrictive covenant between 2543
a client employer and a worksite employee unless the alternate 2544
employer organization has specifically agreed otherwise in 2545

writing. 2546

Sec. 4133.14. For purposes of a bid, contract, purchase order, or agreement entered into with the state or any political subdivision, a client employer's status or certification as a small, minority-owned, disadvantaged, or women-owned business enterprise or as a historically underutilized business shall not be affected as a result of the client employer entering into an alternate employer organization agreement or using the services of an alternate employer organization. 2547
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Sec. 4133.99. Whoever recklessly violates division (A) of section 4133.07 of the Revised Code is guilty of a minor misdemeanor. Whoever knowingly violates division (A) of section 4133.07 of the Revised Code is guilty of a misdemeanor of the second degree. 2555
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Sec. 4141.24. (A) (1) The director of job and family services shall maintain a separate account for each employer and, except as otherwise provided in division (B) of section 4141.25 of the Revised Code respecting mutualized contributions, shall credit such employer's account with all the contributions, or payments in lieu of contributions, which the employer has paid on the employer's own behalf. 2560
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(2) If, as of the computation date, a contributory employer's account shows a negative balance computed as provided in division (A) (3) of section 4141.25 of the Revised Code, less any contributions due and unpaid on such date, which negative balance is in excess of the limitations imposed by divisions (A) (2) (a), (b), and (c) of this section and if the employer's account is otherwise eligible for the transfer, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess 2567
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eligible for transfer shall be permanently transferred from the 2576
account of such employer and charged to the mutualized account 2577
provided in division (B) of section 4141.25 of the Revised Code. 2578

(a) If as of any computation date, a contributory 2579
employer's account shows a negative balance in excess of ten per 2580
cent of the employer's average annual payroll, then before the 2581
employer's contribution rate is computed for the next succeeding 2582
contribution period, an amount equal to the amount of the excess 2583
shall be transferred from the account as provided in this 2584
division. No contributory employer's account may have any excess 2585
transferred pursuant to division (A) (2) (a) of this section, 2586
unless the employer's account has shown a positive balance for 2587
at least two consecutive computation dates prior to the 2588
computation date with respect to which the transfer is proposed. 2589
Each time a transfer is made pursuant to division (A) (2) (a) of 2590
this section, the employer's account is ineligible for any 2591
additional transfers under that division, until the account 2592
shows a positive balance for at least two consecutive 2593
computation dates subsequent to the computation date of which 2594
the most recent transfer occurs pursuant to division (A) (2) (a), 2595
(b), or (c) of this section. 2596

(b) If at the next computation date after the computation 2597
date at which a transfer from the account occurs pursuant to 2598
division (A) (2) (a) of this section, a contributory employer's 2599
account shows a negative balance in excess of fifteen per cent 2600
of the employer's average annual payroll, then before the 2601
employer's contribution rate is computed for the next succeeding 2602
contribution period an amount equal to the amount of the excess 2603
shall be permanently transferred from the account as provided in 2604
this division. 2605

(c) If at the next computation date subsequent to the 2606
computation date at which a transfer from a contributory 2607
employer's account occurs pursuant to division (A) (2) (b) of this 2608
section, the employer's account shows a negative balance in 2609
excess of twenty per cent of the employer's average annual 2610
payroll, then before the employer's contribution rate is 2611
computed for the next succeeding contribution period, an amount 2612
equal to the amount of the excess shall be permanently 2613
transferred from the account as provided in this division. 2614

(d) If no transfer occurs pursuant to division (A) (2) (b) 2615
or (c) of this section, the employer's account is ineligible for 2616
any additional transfers under division (A) (2) of this section 2617
until the account requalifies for a transfer pursuant to 2618
division (A) (2) (a) of this section. 2619

(B) Any employer may make voluntary payments in addition 2620
to the contributions required under this chapter, in accordance 2621
with rules established by the director. Such payments shall be 2622
included in the employer's account as of the computation date, 2623
provided they are received by the director by the thirty-first 2624
day of December following such computation date. Such voluntary 2625
payment, when accepted from an employer, will not be refunded in 2626
whole or in part. In determining whether an employer's account 2627
has a positive balance on two consecutive computation dates and 2628
is eligible for transfers under division (A) (2) of this section, 2629
the director shall exclude any voluntary payments made 2630
subsequent to the last transfer made under division (A) (2) of 2631
this section. 2632

(C) All contributions to the fund shall be pooled and 2633
available to pay benefits to any individual entitled to benefits 2634
irrespective of the source of such contributions. 2635

(D) (1) For the purposes of this section and sections 2636
4141.241 and 4141.242 of the Revised Code, an employer's account 2637
shall be charged only for benefits based on remuneration paid by 2638
such employer. Benefits paid to an eligible individual shall be 2639
charged against the account of each employer within the 2640
claimant's base period in the proportion to which wages 2641
attributable to each employer of the claimant bears to the 2642
claimant's total base period wages. Charges to the account of a 2643
base period employer with whom the claimant is employed part- 2644
time at the time the claimant's application for a determination 2645
of benefits rights is filed shall be charged to the mutualized 2646
account when all of the following conditions are met: 2647

(a) The claimant also worked part-time for the employer 2648
during the base period of the claim. 2649

(b) The claimant is unemployed due to loss of other 2650
employment. 2651

(c) The employer is not a reimbursing employer under 2652
section 4141.241 or 4141.242 of the Revised Code. 2653

(2) Notwithstanding division (D) (1) of this section, 2654
charges to the account of any employer, including any 2655
reimbursing employer, shall be charged to the mutualized account 2656
if it finally is determined by a court on appeal that the 2657
employer's account is not chargeable for the benefits. 2658

(3) (a) Any benefits paid to a claimant under section 2659
4141.28 of the Revised Code prior to a final determination of 2660
the claimant's right to the benefits shall be charged to the 2661
employer's account as provided in division (D) (1) of this 2662
section, provided that if there is no final determination of the 2663
claim by the subsequent thirtieth day of June, the employer's 2664

account shall be credited with the total amount of benefits that 2665
has been paid prior to that date, based on the determination 2666
that has not become final. The total amount credited to the 2667
employer's account shall be charged to a suspense account, which 2668
shall be maintained as a separate bookkeeping account and 2669
administered as a part of this section, and shall not be used in 2670
determining the account balance of the employer for the purpose 2671
of computing the employer's contribution rate under section 2672
4141.25 of the Revised Code. 2673

(b) If it is finally determined that the claimant is 2674
entitled to all or a part of the benefits in dispute, the 2675
suspense account shall be credited and the appropriate 2676
employer's account charged with the benefits. If it is finally 2677
determined that the claimant is not entitled to all or any 2678
portion of the benefits in dispute, the benefits shall be 2679
credited to the suspense account and, except as provided in 2680
division (D) (3) (d) of this section, a corresponding charge made 2681
to the mutualized account established in division (B) of section 2682
4141.25 of the Revised Code, provided that, except as otherwise 2683
provided in this section, if benefits are chargeable to an 2684
employer or group of employers who is required or elects to make 2685
payments to the fund in lieu of contributions under section 2686
4141.241 of the Revised Code, the benefits shall be charged to 2687
the employer's account in the manner provided in division (D) (1) 2688
of this section and division (B) of section 4141.241 of the 2689
Revised Code, and no part of the benefits may be charged to the 2690
suspense account provided in this division. 2691

(c) Except as provided in division (D) (3) (d) of this 2692
section, to the extent that benefits that have been paid to a 2693
claimant and charged to the employer's account are found not to 2694
be due the claimant and are recovered by the director as 2695

provided in section 4141.35 of the Revised Code, they shall be 2696
credited to the employer's account. 2697

(d) (i) An employer's account shall not be credited for 2698
amounts recovered by the director pursuant to division (D) (3) (c) 2699
of this section, and the mutualized account established in 2700
division (B) of section 4141.25 of the Revised Code shall not be 2701
charged pursuant to division (D) (3) (b) of this section, for 2702
benefits that have been paid to a claimant and are subsequently 2703
found not to be due to the claimant, if it is determined by the 2704
director, on or after October 21, 2013, that both of the 2705
following have occurred: 2706

(I) The benefits were paid because the claimant's 2707
employer, or any employee, officer, or agent of that employer, 2708
failed to respond timely or adequately to a request for 2709
information regarding a determination of benefit rights or 2710
claims for benefits under section 4141.28 of the Revised Code. 2711

(II) The claimant's employer, or any employee, officer, or 2712
agent of that employer, on behalf of the employer, previously 2713
established a pattern of failing to respond timely or adequately 2714
within the same calendar year period pursuant to division (D) (3) 2715
(d) (ii) (III) of this section. 2716

(ii) For purposes of division (D) (3) (d) of this section: 2717

(I) A response is considered "timely" if the response is 2718
received by the director within the time provided under section 2719
4141.28 of the Revised Code. 2720

(II) A response is considered "adequate" if the employer 2721
or employee, officer, or agent of that employer provided answers 2722
to all questions raised by the director pursuant to section 2723
4141.28 of the Revised Code or participated in a fact-finding 2724

interview if requested by the director. 2725

(III) A "pattern of failing" is established after the 2726
third instance of benefits being paid because the claimant's 2727
employer, or any employee, officer, or agent of that employer, 2728
on behalf of the employer, failed to respond timely or 2729
adequately to a request for information regarding a 2730
determination of benefit rights or claims for benefits under 2731
section 4141.28 of the Revised Code within a calendar year 2732
period. 2733

(e) If the mutualized account established in division (B) 2734
of section 4141.25 of the Revised Code is not charged for 2735
benefits credited to a suspense account pursuant to division (D) 2736
(3) (d) of this section, a corresponding charge shall be made to 2737
the account of the employer whose failure to timely or 2738
adequately respond to a request for information caused the 2739
erroneous payment. 2740

(f) The appeal provisions of sections 4141.281 and 2741
4141.282 of the Revised Code shall apply to all determinations 2742
issued under division (D) (3) (d) of this section. 2743

(4) The director shall notify each employer at least once 2744
each month of the benefits charged to the employer's account 2745
since the last preceding notice; except that for the purposes of 2746
sections 4141.241 and 4141.242 of the Revised Code which 2747
provides the billing of employers on a payment in lieu of a 2748
contribution basis, the director may prescribe a quarterly or 2749
less frequent notice of benefits charged to the employer's 2750
account. Such notice will show a summary of the amount of 2751
benefits paid which were charged to the employer's account. This 2752
notice shall not be deemed a determination of the claimant's 2753
eligibility for benefits. Any employer so notified, however, may 2754

file within fifteen days after the mailing date of the notice, 2755
an exception to charges appearing on the notice on the grounds 2756
that such charges are not in accordance with this section. The 2757
director shall promptly examine the exception to such charges 2758
and shall notify the employer of the director's decision 2759
thereon, which decision shall become final unless appealed to 2760
the unemployment compensation review commission in the manner 2761
provided in section 4141.26 of the Revised Code. For the 2762
purposes of this division, an exception is considered timely 2763
filed when it has been received as provided in division (D) (1) 2764
of section 4141.281 of the Revised Code. 2765

