

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 25**

**Senator Yuko**

**Cosponsors: Senators Brown, Cafaro, Gentile, Sawyer, Schiavoni, Skindell,  
Tavares, Thomas, Williams**

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**A BILL**

To amend sections 119.14, 121.083, 1349.61, 1  
4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 2  
4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 3  
4141.01, and 5747.01 and to enact sections 4  
4175.01, 4175.02, 4175.03, 4175.04, 4175.05, 5  
4175.06, 4175.07, 4175.08, 4175.09, 4175.10, 6  
4175.11, 4175.12, 4175.13, 4175.14, 4175.15, 7  
4175.16, 4175.17, 4175.18, and 4175.99 of the 8  
Revised Code to raise the minimum wage; to raise 9  
the salary threshold above which certain 10  
employees are exempt from the overtime law; and 11  
to create a uniform standard to determine 12  
whether an individual performing services for an 13  
employer is an employee of that employer. 14

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

**Section 1.** That sections 119.14, 121.083, 1349.61, 15  
4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 4113.15, 4115.03, 16  
4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 be amended and 17  
sections 4175.01, 4175.02, 4175.03, 4175.04, 4175.05, 4175.06, 18

4175.07, 4175.08, 4175.09, 4175.10, 4175.11, 4175.12, 4175.13, 19  
4175.14, 4175.15, 4175.16, 4175.17, 4175.18, and 4175.99 of the 20  
Revised Code be enacted to read as follows: 21

**Sec. 119.14.** (A) For any small business that engages in a 22  
paperwork violation, the state agency or regulatory authority 23  
that regulates the field of operation in which the business 24  
operates shall waive any and all administrative fines or civil 25  
penalties on that small business for the violation, if the 26  
paperwork violation is a first-time offense. 27

(B) When an agency or regulatory authority waives an 28  
administrative fine or civil penalty under this section, the 29  
state agency or regulatory authority shall require the small 30  
business to correct the violation within a reasonable period of 31  
time. 32

(C) Notwithstanding this section, a state agency or 33  
regulatory authority may impose administrative fines or civil 34  
penalties on a small business for a paperwork violation that is 35  
a first-time offense for any of the following reasons: 36

(1) The violation has the potential to cause serious harm 37  
to the public interest as determined by a state agency or 38  
regulatory authority director; 39

(2) The violation involves a small business knowingly or 40  
willfully engaging in conduct that may result in a felony 41  
conviction; 42

(3) Failure to impose an administrative fine or civil 43  
penalty for the violation would impede or interfere with the 44  
detection of criminal activity; 45

(4) The violation is of a law concerning the assessment or 46  
collection of any tax, debt, revenue, or receipt; 47

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

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

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

(2) Any administrative fine or civil penalty that is waived under this section~~7~~ may be reinstated and imposed in addition to any additional fines or penalties associated with a subsequent violation for noncompliance with the same paperwork requirement.

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

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

(G) As used in this section:	77
(1) "Small business" has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121.	78 79
(2) "Paperwork violation" means the violation of any statutory or regulatory requirement in the Revised Code mandating the collection of information by a state agency or regulatory body.	80 81 82 83
(3) "First-time offense" means the first instance of a violation of the particular statutory or regulatory requirement mandating the collection of information by a state agency or regulatory body.	84 85 86 87
<u>(4) "Employee" means any individual employed by an employer but does not include:</u>	88 89
<u>(a) Any individual employed by the United States;</u>	90
<u>(b) Any individual employed as a babysitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;</u>	91 92 93 94
<u>(c) Any individual engaged in the delivery of newspapers to the consumer;</u>	95 96
<u>(d) Any individual employed as an outside salesperson compensated by commissions or employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended;</u>	97 98 99 100 101
<u>(e) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;</u>	102 103 104

(f) A member of a police or fire protection agency or 105  
student employed on a part-time or seasonal basis by a political 106  
subdivision of this state; 107

(g) Any individual in the employ of a camp or recreational 108  
area for children under eighteen years of age and owned and 109  
operated by a nonprofit organization or group of organizations 110  
described in section 501(c)(3) of the "Internal Revenue Code of 111  
1954," and exempt from income tax under section 501(a) of that 112  
code; 113

(h) Any individual employed directly by the house of 114  
representatives or directly by the senate. 115

**Sec. 121.083.** The superintendent of industrial compliance 116  
in the department of commerce shall do all of the following: 117

(A) Administer and enforce the general laws of this state 118  
pertaining to buildings, pressure piping, boilers, bedding, 119  
upholstered furniture, and stuffed toys, steam engineering, 120  
elevators, plumbing, licensed occupations regulated by the 121  
department, and travel agents, as they apply to plans review, 122  
inspection, code enforcement, testing, licensing, registration, 123  
and certification. 124

(B) Exercise the powers and perform the duties delegated 125  
to the superintendent by the director of commerce under Chapters 126  
4109., 4111., ~~and 4115.~~, and 4175. of the Revised Code. 127

(C) Collect and collate statistics as are necessary. 128

(D) Examine and license persons who desire to act as steam 129  
engineers, to operate steam boilers, and to act as inspectors of 130  
steam boilers, provide for the scope, conduct, and time of such 131  
examinations, provide for, regulate, and enforce the renewal and 132  
revocation of such licenses, inspect and examine steam boilers 133

and make, publish, and enforce rules and orders for the 134  
construction, installation, inspection, and operation of steam 135  
boilers, and do, require, and enforce all things necessary to 136  
make such examination, inspection, and requirement efficient. 137

(E) Rent and furnish offices as needed in cities in this 138  
state for the conduct of its affairs. 139

(F) Oversee a chief of construction and compliance, a 140  
chief of operations and maintenance, a chief of licensing and 141  
certification, a chief of worker protection, and other designees 142  
appointed by the director to perform the duties described in 143  
this section. 144

(G) Enforce the rules the board of building standards 145  
adopts pursuant to division (A) (2) of section 4104.43 of the 146  
Revised Code under the circumstances described in division (D) 147  
of that section. 148

(H) Accept submissions, establish a fee for submissions, 149  
and review submissions of certified welding and brazing 150  
procedure specifications, procedure qualification records, and 151  
performance qualification records for building services piping 152  
as required by section 4104.44 of the Revised Code. 153

**Sec. 1349.61.** (A) (1) Subject to division (C) of this 154  
section, no person or entity shall sell a gift card to a 155  
purchaser containing an expiration date that is less than two 156  
years after the date the gift card is issued. 157

(2) No person or entity, within two years after a gift 158  
card is issued, shall charge service charges or fees relative to 159  
that gift card, including dormancy fees, latency fees, or 160  
administrative fees, that have the effect of reducing the total 161  
amount for which the holder of the gift card may redeem the gift 162

card. 163

(B) A gift card sold without an expiration date is valid 164  
until redeemed or replaced with a new gift card. 165

(C) Division (A) of this section does not apply to any of 166  
the following gift cards: 167

(1) A gift card that is distributed by the issuer to a 168  
consumer pursuant to an awards, loyalty, or promotional program 169  
without any money or anything of value being given in exchange 170  
for the gift card by the consumer; 171

(2) A gift card that is sold below face value at a volume 172  
discount to employers or to nonprofit and charitable 173  
organizations for fundraising purposes, if the expiration date 174  
on that gift card is not more than thirty days after the date of 175  
sale; 176

(3) A gift card that is sold by a nonprofit or charitable 177  
organization for fundraising purposes; 178

(4) A gift card that an employer gives to an employee if 179  
use of the gift card is limited to the employer's business 180  
establishment, which may include a group of merchants that are 181  
affiliated with that business establishment; 182

(5) A gift certificate issued in accordance with section 183  
1533.131 of the Revised Code that may be used to obtain hunting 184  
and fishing licenses, fur taker, special deer, and special wild 185  
turkey permits, and wetlands habitat stamps; 186

(6) A gift card that is usable with multiple, unaffiliated 187  
sellers of goods or services; 188

(7) A gift card that an employer issues to an employee in 189  
recognition of services performed by the employee. 190

(D) Whoever violates division (A) (2) of this section is 191  
liable to the holder for any amount that the redemption value of 192  
the gift card was reduced, any court costs incurred, and 193  
reasonable attorney's fees. 194

(E) As used in this section: 195

(1) "Gift card" means a certificate, electronic card, or 196  
other medium issued by a merchant that evidences the giving of 197  
consideration in exchange for the right to redeem the 198  
certificate, electronic card, or other medium for goods, food, 199  
services, credit, or money of at least an equal value, including 200  
any electronic card issued by a merchant with a monetary value 201  
where the issuer has received payment for the full monetary 202  
value for the future purchase or delivery of goods or services 203  
and any certificate issued by a merchant where the issuer has 204  
received payment for the full monetary face value of the 205  
certificate for the future purchase or delivery of goods and 206  
services. "Gift card" does not include a prepaid calling card 207  
used to make telephone calls. 208

(2) "Employer" ~~and "employee" have~~ has the same meanings 209  
meaning as in section 4121.01 of the Revised Code. 210

(3) "Employee" means every person who may be required or 211  
directed by any employer, in consideration of direct or indirect 212  
gain or profit, to engage in any employment, or to go, or work, 213  
or be at any time in any place of employment. 214

**Sec. 4111.02.** ~~Every~~ (A) (1) Except as otherwise provided in 215  
this chapter, beginning January 1, 2016, every employer, as 216  
defined in Section 34a of Article II, Ohio Constitution, shall 217  
pay each of the employer's employees at a wage rate of not less 218  
than the wage rate specified in Section 34a of Article II, Ohio 219



Constitution or ten dollars and ten cents per hour, whichever is 220  
greater. 221

(2) If an employer is able to demonstrate that an employee 222  
receives tips that combined with the wages paid by the employer 223  
are equal to or greater than the minimum wage rate for all hours 224  
worked, the employer may pay the employee at a rate of less 225  
than, but not less than half, the minimum wage rate required by 226  
division (A)(1) of this section. 227

(3) An employer may pay an employee a wage rate not less 228  
than the wage rate established under the federal "Fair Labor 229  
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201 et seq., as 230  
amended, or its successor law if either of the following 231  
applies: 232

(a) The employer, as of January 1, 2015, had gross annual 233  
receipts of two hundred ninety-seven thousand dollars or less. 234

(b) The employee is less than sixteen years of age. 235

(B) The director of commerce annually shall adjust the 236  
wage ~~rate as~~ rates specified in division (A)(1) of this section 237  
and the gross annual receipt amount specified in division (A)(3) 238  
of this section in accordance with Section 34a of Article II, 239  
Ohio Constitution. 240

(C) As used in this section, "employee" has the same 241  
meaning as in section 4111.14 of the Revised Code. 242

**Sec. 4111.03.** (A) An employer shall pay an employee for 243  
overtime at a wage rate of one and one-half times the employee's 244  
wage rate for hours worked in excess of forty hours in one 245  
workweek, in the manner and methods provided in and, except as 246  
otherwise provided in division (D) of this section, subject to 247  
the exemptions of section 7 and section 13 of the "Fair Labor 248

Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 249  
amended. 250

Any employee employed in agriculture shall not be covered 251  
by the overtime provision of this section. 252

(B) If a county employee elects to take compensatory time 253  
off in lieu of overtime pay, for any overtime worked, 254  
compensatory time may be granted by the employee's 255  
administrative superior, on a time and one-half basis, at a time 256  
mutually convenient to the employee and the administrative 257  
superior within one hundred eighty days after the overtime is 258  
worked. 259

(C) A county appointing authority with the exception of 260  
the county department of job and family services may, by rule or 261  
resolution as is appropriate, indicate the authority's intention 262  
not to be bound by division (B) of this section, and to adopt a 263  
different policy for the calculation and payment of overtime 264  
than that established by that division. Upon adoption, the 265  
alternative overtime policy prevails. Prior to the adoption of 266  
an alternative overtime policy, a county appointing authority 267  
with the exception of the county department of job and family 268  
services shall give a written notice of the alternative policy 269  
to each employee at least ten days prior to its effective date. 270

(D) As used in this section: 271

(1) "Employ" means to suffer or to permit to work. 272

(2) "Employer" means the state of Ohio, its 273  
instrumentalities, and its political subdivisions and their 274  
instrumentalities, any individual, partnership, association, 275  
corporation, business trust, or any person or group of persons, 276  
acting in the interest of an employer in relation to an 277

employee, but does not include an employer whose annual gross 278  
volume of sales made for business done is less than one hundred 279  
fifty thousand dollars, exclusive of excise taxes at the retail 280  
level which are separately stated. 281

(3) "Employee" means any individual employed by an 282  
employer but does not include: 283

(a) Any individual employed by the United States; 284

(b) Any individual employed as a baby-sitter in the 285  
employer's home, or a live-in companion to a sick, convalescing, 286  
or elderly person whose principal duties do not include 287  
housekeeping; 288

(c) Any individual engaged in the delivery of newspapers 289  
to the consumer; 290

(d) Any individual employed as an outside salesperson 291  
compensated by commissions ~~or~~; 292

(e) Any individual who is employed in a bona fide 293  
executive, administrative, or professional capacity as such 294  
terms are defined by the "Fair Labor Standards Act of 1938," 52 295  
Stat. 1060, 29 U.S.C.A. 201, as amended, and who is compensated 296  
on a salary basis of at least the following amounts: 297

(i) For the time period beginning January 1, 2016, and 298  
ending December 31, 2016, fifty thousand dollars per year; 299

(ii) Beginning on and after January 1, 2017, sixty-nine 300  
thousand dollars per year. 301

~~(e)~~ (f) Any individual who works or provides personal 302  
services of a charitable nature in a hospital or health 303  
institution for which compensation is not sought or 304  
contemplated; 305

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

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

~~(h)~~ (i) Any individual employed directly by the house of representatives or directly by the senate.

**Sec. 4111.09.** Every employer subject to sections 4111.01 to 4111.17 of the Revised Code, or to any rules issued thereunder, shall keep a summary of the sections, approved by the director of commerce, and copies of any applicable rules issued thereunder, or a summary of the rules, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. The director of commerce shall make the summary described in this section available on the web site of the department of commerce. The director shall update this summary as necessary, but not less than annually, in order to reflect changes in the minimum wage rate as required under Section 34a of Article II, Ohio Constitution and section 4111.02 of the Revised Code. Employees and employers shall be furnished copies of the summaries and rules by the state, on request, without charge.

**Sec. 4111.13.** (A) No employer shall hinder or delay the director of commerce in the performance of the director's duties in the enforcement of sections 4111.01 to 4111.17 of the Revised Code, or refuse to admit the director to any place of

employment, or fail to make, keep, and preserve any records as 336  
required under those sections, or falsify any of those records, 337  
or refuse to make them accessible to the director upon demand, 338  
or refuse to furnish them or any other information required for 339  
the proper enforcement of those sections to the director upon 340  
demand, or fail to post a summary of those sections or a copy of 341  
any applicable rules as required by section 4111.09 of the 342  
Revised Code. Each day of violation constitutes a separate 343  
offense. 344

(B) No employer shall discharge or in any other manner 345  
discriminate against any employee because the employee has made 346  
any complaint to the employee's employer, or to the director, 347  
that the employee has not been paid wages in accordance with 348  
sections 4111.01 to 4111.17 of the Revised Code, or because the 349  
employee has made any complaint or is about to cause to be 350  
instituted any proceeding under or related to those sections, or 351  
because the employee has testified or is about to testify in any 352  
proceeding. 353

(C) No employer shall recklessly pay or agree to pay wages 354  
at a rate less than the rate applicable under sections 4111.01 355  
to 4111.17 of the Revised Code or recklessly fail to pay 356  
overtime as required by those sections. Each week or portion 357  
thereof for which the employer pays any employee less than the 358  
rate applicable under those sections constitutes a separate 359  
offense as to each employer. 360

(D) No employer shall otherwise violate sections 4111.01 361  
to 4111.17 of the Revised Code, or any rule adopted thereunder. 362  
Each day of violation constitutes a separate offense. 363

**Sec. 4111.14.** (A) Pursuant to the general assembly's 364  
authority to establish a minimum wage under Section 34 of 365

Article II, Ohio Constitution, this section is in implementation 366  
of Section 34a of Article II, Ohio Constitution. In implementing 367  
Section 34a of Article II, Ohio Constitution, the general 368  
assembly hereby finds that the purpose of Section 34a of Article 369  
II, Ohio Constitution, is to: 370

(1) Ensure that Ohio employees, as defined in division (B) 371  
(1) of this section, are paid the wage rate required by section 372  
4111.02 of the Revised Code in accordance with Section 34a of 373  
Article II, Ohio Constitution; 374

(2) Ensure that covered Ohio employers maintain certain 375  
records that are directly related to the enforcement of the wage 376  
rate requirements in of Section 34a of Article II, Ohio 377  
Constitution and section 4111.02 of the Revised Code; 378

(3) Ensure that Ohio employees who are paid the wage rate 379  
~~required by Section 34a of Article II, Ohio Constitution~~ section 380  
4111.02 of the Revised Code, may enforce their right to receive 381  
that wage rate in the manner set forth in Section 34a of Article 382  
II, Ohio Constitution; and 383

(4) Protect the privacy of Ohio employees' pay and 384  
personal information specified in Section 34a of Article II, 385  
Ohio Constitution, by restricting an employee's access, and 386  
access by a person acting on behalf of that employee, to the 387  
employee's own pay and personal information. 388

(B) In accordance with Section 34a of Article II, Ohio 389  
Constitution, the terms "employer," ~~"employee,"~~ "employ," and 390  
~~"person,"~~ and ~~"independent contractor"~~ have the same meanings as 391  
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 392  
U.S.C. 203, as amended. In construing the meaning of these 393  
terms, due consideration and great weight shall be given to the 394

United States department of labor's and federal courts' 395  
interpretations of those terms under the Fair Labor Standards 396  
Act and its regulations. As used in division (B) of this 397  
section+ 398

~~(1) "Employee" means individuals employed in Ohio, but 399  
does not mean individuals who are excluded from the definition 400  
of "employee" under 29 U.S.C. 203(e) or individuals who are 401  
exempted from the minimum wage requirements in 29 U.S.C. 213 and 402  
from the definition of "employee" in this chapter. 403~~

~~(2) "Employ" and "employee" do not include any person 404  
acting as a volunteer. In construing who is a volunteer, 405  
"volunteer" shall have the same meaning as in sections 553.101- 406  
to 553.106 of Title 29 of the Code of Federal Regulations, as 407  
amended, and due consideration and great weight shall be given 408  
to the United States department of labor's and federal courts' 409  
interpretations of the term "volunteer" under the Fair Labor 410  
Standards Act and its regulations, "employee" has the same 411  
meaning as in section 4175.01 of the Revised Code. 412~~

(C) In accordance with Section 34a of Article II, Ohio 413  
Constitution, the state may issue licenses to employers 414  
authorizing payment of a wage below that required by Section 34a 415  
of Article II, Ohio Constitution, or section 4111.02 of the 416  
Revised Code to individuals with mental or physical disabilities 417  
that may otherwise adversely affect their opportunity for 418  
employment. In issuing such licenses, the state shall abide by 419  
the rules adopted pursuant to section 4111.06 of the Revised 420  
Code. 421

(D) (1) In accordance with Section 34a of Article II, Ohio 422  
Constitution, individuals employed in or about the property of 423  
an employer or an individual's residence on a casual basis are 424

not included within the coverage of Section 34a of Article II, 425  
Ohio Constitution. As used in division (D) of this section: 426

(a) "Casual basis" means employment that is irregular or 427  
intermittent and that is not performed by an individual whose 428  
vocation is to be employed in or about the property of the 429  
employer or individual's residence. In construing who is 430  
employed on a "casual basis," due consideration and great weight 431  
shall be given to the United States department of labor's and 432  
federal courts' interpretations of the term "casual basis" under 433  
the Fair Labor Standards Act and its regulations. 434

(b) "An individual employed in or about the property of an 435  
employer or individual's residence" means an individual employed 436  
on a casual basis or an individual employed in or about a 437  
residence on a casual basis, respectively. 438

(2) In accordance with Section 34a of Article II, Ohio 439  
Constitution, employees of a solely family-owned and operated 440  
business who are family members of an owner are not included 441  
within the coverage of Section 34a of Article II, Ohio 442  
Constitution. As used in division (D)(2) of this section, 443  
"family member" means a parent, spouse, child, stepchild, 444  
sibling, grandparent, grandchild, or other member of an owner's 445  
immediate family. 446

(E) In accordance with Section 34a of Article II, Ohio 447  
Constitution, an employer shall at the time of hire provide an 448  
employee with the employer's name, address, telephone number, 449  
and other contact information and update such information when 450  
it changes. As used in division (E) of this section: 451

(1) "Other contact information" may include, where 452  
applicable, the address of the employer's internet site on the 453



world wide web, the employer's electronic mail address, fax 454  
number, or the name, address, and telephone number of the 455  
employer's statutory agent. "Other contact information" does not 456  
include the name, address, telephone number, fax number, 457  
internet site address, or electronic mail address of any 458  
employee, shareholder, officer, director, supervisor, manager, 459  
or other individual employed by or associated with an employer. 460

(2) "When it changes" means that the employer shall 461  
provide its employees with the change in its name, address, 462  
telephone number, or other contact information within sixty 463  
business days after the change occurs. The employer shall 464  
provide the changed information by using any of its usual 465  
methods of communicating with its employees, including, but not 466  
limited to, listing the change on the employer's internet site 467  
on the world wide web, internal computer network, or a bulletin 468  
board where it commonly posts employee communications or by 469  
insertion or inclusion with employees' paychecks or pay stubs. 470

(F) In accordance with Section 34a of Article II, Ohio 471  
Constitution, an employer shall maintain a record of the name, 472  
address, occupation, pay rate, hours worked for each day worked, 473  
and each amount paid an employee for a period of not less than 474  
three years following the last date the employee was employed by 475  
that employer. As used in division (F) of this section: 476

(1) "Address" means an employee's home address as 477  
maintained in the employer's personnel file or personnel 478  
database for that employee. 479

(2) (a) With respect to employees who are not exempt from 480  
the overtime pay requirements of the Fair Labor Standards Act or 481  
this chapter, "pay rate" means an employee's base rate of pay. 482

(b) With respect to employees who are exempt from the 483  
overtime pay requirements of the Fair Labor Standards Act or 484  
this chapter, "pay rate" means an employee's annual base salary 485  
or other rate of pay by which the particular employee qualifies 486  
for that exemption under the Fair Labor Standards Act or this 487  
chapter, but does not include bonuses, stock options, 488  
incentives, deferred compensation, or any other similar form of 489  
compensation. 490

(3) "Record" means the name, address, occupation, pay 491  
rate, hours worked for each day worked, and each amount paid an 492  
employee in one or more documents, databases, or other paper or 493  
electronic forms of record-keeping maintained by an employer. No 494  
one particular method or form of maintaining such a record or 495  
records is required under this division. An employer is not 496  
required to create or maintain a single record containing only 497  
the employee's name, address, occupation, pay rate, hours worked 498  
for each day worked, and each amount paid an employee. An 499  
employer shall maintain a record or records from which the 500  
employee or person acting on behalf of that employee could 501  
reasonably review the information requested by the employee or 502  
person. 503

An employer is not required to maintain the records 504  
specified in division (F) (3) of this section for any period 505  
before January 1, 2007. On and after January 1, 2007, the 506  
employer shall maintain the records required by division (F) (3) 507  
of this section for three years from the date the hours were 508  
worked by the employee and for three years after the date the 509  
employee's employment ends. 510

(4) (a) Except for individuals specified in division (F) (4) 511  
(b) of this section, "hours worked for each day worked" means 512

the total amount of time worked by an employee in whatever 513  
increments the employer uses for its payroll purposes during a 514  
day worked by the employee. An employer is not required to keep 515  
a record of the time of day an employee begins and ends work on 516  
any given day. As used in division (F) (4) of this section, "day" 517  
means a fixed period of twenty-four consecutive hours during 518  
which an employee performs work for an employer. 519

(b) An employer is not required to keep records of "hours 520  
worked for each day worked" for individuals for whom the 521  
employer is not required to keep those records under the Fair 522  
Labor Standards Act and its regulations or individuals who are 523  
not subject to the overtime pay requirements specified in 524  
section 4111.03 of the Revised Code. 525

(5) "Each amount paid an employee" means the total gross 526  
wages paid to an employee for each pay period. As used in 527  
division (F) (5) of this section, "pay period" means the period 528  
of time designated by an employer to pay an employee the 529  
employee's gross wages in accordance with the employer's payroll 530  
practices under section 4113.15 of the Revised Code. 531

(G) In accordance with Section 34a of Article II, Ohio 532  
Constitution, an employer must provide such information without 533  
charge to an employee or person acting on behalf of an employee 534  
upon request. As used in division (G) of this section: 535

(1) "Such information" means the name, address, 536  
occupation, pay rate, hours worked for each day worked, and each 537  
amount paid for the specific employee who has requested that 538  
specific employee's own information and does not include the 539  
name, address, occupation, pay rate, hours worked for each day 540  
worked, or each amount paid of any other employee of the 541  
employer. "Such information" does not include hours worked for 542

each day worked by individuals for whom an employer is not 543  
required to keep that information under the Fair Labor Standards 544  
Act and its regulations or individuals who are not subject to 545  
the overtime pay requirements specified in section 4111.03 of 546  
the Revised Code. 547

(2) "Acting on behalf of an employee" means a person 548  
acting on behalf of an employee as any of the following: 549

(a) The certified or legally recognized collective 550  
bargaining representative for that employee under the applicable 551  
federal law or Chapter 4117. of the Revised Code; 552

(b) The employee's attorney; 553

(c) The employee's parent, guardian, or legal custodian. 554

A person "acting on behalf of an employee" must be 555  
specifically authorized by an employee in order to make a 556  
request for that employee's own name, address, occupation, pay 557  
rate, hours worked for each day worked, and each amount paid to 558  
that employee. 559

(3) "Provide" means that an employer shall provide the 560  
requested information within thirty business days after the date 561  
the employer receives the request, unless either of the 562  
following occurs: 563

(a) The employer and the employee or person acting on 564  
behalf of the employee agree to some alternative time period for 565  
providing the information. 566

(b) The thirty-day period would cause a hardship on the 567  
employer under the circumstances, in which case the employer 568  
must provide the requested information as soon as practicable. 569

(4) A "request" made by an employee or a person acting on 570

behalf of an employee means a request by an employee or a person 571  
acting on behalf of an employee for the employee's own 572  
information. The employer may require that the employee provide 573  
the employer with a written request that has been signed by the 574  
employee and notarized and that reasonably specifies the 575  
particular information being requested. The employer may require 576  
that the person acting on behalf of an employee provide the 577  
employer with a written request that has been signed by the 578  
employee whose information is being requested and notarized and 579  
that reasonably specifies the particular information being 580  
requested. 581

(H) In accordance with Section 34a of Article II, Ohio 582  
Constitution, an employee, person acting on behalf of one or 583  
more employees, and any other interested party may file a 584  
complaint with the state for a violation of any provision of 585  
Section 34a of Article II, Ohio Constitution, or any law or 586  
regulation implementing its provisions. Such complaint shall be 587  
promptly investigated and resolved by the state. The employee's 588  
name shall be kept confidential unless disclosure is necessary 589  
to resolution of a complaint and the employee consents to 590  
disclosure. As used in division (H) of this section: 591