(E) The director shall terminate and close the account of 2766
any contributory employer who has been subject to this chapter 2767
if the enterprise for which the account was established is no 2768
longer in operation and it has had no payroll and its account 2769
has not been chargeable with benefits for a period of five 2770
consecutive years. The amount of any positive balance, computed 2771
as provided in division (A) (3) of section 4141.25 of the Revised 2772
Code, in an account closed and terminated as provided in this 2773
section shall be credited to the mutualized account as provided 2774
in division (B) (2) (b) of section 4141.25 of the Revised Code. 2775
The amount of any negative balance, computed as provided in 2776
division (A) (3) of section 4141.25 of the Revised Code, in an 2777
account closed and terminated as provided in this section shall 2778
be charged to the mutualized account as provided in division (B) 2779
(1) (b) of section 4141.25 of the Revised Code. The amount of any 2780
positive balance or negative balance, credited or charged to the 2781
mutualized account after the termination and closing of an 2782
employer's account, shall not thereafter be considered in 2783
determining the contribution rate of such employer. The closing 2784
of an employer's account as provided in this division shall not 2785

relieve such employer from liability for any unpaid 2786
contributions or payment in lieu of contributions which are due 2787
for periods prior to such closing. 2788

If the director finds that a contributory employer's 2789
business is closed solely because of the entrance of one or more 2790
of the owners, officers, or partners, or the majority 2791
stockholder, into the armed forces of the United States, or any 2792
of its allies, or of the United Nations after July 1, 1950, such 2793
employer's account shall not be terminated and if the business 2794
is resumed within two years after the discharge or release of 2795
such persons from active duty in the armed forces, the 2796
employer's experience shall be deemed to have been continuous 2797
throughout such period. The reserve ratio of any such employer 2798
shall be the total contributions paid by such employer minus all 2799
benefits, including benefits paid to any individual during the 2800
period such employer was in the armed forces, based upon wages 2801
paid by the employer prior to the employer's entrance into the 2802
armed forces divided by the average of the employer's annual 2803
payrolls for the three most recent years during the whole of 2804
which the employer has been in business. 2805

(F) If an employer transfers all of its trade or business 2806
to another employer or person, the acquiring employer or person 2807
shall be the successor in interest to the transferring employer 2808
and shall assume the resources and liabilities of such 2809
transferring employer's account, and continue the payment of all 2810
contributions, or payments in lieu of contributions, due under 2811
this chapter. 2812

If an employer or person acquires substantially all, or a 2813
clearly segregable and identifiable portion of an employer's 2814
trade or business, then upon the director's approval of a 2815

properly completed application for successorship, the employer 2816
or person acquiring the trade or business, or portion thereof, 2817
shall be the successor in interest. The director by rule may 2818
prescribe procedures for effecting transfers of experience as 2819
provided for in this section. 2820

(G) Notwithstanding sections 4141.09, 4141.23, 4141.24, 2821
4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised 2822
Code, both of the following apply regarding assignment of rates 2823
and transfers of experience: 2824

(1) If an employer transfers its trade or business, or a 2825
portion thereof, to another employer and, at the time of the 2826
transfer, both employers are under substantially common 2827
ownership, management, or control, then the unemployment 2828
experience attributable to the transferred trade or business, or 2829
portion thereof, shall be transferred to the employer to whom 2830
the business is so transferred. The director shall recalculate 2831
the rates of both employers and those rates shall be effective 2832
immediately upon the date of the transfer of the trade or 2833
business. 2834

(2) Whenever a person is not an employer under this 2835
chapter at the time the person acquires the trade or business of 2836
an employer, the unemployment experience of the acquired trade 2837
or business shall not be transferred to the person if the 2838
director finds that the person acquired the trade or business 2839
solely or primarily for the purpose of obtaining a lower rate of 2840
contributions. Instead, that person shall be assigned the 2841
applicable new employer rate under division (A) (1) of section 2842
4141.25 of the Revised Code. 2843

(H) The director shall establish procedures to identify 2844
the transfer or acquisition of a trade or business for purposes 2845

of this section and shall adopt rules prescribing procedures for 2846
effecting transfers of experience as described in this section. 2847

(I) No rate of contribution less than two and seven-tenths 2848
per cent shall be permitted a contributory employer succeeding 2849
to the experience of another contributory employer pursuant to 2850
this section for any period subsequent to such succession, 2851
except in accordance with rules prescribed by the director, 2852
which rules shall be consistent with federal requirements for 2853
additional credit allowance in section 3303 of the "Internal 2854
Revenue Code of 1954" and consistent with this chapter, except 2855
that such rules may establish a computation date for any such 2856
period different from the computation date generally prescribed 2857
by this chapter, and may define "calendar year" as meaning a 2858
twelve-consecutive-month period ending on the same day of the 2859
year as that on which such computation date occurs. 2860

(J) The director may prescribe rules for the 2861
establishment, maintenance, and dissolution of common 2862
contribution rates for two or more contributory employers, and 2863
in accordance with such rules and upon application by two or 2864
more employers shall establish such common rate to be computed 2865
by merging the several contribution rate factors of such 2866
employers for the purpose of establishing a common contribution 2867
rate applicable to all such employers. 2868

(K) The director shall adopt rules applicable to 2869
professional employer organizations and professional employer 2870
organization reporting entities to address the method in which a 2871
professional employer organization or professional employer 2872
organization reporting entity reports quarterly wages and 2873
contributions to the director for shared employees. 2874

(1) The rules shall recognize a professional employer 2875

organization or professional employer organization reporting 2876
entity as the employer of record of the shared employees of the 2877
professional employer organization or professional employer 2878
organization reporting entity for reporting purposes; however, 2879
the rules shall require that each shared employee of a single 2880
client employer be reported under a separate and unique 2881
subaccount of the professional employer organization or 2882
professional employer organization reporting entity to reflect 2883
the experience of the shared employees of that client employer. 2884

(2) The director shall use a subaccount solely to 2885
determine experience rates for that individual subaccount on an 2886
annual basis and shall recognize a professional employer 2887
organization or professional employer organization reporting 2888
entity as the employer of record associated with each 2889
subaccount. The director shall combine the rate experience that 2890
existed on a client employer's account prior to entering into a 2891
professional employer organization agreement with the experience 2892
accumulated as a subaccount of the professional employer 2893
organization or professional employer organization reporting 2894
entity. The combined experience shall remain with the client 2895
account upon termination of the professional employer 2896
organization agreement. 2897

(3) A professional employer organization or professional 2898
employer organization reporting entity shall provide a power of 2899
attorney or other evidence, which evidence may be included as 2900
part of a professional employer organization agreement, 2901
completed by each client employer of the professional employer 2902
organization or professional employer organization reporting 2903
entity, authorizing the professional employer organization or 2904
professional employer organization reporting entity to act on 2905
behalf of the client employer in accordance with the 2906

requirements of this chapter. 2907

(4) Any rule adopted pursuant to division (K) of this 2908
section also shall include administrative requirements that 2909
permit a professional employer organization or a professional 2910
employer organization reporting entity to transmit any reporting 2911
and payment data required under division (K)(1) of this section 2912
collectively as a single filing with the director. 2913

(5) As used in division (K) of this section, "client 2914
employer," "professional employer organization," "professional 2915
employer organization agreement," "professional employer 2916
organization reporting entity," and "shared employee" have the 2917
same meanings as in section 4125.01 of the Revised Code. 2918

(L) The director shall adopt rules applicable to alternate 2919
employer organizations as defined in section 4133.01 of the 2920
Revised Code that are consistent with the requirements of and 2921
rules adopted under division (K) of this section. 2922

Sec. 4740.131. Nothing in this chapter shall be construed 2923
to prohibit a contractor from leasing, on a temporary or 2924
permanent basis, an employee from a professional employer 2925
organization, as defined by section 4125.01 of the Revised Code, 2926
from an alternate employer organization, as defined by section 2927
4133.01 of the Revised Code, or from a temporary agency to 2928
perform work under the direct supervision of the contractor. 2929

Sec. 5733.40. As used in sections 5733.40 and 5733.41 and 2930
Chapter 5747. of the Revised Code: 2931

(A) (1) "Adjusted qualifying amount" means either of the 2932
following: 2933

(a) The sum of each qualifying investor's distributive 2934
share of the income, gain, expense, or loss of a qualifying 2935

pass-through entity for the qualifying taxable year of the 2936
qualifying pass-through entity multiplied by the apportionment 2937
fraction defined in division (B) of this section, subject to 2938
section 5733.401 of the Revised Code and divisions (A) (2) to (7) 2939
of this section; 2940

(b) The sum of each qualifying beneficiary's share of the 2941
qualifying net income and qualifying net gain distributed by a 2942
qualifying trust for the qualifying taxable year of the 2943
qualifying trust multiplied by the apportionment fraction 2944
defined in division (B) of this section, subject to section 2945
5733.401 of the Revised Code and divisions (A) (2) to (7) of this 2946
section. 2947

(2) The sum shall exclude any amount which, pursuant to 2948
the Constitution of the United States, the Constitution of Ohio, 2949
or any federal law is not subject to a tax on or measured by net 2950
income. 2951

(3) For the purposes of Chapters 5733. and 5747. of the 2952
Revised Code, the profit or net income of the qualifying entity 2953
shall be increased by disallowing all amounts representing 2954
expenses, other than amounts described in division (A) (7) of 2955
this section, that the qualifying entity paid to or incurred 2956
with respect to direct or indirect transactions with one or more 2957
related members, excluding the cost of goods sold calculated in 2958
accordance with section 263A of the Internal Revenue Code and 2959
United States department of the treasury regulations issued 2960
thereunder. Nothing in division (A) (3) of this section shall be 2961
construed to limit solely to this chapter the application of 2962
section 263A of the Internal Revenue Code and United States 2963
department of the treasury regulations issued thereunder. 2964

(4) For the purposes of Chapters 5733. and 5747. of the 2965

Revised Code, the profit or net income of the qualifying entity 2966
shall be increased by disallowing all recognized losses, other 2967
than losses from sales of inventory the cost of which is 2968
calculated in accordance with section 263A of the Internal 2969
Revenue Code and United States department of the treasury 2970
regulations issued thereunder, with respect to all direct or 2971
indirect transactions with one or more related members. For the 2972
purposes of Chapters 5733. and 5747. of the Revised Code, losses 2973
from the sales of such inventory shall be allowed only to the 2974
extent calculated in accordance with section 482 of the Internal 2975
Revenue Code and United States department of the treasury 2976
regulations issued thereunder. Nothing in division (A) (4) of 2977
this section shall be construed to limit solely to this section 2978
the application of section 263A and section 482 of the Internal 2979
Revenue Code and United States department of the treasury 2980
regulations issued thereunder. 2981

(5) The sum shall be increased or decreased by an amount 2982
equal to the qualifying investor's or qualifying beneficiary's 2983
distributive or proportionate share of the amount that the 2984
qualifying entity would be required to add or deduct under 2985
divisions (A) (20) and (21) of section 5747.01 of the Revised 2986
Code if the qualifying entity were a taxpayer for the purposes 2987
of Chapter 5747. of the Revised Code. 2988

(6) The sum shall be computed without regard to section 2989
5733.051 or division (D) of section 5733.052 of the Revised 2990
Code. 2991