(1) "Complaint" means a complaint of an alleged violation 592  
pertaining to harm suffered by the employee filing the 593  
complaint, by a person acting on behalf of one or more 594  
employees, or by an interested party. 595

(2) "Acting on behalf of one or more employees" has the 596  
same meaning as "acting on behalf of an employee" in division 597  
(G) (2) of this section. Each employee must provide a separate 598  
written and notarized authorization before the person acting on 599  
that employee's or those employees' behalf may request the name, 600

address, occupation, pay rate, hours worked for each day worked, 601  
and each amount paid for the particular employee. 602

(3) "Interested party" means a party who alleges to be 603  
injured by the alleged violation and who has standing to file a 604  
complaint under common law principles of standing. 605

(4) "Resolved by the state" means that the complaint has 606  
been resolved to the satisfaction of the state. 607

(5) "Shall be kept confidential" means that the state 608  
shall keep the name of the employee confidential as required by 609  
division (H) of this section. 610

(I) In accordance with Section 34a of Article II, Ohio 611  
Constitution, the state may on its own initiative investigate an 612  
employer's compliance with Section 34a of Article II, Ohio 613  
Constitution, and any law or regulation implementing Section 34a 614  
of Article II, Ohio Constitution. The employer shall make 615  
available to the state any records related to such investigation 616  
and other information required for enforcement of Section 34a of 617  
Article II, Ohio Constitution or any law or regulation 618  
implementing Section 34a of Article II, Ohio Constitution. The 619  
state shall investigate an employer's compliance with this 620  
section in accordance with the procedures described in section 621  
4111.04 of the Revised Code. All records and information related 622  
to investigations by the state are confidential and are not a 623  
public record subject to section 149.43 of the Revised Code. 624  
This division does not prevent the state from releasing to or 625  
exchanging with other state and federal wage and hour regulatory 626  
authorities information related to investigations. 627

(J) In accordance with Section 34a of Article II, Ohio 628  
Constitution, damages shall be calculated as an additional two 629

times the amount of the back wages and in the case of a 630  
violation of an anti-retaliation provision an amount set by the 631  
state or court sufficient to compensate the employee and deter 632  
future violations, but not less than one hundred fifty dollars 633  
for each day that the violation continued. The "not less than 634  
one hundred fifty dollar" penalty specified in division (J) of 635  
this section shall be imposed only for violations of the anti- 636  
retaliation provision in Section 34a of Article II, Ohio 637  
Constitution. 638

(K) In accordance with Section 34a of Article II, Ohio 639  
Constitution, an action for equitable and monetary relief may be 640  
brought against an employer by the attorney general and/or an 641  
employee or person acting on behalf of an employee or all 642  
similarly situated employees in any court of competent 643  
jurisdiction, including the court of common pleas of an 644  
employee's county of residence, for any violation of Section 34a 645  
of Article II, Ohio Constitution, or any law or regulation 646  
implementing its provisions within three years of the violation 647  
or of when the violation ceased if it was of a continuing 648  
nature, or within one year after notification to the employee of 649  
final disposition by the state of a complaint for the same 650  
violation, whichever is later. 651

(1) As used in division (K) of this section, 652  
"notification" means the date on which the notice was sent to 653  
the employee by the state. 654

(2) No employee shall join as a party plaintiff in any 655  
civil action that is brought under division (K) of this section 656  
by an employee, person acting on behalf of an employee, or 657  
person acting on behalf of all similarly situated employees 658  
unless that employee first gives written consent to become such 659

a party plaintiff and that consent is filed with the court in 660  
which the action is brought. 661

(3) A civil action regarding an alleged violation of this 662  
section shall be maintained only under division (K) of this 663  
section. This division does not preclude the joinder in a single 664  
civil action of an action under this division and an action 665  
under section 4111.10 of the Revised Code. 666

(4) Any agreement between an employee and employer to work 667  
for less than the wage rate specified in ~~Section 34a of Article~~ 668  
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 669  
defense to an action under this section. 670

(L) In accordance with Section 34a of Article II, Ohio 671  
Constitution, there shall be no exhaustion requirement, no 672  
procedural, pleading, or burden of proof requirements beyond 673  
those that apply generally to civil suits in order to maintain 674  
such action and no liability for costs or attorney's fees on an 675  
employee except upon a finding that such action was frivolous in 676  
accordance with the same standards that apply generally in civil 677  
suits. Nothing in division (L) of this section affects the right 678  
of an employer and employee to agree to submit a dispute under 679  
this section to alternative dispute resolution, including, but 680  
not limited to, arbitration, in lieu of maintaining the civil 681  
suit specified in division (K) of this section. Nothing in this 682  
division limits the state's ability to investigate or enforce 683  
this section. 684

(M) An employer who provides such information specified in 685  
Section 34a of Article II, Ohio Constitution, shall be immune 686  
from any civil liability for injury, death, or loss to person or 687  
property that otherwise might be incurred or imposed as a result 688  
of providing that information to an employee or person acting on 689



behalf of an employee in response to a request by the employee 690  
or person, and the employer shall not be subject to the 691  
provisions of Chapters 1347. and 1349. of the Revised Code to 692  
the extent that such provisions would otherwise apply. As used 693  
in division (M) of this section, "such information," "acting on 694  
behalf of an employee," and "request" have the same meanings as 695  
in division (G) of this section. 696

(N) As used in this section, "the state" means the 697  
director of commerce. 698

**Sec. 4113.15.** (A) Every individual, firm, partnership, 699  
association, or corporation doing business in this state shall, 700  
on or before the first day of each month, pay all its employees 701  
the wages earned by them during the first half of the preceding 702  
month ending with the fifteenth day thereof, and shall, on or 703  
before the fifteenth day of each month, pay such employees the 704  
wages earned by them during the last half of the preceding 705  
calendar month. If at any time of payment an employee is absent 706  
from ~~his~~ the employee's regular place of labor and does not 707  
receive ~~his~~ payment of wages through an authorized 708  
representative, such person shall be entitled to said payment at 709  
any time thereafter upon demand upon the proper paymaster at the 710  
place where such wages are usually paid and where such pay is 711  
due. This section does not prohibit the daily or weekly payment 712  
of wages. ~~The~~ or the use of a longer time lapse that is 713  
customary to a given trade, profession or occupation, or 714  
establishment of a different time lapse by written contract or 715  
by operation of law. 716

(B) Where wages remain unpaid for thirty days beyond the 717  
regularly scheduled payday or, in the case where no regularly 718  
scheduled payday is applicable, for sixty days beyond the filing 719

by the employee of a claim or for sixty days beyond the date of 720  
the agreement, award, or other act making wages payable and no 721  
contest court order or dispute of any wage claim including the 722  
assertion of a counterclaim exists accounting for nonpayment, 723  
the employer, in addition, as liquidated damages, is liable to 724  
the employee in an amount equal to six per cent of the amount of 725  
the claim still unpaid and not in contest or disputed or two 726  
hundred dollars, whichever is greater. 727

(C) In the absence of a contest, court order or dispute, 728  
an employer who is party to an agreement to pay or provide 729  
fringe benefits to an employee or to make any employee 730  
authorized deduction becomes a trustee of any funds required by 731  
such agreement to be paid to any person, organization, or 732  
governmental agency from the time that the duty to make such 733  
payment arises. No person shall, without reasonable 734  
justification or excuse for such failure, knowingly fail or 735  
refuse to pay to the appropriate person, organization, or 736  
governmental agency the amount necessary to provide the benefits 737  
or accomplish the purpose of any employee authorized deduction, 738  
within thirty days after the close of the pay period during 739  
which the employee earned or had deducted the amount of money 740  
necessary to pay for the fringe benefit or make any employee 741  
authorized deduction. A failure or refusal to pay, regardless of 742  
the number of employee pay accounts involved, constitutes one 743  
offense for the first delinquency of thirty days and a separate 744  
offense for each successive delinquency of thirty days. 745

(D) As used in this section and section 4113.16 of the 746  
Revised Code: 747

(1) "Wage" means the net amount of money payable to an 748  
employee, including any guaranteed pay or reimbursement for 749

expenses, less any federal, state, or local taxes withheld; any 750  
deductions made pursuant to a written agreement for the purpose 751  
of providing the employee with any fringe benefits; and any 752  
employee authorized deduction. 753

(2) "Fringe benefits" includes but is not limited to 754  
health, welfare, or retirement benefits, whether paid for 755  
entirely by the employer or on the basis of a joint employer- 756  
employee contribution, or vacation, separation, or holiday pay. 757

(3) "Employee authorized deduction" includes but is not 758  
limited to deductions for the purpose of any of the following: 759  
~~(a) purchase~~ 760

(a) Purchase of United States savings bonds or corporate 761  
stocks or bonds, ~~(b) a~~; 762

(b) A charitable contribution, ~~(c) credit~~; 763

(c) Credit union savings or other regular savings program, ~~or~~ 764  
~~(d) repayment~~; 765

(d) Repayment of a loan or other obligation. 766

(4) "Employee" has the same meaning as in section 4175.01 767  
of the Revised Code. 768

**Sec. 4115.03.** As used in sections 4115.03 to 4115.16 of 769  
the Revised Code: 770

(A) "Public authority" means any officer, board, or 771  
commission of the state, or any political subdivision of the 772  
state, authorized to enter into a contract for the construction 773  
of a public improvement or to construct the same by the direct 774  
employment of labor, or any institution supported in whole or in 775  
part by public funds and said sections apply to expenditures of 776  
such institutions made in whole or in part from public funds. 777

(B) "Construction" means any of the following: 778

(1) Except as provided in division (B) (3) of this section, 779  
any new construction of a public improvement, the total overall 780  
project cost of which is fairly estimated to be more than the 781  
following amounts and performed by other than full-time 782  
employees who have completed their probationary periods in the 783  
classified service of a public authority: 784

(a) One hundred twenty-five thousand dollars, beginning on 785  
~~the effective date of this amendment~~ September 29, 2011, and 786  
continuing for one year thereafter; 787

(b) Two hundred thousand dollars, beginning when the time 788  
period described in division (B) (1) (a) of this section expires 789  
and continuing for one year thereafter; 790

(c) Two hundred fifty thousand dollars, beginning when the 791  
time period described in division (B) (1) (b) of this section 792  
expires. 793

(2) Except as provided in division (B) (4) of this section, 794  
any reconstruction, enlargement, alteration, repair, remodeling, 795  
renovation, or painting of a public improvement, the total 796  
overall project cost of which is fairly estimated to be more 797  
than the following amounts and performed by other than full-time 798  
employees who have completed their probationary period in the 799  
classified civil service of a public authority: 800

(a) Thirty-eight thousand dollars, beginning on ~~the~~ 801  
~~effective date of this amendment~~ September 29, 2011, and 802  
continuing for one year thereafter; 803

(b) Sixty thousand dollars, beginning when the time period 804  
described in division (B) (2) (a) of this section expires and 805  
continuing for one year thereafter; 806

(c) Seventy-five thousand dollars, beginning when the time 807  
period described in division (B) (2) (b) of this section expires. 808

(3) Any new construction of a public improvement that 809  
involves roads, streets, alleys, sewers, ditches, and other 810  
works connected to road or bridge construction, the total 811  
overall project cost of which is fairly estimated to be more 812  
than seventy-eight thousand two hundred fifty-eight dollars 813  
adjusted biennially by the director of commerce pursuant to 814  
section 4115.034 of the Revised Code and performed by other than 815  
full-time employees who have completed their probationary 816  
periods in the classified service of a public authority; 817

(4) Any reconstruction, enlargement, alteration, repair, 818  
remodeling, renovation, or painting of a public improvement that 819  
involves roads, streets, alleys, sewers, ditches, and other 820  
works connected to road or bridge construction, the total 821  
overall project cost of which is fairly estimated to be more 822  
than twenty-three thousand four hundred forty-seven dollars 823  
adjusted biennially by the director of commerce pursuant to 824  
section 4115.034 of the Revised~~code~~ Code and performed by other 825  
than full-time employees who have completed their probationary 826  
periods in the classified service of a public authority. 827

(C) "Public improvement" includes all buildings, roads, 828  
streets, alleys, sewers, ditches, sewage disposal plants, water 829  
works, and all other structures or works constructed by a public 830  
authority of the state or any political subdivision thereof or 831  
by any person who, pursuant to a contract with a public 832  
authority, constructs any structure for a public authority of 833  
the state or a political subdivision thereof. When a public 834  
authority rents or leases a newly constructed structure within 835  
six months after completion of such construction, all work 836

performed on such structure to suit it for occupancy by a public authority is a "public improvement." "Public improvement" does not include an improvement authorized by section 1515.08 of the Revised Code that is constructed pursuant to a contract with a soil and water conservation district, as defined in section 1515.01 of the Revised Code, or performed as a result of a petition filed pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, wherein no less than seventy-five per cent of the project is located on private land and no less than seventy-five per cent of the cost of the improvement is paid for by private property owners pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised Code.

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

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

(1) The basic hourly rate of pay;

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

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

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

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

(c) Compensation for injuries or illnesses resulting from 865  
occupational activities if it is in addition to that coverage 866  
required by Chapters 4121. and 4123. of the Revised Code; 867

(d) Supplemental unemployment benefits that are in 868  
addition to those required by Chapter 4141. of the Revised Code; 869

(e) Life insurance; 870

(f) Disability and sickness insurance; 871

(g) Accident insurance; 872

(h) Vacation and holiday pay; 873

(i) Defraying of costs for apprenticeship or other similar 874  
training programs which are beneficial only to the laborers and 875  
mechanics affected; 876

(j) Other bona fide fringe benefits. 877

None of the benefits enumerated in division (E) (3) of this 878  
section may be considered in the determination of prevailing 879  
wages if federal, state, or local law requires contractors or 880  
subcontractors to provide any of such benefits. 881

(F) "Interested party," with respect to a particular 882  
contract for construction of a public improvement, means: 883

(1) Any person who submits a bid for the purpose of 884  
securing the award of the contract; 885

(2) Any person acting as a subcontractor of a person 886  
described in division (F) (1) of this section; 887

(3) Any bona fide organization of labor which has as 888  
members or is authorized to represent employees of a person 889  
described in division (F) (1) or (2) of this section and which 890  
exists, in whole or in part, for the purpose of negotiating with 891

employers concerning the wages, hours, or terms and conditions 892  
of employment of employees; 893

(4) Any association having as members any of the persons 894  
described in division (F) (1) or (2) of this section. 895

(G) Except as used in division (A) of this section, 896  
"officer" means an individual who has an ownership interest or 897  
holds an office of trust, command, or authority in a 898  
corporation, business trust, partnership, or association. 899

(H) "Employee" has the same meaning as in section 4175.01 900  
of the Revised Code. 901

**Sec. 4121.01.** (A) As used in sections 4121.01 to 4121.29 902  
of the Revised Code: 903

(1) "Place of employment" means every place, whether 904  
indoors or out, or underground, and the premises appurtenant 905  
thereto, where either temporarily or permanently any industry, 906  
trade, or business is carried on, or where any process or 907  
operation, directly or indirectly related to any industry, 908  
trade, or business, is carried on and where any person is 909  
directly or indirectly employed by another for direct or 910  
indirect gain or profit, but does not include any place where 911  
persons are employed in private domestic service or agricultural 912  
pursuits which do not involve the use of mechanical power. 913

(2) "Employment" means any trade, occupation, or process 914  
of manufacture or any method of carrying on such trade, 915  
occupation, or process of manufacture in which any person may be 916  
engaged, except in such private domestic service or agricultural 917  
pursuits as do not involve the use of mechanical power. 918

(3) "Employer" means every person, firm, corporation, 919  
agent, manager, representative, or other person having control 920



or custody of any employment, place of employment, or employee. 921

(4) "Employee" ~~means every person who may be required or~~ 922  
~~directed by any employer, in consideration of direct or indirect~~ 923  
~~gain or profit, to engage in any employment, or to go, or work,~~ 924  
~~or be at any time in any place of employment~~ has the same 925  
meaning as in section 4175.01 of the Revised Code. 926

(5) "Frequentener" means every person, other than an 927  
employee, who may go in or be in a place of employment under 928  
circumstances which render the person other than a trespasser. 929

(6) "Deputy" means any person employed by the industrial 930  
commission or the bureau of workers' compensation, designated as 931  
a deputy by the commission or the administrator of workers' 932  
compensation, who possesses special, technical, scientific, 933  
managerial, professional, or personal abilities or qualities in 934  
matters within the jurisdiction of the commission or the bureau, 935  
and who may be engaged in the performance of duties under the 936  
direction of the commission or the bureau calling for the 937  
exercise of such abilities or qualities. 938

(7) "Order" means any decision, rule, regulation, 939  
direction, requirement, or standard, or any other determination 940  
or decision that the bureau is empowered to and does make. 941

(8) "General order" means an order that applies generally 942  
throughout the state to all persons, employments, or places of 943  
employment, or all persons, employments, or places of employment 944  
of a class under the jurisdiction of the bureau. All other 945  
orders shall be considered special orders. 946

(9) "Local order" means any ordinance, order, rule, or 947  
determination of the legislative authority of any municipal 948  
corporation, or any trustees, or board or officers of any 949

municipal corporation upon any matter over which the bureau has 950  
jurisdiction. 951

(10) "Welfare" means comfort, decency, and moral well- 952  
being. 953

(11) "Safe" or "safety," as applied to any employment or a 954  
place of employment, means such freedom from danger to the life, 955  
health, safety, or welfare of employees or frequenters as the 956  
nature of the employment will reasonably permit, including 957  
requirements as to the hours of labor with relation to the 958  
health and welfare of employees. 959

(12) "Employee organization" means any labor or bona fide 960  
organization in which employees participate and that exists for 961  
the purpose, in whole or in part, of dealing with employers 962  
concerning grievances, labor disputes, wages, hours, terms, and 963  
other conditions of employment. 964

(B) As used in the Revised Code: 965

(1) "Industrial commission" means the chairperson of the 966  
three-member industrial commission created pursuant to section 967  
4121.02 of the Revised Code when the context refers to the 968  
authority vested in the chairperson as the chief executive 969  
officer of the three-member industrial commission pursuant to 970  
divisions (A), (B), (C), and (D) of section 4121.03 of the 971  
Revised Code. 972

(2) "Industrial commission" means the three-member 973  
industrial commission created pursuant to section 4121.02 of the 974  
Revised Code when the context refers to the authority vested in 975  
the three-member industrial commission pursuant to division (E) 976  
of section 4121.03 of the Revised Code. 977

(3) "Industrial commission" means the industrial 978

commission as a state agency when the context refers to the 979  
authority vested in the industrial commission as a state agency. 980

**Sec. 4123.01.** As used in this chapter: 981

(A) (1) "Employee" means: 982

~~(a) Every person in the service of the state, or of any 983  
county, municipal corporation, township, or school district 984  
therein, including regular members of lawfully constituted 985  
police and fire departments of municipal corporations and 986  
townships, whether paid or volunteer, and wherever serving 987  
within the state or on temporary assignment outside thereof, and 988  
executive officers of boards of education, under any appointment 989  
or contract of hire, express or implied, oral or written, 990  
including any elected official of the state, or of any county, 991  
municipal corporation, or township, or members of boards of 992  
education. 993~~

~~As used in division (A) (1) (a) of this section, the term 994  
"employee" has the same meaning as in section 4175.01 of the 995  
Revised Code, except that "employee" also includes the following 996  
persons when responding to an inherently dangerous situation 997  
that calls for an immediate response on the part of the person, 998  
regardless of whether the person is within the limits of the 999  
jurisdiction of the person's regular employment or voluntary 1000  
service when responding, on the condition that the person 1001  
responds to the situation as the person otherwise would if the 1002  
person were on duty in the person's jurisdiction: 1003~~

~~(i) (a) Off-duty peace officers. As used in division (A) 1004  
(1) (a) (i) of this section, "peace officer" has the same meaning 1005  
as in section 2935.01 of the Revised Code. 1006~~

~~(ii) (b) Off-duty firefighters, whether paid or volunteer, 1007~~

of a lawfully constituted fire department. 1008

~~(iii)-(c)~~ Off-duty first responders, emergency medical 1009  
technicians-basic, emergency medical technicians-intermediate, 1010  
or emergency medical technicians-paramedic, whether paid or 1011  
volunteer, of an ambulance service organization or emergency 1012  
medical service organization pursuant to Chapter 4765. of the 1013  
Revised Code. 1014

~~(b) Every person in the service of any person, firm, or 1015  
private corporation, including any public service corporation, 1016  
that (i) employs one or more persons regularly in the same 1017  
business or in or about the same establishment under any 1018  
contract of hire, express or implied, oral or written, including 1019  
aliens and minors, household workers who earn one hundred sixty 1020  
dollars or more in cash in any calendar quarter from a single 1021  
household and casual workers who earn one hundred sixty dollars 1022  
or more in cash in any calendar quarter from a single employer, 1023  
or (ii) is bound by any such contract of hire or by any other 1024  
written contract, to pay into the state insurance fund the 1025  
premiums provided by this chapter. 1026~~

~~(c) Every person who performs labor or provides services 1027  
pursuant to a construction contract, as defined in section 1028  
4123.79 of the Revised Code, if at least ten of the following 1029  
criteria apply: 1030~~

~~(i) The person is required to comply with instructions 1031  
from the other contracting party regarding the manner or method 1032  
of performing services; 1033~~

~~(ii) The person is required by the other contracting party 1034  
to have particular training; 1035~~

~~(iii) The person's services are integrated into the 1036~~

<del>regular functioning of the other contracting party;</del>	1037
<del>(iv) The person is required to perform the work personally;</del>	1038
	1039
<del>(v) The person is hired, supervised, or paid by the other contracting party;</del>	1040
	1041
<del>(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;</del>	1042
	1043
	1044
<del>(vii) The person's hours of work are established by the other contracting party;</del>	1045
	1046
<del>(viii) The person is required to devote full time to the business of the other contracting party;</del>	1047
	1048
<del>(ix) The person is required to perform the work on the premises of the other contracting party;</del>	1049
	1050
<del>(x) The person is required to follow the order of work set by the other contracting party;</del>	1051
	1052
<del>(xi) The person is required to make oral or written reports of progress to the other contracting party;</del>	1053
	1054
<del>(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;</del>	1055
	1056
<del>(xiii) The person's expenses are paid for by the other contracting party;</del>	1057
	1058
<del>(xiv) The person's tools and materials are furnished by the other contracting party;</del>	1059
	1060
<del>(xv) The person is provided with the facilities used to perform services;</del>	1061
	1062

~~(xvi) The person does not realize a profit or suffer a~~ 1063  
~~loss as a result of the services provided;~~ 1064

~~(xvii) The person is not performing services for a number~~ 1065  
~~of employers at the same time;~~ 1066

~~(xviii) The person does not make the same services~~ 1067  
~~available to the general public;~~ 1068

~~(xix) The other contracting party has a right to discharge~~ 1069  
~~the person;~~ 1070

~~(xx) The person has the right to end the relationship with~~ 1071  
~~the other contracting party without incurring liability pursuant~~ 1072  
~~to an employment contract or agreement.~~ 1073

~~Every person in the service of any independent contractor~~ 1074  
~~or subcontractor who has failed to pay into the state insurance~~ 1075  
~~fund the amount of premium determined and fixed by the~~ 1076  
~~administrator of workers' compensation for the person's~~ 1077  
~~employment or occupation or if a self-insuring employer has~~ 1078  
~~failed to pay compensation and benefits directly to the~~ 1079  
~~employer's injured and to the dependents of the employer's~~ 1080  
~~killed employees as required by section 4123.35 of the Revised~~ 1081  
~~Code, shall be considered as the employee of the person who has~~ 1082  
~~entered into a contract, whether written or verbal, with such~~ 1083  
~~independent contractor unless such employees or their legal~~ 1084  
~~representatives or beneficiaries elect, after injury or death,~~ 1085  
~~to regard such independent contractor as the employer.~~ 1086

(2) "Employee" does not mean any of the following: 1087

(a) A duly ordained, commissioned, or licensed minister or 1088  
assistant or associate minister of a church in the exercise of 1089  
ministry; 1090

(b) Any officer of a family farm corporation; 1091

(c) An individual ~~incorporated as a corporation, or~~ 1092

~~(d) An individual~~ who otherwise is an employee of an 1093  
employer but who signs the waiver and affidavit specified in 1094  
section 4123.15 of the Revised Code on the condition that the 1095  
administrator of workers' compensation has granted a waiver and 1096  
exception to the individual's employer under section 4123.15 of 1097  
the Revised Code. 1098

Any employer may elect to include as an "employee" within 1099  
this chapter, any person excluded from the definition of 1100  
"employee" pursuant to division (A)(2) of this section. If an 1101  
employer is a partnership, sole proprietorship, ~~individual~~ 1102  
~~incorporated as a corporation, or~~ family farm corporation, such 1103  
employer may elect to include as an "employee" within this 1104  
chapter, any member of such partnership, the owner of the sole 1105  
proprietorship, ~~the individual incorporated as a corporation, or~~ 1106  
the officers of the family farm corporation. In the event of an 1107  
election, the employer shall serve upon the bureau of workers' 1108  
compensation written notice naming the persons to be covered, 1109  
include such employee's remuneration for premium purposes in all 1110  
future payroll reports, and no person excluded from the 1111  
definition of "employee" pursuant to division (A)(2) of this 1112  
section, proprietor, ~~individual incorporated as a corporation,~~ 1113  
or partner shall be deemed an employee within this division 1114  
until the employer has served such notice. 1115

For informational purposes only, the bureau shall 1116  
prescribe such language as it considers appropriate, on such of 1117  
its forms as it considers appropriate, to advise employers of 1118  
their right to elect to include as an "employee" within this 1119  
chapter a sole proprietor, any member of a partnership, ~~an~~ 1120

~~individual incorporated as a corporation,~~ the officers of a 1121  
family farm corporation, or a person excluded from the 1122  
definition of "employee" under division (A) (2) of this section, 1123  
that they should check any health and disability insurance 1124  
policy, or other form of health and disability plan or contract, 1125  
presently covering them, or the purchase of which they may be 1126  
considering, to determine whether such policy, plan, or contract 1127  
excludes benefits for illness or injury that they might have 1128  
elected to have covered by workers' compensation. 1129

(B) "Employer" means: 1130

(1) The state, including state hospitals, each county, 1131  
municipal corporation, township, school district, and hospital 1132  
owned by a political subdivision or subdivisions other than the 1133  
state; 1134

(2) Every person, firm, professional employer 1135  
organization, and private corporation, including any public 1136  
service corporation, that (a) has in service one or more 1137  
employees or shared employees regularly in the same business or 1138  
in or about the same establishment under any contract of hire, 1139  
express or implied, oral or written, or (b) is bound by any such 1140  
contract of hire or by any other written contract, to pay into 1141  
the insurance fund the premiums provided by this chapter. 1142