(7) For the purposes of Chapters 5733. and 5747. of the 2992
Revised Code, guaranteed payments or compensation paid to 2993
investors by a qualifying entity that is not subject to the tax 2994
imposed by section 5733.06 of the Revised Code shall be 2995

considered a distributive share of income of the qualifying 2996
entity. Division (A) (7) of this section applies only to such 2997
payments or such compensation paid to an investor who at any 2998
time during the qualifying entity's taxable year holds at least 2999
a twenty per cent direct or indirect interest in the profits or 3000
capital of the qualifying entity. For the purposes of this 3001
division, guaranteed payments and compensation shall be 3002
considered to be paid to an investor by a qualifying entity if 3003
the qualifying entity in which the investor holds at least a 3004
twenty per cent direct or indirect interest is a client employer 3005
of a professional employer organization or alternate employer 3006
organization, as those terms are defined in section 4125.01 or 3007
4133.01 of the Revised Code, as applicable, and the guaranteed 3008
payments or compensation are paid to the investor by that 3009
professional employer organization or alternate employer 3010
organization. 3011

(B) "Apportionment fraction" means: 3012

(1) With respect to a qualifying pass-through entity other 3013
than a financial institution, the fraction calculated pursuant 3014
to division (B) (2) of section 5733.05 of the Revised Code as if 3015
the qualifying pass-through entity were a corporation subject to 3016
the tax imposed by section 5733.06 of the Revised Code; 3017

(2) With respect to a qualifying pass-through entity that 3018
is a financial institution, the fraction calculated pursuant to 3019
division (C) of section 5733.056 of the Revised Code as if the 3020
qualifying pass-through entity were a financial institution 3021
subject to the tax imposed by section 5733.06 of the Revised 3022
Code. 3023

(3) With respect to a qualifying trust, the fraction 3024
calculated pursuant to division (B) (2) of section 5733.05 of the 3025

Revised Code as if the qualifying trust were a corporation 3026
subject to the tax imposed by section 5733.06 of the Revised 3027
Code, except that the property, payroll, and sales fractions 3028
shall be calculated by including in the numerator and 3029
denominator of the fractions only the property, payroll, and 3030
sales, respectively, directly related to the production of 3031
income or gain from acquisition, ownership, use, maintenance, 3032
management, or disposition of tangible personal property located 3033
in this state at any time during the qualifying trust's 3034
qualifying taxable year or of real property located in this 3035
state. 3036

(C) "Qualifying beneficiary" means any individual that, 3037
during the qualifying taxable year of a qualifying trust, is a 3038
beneficiary of that trust, but does not include an individual 3039
who is a resident taxpayer for the purposes of Chapter 5747. of 3040
the Revised Code for the entire qualifying taxable year of the 3041
qualifying trust. 3042

(D) "Fiscal year" means an accounting period ending on any 3043
day other than the thirty-first day of December. 3044

(E) "Individual" means a natural person. 3045

(F) "Month" means a calendar month. 3046

(G) "Partnership" has the same meaning as in section 3047
5747.01 of the Revised Code. 3048

(H) "Investor" means any person that, during any portion 3049
of a taxable year of a qualifying pass-through entity, is a 3050
partner, member, shareholder, or investor in that qualifying 3051
pass-through entity. 3052

(I) Except as otherwise provided in section 5733.402 or 3053
5747.401 of the Revised Code, "qualifying investor" means any 3054

investor except those described in divisions (I) (1) to (9) of 3055
this section. 3056

(1) An investor satisfying one of the descriptions under 3057
section 501(a) or (c) of the Internal Revenue Code, a 3058
partnership with equity securities registered with the United 3059
States securities and exchange commission under section 12 of 3060
the "Securities Exchange Act of 1934," as amended, or an 3061
investor described in division (F) of section 3334.01, or 3062
division (A) or (C) of section 5733.09 of the Revised Code for 3063
the entire qualifying taxable year of the qualifying pass- 3064
through entity. 3065

(2) An investor who is either an individual or an estate 3066
and is a resident taxpayer for the purposes of section 5747.01 3067
of the Revised Code for the entire qualifying taxable year of 3068
the qualifying pass-through entity. 3069

(3) An investor who is an individual for whom the 3070
qualifying pass-through entity makes a good faith and reasonable 3071
effort to comply fully and timely with the filing and payment 3072
requirements set forth in division (D) of section 5747.08 of the 3073
Revised Code and section 5747.09 of the Revised Code with 3074
respect to the individual's adjusted qualifying amount for the 3075
entire qualifying taxable year of the qualifying pass-through 3076
entity. 3077

(4) An investor that is another qualifying pass-through 3078
entity having only investors described in division (I) (1), (2), 3079
(3), or (6) of this section during the three-year period 3080
beginning twelve months prior to the first day of the qualifying 3081
taxable year of the qualifying pass-through entity. 3082

(5) An investor that is another pass-through entity having 3083

no investors other than individuals and estates during the 3084
qualifying taxable year of the qualifying pass-through entity in 3085
which it is an investor, and that makes a good faith and 3086
reasonable effort to comply fully and timely with the filing and 3087
payment requirements set forth in division (D) of section 3088
5747.08 of the Revised Code and section 5747.09 of the Revised 3089
Code with respect to investors that are not resident taxpayers 3090
of this state for the purposes of Chapter 5747. of the Revised 3091
Code for the entire qualifying taxable year of the qualifying 3092
pass-through entity in which it is an investor. 3093

(6) An investor that is a financial institution required 3094
to calculate the tax in accordance with division (E) of section 3095
5733.06 of the Revised Code on the first day of January of the 3096
calendar year immediately following the last day of the 3097
financial institution's calendar or fiscal year in which ends 3098
the taxpayer's taxable year. 3099

(7) An investor other than an individual that satisfies 3100
all the following: 3101

(a) The investor submits a written statement to the 3102
qualifying pass-through entity stating that the investor 3103
irrevocably agrees that the investor has nexus with this state 3104
under the Constitution of the United States and is subject to 3105
and liable for the tax calculated under division (A) or (B) of 3106
section 5733.06 of the Revised Code with respect to the 3107
investor's adjusted qualifying amount for the entire qualifying 3108
taxable year of the qualifying pass-through entity. The 3109
statement is subject to the penalties of perjury, shall be 3110
retained by the qualifying pass-through entity for no fewer than 3111
seven years, and shall be delivered to the tax commissioner upon 3112
request. 3113

(b) The investor makes a good faith and reasonable effort 3114
to comply timely and fully with all the reporting and payment 3115
requirements set forth in Chapter 5733. of the Revised Code with 3116
respect to the investor's adjusted qualifying amount for the 3117
entire qualifying taxable year of the qualifying pass-through 3118
entity. 3119

(c) Neither the investor nor the qualifying pass-through 3120
entity in which it is an investor, before, during, or after the 3121
qualifying pass-through entity's qualifying taxable year, 3122
carries out any transaction or transactions with one or more 3123
related members of the investor or the qualifying pass-through 3124
entity resulting in a reduction or deferral of tax imposed by 3125
Chapter 5733. of the Revised Code with respect to all or any 3126
portion of the investor's adjusted qualifying amount for the 3127
qualifying pass-through entity's taxable year, or that 3128
constitute a sham, lack economic reality, or are part of a 3129
series of transactions the form of which constitutes a step 3130
transaction or transactions or does not reflect the substance of 3131
those transactions. 3132

(8) Any other investor that the tax commissioner may 3133
designate by rule. The tax commissioner may adopt rules 3134
including a rule defining "qualifying investor" or "qualifying 3135
beneficiary" and governing the imposition of the withholding tax 3136
imposed by section 5747.41 of the Revised Code with respect to 3137
an individual who is a resident taxpayer for the purposes of 3138
Chapter 5747. of the Revised Code for only a portion of the 3139
qualifying taxable year of the qualifying entity. 3140

(9) An investor that is a trust or fund the beneficiaries 3141
of which, during the qualifying taxable year of the qualifying 3142
pass-through entity, are limited to the following: 3143

(a) A person that is or may be the beneficiary of a trust 3144
subject to Subchapter D of Chapter 1 of Subtitle A of the 3145
Internal Revenue Code. 3146

(b) A person that is or may be the beneficiary of or the 3147
recipient of payments from a trust or fund that is a nuclear 3148
decommissioning reserve fund, a designated settlement fund, or 3149
any other trust or fund established to resolve and satisfy 3150
claims that may otherwise be asserted by the beneficiary or a 3151
member of the beneficiary's family. Sections 267(c)(4), 468A(e), 3152
and 468B(d)(2) of the Internal Revenue Code apply to the 3153
determination of whether such a person satisfies division (I)(9) 3154
of this section. 3155

(c) A person who is or may be the beneficiary of a trust 3156
that, under its governing instrument, is not required to 3157
distribute all of its income currently. Division (I)(9)(c) of 3158
this section applies only if the trust, prior to the due date 3159
for filing the qualifying pass-through entity's return for taxes 3160
imposed by section 5733.41 and sections 5747.41 to 5747.453 of 3161
the Revised Code, irrevocably agrees in writing that for the 3162
taxable year during or for which the trust distributes any of 3163
its income to any of its beneficiaries, the trust is a 3164
qualifying trust and will pay the estimated tax, and will 3165
withhold and pay the withheld tax, as required under sections 3166
5747.40 to 5747.453 of the Revised Code. 3167

For the purposes of division (I)(9) of this section, a 3168
trust or fund shall be considered to have a beneficiary other 3169
than persons described under divisions (I)(9)(a) to (c) of this 3170
section if a beneficiary would not qualify under those divisions 3171
under the doctrines of "economic reality," "sham transaction," 3172
"step doctrine," or "substance over form." A trust or fund 3173

described in division (I) (9) of this section bears the burden of 3174
establishing by a preponderance of the evidence that any 3175
transaction giving rise to the tax benefits provided under 3176
division (I) (9) of this section does not have as a principal 3177
purpose a claim of those tax benefits. Nothing in this section 3178
shall be construed to limit solely to this section the 3179
application of the doctrines referred to in this paragraph. 3180

(J) "Qualifying net gain" means any recognized net gain 3181
with respect to the acquisition, ownership, use, maintenance, 3182
management, or disposition of tangible personal property located 3183
in this state at any time during a trust's qualifying taxable 3184
year or real property located in this state. 3185

(K) "Qualifying net income" means any recognized income, 3186
net of related deductible expenses, other than distributions 3187
deductions with respect to the acquisition, ownership, use, 3188
maintenance, management, or disposition of tangible personal 3189
property located in this state at any time during the trust's 3190
qualifying taxable year or real property located in this state. 3191

(L) "Qualifying entity" means a qualifying pass-through 3192
entity or a qualifying trust. 3193

(M) "Qualifying trust" means a trust subject to subchapter 3194
J of the Internal Revenue Code that, during any portion of the 3195
trust's qualifying taxable year, has income or gain from the 3196
acquisition, management, ownership, use, or disposition of 3197
tangible personal property located in this state at any time 3198
during the trust's qualifying taxable year or real property 3199
located in this state. "Qualifying trust" does not include a 3200
person described in section 501(c) of the Internal Revenue Code 3201
or a person described in division (C) of section 5733.09 of the 3202
Revised Code. 3203

(N) "Qualifying pass-through entity" means a pass-through entity as defined in section 5733.04 of the Revised Code, excluding: a person described in section 501(c) of the Internal Revenue Code; a partnership with equity securities registered with the United States securities and exchange commission under section 12 of the Securities Exchange Act of 1934, as amended; or a person described in division (C) of section 5733.09 of the Revised Code.