All such employers are subject to this chapter. Any member 1143  
of a firm or association, who regularly performs manual labor in 1144  
or about a mine, factory, or other establishment, including a 1145  
household establishment, shall be considered an employee in 1146  
determining whether such person, firm, or private corporation, 1147  
or public service corporation, has in its service, one or more 1148  
employees and the employer shall report the income derived from 1149  
such labor to the bureau as part of the payroll of such 1150



employer, and such member shall thereupon be entitled to all the 1151  
benefits of an employee. 1152

(C) "Injury" includes any injury, whether caused by 1153  
external accidental means or accidental in character and result, 1154  
received in the course of, and arising out of, the injured 1155  
employee's employment. "Injury" does not include: 1156

(1) Psychiatric conditions except where the claimant's 1157  
psychiatric conditions have arisen from an injury or 1158  
occupational disease sustained by that claimant or where the 1159  
claimant's psychiatric conditions have arisen from sexual 1160  
conduct in which the claimant was forced by threat of physical 1161  
harm to engage or participate; 1162

(2) Injury or disability caused primarily by the natural 1163  
deterioration of tissue, an organ, or part of the body; 1164

(3) Injury or disability incurred in voluntary 1165  
participation in an employer-sponsored recreation or fitness 1166  
activity if the employee signs a waiver of the employee's right 1167  
to compensation or benefits under this chapter prior to engaging 1168  
in the recreation or fitness activity; 1169

(4) A condition that pre-existed an injury unless that 1170  
pre-existing condition is substantially aggravated by the 1171  
injury. Such a substantial aggravation must be documented by 1172  
objective diagnostic findings, objective clinical findings, or 1173  
objective test results. Subjective complaints may be evidence of 1174  
such a substantial aggravation. However, subjective complaints 1175  
without objective diagnostic findings, objective clinical 1176  
findings, or objective test results are insufficient to 1177  
substantiate a substantial aggravation. 1178

(D) "Child" includes a posthumous child and a child 1179

legally adopted prior to the injury. 1180

(E) "Family farm corporation" means a corporation founded 1181  
for the purpose of farming agricultural land in which the 1182  
majority of the voting stock is held by and the majority of the 1183  
stockholders are persons or the spouse of persons related to 1184  
each other within the fourth degree of kinship, according to the 1185  
rules of the civil law, and at least one of the related persons 1186  
is residing on or actively operating the farm, and none of whose 1187  
stockholders are a corporation. A family farm corporation does 1188  
not cease to qualify under this division where, by reason of any 1189  
devise, bequest, or the operation of the laws of descent or 1190  
distribution, the ownership of shares of voting stock is 1191  
transferred to another person, as long as that person is within 1192  
the degree of kinship stipulated in this division. 1193

(F) "Occupational disease" means a disease contracted in 1194  
the course of employment, which by its causes and the 1195  
characteristics of its manifestation or the condition of the 1196  
employment results in a hazard which distinguishes the 1197  
employment in character from employment generally, and the 1198  
employment creates a risk of contracting the disease in greater 1199  
degree and in a different manner from the public in general. 1200

(G) "Self-insuring employer" means an employer who is 1201  
granted the privilege of paying compensation and benefits 1202  
directly under section 4123.35 of the Revised Code, including a 1203  
board of county commissioners for the sole purpose of 1204  
constructing a sports facility as defined in section 307.696 of 1205  
the Revised Code, provided that the electors of the county in 1206  
which the sports facility is to be built have approved 1207  
construction of a sports facility by ballot election no later 1208  
than November 6, 1997. 1209

(H) "Private employer" means an employer as defined in 1210  
division (B) (2) of this section. 1211

(I) "Professional employer organization" has the same 1212  
meaning as in section 4125.01 of the Revised Code. 1213

(J) "Public employer" means an employer as defined in 1214  
division (B) (1) of this section. 1215

(K) "Sexual conduct" means vaginal intercourse between a 1216  
male and female; anal intercourse, fellatio, and cunnilingus 1217  
between persons regardless of gender; and, without privilege to 1218  
do so, the insertion, however slight, of any part of the body or 1219  
any instrument, apparatus, or other object into the vaginal or 1220  
anal cavity of another. Penetration, however slight, is 1221  
sufficient to complete vaginal or anal intercourse. 1222

(L) "Other-states' insurer" means an insurance company 1223  
that is authorized to provide workers' compensation insurance 1224  
coverage in any of the states that permit employers to obtain 1225  
insurance for workers' compensation claims through insurance 1226  
companies. 1227

(M) "Other-states' coverage" means both of the following: 1228

(1) Insurance coverage secured by an eligible employer for 1229  
workers' compensation claims of employees who are in employment 1230  
relationships localized in a state other than this state or 1231  
those employees' dependents; 1232

(2) Insurance coverage secured by an eligible employer for 1233  
workers' compensation claims that arise in a state other than 1234  
this state where an employer elects to obtain coverage through 1235  
either the administrator or an other-states' insurer. 1236

(N) "Limited other-states coverage" means insurance 1237

coverage provided by the administrator to an eligible employer 1238  
for workers' compensation claims of employees who are in an 1239  
employment relationship localized in this state but are 1240  
temporarily working in a state other than this state, or those 1241  
employees' dependents. 1242

**Sec. 4123.026.** (A) The administrator of workers' 1243  
compensation, or a self-insuring public employer for the peace 1244  
officers, firefighters, and emergency medical workers employed 1245  
by or volunteering for that self-insuring public employer, shall 1246  
pay the costs of conducting post-exposure medical diagnostic 1247  
services, consistent with the standards of medical care existing 1248  
at the time of the exposure, to investigate whether an injury or 1249  
occupational disease was sustained by a peace officer, 1250  
firefighter, or emergency medical worker when coming into 1251  
contact with the blood or other body fluid of another person in 1252  
the course of and arising out of the peace officer's, 1253  
firefighter's, or emergency medical worker's employment, or when 1254  
responding to an inherently dangerous situation in the manner 1255  
described in, and in accordance with the conditions specified 1256  
under, division (A)(1)~~(a)~~ of section 4123.01 of the Revised 1257  
Code, through any of the following means: 1258

(1) Splash or spatter in the eye or mouth, including when 1259  
received in the course of conducting mouth-to-mouth 1260  
resuscitation; 1261

(2) A puncture in the skin; 1262

(3) A cut in the skin or another opening in the skin such 1263  
as an open sore, wound, lesion, abrasion, or ulcer. 1264

(B) As used in this section: 1265

(1) "Peace officer" has the same meaning as in section 1266

2935.01 of the Revised Code. 1267

(2) "Firefighter" means a firefighter, whether paid or 1268  
volunteer, of a lawfully constituted fire department. 1269

(3) "Emergency medical worker" means a first responder, 1270  
emergency medical technician-basic, emergency medical 1271  
technician-intermediate, or emergency medical technician- 1272  
paramedic, certified under Chapter 4765. of the Revised Code, 1273  
whether paid or volunteer. 1274

**Sec. 4141.01.** As used in this chapter, unless the context 1275  
otherwise requires: 1276

(A) (1) "Employer" means the state, its instrumentalities, 1277  
its political subdivisions and their instrumentalities, Indian 1278  
tribes, and any individual or type of organization including any 1279  
partnership, limited liability company, association, trust, 1280  
estate, joint-stock company, insurance company, or corporation, 1281  
whether domestic or foreign, or the receiver, trustee in 1282  
bankruptcy, trustee, or the successor thereof, or the legal 1283  
representative of a deceased person who subsequent to December 1284  
31, 1971, or in the case of political subdivisions or their 1285  
instrumentalities, subsequent to December 31, 1973: 1286

(a) Had in employment at least one individual, or in the 1287  
case of a nonprofit organization, subsequent to December 31, 1288  
1973, had not less than four individuals in employment for some 1289  
portion of a day in each of twenty different calendar weeks, in 1290  
either the current or the preceding calendar year whether or not 1291  
the same individual was in employment in each such day; or 1292

(b) Except for a nonprofit organization, had paid for 1293  
service in employment wages of fifteen hundred dollars or more 1294  
in any calendar quarter in either the current or preceding 1295

calendar year; or 1296

(c) Had paid, subsequent to December 31, 1977, for 1297  
employment in domestic service in a local college club, or local 1298  
chapter of a college fraternity or sorority, cash remuneration 1299  
of one thousand dollars or more in any calendar quarter in the 1300  
current calendar year or the preceding calendar year, or had 1301  
paid subsequent to December 31, 1977, for employment in domestic 1302  
service in a private home cash remuneration of one thousand 1303  
dollars in any calendar quarter in the current calendar year or 1304  
the preceding calendar year: 1305

(i) For the purposes of divisions (A) (1) (a) and (b) of 1306  
this section, there shall not be taken into account any wages 1307  
paid to, or employment of, an individual performing domestic 1308  
service as described in this division. 1309

(ii) An employer under this division shall not be an 1310  
employer with respect to wages paid for any services other than 1311  
domestic service unless the employer is also found to be an 1312  
employer under division (A) (1) (a), (b), or (d) of this section. 1313

(d) As a farm operator or a crew leader subsequent to 1314  
December 31, 1977, had in employment individuals in agricultural 1315  
labor; and 1316

(i) During any calendar quarter in the current calendar 1317  
year or the preceding calendar year, paid cash remuneration of 1318  
twenty thousand dollars or more for the agricultural labor; or 1319

(ii) Had at least ten individuals in employment in 1320  
agricultural labor, not including agricultural workers who are 1321  
aliens admitted to the United States to perform agricultural 1322  
labor pursuant to sections 1184(c) and 1101(a) (15) (H) of the 1323  
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1324

1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in 1325  
each of the twenty different calendar weeks, in either the 1326  
current or preceding calendar year whether or not the same 1327  
individual was in employment in each day; or 1328

(e) Is not otherwise an employer as defined under division 1329  
(A)(1)(a) or (b) of this section; and 1330

(i) For which, within either the current or preceding 1331  
calendar year, service, except for domestic service in a private 1332  
home not covered under division (A)(1)(c) of this section, is or 1333  
was performed with respect to which such employer is liable for 1334  
any federal tax against which credit may be taken for 1335  
contributions required to be paid into a state unemployment 1336  
fund; 1337

(ii) Which, as a condition for approval of this chapter 1338  
for full tax credit against the tax imposed by the "Federal 1339  
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 1340  
is required, pursuant to such act to be an employer under this 1341  
chapter; or 1342

(iii) Who became an employer by election under division 1343  
(A)(4) or (5) of this section and for the duration of such 1344  
election; or 1345

(f) In the case of the state, its instrumentalities, its 1346  
political subdivisions, and their instrumentalities, and Indian 1347  
tribes, had in employment, as defined in divisions (B)(2)(a) and 1348  
(B)(2)(1) of this section, at least one individual; 1349

(g) For the purposes of division (A)(1)(a) of this 1350  
section, if any week includes both the thirty-first day of 1351  
December and the first day of January, the days of that week 1352  
before the first day of January shall be considered one calendar 1353

week and the days beginning the first day of January another 1354  
week. 1355

(2) Each individual employed to perform or to assist in 1356  
performing the work of any agent or employee of an employer is 1357  
employed by such employer for all the purposes of this chapter, 1358  
whether such individual was hired or paid directly by such 1359  
employer or by such agent or employee, provided the employer had 1360  
actual or constructive knowledge of the work. All individuals 1361  
performing services for an employer of any person in this state 1362  
who maintains two or more establishments within this state are 1363  
employed by a single employer for the purposes of this chapter. 1364

(3) An employer subject to this chapter within any 1365  
calendar year is subject to this chapter during the whole of 1366  
such year and during the next succeeding calendar year. 1367

(4) An employer not otherwise subject to this chapter who 1368  
files with the director of job and family services a written 1369  
election to become an employer subject to this chapter for not 1370  
less than two calendar years shall, with the written approval of 1371  
such election by the director, become an employer subject to 1372  
this chapter to the same extent as all other employers as of the 1373  
date stated in such approval, and shall cease to be subject to 1374  
this chapter as of the first day of January of any calendar year 1375  
subsequent to such two calendar years only if at least thirty 1376  
days prior to such first day of January the employer has filed 1377  
with the director a written notice to that effect. 1378

(5) Any employer for whom services that do not constitute 1379  
employment are performed may file with the director a written 1380  
election that all such services performed by individuals in the 1381  
employer's employ in one or more distinct establishments or 1382  
places of business shall be deemed to constitute employment for 1383



all the purposes of this chapter, for not less than two calendar 1384  
years. Upon written approval of the election by the director, 1385  
such services shall be deemed to constitute employment subject 1386  
to this chapter from and after the date stated in such approval. 1387  
Such services shall cease to be employment subject to this 1388  
chapter as of the first day of January of any calendar year 1389  
subsequent to such two calendar years only if at least thirty 1390  
days prior to such first day of January such employer has filed 1391  
with the director a written notice to that effect. 1392

(B) (1) "Employment" means service performed by an 1393  
individual for remuneration under any contract of hire, written 1394  
or oral, express or implied, including service performed in 1395  
interstate commerce and service performed by an officer of a 1396  
corporation, without regard to whether such service is 1397  
executive, managerial, or manual in nature, and without regard 1398  
to whether such officer is a stockholder or a member of the 1399  
board of directors of the corporation, unless it is shown to the 1400  
satisfaction of the director that such individual has been and 1401  
will continue to be free from direction or control over the 1402  
performance of such service, both under a contract of service 1403  
and in fact. The director shall adopt rules to define "direction 1404  
or control." 1405

(2) "Employment" includes: 1406

(a) Service performed after December 31, 1977, by an 1407  
individual in the employ of the state or any of its 1408  
instrumentalities, or any political subdivision thereof or any 1409  
of its instrumentalities or any instrumentality of more than one 1410  
of the foregoing or any instrumentality of any of the foregoing 1411  
and one or more other states or political subdivisions and 1412  
without regard to divisions (A) (1) (a) and (b) of this section, 1413

provided that such service is excluded from employment as 1414  
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1415  
U.S.C.A. 3301, 3306(c)(7) and is not excluded under division (B) 1416  
(3) of this section; or the services of employees covered by 1417  
voluntary election, as provided under divisions (A)(4) and (5) 1418  
of this section; 1419

(b) Service performed after December 31, 1971, by an 1420  
individual in the employ of a religious, charitable, 1421  
educational, or other organization which is excluded from the 1422  
term "employment" as defined in the "Federal Unemployment Tax 1423  
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1424  
of section 26 U.S.C.A. 3306(c)(8) of that act and is not 1425  
excluded under division (B)(3) of this section; 1426

(c) Domestic service performed after December 31, 1977, 1427  
for an employer, as provided in division (A)(1)(c) of this 1428  
section; 1429

(d) Agricultural labor performed after December 31, 1977, 1430  
for a farm operator or a crew leader, as provided in division 1431  
(A)(1)(d) of this section; 1432

(e) Service not covered under division (B)(1) of this 1433  
section which is performed after December 31, 1971: 1434

(i) As ~~an agent-driver or commission-driver~~ a delivery 1435  
driver engaged in distributing meat products, vegetable 1436  
products, fruit products, bakery products, beverages ~~other than~~ 1437  
~~milk, laundry, or parcels, freight, dry-cleaning services, for~~ 1438  
~~the individual's employer or principal~~ similar products; 1439

(ii) As a traveling or city salesperson, other than as ~~an~~ 1440  
~~agent-driver or commission-driver~~ a delivery driver, engaged on 1441  
a full-time basis in the solicitation on behalf of and in the 1442

transmission to the salesperson's employer or principal except 1443  
for sideline sales activities on behalf of some other person of 1444  
orders from wholesalers, retailers, contractors, or operators of 1445  
hotels, restaurants, or other similar establishments for 1446  
merchandise for resale, or supplies for use in their business 1447  
operations, ~~provided that for the purposes of division (B) (2) (e)~~ 1448  
~~(ii) of this section, the services shall be deemed employment if~~ 1449  
~~the contract of service contemplates that substantially all of~~ 1450  
~~the services are to be performed personally by the individual~~ 1451  
~~and that the individual does not have a substantial investment~~ 1452  
~~in facilities used in connection with the performance of the~~ 1453  
~~services other than in facilities for transportation, and the~~ 1454  
~~services are not in the nature of a single transaction that is~~ 1455  
~~not a part of a continuing relationship with the person for whom~~ 1456  
~~the services are performed.~~ 1457

(f) An individual's entire service performed within or 1458  
both within and without the state if: 1459

(i) The service is localized in this state. 1460

(ii) The service is not localized in any state, but some 1461  
of the service is performed in this state and either the base of 1462  
operations, or if there is no base of operations then the place 1463  
from which such service is directed or controlled, is in this 1464  
state or the base of operations or place from which such service 1465  
is directed or controlled is not in any state in which some part 1466  
of the service is performed but the individual's residence is in 1467  
this state. 1468

(g) Service not covered under division (B) (2) (f) (ii) of 1469  
this section and performed entirely without this state, with 1470  
respect to no part of which contributions are required and paid 1471  
under an unemployment compensation law of any other state, the 1472

Virgin Islands, Canada, or of the United States, if the 1473  
individual performing such service is a resident of this state 1474  
and the director approves the election of the employer for whom 1475  
such services are performed; or, if the individual is not a 1476  
resident of this state but the place from which the service is 1477  
directed or controlled is in this state, the entire services of 1478  
such individual shall be deemed to be employment subject to this 1479  
chapter, provided service is deemed to be localized within this 1480  
state if the service is performed entirely within this state or 1481  
if the service is performed both within and without this state 1482  
but the service performed without this state is incidental to 1483  
the individual's service within the state, for example, is 1484  
temporary or transitory in nature or consists of isolated 1485  
transactions; 1486

(h) Service of an individual who is a citizen of the 1487  
United States, performed outside the United States except in 1488  
Canada after December 31, 1971, or the Virgin Islands, after 1489  
December 31, 1971, and before the first day of January of the 1490  
year following that in which the United States secretary of 1491  
labor approves the Virgin Islands law for the first time, in the 1492  
employ of an American employer, other than service which is 1493  
"employment" under divisions (B)(2)(f) and (g) of this section 1494  
or similar provisions of another state's law, if: 1495

(i) The employer's principal place of business in the 1496  
United States is located in this state; 1497

(ii) The employer has no place of business in the United 1498  
States, but the employer is an individual who is a resident of 1499  
this state; or the employer is a corporation which is organized 1500  
under the laws of this state, or the employer is a partnership 1501  
or a trust and the number of partners or trustees who are 1502

residents of this state is greater than the number who are 1503  
residents of any other state; or 1504

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1505  
(ii) of this section is met but the employer has elected 1506  
coverage in this state or the employer having failed to elect 1507  
coverage in any state, the individual has filed a claim for 1508  
benefits, based on such service, under this chapter. 1509

(i) For the purposes of division (B) (2) (h) of this 1510  
section, the term "American employer" means an employer who is 1511  
an individual who is a resident of the United States; or a 1512  
partnership, if two-thirds or more of the partners are residents 1513  
of the United States; or a trust, if all of the trustees are 1514  
residents of the United States; or a corporation organized under 1515  
the laws of the United States or of any state, provided the term 1516  
"United States" includes the states, the District of Columbia, 1517  
the Commonwealth of Puerto Rico, and the Virgin Islands. 1518

(j) Notwithstanding any other provisions of divisions (B) 1519  
(1) and (2) of this section, service, except for domestic 1520  
service in a private home not covered under division (A) (1) (c) 1521  
of this section, with respect to which a tax is required to be 1522  
paid under any federal law imposing a tax against which credit 1523  
may be taken for contributions required to be paid into a state 1524  
unemployment fund, or service, except for domestic service in a 1525  
private home not covered under division (A) (1) (c) of this 1526  
section, which, as a condition for full tax credit against the 1527  
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1528  
26 U.S.C.A. 3301 to 3311, is required to be covered under this 1529  
chapter. 1530

(k) Construction services performed by any individual 1531  
under a construction contract, as defined in section 4141.39 of 1532

the Revised Code, ~~if the director determines that the employer~~ 1533  
~~for whom services are performed has the right to direct or~~ 1534  
~~control the performance of the services and that the individuals~~ 1535  
~~who perform the services receive remuneration for the services~~ 1536  
~~performed. The director shall presume that the employer for whom~~ 1537  
~~services are performed has the right to direct or control the~~ 1538  
~~performance of the services if ten or more of the following~~ 1539  
~~criteria apply:~~ 1540

~~(i) The employer directs or controls the manner or method~~ 1541  
~~by which instructions are given to the individual performing~~ 1542  
~~services;~~ 1543

~~(ii) The employer requires particular training for the~~ 1544  
~~individual performing services;~~ 1545

~~(iii) Services performed by the individual are integrated~~ 1546  
~~into the regular functioning of the employer;~~ 1547

~~(iv) The employer requires that services be provided by a~~ 1548  
~~particular individual;~~ 1549

~~(v) The employer hires, supervises, or pays the wages of~~ 1550  
~~the individual performing services;~~ 1551

~~(vi) A continuing relationship between the employer and~~ 1552  
~~the individual performing services exists which contemplates~~ 1553  
~~continuing or recurring work, even if not full-time work;~~ 1554

~~(vii) The employer requires the individual to perform~~ 1555  
~~services during established hours;~~ 1556

~~(viii) The employer requires that the individual~~ 1557  
~~performing services be devoted on a full-time basis to the~~ 1558  
~~business of the employer;~~ 1559

~~(ix) The employer requires the individual to perform~~ 1560

~~services on the employer's premises;~~ 1561

~~(x) The employer requires the individual performing~~ 1562  
~~services to follow the order of work established by the~~ 1563  
~~employer;~~ 1564

~~(xi) The employer requires the individual performing~~ 1565  
~~services to make oral or written reports of progress;~~ 1566

~~(xii) The employer makes payment to the individual for~~ 1567  
~~services on a regular basis, such as hourly, weekly, or monthly;~~ 1568

~~(xiii) The employer pays expenses for the individual~~ 1569  
~~performing services;~~ 1570

~~(xiv) The employer furnishes the tools and materials for~~ 1571  
~~use by the individual to perform services;~~ 1572

~~(xv) The individual performing services has not invested~~ 1573  
~~in the facilities used to perform services;~~ 1574

~~(xvi) The individual performing services does not realize~~ 1575  
~~a profit or suffer a loss as a result of the performance of the~~ 1576  
~~services;~~ 1577

~~(xvii) The individual performing services is not~~ 1578  
~~performing services for more than two employers simultaneously;~~ 1579

~~(xviii) The individual performing services does not make~~ 1580  
~~the services available to the general public;~~ 1581

~~(xix) The employer has a right to discharge the individual~~ 1582  
~~performing services;~~ 1583

~~(xx) The individual performing services has the right to~~ 1584  
~~end the individual's relationship with the employer without~~ 1585  
~~incurring liability pursuant to an employment contract or~~ 1586  
~~agreement.~~ 1587

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

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

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

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

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

(i) As a publicly elected official;

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

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



(iv) As an employee, not in the classified service as 1616  
defined in section 124.11 of the Revised Code, serving on a 1617  
temporary basis in case of fire, storm, snow, earthquake, flood, 1618  
or similar emergency; 1619

(v) In a position which, under or pursuant to law, is 1620  
designated as a major nontenured policymaking or advisory 1621  
position, not in the classified service of the state, or a 1622  
policymaking or advisory position the performance of the duties 1623  
of which ordinarily does not require more than eight hours per 1624  
week. 1625

(d) In the employ of any governmental unit or 1626  
instrumentality of the United States; 1627

(e) Service performed after December 31, 1971: 1628

(i) Service in the employ of an educational institution or 1629  
institution of higher education, including those operated by the 1630  
state or a political subdivision, if such service is performed 1631  
by a student who is enrolled and is regularly attending classes 1632  
at the educational institution or institution of higher 1633  
education; or 1634

(ii) By an individual who is enrolled at a nonprofit or 1635  
public educational institution which normally maintains a 1636  
regular faculty and curriculum and normally has a regularly 1637  
organized body of students in attendance at the place where its 1638  
educational activities are carried on as a student in a full- 1639  
time program, taken for credit at the institution, which 1640  
combines academic instruction with work experience, if the 1641  
service is an integral part of the program, and the institution 1642  
has so certified to the employer, provided that this subdivision 1643  
shall not apply to service performed in a program established 1644

for or on behalf of an employer or group of employers. 1645

(f) Service performed by an individual in the employ of 1646  
the individual's son, daughter, or spouse and service performed 1647  
by a child under the age of eighteen in the employ of the 1648  
child's father or mother; 1649

~~(g) Service performed for one or more principals by an 1650  
individual who is compensated on a commission basis, who in the 1651  
performance of the work is master of the individual's own time 1652  
and efforts, and whose remuneration is wholly dependent on the 1653  
amount of effort the individual chooses to expend, and which 1654  
service is not subject to the "Federal Unemployment Tax Act," 53- 1655  
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1656  
after December 31, 1971: 1657~~

(i) By an individual for an employer as an insurance agent 1658  
or as an insurance solicitor, if all this service is performed 1659  
for remuneration solely by way of commission; 1660

(ii) As a home worker performing work, according to 1661  
specifications furnished by the employer for whom the services 1662  
are performed, on materials or goods furnished by such employer 1663  
which are required to be returned to the employer or to a person 1664  
designated for that purpose. 1665

(h) Service performed after December 31, 1971: 1666

(i) In the employ of a church or convention or association 1667  
of churches, or in an organization which is operated primarily 1668  
for religious purposes and which is operated, supervised, 1669  
controlled, or principally supported by a church or convention 1670  
or association of churches; 1671

(ii) By a duly ordained, commissioned, or licensed 1672  
minister of a church in the exercise of the individual's 1673

ministry or by a member of a religious order in the exercise of 1674  
duties required by such order; or 1675

(iii) In a facility conducted for the purpose of carrying 1676  
out a program of rehabilitation for individuals whose earning 1677  
capacity is impaired by age or physical or mental deficiency or 1678  
injury, or providing remunerative work for individuals who 1679  
because of their impaired physical or mental capacity cannot be 1680  
readily absorbed in the competitive labor market, by an 1681  
individual receiving such rehabilitation or remunerative work. 1682

(i) Service performed after June 30, 1939, with respect to 1683  
which unemployment compensation is payable under the "Railroad 1684  
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1685  
351; 1686

(j) Service performed by an individual in the employ of 1687  
any organization exempt from income tax under section 501 of the 1688  
"Internal Revenue Code of 1954," if the remuneration for such 1689  
service does not exceed fifty dollars in any calendar quarter, 1690  
or if such service is in connection with the collection of dues 1691  
or premiums for a fraternal beneficial society, order, or 1692  
association and is performed away from the home office or is 1693  
ritualistic service in connection with any such society, order, 1694  
or association; 1695

(k) Casual labor not in the course of an employer's trade 1696  
or business; incidental service performed by an officer, 1697  
appraiser, or member of a finance committee of a bank, building 1698  
and loan association, savings and loan association, or savings 1699  
association when the remuneration for such incidental service 1700  
exclusive of the amount paid or allotted for directors' fees 1701  
does not exceed sixty dollars per calendar quarter is casual 1702  
labor; 1703