(O) "Quarter" means the first three months, the second three months, the third three months, or the last three months of a qualifying entity's qualifying taxable year.

(P) "Related member" has the same meaning as in division (A) (6) of section 5733.042 of the Revised Code without regard to division (B) of that section. However, for the purposes of divisions (A) (3) and (4) of this section only, "related member" has the same meaning as in division (A) (6) of section 5733.042 of the Revised Code without regard to division (B) of that section, but shall be applied by substituting "forty per cent" for "twenty per cent" wherever "twenty per cent" appears in division (A) of that section.

(Q) "Return" or "report" means the notifications and reports required to be filed pursuant to sections 5747.42 to 5747.45 of the Revised Code for the purpose of reporting the tax imposed under section 5733.41 or 5747.41 of the Revised Code, and included declarations of estimated tax when so required.

(R) "Qualifying taxable year" means the calendar year or the qualifying entity's fiscal year ending during the calendar year, or fractional part thereof, for which the adjusted qualifying amount is calculated pursuant to sections 5733.40 and 5733.41 or sections 5747.40 to 5747.453 of the Revised Code.

(S) "Distributive share" includes the sum of the income, 3234
gain, expense, or loss of a disregarded entity or qualified 3235
subchapter S subsidiary. 3236

Sec. 5747.07. (A) As used in this section: 3237

(1) "Partial weekly withholding period" means a period 3238
during which an employer directly, indirectly, or constructively 3239
pays compensation to, or credits compensation to the benefit of, 3240
an employee, and that consists of a consecutive Saturday, 3241
Sunday, Monday, and Tuesday or a consecutive Wednesday, 3242
Thursday, and Friday. There are two partial weekly withholding 3243
periods each week, except that a partial weekly withholding 3244
period cannot extend from one calendar year into the next 3245
calendar year; if the first day of January falls on a day other 3246
than Saturday or Wednesday, the partial weekly withholding 3247
period ends on the thirty-first day of December and there are 3248
three partial weekly withholding periods during that week. 3249

(2) "Undeposited taxes" means the taxes an employer is 3250
required to deduct and withhold from an employee's compensation 3251
pursuant to section 5747.06 of the Revised Code that have not 3252
been remitted to the tax commissioner pursuant to this section 3253
or to the treasurer of state pursuant to section 5747.072 of the 3254
Revised Code. 3255

(3) A "week" begins on Saturday and concludes at the end 3256
of the following Friday. 3257

(4) "~~Client employer," "professional "~~Professional 3258
employer organization," "professional employer organization 3259
agreement," and "professional employer organization reporting 3260
entity" have the same meanings as in section 4125.01 of the 3261
Revised Code. 3262

(5) "Alternate employer organization" and "alternate employer organization agreement" have the same meanings as in section 4133.01 of the Revised Code. 3263
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(6) "Client employer" has the same meaning as in section 4125.01 of the Revised Code in the context of a professional employer organization or a professional employer organization reporting entity, or the same meaning as in section 4133.01 of the Revised Code in the context of an alternate employer organization. 3266
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(B) Except as provided in divisions (C) and (D) of this section and in division (A) of section 5747.072 of the Revised Code, every employer required to deduct and withhold any amount under section 5747.06 of the Revised Code shall file a return and shall pay the amount required by law as follows: 3272
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(1) An employer who accumulates or is required to accumulate undeposited taxes of one hundred thousand dollars or more during a partial weekly withholding period shall make the payment of the undeposited taxes by the close of the first banking day after the day on which the accumulation reaches one hundred thousand dollars. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code. 3277
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(2) (a) Except as required by division (B) (1) of this section, an employer described in division (B) (2) (b) of this section shall make the payment of undeposited taxes within three banking days after the close of a partial weekly withholding period during which the employer was required to deduct and withhold any amount under this chapter. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised 3285
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Code.	3293
(b) For amounts required to be deducted and withheld	3294
during 1994, an employer described in division (B) (2) (b) of this	3295
section is one whose actual or required payments under this	3296
section exceeded one hundred eighty thousand dollars during the	3297
twelve-month period ending June 30, 1993. For amounts required	3298
to be deducted and withheld during 1995 and each year	3299
thereafter, an employer described in division (B) (2) (b) of this	3300
section is one whose actual or required payments under this	3301
section were at least eighty-four thousand dollars during the	3302
twelve-month period ending on the thirtieth day of June of the	3303
preceding calendar year.	3304
(3) Except as required by divisions (B) (1) and (2) of this	3305
section, if an employer's actual or required payments were more	3306
than two thousand dollars during the twelve-month period ending	3307
on the thirtieth day of June of the preceding calendar year, the	3308
employer shall make the payment of undeposited taxes for each	3309
month during which they were required to be withheld no later	3310
than fifteen days following the last day of that month. The	3311
employer shall file the return prescribed by the tax	3312
commissioner with the payment.	3313
(4) Except as required by divisions (B) (1), (2), and (3)	3314
of this section, an employer shall make the payment of	3315
undeposited taxes for each calendar quarter during which they	3316
were required to be withheld no later than the last day of the	3317
month following the last day of March, June, September, and	3318
December each year. The employer shall file the return	3319
prescribed by the tax commissioner with the payment.	3320
(C) The return and payment schedules prescribed by	3321
divisions (B) (1) and (2) of this section do not apply to the	3322

return and payment of undeposited school district income taxes 3323
arising from taxes levied pursuant to Chapter 5748. of the 3324
Revised Code. Undeposited school district income taxes shall be 3325
returned and paid pursuant to divisions (B) (3) and (4) of this 3326
section, as applicable. 3327

(D) (1) The requirements of division (B) of this section 3328
are met if the amount paid is not less than ninety-five per cent 3329
of the actual tax withheld or required to be withheld for the 3330
prior quarterly, monthly, or partial weekly withholding period, 3331
and the underpayment is not due to willful neglect. Any 3332
underpayment of withheld tax shall be paid within thirty days of 3333
the date on which the withheld tax was due without regard to 3334
division (D) (1) of this section. An employer described in 3335
division (B) (1) or (2) of this section shall make the payment by 3336
electronic funds transfer under section 5747.072 of the Revised 3337
Code. 3338

(2) If the tax commissioner believes that quarterly or 3339
monthly payments would result in a delay that might jeopardize 3340
the remittance of withholding payments, the commissioner may 3341
order that the payments be made weekly, or more frequently if 3342
necessary, and the payments shall be made no later than three 3343
banking days following the close of the period for which the 3344
jeopardy order is made. An order requiring weekly or more 3345
frequent payments shall be delivered to the employer personally 3346
or by certified mail and remains in effect until the 3347
commissioner notifies the employer to the contrary. 3348

(3) If compelling circumstances exist concerning the 3349
remittance of undeposited taxes, the commissioner may order the 3350
employer to make payments under any of the payment schedules 3351
under division (B) of this section. The order shall be delivered 3352

to the employer personally or by certified mail and shall remain 3353
in effect until the commissioner notifies the employer to the 3354
contrary. For purposes of division (D) (3) of this section, 3355
"compelling circumstances" exist if either or both of the 3356
following are true: 3357

(a) Based upon annualization of payments made or required 3358
to be made during the preceding calendar year and during the 3359
current calendar year, the employer would be required for the 3360
next calendar year to make payments under division (B) (2) of 3361
this section. 3362

(b) Based upon annualization of payments made or required 3363
to be made during the current calendar year, the employer would 3364
be required for the next calendar year to make payments under 3365
division (B) (2) of this section. 3366

(E) (1) An employer described in division (B) (1) or (2) of 3367
this section shall file, not later than the last day of the 3368
month following the end of each calendar quarter, a return 3369
covering, but not limited to, both the actual amount deducted 3370
and withheld and the amount required to be deducted and withheld 3371
for the tax imposed under section 5747.02 of the Revised Code 3372
during each partial weekly withholding period or portion of a 3373
partial weekly withholding period during that quarter. The 3374
employer shall file the quarterly return even if the aggregate 3375
amount required to be deducted and withheld for the quarter is 3376
zero dollars. At the time of filing the return, the employer 3377
shall pay any amounts of undeposited taxes for the quarter, 3378
whether actually deducted and withheld or required to be 3379
deducted and withheld, that have not been previously paid. If 3380
required under division (I) of this section, the payment shall 3381
be made by electronic funds transfer. The tax commissioner shall 3382

prescribe the form and other requirements of the quarterly 3383
return. 3384

(2) In addition to other returns required to be filed and 3385
payments required to be made under this section, every employer 3386
required to deduct and withhold taxes shall file, not later than 3387
the thirty-first day of January of each year, an annual return 3388
covering, but not limited to, both the aggregate amount deducted 3389
and withheld and the aggregate amount required to be deducted 3390
and withheld during the entire preceding year for the tax 3391
imposed under section 5747.02 of the Revised Code and for each 3392
tax imposed under Chapter 5748. of the Revised Code. At the time 3393
of filing that return, the employer shall pay over any amounts 3394
of undeposited taxes for the preceding year, whether actually 3395
deducted and withheld or required to be deducted and withheld, 3396
that have not been previously paid. The employer shall make the 3397
annual report, to each employee and to the tax commissioner, of 3398
the compensation paid and each tax withheld, as the commissioner 3399
by rule may prescribe. 3400

Each employer required to deduct and withhold any tax is 3401
liable for the payment of that amount required to be deducted 3402
and withheld, whether or not the tax has in fact been withheld, 3403
unless the failure to withhold was based upon the employer's 3404
good faith in reliance upon the statement of the employee as to 3405
liability, and the amount shall be deemed to be a special fund 3406
in trust for the general revenue fund. 3407

(F) Each employer shall file with the employer's annual 3408
return the following items of information on employees for whom 3409
withholding is required under section 5747.06 of the Revised 3410
Code: 3411

(1) The full name of each employee, the employee's 3412

address, the employee's school district of residence, and in the 3413
case of a nonresident employee, the employee's principal county 3414
of employment; 3415

(2) The social security number of each employee; 3416

(3) The total amount of compensation paid before any 3417
deductions to each employee for the period for which the annual 3418
return is made; 3419

(4) The amount of the tax imposed by section 5747.02 of 3420
the Revised Code and the amount of each tax imposed under 3421
Chapter 5748. of the Revised Code withheld from the compensation 3422
of the employee for the period for which the annual return is 3423
made. The commissioner may extend upon good cause the period for 3424
filing any notice or return required to be filed under this 3425
section and may adopt rules relating to extensions of time. If 3426
the extension results in an extension of time for the payment of 3427
the amounts withheld with respect to which the return is filed, 3428
the employer shall pay, at the time the amount withheld is paid, 3429
an amount of interest computed at the rate per annum prescribed 3430
by section 5703.47 of the Revised Code on that amount withheld, 3431
from the day that amount was originally required to be paid to 3432
the day of actual payment or to the day an assessment is issued 3433
under section 5747.13 of the Revised Code, whichever occurs 3434
first. 3435