(l) Service performed in the employ of a voluntary 1704  
employees' beneficial association providing for the payment of 1705  
life, sickness, accident, or other benefits to the members of 1706  
such association or their dependents or their designated 1707  
beneficiaries, if admission to a membership in such association 1708  
is limited to individuals who are officers or employees of a 1709  
municipal or public corporation, of a political subdivision of 1710  
the state, or of the United States and no part of the net 1711  
earnings of such association inures, other than through such 1712  
payments, to the benefit of any private shareholder or 1713  
individual; 1714

(m) Service performed by an individual in the employ of a 1715  
foreign government, including service as a consular or other 1716  
officer or employee or of a nondiplomatic representative; 1717

(n) Service performed in the employ of an instrumentality 1718  
wholly owned by a foreign government if the service is of a 1719  
character similar to that performed in foreign countries by 1720  
employees of the United States or of an instrumentality thereof 1721  
and if the director finds that the secretary of state of the 1722  
United States has certified to the secretary of the treasury of 1723  
the United States that the foreign government, with respect to 1724  
whose instrumentality exemption is claimed, grants an equivalent 1725  
exemption with respect to similar service performed in the 1726  
foreign country by employees of the United States and of 1727  
instrumentalities thereof; 1728

(o) Service with respect to which unemployment 1729  
compensation is payable under an unemployment compensation 1730  
system established by an act of congress; 1731

(p) Service performed as a student nurse in the employ of 1732  
a hospital or a nurses' training school by an individual who is 1733

enrolled and is regularly attending classes in a nurses' 1734  
training school chartered or approved pursuant to state law, and 1735  
service performed as an intern in the employ of a hospital by an 1736  
individual who has completed a four years' course in a medical 1737  
school chartered or approved pursuant to state law; 1738

(q) Service performed by an individual under the age of 1739  
eighteen in the delivery or distribution of newspapers or 1740  
shopping news, not including delivery or distribution to any 1741  
point for subsequent delivery or distribution; 1742

(r) Service performed in the employ of the United States 1743  
or an instrumentality of the United States immune under the 1744  
Constitution of the United States from the contributions imposed 1745  
by this chapter, except that to the extent that congress permits 1746  
states to require any instrumentalities of the United States to 1747  
make payments into an unemployment fund under a state 1748  
unemployment compensation act, this chapter shall be applicable 1749  
to such instrumentalities and to services performed for such 1750  
instrumentalities in the same manner, to the same extent, and on 1751  
the same terms as to all other employers, individuals, and 1752  
services, provided that if this state is not certified for any 1753  
year by the proper agency of the United States under section 1754  
3304 of the "Internal Revenue Code of 1954," the payments 1755  
required of such instrumentalities with respect to such year 1756  
shall be refunded by the director from the fund in the same 1757  
manner and within the same period as is provided in division (E) 1758  
of section 4141.09 of the Revised Code with respect to 1759  
contributions erroneously collected; 1760

(s) Service performed by an individual as a member of a 1761  
band or orchestra, provided such service does not represent the 1762  
principal occupation of such individual, and which service is 1763

not subject to or required to be covered for full tax credit 1764  
against the tax imposed by the "Federal Unemployment Tax Act," 1765  
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1766

(t) Service performed in the employ of a day camp whose 1767  
camping season does not exceed twelve weeks in any calendar 1768  
year, and which service is not subject to the "Federal 1769  
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1770  
3311. Service performed after December 31, 1971: 1771

(i) In the employ of a hospital, if the service is 1772  
performed by a patient of the hospital, as defined in division 1773  
(W) of this section; 1774

(ii) For a prison or other correctional institution by an 1775  
inmate of the prison or correctional institution; 1776

(iii) Service performed after December 31, 1977, by an 1777  
inmate of a custodial institution operated by the state, a 1778  
political subdivision, or a nonprofit organization. 1779

(u) Service that is performed by a nonresident alien 1780  
individual for the period the individual temporarily is present 1781  
in the United States as a nonimmigrant under division (F), (J), 1782  
(M), or (Q) of section 101(a)(15) of the "Immigration and 1783  
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1784  
that is excluded under section 3306(c)(19) of the "Federal 1785  
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1786  
3311. 1787

(v) Notwithstanding any other provisions of division (B) 1788  
(3) of this section, services that are excluded under divisions 1789  
(B)(3)(g), (j), (k), and (l) of this section shall not be 1790  
excluded from employment when performed for a nonprofit 1791  
organization, as defined in division (X) of this section, or for 1792

this state or its instrumentalities, or for a political 1793  
subdivision or its instrumentalities or for Indian tribes; 1794

(w) Service that is performed by an individual working as 1795  
an election official or election worker if the amount of 1796  
remuneration received by the individual during the calendar year 1797  
for services as an election official or election worker is less 1798  
than one thousand dollars; 1799

(x) Service performed for an elementary or secondary 1800  
school that is operated primarily for religious purposes, that 1801  
is described in subsection 501(c)(3) and exempt from federal 1802  
income taxation under subsection 501(a) of the Internal Revenue 1803  
Code, 26 U.S.C.A. 501; 1804

(y) Service performed by a person committed to a penal 1805  
institution. 1806

(z) Service performed for an Indian tribe as described in 1807  
division (B)(2)(1) of this section when performed in any of the 1808  
following manners: 1809

(i) As a publicly elected official; 1810

(ii) As a member of an Indian tribal council; 1811

(iii) As a member of a legislative or judiciary body; 1812

(iv) In a position which, pursuant to Indian tribal law, 1813  
is designated as a major nontenured policymaking or advisory 1814  
position, or a policymaking or advisory position where the 1815  
performance of the duties ordinarily does not require more than 1816  
eight hours of time per week; 1817

(v) As an employee serving on a temporary basis in the 1818  
case of a fire, storm, snow, earthquake, flood, or similar 1819  
emergency. 1820

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

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

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

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

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



the maximum benefit amount that may become payable to an 1851  
individual within the individual's benefit year as determined by 1852  
the director. 1853

(E) "Claim for benefits" means a claim for waiting period 1854  
or benefits for a designated week. 1855

(F) "Additional claim" means the first claim for benefits 1856  
filed following any separation from employment during a benefit 1857  
year; "continued claim" means any claim other than the first 1858  
claim for benefits and other than an additional claim. 1859

(G) (1) "Wages" means remuneration paid to an employee by 1860  
each of the employee's employers with respect to employment; 1861  
except that wages shall not include that part of remuneration 1862  
paid during any calendar year to an individual by an employer or 1863  
such employer's predecessor in interest in the same business or 1864  
enterprise, which in any calendar year is in excess of eight 1865  
thousand two hundred fifty dollars on and after January 1, 1992; 1866  
eight thousand five hundred dollars on and after January 1, 1867  
1993; eight thousand seven hundred fifty dollars on and after 1868  
January 1, 1994; and nine thousand dollars on and after January 1869  
1, 1995. Remuneration in excess of such amounts shall be deemed 1870  
wages subject to contribution to the same extent that such 1871  
remuneration is defined as wages under the "Federal Unemployment 1872  
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1873  
amended. The remuneration paid an employee by an employer with 1874  
respect to employment in another state, upon which contributions 1875  
were required and paid by such employer under the unemployment 1876  
compensation act of such other state, shall be included as a 1877  
part of remuneration in computing the amount specified in this 1878  
division. 1879

(2) Notwithstanding division (G) (1) of this section, if, 1880

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

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

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

(a) Payments as provided in divisions (b) (2) to (b) (20) of  
section 3306 of the "Federal Unemployment Tax Act," 84 Stat.

713, 26 U.S.C.A. 3301 to 3311, as amended; 1911

(b) The payment by an employer, without deduction from the 1912  
remuneration of the individual in the employer's employ, of the 1913  
tax imposed upon an individual in the employer's employ under 1914  
section 3101 of the "Internal Revenue Code of 1954," with 1915  
respect to services performed after October 1, 1941. 1916

(2) "Cash remuneration" means all remuneration paid in 1917  
cash, including commissions and bonuses, but not including the 1918  
cash value of all compensation in any medium other than cash. 1919

(I) "Interested party" means the director and any party to 1920  
whom notice of a determination of an application for benefit 1921  
rights or a claim for benefits is required to be given under 1922  
section 4141.28 of the Revised Code. 1923

(J) "Annual payroll" means the total amount of wages 1924  
subject to contributions during a twelve-month period ending 1925  
with the last day of the second calendar quarter of any calendar 1926  
year. 1927

(K) "Average annual payroll" means the average of the last 1928  
three annual payrolls of an employer, provided that if, as of 1929  
any computation date, the employer has had less than three 1930  
annual payrolls in such three-year period, such average shall be 1931  
based on the annual payrolls which the employer has had as of 1932  
such date. 1933

(L) (1) "Contributions" means the money payments to the 1934  
state unemployment compensation fund required of employers by 1935  
section 4141.25 of the Revised Code and of the state and any of 1936  
its political subdivisions electing to pay contributions under 1937  
section 4141.242 of the Revised Code. Employers paying 1938  
contributions shall be described as "contributory employers." 1939

(2) "Payments in lieu of contributions" means the money 1940  
payments to the state unemployment compensation fund required of 1941  
reimbursing employers under sections 4141.241 and 4141.242 of 1942  
the Revised Code. 1943

(M) An individual is "totally unemployed" in any week 1944  
during which the individual performs no services and with 1945  
respect to such week no remuneration is payable to the 1946  
individual. 1947

(N) An individual is "partially unemployed" in any week 1948  
if, due to involuntary loss of work, the total remuneration 1949  
payable to the individual for such week is less than the 1950  
individual's weekly benefit amount. 1951

(O) "Week" means the calendar week ending at midnight 1952  
Saturday unless an equivalent week of seven consecutive calendar 1953  
days is prescribed by the director. 1954

(1) "Qualifying week" means any calendar week in an 1955  
individual's base period with respect to which the individual 1956  
earns or is paid remuneration in employment subject to this 1957  
chapter. A calendar week with respect to which an individual 1958  
earns remuneration but for which payment was not made within the 1959  
base period, when necessary to qualify for benefit rights, may 1960  
be considered to be a qualifying week. The number of qualifying 1961  
weeks which may be established in a calendar quarter shall not 1962  
exceed the number of calendar weeks in the quarter. 1963

(2) "Average weekly wage" means the amount obtained by 1964  
dividing an individual's total remuneration for all qualifying 1965  
weeks during the base period by the number of such qualifying 1966  
weeks, provided that if the computation results in an amount 1967  
that is not a multiple of one dollar, such amount shall be 1968

rounded to the next lower multiple of one dollar. 1969

(P) "Weekly benefit amount" means the amount of benefits 1970  
an individual would be entitled to receive for one week of total 1971  
unemployment. 1972

(Q) (1) "Base period" means the first four of the last five 1973  
completed calendar quarters immediately preceding the first day 1974  
of an individual's benefit year, except as provided in division 1975  
(Q) (2) of this section. 1976

(2) If an individual does not have sufficient qualifying 1977  
weeks and wages in the base period to qualify for benefit 1978  
rights, the individual's base period shall be the four most 1979  
recently completed calendar quarters preceding the first day of 1980  
the individual's benefit year. Such base period shall be known 1981  
as the "alternate base period." If information as to weeks and 1982  
wages for the most recent quarter of the alternate base period 1983  
is not available to the director from the regular quarterly 1984  
reports of wage information, which are systematically 1985  
accessible, the director may, consistent with the provisions of 1986  
section 4141.28 of the Revised Code, base the determination of 1987  
eligibility for benefits on the affidavit of the claimant with 1988  
respect to weeks and wages for that calendar quarter. The 1989  
claimant shall furnish payroll documentation, where available, 1990  
in support of the affidavit. The determination based upon the 1991  
alternate base period as it relates to the claimant's benefit 1992  
rights, shall be amended when the quarterly report of wage 1993  
information from the employer is timely received and that 1994  
information causes a change in the determination. As provided in 1995  
division (B) of section 4141.28 of the Revised Code, any 1996  
benefits paid and charged to an employer's account, based upon a 1997  
claimant's affidavit, shall be adjusted effective as of the 1998

beginning of the claimant's benefit year. No calendar quarter in 1999  
a base period or alternate base period shall be used to 2000  
establish a subsequent benefit year. 2001

(3) The "base period" of a combined wage claim, as 2002  
described in division (H) of section 4141.43 of the Revised 2003  
Code, shall be the base period prescribed by the law of the 2004  
state in which the claim is allowed. 2005

(4) For purposes of determining the weeks that comprise a 2006  
completed calendar quarter under this division, only those weeks 2007  
ending at midnight Saturday within the calendar quarter shall be 2008  
utilized. 2009

(R) (1) "Benefit year" with respect to an individual means 2010  
the fifty-two week period beginning with the first day of that 2011  
week with respect to which the individual first files a valid 2012  
application for determination of benefit rights, and thereafter 2013  
the fifty-two week period beginning with the first day of that 2014  
week with respect to which the individual next files a valid 2015  
application for determination of benefit rights after the 2016  
termination of the individual's last preceding benefit year, 2017  
except that the application shall not be considered valid unless 2018  
the individual has had employment in six weeks that is subject 2019  
to this chapter or the unemployment compensation act of another 2020  
state, or the United States, and has, since the beginning of the 2021  
individual's previous benefit year, in the employment earned 2022  
three times the average weekly wage determined for the previous 2023  
benefit year. The "benefit year" of a combined wage claim, as 2024  
described in division (H) of section 4141.43 of the Revised 2025  
Code, shall be the benefit year prescribed by the law of the 2026  
state in which the claim is allowed. Any application for 2027  
determination of benefit rights made in accordance with section 2028

4141.28 of the Revised Code is valid if the individual filing 2029  
such application is unemployed, has been employed by an employer 2030  
or employers subject to this chapter in at least twenty 2031  
qualifying weeks within the individual's base period, and has 2032  
earned or been paid remuneration at an average weekly wage of 2033  
not less than twenty-seven and one-half per cent of the 2034  
statewide average weekly wage for such weeks. For purposes of 2035  
determining whether an individual has had sufficient employment 2036  
since the beginning of the individual's previous benefit year to 2037  
file a valid application, "employment" means the performance of 2038  
services for which remuneration is payable. 2039