(5) In addition to all other interest charges and 3436
penalties imposed, all amounts of taxes withheld or required to 3437
be withheld and remaining unpaid after the day the amounts are 3438
required to be paid shall bear interest from the date prescribed 3439
for payment at the rate per annum prescribed by section 5703.47 3440
of the Revised Code on the amount unpaid, in addition to the 3441
amount withheld, until paid or until the day an assessment is 3442

issued under section 5747.13 of the Revised Code, whichever 3443
occurs first. 3444

(G) An employee of a corporation, limited liability 3445
company, or business trust having control or supervision of or 3446
charged with the responsibility of filing the report and making 3447
payment, or an officer, member, manager, or trustee of a 3448
corporation, limited liability company, or business trust who is 3449
responsible for the execution of the corporation's, limited 3450
liability company's, or business trust's fiscal 3451
responsibilities, shall be personally liable for failure to file 3452
the report or pay the tax due as required by this section. The 3453
dissolution, termination, or bankruptcy of a corporation, 3454
limited liability company, or business trust does not discharge 3455
a responsible officer's, member's, manager's, employee's, or 3456
trustee's liability for a failure of the corporation, limited 3457
liability company, or business trust to file returns or pay tax 3458
due. 3459

(H) If an employer required to deduct and withhold income 3460
tax from compensation and to pay that tax to the state under 3461
sections 5747.06 and 5747.07 of the Revised Code sells the 3462
employer's business or stock of merchandise or quits the 3463
employer's business, the taxes required to be deducted and 3464
withheld and paid to the state pursuant to those sections prior 3465
to that time, together with any interest and penalties imposed 3466
on those taxes, become due and payable immediately, and that 3467
person shall make a final return within fifteen days after the 3468
date of selling or quitting business. The employer's successor 3469
shall withhold a sufficient amount of the purchase money to 3470
cover the amount of the taxes, interest, and penalties due and 3471
unpaid, until the former owner produces a receipt from the tax 3472
commissioner showing that the taxes, interest, and penalties 3473

have been paid or a certificate indicating that no such taxes 3474
are due. If the purchaser of the business or stock of 3475
merchandise fails to withhold purchase money, the purchaser 3476
shall be personally liable for the payment of the taxes, 3477
interest, and penalties accrued and unpaid during the operation 3478
of the business by the former owner. If the amount of taxes, 3479
interest, and penalties outstanding at the time of the purchase 3480
exceeds the total purchase money, the tax commissioner in the 3481
commissioner's discretion may adjust the liability of the seller 3482
or the responsibility of the purchaser to pay that liability to 3483
maximize the collection of withholding tax revenue. 3484

(I) (1) An employer described in division (I) (2) of this 3485
section shall make all payments required by this section for the 3486
year by electronic funds transfer under section 5747.072 of the 3487
Revised Code. 3488

(2) (a) For 1994, an employer described in division (I) (2) 3489
of this section is one whose actual or required payments under 3490
this section exceeded five hundred thousand dollars during the 3491
twelve-month period ending June 30, 1993. 3492

(b) For 1995, an employer described in division (I) (2) of 3493
this section is one whose actual or required payments under this 3494
section exceeded five hundred thousand dollars during the 3495
twelve-month period ending June 30, 1994. 3496

(c) For 1996, an employer described in division (I) (2) of 3497
this section is one whose actual or required payments under this 3498
section exceeded three hundred thousand dollars during the 3499
twelve-month period ending June 30, 1995. 3500

(d) For 1997 through 2000, an employer described in 3501
division (I) (2) of this section is one whose actual or required 3502

payments under this section exceeded one hundred eighty thousand 3503
dollars during the twelve-month period ending on the thirtieth 3504
day of June of the preceding calendar year. 3505

(e) For 2001 and thereafter, an employer described in 3506
division (I) (2) of this section is one whose actual or required 3507
payments under this section exceeded eighty-four thousand 3508
dollars during the twelve-month period ending on the thirtieth 3509
day of June of the preceding calendar year. 3510

(J) (1) Every professional employer organization ~~and every,~~ 3511
professional employer organization reporting entity, and 3512
alternate employer organization shall file a report with the tax 3513
commissioner within thirty days after commencing business in 3514
this state or within thirty days after ~~the effective date of~~ 3515
~~this amendment~~ March 22, 2013, whichever is later, that includes 3516
all of the following information: 3517

(a) The name, address, number the employer receives from 3518
the secretary of state to do business in this state, if 3519
applicable, and federal employer identification number of each 3520
client employer of the ~~professional employer organization or~~ 3521
~~professional employer organization reporting entity;~~ 3522

(b) The date that each client employer became a client of 3523
the ~~professional employer organization or professional employer~~ 3524
~~organization reporting entity;~~ 3525

(c) The names and mailing addresses of the chief executive 3526
officer and the chief financial officer of each client employer 3527
for taxation of the client employer. 3528

(2) Beginning with the calendar quarter ending after a 3529
professional employer organization ~~or,~~ professional employer 3530
organization reporting entity, or alternate employer 3531

organization files the report required under division (J) (1) of 3532
this section, and every calendar quarter thereafter, the 3533
~~professional employer organization or the professional employer~~ 3534
~~organization reporting entity~~ shall file an updated report with 3535
the tax commissioner. The ~~professional employer organization or~~ 3536
~~professional employer organization reporting entity~~ shall file 3537
the updated report not later than the last day of the month 3538
following the end of the calendar quarter and shall include all 3539
of the following information in the report: 3540

(a) If an entity became a client employer of the 3541
professional employer organization ~~or, a professional employer~~ 3542
organization reporting entity, or alternate employer 3543
organization at any time during the calendar quarter, all of the 3544
information required under division (J) (1) of this section for 3545
each new client employer; 3546

(b) If an entity terminated the professional employer 3547
organization agreement or the alternate employer organization 3548
agreement between the entity and the professional employer 3549
organization ~~or, a professional employer organization reporting~~ 3550
entity ~~and the entity, or alternate employer organization, as~~ 3551
applicable, at any time during the calendar quarter, the 3552
information described in division (J) (1) (a) of this section for 3553
that entity, the date during the calendar quarter that the 3554
entity ceased being a client of the ~~professional employer~~ 3555
organization or ~~professional employer organization reporting~~ 3556
entity, if applicable, or the date the entity ceased business 3557
operations in this state, if applicable; 3558

(c) If the name or mailing address of the chief executive 3559
officer or the chief financial officer of a client employer has 3560
changed since the professional employer organization ~~or, a~~ 3561

professional employer organization reporting entity, or 3562
alternate employer organization previously submitted a report 3563
under division (J) (1) or (2) of this section, the updated name 3564
or mailing address, or both, of the chief executive officer or 3565
the chief financial officer, as applicable; 3566

(d) If none of the events described in divisions (J) (2) (a) 3567
to (c) of this section occurred during the calendar quarter, a 3568
statement of that fact. 3569

Sec. 5751.01. As used in this chapter: 3570

(A) "Person" means, but is not limited to, individuals, 3571
combinations of individuals of any form, receivers, assignees, 3572
trustees in bankruptcy, firms, companies, joint-stock companies, 3573
business trusts, estates, partnerships, limited liability 3574
partnerships, limited liability companies, associations, joint 3575
ventures, clubs, societies, for-profit corporations, S 3576
corporations, qualified subchapter S subsidiaries, qualified 3577
subchapter S trusts, trusts, entities that are disregarded for 3578
federal income tax purposes, and any other entities. 3579

(B) "Consolidated elected taxpayer" means a group of two 3580
or more persons treated as a single taxpayer for purposes of 3581
this chapter as the result of an election made under section 3582
5751.011 of the Revised Code. 3583

(C) "Combined taxpayer" means a group of two or more 3584
persons treated as a single taxpayer for purposes of this 3585
chapter under section 5751.012 of the Revised Code. 3586

(D) "Taxpayer" means any person, or any group of persons 3587
in the case of a consolidated elected taxpayer or combined 3588
taxpayer treated as one taxpayer, required to register or pay 3589
tax under this chapter. "Taxpayer" does not include excluded 3590

persons. 3591

(E) "Excluded person" means any of the following: 3592

(1) Any person with not more than one hundred fifty 3593
thousand dollars of taxable gross receipts during the calendar 3594
year. Division (E) (1) of this section does not apply to a person 3595
that is a member of a consolidated elected taxpayer; 3596

(2) A public utility that paid the excise tax imposed by 3597
section 5727.24 or 5727.30 of the Revised Code based on one or 3598
more measurement periods that include the entire tax period 3599
under this chapter, except that a public utility that is a 3600
combined company is a taxpayer with regard to the following 3601
gross receipts: 3602

(a) Taxable gross receipts directly attributed to a public 3603
utility activity, but not directly attributed to an activity 3604
that is subject to the excise tax imposed by section 5727.24 or 3605
5727.30 of the Revised Code; 3606

(b) Taxable gross receipts that cannot be directly 3607
attributed to any activity, multiplied by a fraction whose 3608
numerator is the taxable gross receipts described in division 3609
(E) (2) (a) of this section and whose denominator is the total 3610
taxable gross receipts that can be directly attributed to any 3611
activity; 3612

(c) Except for any differences resulting from the use of 3613
an accrual basis method of accounting for purposes of 3614
determining gross receipts under this chapter and the use of the 3615
cash basis method of accounting for purposes of determining 3616
gross receipts under section 5727.24 of the Revised Code, the 3617
gross receipts directly attributed to the activity of a natural 3618
gas company shall be determined in a manner consistent with 3619

division (D) of section 5727.03 of the Revised Code. 3620

As used in division (E) (2) of this section, "combined 3621
company" and "public utility" have the same meanings as in 3622
section 5727.01 of the Revised Code. 3623

(3) A financial institution, as defined in section 5726.01 3624
of the Revised Code, that paid the tax imposed by section 3625
5726.02 of the Revised Code based on one or more taxable years 3626
that include the entire tax period under this chapter; 3627

(4) A person directly or indirectly owned by one or more 3628
financial institutions, as defined in section 5726.01 of the 3629
Revised Code, that paid the tax imposed by section 5726.02 of 3630
the Revised Code based on one or more taxable years that include 3631
the entire tax period under this chapter. 3632

For the purposes of division (E) (4) of this section, a 3633
person owns another person under the following circumstances: 3634

(a) In the case of corporations issuing capital stock, one 3635
corporation owns another corporation if it owns fifty per cent 3636
or more of the other corporation's capital stock with current 3637
voting rights; 3638

(b) In the case of a limited liability company, one person 3639
owns the company if that person's membership interest, as 3640
defined in section 1705.01 of the Revised Code, is fifty per 3641
cent or more of the combined membership interests of all persons 3642
owning such interests in the company; 3643

(c) In the case of a partnership, trust, or other 3644
unincorporated business organization other than a limited 3645
liability company, one person owns the organization if, under 3646
the articles of organization or other instrument governing the 3647
affairs of the organization, that person has a beneficial 3648

interest in the organization's profits, surpluses, losses, or 3649
distributions of fifty per cent or more of the combined 3650
beneficial interests of all persons having such an interest in 3651
the organization. 3652

(5) A domestic insurance company or foreign insurance 3653
company, as defined in section 5725.01 of the Revised Code, that 3654
paid the insurance company premiums tax imposed by section 3655
5725.18 or Chapter 5729. of the Revised Code, or an unauthorized 3656
insurance company whose gross premiums are subject to tax under 3657
section 3905.36 of the Revised Code based on one or more 3658
measurement periods that include the entire tax period under 3659
this chapter; 3660

(6) A person that solely facilitates or services one or 3661
more securitizations of phase-in-recovery property pursuant to a 3662
final financing order as those terms are defined in section 3663
4928.23 of the Revised Code. For purposes of this division, 3664
"securitization" means transferring one or more assets to one or 3665
more persons and then issuing securities backed by the right to 3666
receive payment from the asset or assets so transferred. 3667

(7) Except as otherwise provided in this division, a pre- 3668
income tax trust as defined in division (FF) (4) of section 3669
5747.01 of the Revised Code and any pass-through entity of which 3670
such pre-income tax trust owns or controls, directly, 3671
indirectly, or constructively through related interests, more 3672
than five per cent of the ownership or equity interests. If the 3673
pre-income tax trust has made a qualifying pre-income tax trust 3674
election under division (FF) (3) of section 5747.01 of the 3675
Revised Code, then the trust and the pass-through entities of 3676
which it owns or controls, directly, indirectly, or 3677
constructively through related interests, more than five per 3678

cent of the ownership or equity interests, shall not be excluded 3679
persons for purposes of the tax imposed under section 5751.02 of 3680
the Revised Code. 3681

(8) Nonprofit organizations or the state and its agencies, 3682
instrumentalities, or political subdivisions. 3683

(F) Except as otherwise provided in divisions (F) (2), (3), 3684
and (4) of this section, "gross receipts" means the total amount 3685
realized by a person, without deduction for the cost of goods 3686
sold or other expenses incurred, that contributes to the 3687
production of gross income of the person, including the fair 3688
market value of any property and any services received, and any 3689
debt transferred or forgiven as consideration. 3690

(1) The following are examples of gross receipts: 3691

(a) Amounts realized from the sale, exchange, or other 3692
disposition of the taxpayer's property to or with another; 3693

(b) Amounts realized from the taxpayer's performance of 3694
services for another; 3695

(c) Amounts realized from another's use or possession of 3696
the taxpayer's property or capital; 3697

(d) Any combination of the foregoing amounts. 3698

(2) "Gross receipts" excludes the following amounts: 3699

(a) Interest income except interest on credit sales; 3700

(b) Dividends and distributions from corporations, and 3701
distributive or proportionate shares of receipts and income from 3702
a pass-through entity as defined under section 5733.04 of the 3703
Revised Code; 3704

(c) Receipts from the sale, exchange, or other disposition 3705

of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F) (2) (c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F) (2) (c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.

(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;

(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;

(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;

(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee,

former employee, or the employee's legal successor for services 3736
rendered to or for an employer, including reimbursements 3737
received by or for an individual for medical or education 3738
expenses, health insurance premiums, or employee expenses, or on 3739
account of a dependent care spending account, legal services 3740
plan, any cafeteria plan described in section 125 of the 3741
Internal Revenue Code, or any similar employee reimbursement; 3742

(h) Proceeds received from the issuance of the taxpayer's 3743
own stock, options, warrants, puts, or calls, or from the sale 3744
of the taxpayer's treasury stock; 3745

(i) Proceeds received on the account of payments from 3746
insurance policies, except those proceeds received for the loss 3747
of business revenue; 3748

(j) Gifts or charitable contributions received; membership 3749
dues received by trade, professional, homeowners', or 3750
condominium associations; and payments received for educational 3751
courses, meetings, meals, or similar payments to a trade, 3752
professional, or other similar association; and fundraising 3753
receipts received by any person when any excess receipts are 3754
donated or used exclusively for charitable purposes; 3755

(k) Damages received as the result of litigation in excess 3756
of amounts that, if received without litigation, would be gross 3757
receipts; 3758

(l) Property, money, and other amounts received or 3759
acquired by an agent on behalf of another in excess of the 3760
agent's commission, fee, or other remuneration; 3761

(m) Tax refunds, other tax benefit recoveries, and 3762
reimbursements for the tax imposed under this chapter made by 3763
entities that are part of the same combined taxpayer or 3764

consolidated elected taxpayer group, and reimbursements made by 3765
entities that are not members of a combined taxpayer or 3766
consolidated elected taxpayer group that are required to be made 3767
for economic parity among multiple owners of an entity whose tax 3768
obligation under this chapter is required to be reported and 3769
paid entirely by one owner, pursuant to the requirements of 3770
sections 5751.011 and 5751.012 of the Revised Code; 3771

(n) Pension reversions; 3772

(o) Contributions to capital; 3773

(p) Sales or use taxes collected as a vendor or an out-of- 3774
state seller on behalf of the taxing jurisdiction from a 3775
consumer or other taxes the taxpayer is required by law to 3776
collect directly from a purchaser and remit to a local, state, 3777
or federal tax authority; 3778

(q) In the case of receipts from the sale of cigarettes or 3779
tobacco products by a wholesale dealer, retail dealer, 3780
distributor, manufacturer, or seller, all as defined in section 3781
5743.01 of the Revised Code, an amount equal to the federal and 3782
state excise taxes paid by any person on or for such cigarettes 3783
or tobacco products under subtitle E of the Internal Revenue 3784
Code or Chapter 5743. of the Revised Code; 3785

(r) In the case of receipts from the sale, transfer, 3786
exchange, or other disposition of motor fuel as "motor fuel" is 3787
defined in section 5736.01 of the Revised Code, an amount equal 3788
to the value of the motor fuel, including federal and state 3789
motor fuel excise taxes and receipts from billing or invoicing 3790
the tax imposed under section 5736.02 of the Revised Code to 3791
another person; 3792

(s) In the case of receipts from the sale of beer or 3793

intoxicating liquor, as defined in section 4301.01 of the 3794
Revised Code, by a person holding a permit issued under Chapter 3795
4301. or 4303. of the Revised Code, an amount equal to federal 3796
and state excise taxes paid by any person on or for such beer or 3797
intoxicating liquor under subtitle E of the Internal Revenue 3798
Code or Chapter 4301. or 4305. of the Revised Code; 3799

(t) Receipts realized by a new motor vehicle dealer or 3800
used motor vehicle dealer, as defined in section 4517.01 of the 3801
Revised Code, from the sale or other transfer of a motor 3802
vehicle, as defined in that section, to another motor vehicle 3803
dealer for the purpose of resale by the transferee motor vehicle 3804
dealer, but only if the sale or other transfer was based upon 3805
the transferee's need to meet a specific customer's preference 3806
for a motor vehicle; 3807

(u) Receipts from a financial institution described in 3808
division (E) (3) of this section for services provided to the 3809
financial institution in connection with the issuance, 3810
processing, servicing, and management of loans or credit 3811
accounts, if such financial institution and the recipient of 3812
such receipts have at least fifty per cent of their ownership 3813
interests owned or controlled, directly or constructively 3814
through related interests, by common owners; 3815

(v) Receipts realized from administering anti-neoplastic 3816
drugs and other cancer chemotherapy, biologicals, therapeutic 3817
agents, and supportive drugs in a physician's office to patients 3818
with cancer; 3819

(w) Funds received or used by a mortgage broker that is 3820
not a dealer in intangibles, other than fees or other 3821
consideration, pursuant to a table-funding mortgage loan or 3822
warehouse-lending mortgage loan. Terms used in division (F) (2) 3823

(w) of this section have the same meanings as in section 1322.01 3824
of the Revised Code, except "mortgage broker" means a person 3825
assisting a buyer in obtaining a mortgage loan for a fee or 3826
other consideration paid by the buyer or a lender, or a person 3827
engaged in table-funding or warehouse-lending mortgage loans 3828
that are first lien mortgage loans. 3829

(x) Property, money, and other amounts received by a 3830
professional employer organization, as defined in section 3831
4125.01 of the Revised Code, or an alternate employer 3832
organization, as defined in section 4133.01 of the Revised Code, 3833
from a client employer, as defined in ~~that section~~ either of 3834
those sections as applicable, in excess of the administrative 3835
fee charged by the professional employer organization or the 3836
alternate employer organization to the client employer; 3837

(y) In the case of amounts retained as commissions by a 3838
permit holder under Chapter 3769. of the Revised Code, an amount 3839
equal to the amounts specified under that chapter that must be 3840
paid to or collected by the tax commissioner as a tax and the 3841
amounts specified under that chapter to be used as purse money; 3842

(z) Qualifying distribution center receipts. 3843

(i) For purposes of division (F) (2) (z) of this section: 3844

(I) "Qualifying distribution center receipts" means 3845
receipts of a supplier from qualified property that is delivered 3846
to a qualified distribution center, multiplied by a quantity 3847
that equals one minus the Ohio delivery percentage. If the 3848
qualified distribution center is a refining facility, "supplier" 3849
includes all dealers, brokers, processors, sellers, vendors, 3850
cosigners, and distributors of qualified property. 3851

(II) "Qualified property" means tangible personal property 3852

delivered to a qualified distribution center that is shipped to 3853
that qualified distribution center solely for further shipping 3854
by the qualified distribution center to another location in this 3855
state or elsewhere or, in the case of gold, silver, platinum, or 3856
palladium delivered to a refining facility solely for refining 3857
to a grade and fineness acceptable for delivery to a registered 3858
commodities exchange. "Further shipping" includes storing and 3859
repackaging property into smaller or larger bundles, so long as 3860
the property is not subject to further manufacturing or 3861
processing. "Refining" is limited to extracting impurities from 3862
gold, silver, platinum, or palladium through smelting or some 3863
other process at a refining facility. 3864

(III) "Qualified distribution center" means a warehouse, a 3865
facility similar to a warehouse, or a refining facility in this 3866
state that, for the qualifying year, is operated by a person 3867
that is not part of a combined taxpayer group and that has a 3868
qualifying certificate. All warehouses or facilities similar to 3869
warehouses that are operated by persons in the same taxpayer 3870
group and that are located within one mile of each other shall 3871
be treated as one qualified distribution center. All refining 3872
facilities that are operated by persons in the same taxpayer 3873
group and that are located in the same or adjacent counties may 3874
be treated as one qualified distribution center. 3875

(IV) "Qualifying year" means the calendar year to which 3876
the qualifying certificate applies. 3877

(V) "Qualifying period" means the period of the first day 3878
of July of the second year preceding the qualifying year through 3879
the thirtieth day of June of the year preceding the qualifying 3880
year. 3881

(VI) "Qualifying certificate" means the certificate issued 3882

by the tax commissioner after the operator of a distribution 3883
center files an annual application with the commissioner. The 3884
application and annual fee shall be filed and paid for each 3885
qualified distribution center on or before the first day of 3886
September before the qualifying year or within forty-five days 3887
after the distribution center opens, whichever is later. 3888

The applicant must substantiate to the commissioner's 3889
satisfaction that, for the qualifying period, all persons 3890
operating the distribution center have more than fifty per cent 3891
of the cost of the qualified property shipped to a location such 3892
that it would be situated outside this state under the provisions 3893
of division (E) of section 5751.033 of the Revised Code. The 3894
applicant must also substantiate that the distribution center 3895
cumulatively had costs from its suppliers equal to or exceeding 3896
five hundred million dollars during the qualifying period. (For 3897
purposes of division (F) (2) (z) (i) (VI) of this section, 3898
"supplier" excludes any person that is part of the consolidated 3899
elected taxpayer group, if applicable, of the operator of the 3900
qualified distribution center.) The commissioner may require the 3901
applicant to have an independent certified public accountant 3902
certify that the calculation of the minimum thresholds required 3903
for a qualified distribution center by the operator of a 3904
distribution center has been made in accordance with generally 3905
accepted accounting principles. The commissioner shall issue or 3906
deny the issuance of a certificate within sixty days after the 3907
receipt of the application. A denial is subject to appeal under 3908
section 5717.02 of the Revised Code. If the operator files a 3909
timely appeal under section 5717.02 of the Revised Code, the 3910
operator shall be granted a qualifying certificate effective for 3911
the remainder of the qualifying year or until the appeal is 3912
finalized, whichever is earlier. If the operator does not 3913

prevail in the appeal, the operator shall pay the ineligible operator's supplier tax liability. 3914
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(VII) "Ohio delivery percentage" means the proportion of the total property delivered to a destination inside Ohio from the qualified distribution center during the qualifying period compared with total deliveries from such distribution center everywhere during the qualifying period. 3916
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(VIII) "Refining facility" means one or more buildings located in a county in the Appalachian region of this state as defined by section 107.21 of the Revised Code and utilized for refining or smelting gold, silver, platinum, or palladium to a grade and fineness acceptable for delivery to a registered commodities exchange. 3921
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(IX) "Registered commodities exchange" means a board of trade, such as New York mercantile exchange, inc. or commodity exchange, inc., designated as a contract market by the commodity futures trading commission under the "Commodity Exchange Act," 7 U.S.C. 1 et seq., as amended. 3927
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(X) "Ineligible operator's supplier tax liability" means an amount equal to the tax liability of all suppliers of a distribution center had the distribution center not been issued a qualifying certificate for the qualifying year. Ineligible operator's supplier tax liability shall not include interest or penalties. The tax commissioner shall determine an ineligible operator's supplier tax liability based on information that the commissioner may request from the operator of the distribution center. An operator shall provide a list of all suppliers of the distribution center and the corresponding costs of qualified property for the qualifying year at issue within sixty days of a request by the commissioner under this division. 3932
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(ii) (I) If the distribution center is new and was not open 3944
for the entire qualifying period, the operator of the 3945
distribution center may request that the commissioner grant a 3946
qualifying certificate. If the certificate is granted and it is 3947
later determined that more than fifty per cent of the qualified 3948
property during that year was not shipped to a location such 3949
that it would be situated outside of this state under the 3950
provisions of division (E) of section 5751.033 of the Revised 3951
Code or if it is later determined that the person that operates 3952
the distribution center had average monthly costs from its 3953
suppliers of less than forty million dollars during that year, 3954
then the operator of the distribution center shall pay the 3955
ineligible operator's supplier tax liability. (For purposes of 3956
division (F) (2) (z) (ii) of this section, "supplier" excludes any 3957
person that is part of the consolidated elected taxpayer group, 3958
if applicable, of the operator of the qualified distribution 3959
center.) 3960

(II) The commissioner may grant a qualifying certificate 3961
to a distribution center that does not qualify as a qualified 3962
distribution center for an entire qualifying period if the 3963
operator of the distribution center demonstrates that the 3964
business operations of the distribution center have changed or 3965
will change such that the distribution center will qualify as a 3966
qualified distribution center within thirty-six months after the 3967
date the operator first applies for a certificate. If, at the 3968
end of that thirty-six-month period, the business operations of 3969
the distribution center have not changed such that the 3970
distribution center qualifies as a qualified distribution 3971
center, the operator of the distribution center shall pay the 3972
ineligible operator's supplier tax liability for each year that 3973
the distribution center received a certificate but did not 3974

qualify as a qualified distribution center. For each year the 3975
distribution center receives a certificate under division (F) (2) 3976
(z) (ii) (II) of this section, the distribution center shall pay 3977
all applicable fees required under division (F) (2) (z) of this 3978
section and shall submit an updated business plan showing the 3979
progress the distribution center made toward qualifying as a 3980
qualified distribution center during the preceding year. 3981

(III) An operator may appeal a determination under 3982
division (F) (2) (z) (ii) (I) or (II) of this section that the 3983
ineligible operator is liable for the operator's supplier tax 3984
liability as a result of not qualifying as a qualified 3985
distribution center, as provided in section 5717.02 of the 3986
Revised Code. 3987

(iii) When filing an application for a qualifying 3988
certificate under division (F) (2) (z) (i) (VI) of this section, the 3989
operator of a qualified distribution center also shall provide 3990
documentation, as the commissioner requires, for the 3991
commissioner to ascertain the Ohio delivery percentage. The 3992
commissioner, upon issuing the qualifying certificate, also 3993
shall certify the Ohio delivery percentage. The operator of the 3994
qualified distribution center may appeal the commissioner's 3995
certification of the Ohio delivery percentage in the same manner 3996
as an appeal is taken from the denial of a qualifying 3997
certificate under division (F) (2) (z) (i) (VI) of this section. 3998

(iv) (I) In the case where the distribution center is new 3999
and not open for the entire qualifying period, the operator 4000
shall make a good faith estimate of an Ohio delivery percentage 4001
for use by suppliers in their reports of taxable gross receipts 4002
for the remainder of the qualifying period. The operator of the 4003
facility shall disclose to the suppliers that such Ohio delivery 4004

percentage is an estimate and is subject to recalculation. By 4005
the due date of the next application for a qualifying 4006
certificate, the operator shall determine the actual Ohio 4007
delivery percentage for the estimated qualifying period and 4008
proceed as provided in division (F) (2) (z) (iii) of this section 4009
with respect to the calculation and recalculation of the Ohio 4010
delivery percentage. The supplier is required to file, within 4011
sixty days after receiving notice from the operator of the 4012
qualified distribution center, amended reports for the impacted 4013
calendar quarter or quarters or calendar year, whichever the 4014
case may be. Any additional tax liability or tax overpayment 4015
shall be subject to interest but shall not be subject to the 4016
imposition of any penalty so long as the amended returns are 4017
timely filed. 4018

(II) The operator of a distribution center that receives a 4019
qualifying certificate under division (F) (2) (z) (ii) (II) of this 4020
section shall make a good faith estimate of the Ohio delivery 4021
percentage that the operator estimates will apply to the 4022
distribution center at the end of the thirty-six-month period 4023
after the operator first applied for a qualifying certificate 4024
under that division. The result of the estimate shall be 4025
multiplied by a factor of one and seventy-five one-hundredths. 4026
The product of that calculation shall be the Ohio delivery 4027
percentage used by suppliers in their reports of taxable gross 4028
receipts for each qualifying year that the distribution center 4029
receives a qualifying certificate under division (F) (2) (z) (ii) 4030
(II) of this section, except that, if the product is less than 4031
five per cent, the Ohio delivery percentage used shall be five 4032
per cent and that, if the product exceeds forty-nine per cent, 4033
the Ohio delivery percentage used shall be forty-nine per cent. 4034

(v) Qualifying certificates and Ohio delivery percentages 4035

issued by the commissioner shall be open to public inspection 4036
and shall be timely published by the commissioner. A supplier 4037
relying in good faith on a certificate issued under this 4038
division shall not be subject to tax on the qualifying 4039
distribution center receipts under division (F)(2)(z) of this 4040
section. An operator receiving a qualifying certificate is 4041
liable for the ineligible operator's supplier tax liability for 4042
each year the operator received a certificate but did not 4043
qualify as a qualified distribution center. 4044

(vi) The annual fee for a qualifying certificate shall be 4045
one hundred thousand dollars for each qualified distribution 4046
center. If a qualifying certificate is not issued, the annual 4047
fee is subject to refund after the exhaustion of all appeals 4048
provided for in division (F)(2)(z)(i)(VI) of this section. The 4049
first one hundred thousand dollars of the annual application 4050
fees collected each calendar year shall be credited to the 4051
revenue enhancement fund. The remainder of the annual 4052
application fees collected shall be distributed in the same 4053
manner required under section 5751.20 of the Revised Code. 4054

(vii) The tax commissioner may require that adequate 4055
security be posted by the operator of the distribution center on 4056
appeal when the commissioner disagrees that the applicant has 4057
met the minimum thresholds for a qualified distribution center 4058
as set forth in division (F)(2)(z) of this section. 4059

(aa) Receipts of an employer from payroll deductions 4060
relating to the reimbursement of the employer for advancing 4061
moneys to an unrelated third party on an employee's behalf; 4062

(bb) Cash discounts allowed and taken; 4063

(cc) Returns and allowances; 4064

(dd) Bad debts from receipts on the basis of which the tax 4065
imposed by this chapter was paid in a prior quarterly tax 4066
payment period. For the purpose of this division, "bad debts" 4067
means any debts that have become worthless or uncollectible 4068
between the preceding and current quarterly tax payment periods, 4069
have been uncollected for at least six months, and that may be 4070
claimed as a deduction under section 166 of the Internal Revenue 4071
Code and the regulations adopted under that section, or that 4072
could be claimed as such if the taxpayer kept its accounts on 4073
the accrual basis. "Bad debts" does not include repossessed 4074
property, uncollectible amounts on property that remains in the 4075
possession of the taxpayer until the full purchase price is 4076
paid, or expenses in attempting to collect any account 4077
receivable or for any portion of the debt recovered; 4078

(ee) Any amount realized from the sale of an account 4079
receivable to the extent the receipts from the underlying 4080
transaction giving rise to the account receivable were included 4081
in the gross receipts of the taxpayer; 4082

(ff) Any receipts directly attributed to a transfer 4083
agreement or to the enterprise transferred under that agreement 4084
under section 4313.02 of the Revised Code. 4085

(gg) (i) As used in this division: 4086

(I) "Qualified uranium receipts" means receipts from the 4087
sale, exchange, lease, loan, production, processing, or other 4088
disposition of uranium within a uranium enrichment zone 4089
certified by the tax commissioner under division (F) (2) (gg) (ii) 4090
of this section. "Qualified uranium receipts" does not include 4091
any receipts with a situs in this state outside a uranium 4092
enrichment zone certified by the tax commissioner under division 4093
(F) (2) (gg) (ii) of this section. 4094

(II) "Uranium enrichment zone" means all real property 4095
that is part of a uranium enrichment facility licensed by the 4096
United States nuclear regulatory commission and that was or is 4097
owned or controlled by the United States department of energy or 4098
its successor. 4099

(ii) Any person that owns, leases, or operates real or 4100
tangible personal property constituting or located within a 4101
uranium enrichment zone may apply to the tax commissioner to 4102
have the uranium enrichment zone certified for the purpose of 4103
excluding qualified uranium receipts under division (F) (2) (gg) 4104
of this section. The application shall include such information 4105
that the tax commissioner prescribes. Within sixty days after 4106
receiving the application, the tax commissioner shall certify 4107
the zone for that purpose if the commissioner determines that 4108
the property qualifies as a uranium enrichment zone as defined 4109
in division (F) (2) (gg) of this section, or, if the tax 4110
commissioner determines that the property does not qualify, the 4111
commissioner shall deny the application or request additional 4112
information from the applicant. If the tax commissioner denies 4113
an application, the commissioner shall state the reasons for the 4114
denial. The applicant may appeal the denial of an application to 4115
the board of tax appeals pursuant to section 5717.02 of the 4116
Revised Code. If the applicant files a timely appeal, the tax 4117
commissioner shall conditionally certify the applicant's 4118
property. The conditional certification shall expire when all of 4119
the applicant's appeals are exhausted. Until final resolution of 4120
the appeal, the applicant shall retain the applicant's records 4121
in accordance with section 5751.12 of the Revised Code, 4122
notwithstanding any time limit on the preservation of records 4123
under that section. 4124

(hh) In the case of amounts collected by a licensed casino 4125

operator from casino gaming, amounts in excess of the casino 4126
operator's gross casino revenue. In this division, "casino 4127
operator" and "casino gaming" have the meanings defined in 4128
section 3772.01 of the Revised Code, and "gross casino revenue" 4129
has the meaning defined in section 5753.01 of the Revised Code. 4130

(ii) Receipts realized from the sale of agricultural 4131
commodities by an agricultural commodity handler, both as 4132
defined in section 926.01 of the Revised Code, that is licensed 4133
by the director of agriculture to handle agricultural 4134
commodities in this state. 4135

(jj) Qualifying integrated supply chain receipts. 4136

As used in division (F)(2)(jj) of this section: 4137

(i) "Qualifying integrated supply chain receipts" means 4138
receipts of a qualified integrated supply chain vendor from the 4139
sale of qualified property delivered to, or integrated supply 4140
chain services provided to, another qualified integrated supply 4141
chain vendor or to a retailer that is a member of the integrated 4142
supply chain. "Qualifying integrated supply chain receipts" does 4143
not include receipts of a person that is not a qualified 4144
integrated supply chain vendor from the sale of raw materials to 4145
a member of an integrated supply chain, or receipts of a member 4146
of an integrated supply chain from the sale of qualified 4147
property or integrated supply chain services to a person that is 4148
not a member of the integrated supply chain. 4149

(ii) "Qualified property" means any of the following: 4150

(I) Component parts used to hold, contain, package, or 4151
dispense qualified products, excluding equipment; 4152

(II) Work-in-process inventory that will become, comprise, 4153
or form a component part of a qualified product capable of being 4154

sold at retail, excluding equipment, machinery, furniture, and 4155
fixtures; 4156

(III) Finished goods inventory that is a qualified product 4157
capable of being sold at retail in the inventory's present form. 4158

(iii) "Qualified integrated supply chain vendor" means a 4159
person that is a member of an integrated supply chain and that 4160
provides integrated supply chain services within a qualified 4161
integrated supply chain district to a retailer that is a member 4162
of the integrated supply chain or to another qualified 4163
integrated supply chain vendor that is located within the same 4164
such district as the person but does not share a common owner 4165
with that person. 4166

(iv) "Qualified product" means a personal care, health, or 4167
beauty product or an aromatic product, including a candle. 4168
"Qualified product" does not include a drug that may be 4169
dispensed only pursuant to a prescription, durable medical 4170
equipment, mobility enhancing equipment, or a prosthetic device, 4171
as those terms are defined in section 5739.01 of the Revised 4172
Code. 4173

(v) "Integrated supply chain" means two or more qualified 4174
integrated supply chain vendors certified on the most recent 4175
list certified to the tax commissioner under this division that 4176
systematically collaborate and coordinate business operations 4177
with a retailer on the flow of tangible personal property from 4178
material sourcing through manufacturing, assembly, packaging, 4179
and delivery to the retailer to improve long-term financial 4180
performance of each vendor and the supply chain that includes 4181
the retailer. 4182

For the purpose of the certification required under this 4183

division, the reporting person for each retailer, on or before 4184
the first day of October of each year, shall certify to the tax 4185
commissioner a list of the qualified integrated supply chain 4186
vendors providing or receiving integrated supply chain services 4187
within a qualified integrated supply chain district for the 4188
ensuing calendar year. On or before the following first day of 4189
November, the commissioner shall issue a certificate to the 4190
retailer and to each vendor certified to the commissioner on 4191
that list. The certificate shall include the names of the 4192
retailer and of the qualified integrated supply chain vendors. 4193

The retailer shall notify the commissioner of any changes 4194
to the list, including additions to or subtractions from the 4195
list or changes in the name or legal entity of vendors certified 4196
on the list, within sixty days after the date the retailer 4197
becomes aware of the change. Within thirty days after receiving 4198
that notification, the commissioner shall issue a revised 4199
certificate to the retailer and to each vendor certified on the 4200
list. The revised certificate shall include the effective date 4201
of the change. 4202

Each recipient of a certificate issued pursuant to this 4203
division shall maintain a copy of the certificate for four years 4204
from the date the certificate was received. 4205

(vi) "Integrated supply chain services" means procuring 4206
raw materials or manufacturing, processing, refining, 4207
assembling, packaging, or repackaging tangible personal property 4208
that will become finished goods inventory capable of being sold 4209
at retail by a retailer that is a member of an integrated supply 4210
chain. 4211

(vii) "Retailer" means a person primarily engaged in 4212
making retail sales and any member of that person's consolidated 4213

elected taxpayer group or combined taxpayer group, whether or 4214
not that member is primarily engaged in making retail sales. 4215

(viii) "Qualified integrated supply chain district" means 4216
the parcel or parcels of land from which a retailer's integrated 4217
supply chain that existed on September 29, 2015, provides or 4218
receives integrated supply chain services, and to which all of 4219
the following apply: 4220

(I) The parcel or parcels are located wholly in a county 4221
having a population of greater than one hundred sixty-five 4222
thousand but less than one hundred seventy thousand based on the 4223
2010 federal decennial census. 4224

(II) The parcel or parcels are located wholly in the 4225
corporate limits of a municipal corporation with a population 4226
greater than seven thousand five hundred and less than eight 4227
thousand based on the 2010 federal decennial census that is 4228
partly located in the county described in division (F) (2) (jj) 4229
(viii) (I) of this section, as those corporate limits existed on 4230
September 29, 2015. 4231

(III) The aggregate acreage of the parcel or parcels 4232
equals or exceeds one hundred acres. 4233

(kk) In the case of a railroad company described in 4234
division (D) (9) of section 5727.01 of the Revised Code that 4235
purchases dyed diesel fuel directly from a supplier as defined 4236
by section 5736.01 of the Revised Code, an amount equal to the 4237
product of the number of gallons of dyed diesel fuel purchased 4238
directly from such a supplier multiplied by the average 4239
wholesale price for a gallon of diesel fuel as determined under 4240
section 5736.02 of the Revised Code for the period during which 4241
the fuel was purchased multiplied by a fraction, the numerator 4242

of which equals the rate of tax levied by section 5736.02 of the Revised Code less the rate of tax computed in section 5751.03 of the Revised Code, and the denominator of which equals the rate of tax computed in section 5751.03 of the Revised Code.

(ll) Receipts realized by an out-of-state disaster business from disaster work conducted in this state during a disaster response period pursuant to a qualifying solicitation received by the business. Terms used in ~~this~~ this section division (F) (2) (ll) have the same meanings as in section 5703.94 of the Revised Code.

(mm) Any receipts for which the tax imposed by this chapter is prohibited by the constitution or laws of the United States or the constitution of this state.

(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real estate salesperson associated with that broker, that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker. For the purposes of this division, "real estate broker" and "real estate salesperson" have the same meanings as in section 4735.01 of the Revised Code.

(4) A taxpayer's method of accounting for gross receipts for a tax period shall be the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal taxable year that includes the tax period. If a taxpayer's method of accounting for federal income tax purposes changes, its method of accounting for gross receipts under this chapter shall be changed accordingly.

(G) "Taxable gross receipts" means gross receipts situated	4272
to this state under section 5751.033 of the Revised Code.	4273
(H) A person has "substantial nexus with this state" if	4274
any of the following applies. The person:	4275
(1) Owns or uses a part or all of its capital in this	4276
state;	4277
(2) Holds a certificate of compliance with the laws of	4278
this state authorizing the person to do business in this state;	4279
(3) Has bright-line presence in this state;	4280
(4) Otherwise has nexus with this state to an extent that	4281
the person can be required to remit the tax imposed under this	4282
chapter under the Constitution of the United States.	4283
(I) A person has "bright-line presence" in this state for	4284
a reporting period and for the remaining portion of the calendar	4285
year if any of the following applies. The person:	4286
(1) Has at any time during the calendar year property in	4287
this state with an aggregate value of at least fifty thousand	4288
dollars. For the purpose of division (I)(1) of this section,	4289
owned property is valued at original cost and rented property is	4290
valued at eight times the net annual rental charge.	4291
(2) Has during the calendar year payroll in this state of	4292
at least fifty thousand dollars. Payroll in this state includes	4293
all of the following:	4294
(a) Any amount subject to withholding by the person under	4295
section 5747.06 of the Revised Code;	4296
(b) Any other amount the person pays as compensation to an	4297
individual under the supervision or control of the person for	4298

work done in this state; and	4299
(c) Any amount the person pays for services performed in this state on its behalf by another.	4300 4301
(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.	4302 4303
(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.	4304 4305 4306
(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.	4307 4308
(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code.	4309 4310
(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.	4311 4312 4313 4314 4315 4316 4317 4318
(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.	4319 4320 4321
(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter.	4322 4323 4324
(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year.	4325 4326

(O) "Calendar quarter taxpayer" means a taxpayer for which 4327
the tax period is a calendar quarter. 4328

(P) "Agent" means a person authorized by another person to 4329
act on its behalf to undertake a transaction for the other, 4330
including any of the following: 4331

(1) A person receiving a fee to sell financial 4332
instruments; 4333

(2) A person retaining only a commission from a 4334
transaction with the other proceeds from the transaction being 4335
remitted to another person; 4336

(3) A person issuing licenses and permits under section 4337
1533.13 of the Revised Code; 4338

(4) A lottery sales agent holding a valid license issued 4339
under section 3770.05 of the Revised Code; 4340

(5) A person acting as an agent of the division of liquor 4341
control under section 4301.17 of the Revised Code. 4342

(Q) "Received" includes amounts accrued under the accrual 4343
method of accounting. 4344

(R) "Reporting person" means a person in a consolidated 4345
elected taxpayer or combined taxpayer group that is designated 4346
by that group to legally bind the group for all filings and tax 4347
liabilities and to receive all legal notices with respect to 4348
matters under this chapter, or, for the purposes of section 4349
5751.04 of the Revised Code, a separate taxpayer that is not a 4350
member of such a group. 4351

Section 2. That existing sections 4121.12, 4121.121, 4352
4123.01, 4123.26, 4123.291, 4123.32, 4123.341, 4123.35, 4141.24, 4353
4740.131, 5733.40, 5747.07, and 5751.01 of the Revised Code are 4354

hereby repealed. 4355

Section 3. Section 4121.12 of the Revised Code is 4356
presented in this act as a composite of the section as amended 4357
by Sub. H.B. 123, Am. Sub. H.B. 153, and Sub. S.B. 171 of the 4358
129th General Assembly. The General Assembly, applying the 4359
principle stated in division (B) of section 1.52 of the Revised 4360
Code that amendments are to be harmonized if reasonably capable 4361
of simultaneous operation, finds that the composite is the 4362
resulting version of the section in effect prior to the 4363
effective date of the section as presented in this act. 4364