(2) Effective for benefit years beginning on and after 2040  
December 26, 2004, any application for determination of benefit 2041  
rights made in accordance with section 4141.28 of the Revised 2042  
Code is valid if the individual satisfies the criteria described 2043  
in division (R)(1) of this section, and if the reason for the 2044  
individual's separation from employment is not disqualifying 2045  
pursuant to division (D)(2) of section 4141.29 or section 2046  
4141.291 of the Revised Code. A disqualification imposed 2047  
pursuant to division (D)(2) of section 4141.29 or section 2048  
4141.291 of the Revised Code must be removed as provided in 2049  
those sections as a requirement of establishing a valid 2050  
application for benefit years beginning on and after December 2051  
26, 2004. 2052

(3) The statewide average weekly wage shall be calculated 2053  
by the director once a year based on the twelve-month period 2054  
ending the thirtieth day of June, as set forth in division (B) 2055  
(3) of section 4141.30 of the Revised Code, rounded down to the 2056  
nearest dollar. Increases or decreases in the amount of 2057  
remuneration required to have been earned or paid in order for 2058  
individuals to have filed valid applications shall become 2059

effective on Sunday of the calendar week in which the first day 2060  
of January occurs that follows the twelve-month period ending 2061  
the thirtieth day of June upon which the calculation of the 2062  
statewide average weekly wage was based. 2063

(4) As used in this division, an individual is 2064  
"unemployed" if, with respect to the calendar week in which such 2065  
application is filed, the individual is "partially unemployed" 2066  
or "totally unemployed" as defined in this section or if, prior 2067  
to filing the application, the individual was separated from the 2068  
individual's most recent work for any reason which terminated 2069  
the individual's employee-employer relationship, or was laid off 2070  
indefinitely or for a definite period of seven or more days. 2071

(S) "Calendar quarter" means the period of three 2072  
consecutive calendar months ending on the thirty-first day of 2073  
March, the thirtieth day of June, the thirtieth day of 2074  
September, and the thirty-first day of December, or the 2075  
equivalent thereof as the director prescribes by rule. 2076

(T) "Computation date" means the first day of the third 2077  
calendar quarter of any calendar year. 2078

(U) "Contribution period" means the calendar year 2079  
beginning on the first day of January of any year. 2080

(V) "Agricultural labor," for the purpose of this 2081  
division, means any service performed prior to January 1, 1972, 2082  
which was agricultural labor as defined in this division prior 2083  
to that date, and service performed after December 31, 1971: 2084

(1) On a farm, in the employ of any person, in connection 2085  
with cultivating the soil, or in connection with raising or 2086  
harvesting any agricultural or horticultural commodity, 2087  
including the raising, shearing, feeding, caring for, training, 2088



and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

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

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

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

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

(6) Divisions (V) (4) and (5) of this section shall not be

deemed to be applicable with respect to service performed: 2118

(a) In connection with commercial canning or commercial 2119  
freezing or in connection with any agricultural or horticultural 2120  
commodity after its delivery to a terminal market for 2121  
distribution for consumption; or 2122

(b) On a farm operated for profit if the service is not in 2123  
the course of the employer's trade or business. 2124

As used in division (V) of this section, "farm" includes 2125  
stock, dairy, poultry, fruit, fur-bearing animal, and truck 2126  
farms, plantations, ranches, nurseries, ranges, greenhouses, or 2127  
other similar structures used primarily for the raising of 2128  
agricultural or horticultural commodities and orchards. 2129

(W) "Hospital" means an institution which has been 2130  
registered or licensed by the Ohio department of health as a 2131  
hospital. 2132

(X) "Nonprofit organization" means an organization, or 2133  
group of organizations, described in section 501(c)(3) of the 2134  
"Internal Revenue Code of 1954," and exempt from income tax 2135  
under section 501(a) of that code. 2136

(Y) "Institution of higher education" means a public or 2137  
nonprofit educational institution, including an educational 2138  
institution operated by an Indian tribe, which: 2139

(1) Admits as regular students only individuals having a 2140  
certificate of graduation from a high school, or the recognized 2141  
equivalent; 2142

(2) Is legally authorized in this state or by the Indian 2143  
tribe to provide a program of education beyond high school; and 2144

(3) Provides an educational program for which it awards a 2145

bachelor's or higher degree, or provides a program which is 2146  
acceptable for full credit toward such a degree, a program of 2147  
post-graduate or post-doctoral studies, or a program of training 2148  
to prepare students for gainful employment in a recognized 2149  
occupation. 2150

For the purposes of this division, all colleges and 2151  
universities in this state are institutions of higher education. 2152

(Z) For the purposes of this chapter, "states" includes 2153  
the District of Columbia, the Commonwealth of Puerto Rico, and 2154  
the Virgin Islands. 2155

(AA) "Alien" means, for the purposes of division (A) (1) (d) 2156  
of this section, an individual who is an alien admitted to the 2157  
United States to perform service in agricultural labor pursuant 2158  
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 2159  
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 2160

(BB) (1) "Crew leader" means an individual who furnishes 2161  
individuals to perform agricultural labor for any other employer 2162  
or farm operator, and: 2163

(a) Pays, either on the individual's own behalf or on 2164  
behalf of the other employer or farm operator, the individuals 2165  
so furnished by the individual for the service in agricultural 2166  
labor performed by them; 2167

(b) Has not entered into a written agreement with the 2168  
other employer or farm operator under which the agricultural 2169  
worker is designated as in the employ of the other employer or 2170  
farm operator. 2171

(2) For the purposes of this chapter, any individual who 2172  
is a member of a crew furnished by a crew leader to perform 2173  
service in agricultural labor for any other employer or farm 2174

operator shall be treated as an employee of the crew leader if: 2175

(a) The crew leader holds a valid certificate of 2176  
registration under the "Farm Labor Contractor Registration Act 2177  
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 2178

(b) Substantially all the members of the crew operate or 2179  
maintain tractors, mechanized harvesting or crop-dusting 2180  
equipment, or any other mechanized equipment, which is provided 2181  
by the crew leader; and 2182

(c) If the individual is not in the employment of the 2183  
other employer or farm operator within the meaning of division 2184  
(B) (1) of this section. 2185

(3) For the purposes of this division, any individual who 2186  
is furnished by a crew leader to perform service in agricultural 2187  
labor for any other employer or farm operator and who is not 2188  
treated as in the employment of the crew leader under division 2189  
(BB) (2) of this section shall be treated as the employee of the 2190  
other employer or farm operator and not of the crew leader. The 2191  
other employer or farm operator shall be treated as having paid 2192  
cash remuneration to the individual in an amount equal to the 2193  
amount of cash remuneration paid to the individual by the crew 2194  
leader, either on the crew leader's own behalf or on behalf of 2195  
the other employer or farm operator, for the service in 2196  
agricultural labor performed for the other employer or farm 2197  
operator. 2198

(CC) "Educational institution" means an institution other 2199  
than an institution of higher education as defined in division 2200  
(Y) of this section, including an educational institution 2201  
operated by an Indian tribe, which: 2202

(1) Offers participants, trainees, or students an 2203

organized course of study or training designed to transfer to 2204  
them knowledge, skills, information, doctrines, attitudes, or 2205  
abilities from, by, or under the guidance of an instructor or 2206  
teacher; and 2207

(2) Is approved, chartered, or issued a permit to operate 2208  
as a school by the state board of education, other government 2209  
agency, or Indian tribe that is authorized within the state to 2210  
approve, charter, or issue a permit for the operation of a 2211  
school. 2212

For the purposes of this division, the courses of study or 2213  
training which the institution offers may be academic, 2214  
technical, trade, or preparation for gainful employment in a 2215  
recognized occupation. 2216

(DD) "Cost savings day" means any unpaid day off from work 2217  
in which employees continue to accrue employee benefits which 2218  
have a determinable value including, but not limited to, 2219  
vacation, pension contribution, sick time, and life and health 2220  
insurance. 2221

(EE) "Employee" has the same meaning as in section 4175.01 2222  
of the Revised Code, unless the services performed by the 2223  
individual do not constitute "employment" as defined in division 2224  
(B) of this section. 2225

**Sec. 4175.01. As used in this chapter:** 2226

(A) "Aggrieved party" means any of the following entities 2227  
that believes that the entity has been injured by an employer's 2228  
alleged violation of section 4175.02 of the Revised Code: 2229

(1) An employee; 2230

(2) An employer association; 2231

<u>(3) An interested party;</u>	2232
<u>(4) A labor organization.</u>	2233
<u>(B) "Construction" means any constructing, altering,</u>	2234
<u>reconstructing, repairing, rehabilitating, refinishing,</u>	2235
<u>refurbishing, remodeling, remediating, renovating, custom</u>	2236
<u>fabricating, maintenance, landscaping, improving, wrecking,</u>	2237
<u>painting, decorating, demolishing, and adding to or subtracting</u>	2238
<u>from any building, structure, highway, roadway, street, bridge,</u>	2239
<u>alley, sewer, ditch, sewage disposal plant, waterworks, parking</u>	2240
<u>facility, railroad, excavation, or other structure, project,</u>	2241
<u>development, real property or improvement, or to do any part</u>	2242
<u>thereof, regardless of whether the performance of the work</u>	2243
<u>involves the addition to or fabrication of any material or</u>	2244
<u>article of merchandise into any structure, project, development,</u>	2245
<u>real property, or improvement. "Construction" includes moving</u>	2246
<u>construction-related materials to the job site and removing</u>	2247
<u>construction-related materials from the job site.</u>	2248
<u>(C) "Contractor" means any sole proprietorship,</u>	2249
<u>partnership, firm, corporation, limited liability company,</u>	2250
<u>association, or other entity permitted by law to do business</u>	2251
<u>within this state that engages in construction. "Contractor"</u>	2252
<u>does not include either of the following:</u>	2253
<u>(1) The state or its officers, agencies, or political</u>	2254
<u>subdivisions;</u>	2255
<u>(2) The federal government.</u>	2256
<u>(D) (1) "Employee" means an individual who performs</u>	2257
<u>services for compensation for an employer.</u>	2258
<u>(2) "Employee" does not mean an individual who performs</u>	2259
<u>services for an employer and to whom all of the following</u>	2260

conditions apply: 2261

(a) The individual has been and continues to be free from 2262  
control and direction in connection with the performance of the 2263  
service. 2264

(b) The individual customarily is engaged in an 2265  
independently established trade, occupation, profession, or 2266  
business of the same nature of the trade, occupation, 2267  
profession, or business involved in the service performed. 2268

(c) The individual is a separate and distinct business 2269  
entity from the entity for which the service is being performed 2270  
or if the individual is providing construction services and is a 2271  
sole proprietorship or a partner in a partnership, the 2272  
individual is a legitimate sole proprietorship or a partner in a 2273  
legitimate partnership to which section 4175.04 of the Revised 2274  
Code applies, as applicable. 2275

(d) The individual incurs the main expenses and has 2276  
continuing or recurring business liabilities related to the 2277  
service performed. 2278

(e) The individual is liable for breach of contract for 2279  
failure to complete the service. 2280

(f) An agreement, written or oral, express or implied, 2281  
exists describing the service to be performed, the payment the 2282  
individual will receive for performance of the service, and the 2283  
time frame for completion of the service. 2284

(g) The service performed by the individual is outside of 2285  
the usual course of business of the employer. 2286

(E) "Employer" means any person, the state, any agency or 2287  
instrumentality of the state, and any municipal corporation, 2288

county, township, school district, or other political 2289  
subdivision or any agency or instrumentality thereof that 2290  
engages an individual to perform services. 2291

(F) "Interested party" means any of the following 2292  
entities: 2293

(1) Any contractor who submits a bid for the purpose of 2294  
securing the award of a contract for construction of a public 2295  
improvement as that term is defined in section 4115.03 of the 2296  
Revised Code; 2297

(2) Any person acting as a subcontractor of a contractor 2298  
described in division (F)(1) of this section; 2299

(3) Any bona fide labor organization that has as members 2300  
or is authorized to represent employees of a person described in 2301  
division (F)(1) or (2) of this section; 2302

(4) Any association having as members any of the persons 2303  
described in division (F)(1) or (2) of this section. 2304

(G) "Labor organization" has the same meaning as in 2305  
section 3517.01 of the Revised Code. 2306

(H) "State agency" has the same meaning as in section 1.60 2307  
of the Revised Code. 2308

(I) "Subcontractor" means any person who undertakes to 2309  
perform construction services under a contract with any 2310  
individual other than the owner, part owner, or lessee. 2311

**Sec. 4175.02.** (A) No employer shall fail to designate an 2312  
individual who performs services for the employer as an employee 2313  
unless the conditions described in division (D)(2) of section 2314  
4175.01 of the Revised Code apply to that individual. The 2315  
director of commerce shall not use an employer's failure to 2316



withhold federal or state income taxes with respect to an 2317  
individual or to include remuneration paid to an individual for 2318  
purposes of section 4123.26, 4123.41, or 4141.20 of the Revised 2319  
Code when making a determination as to whether the employer 2320  
violated this division. The director shall not use an 2321  
individual's election to obtain workers' compensation coverage 2322  
as a sole proprietor or a partnership in making a determination 2323  
as to whether the individual has violated this division. The 2324  
burden of proof is on the party asserting that an individual is 2325  
not an employee. 2326

(B) No employer shall retaliate through discharge, or in 2327  
any other manner, against any individual for exercising any 2328  
rights granted under this chapter. 2329

(C) No employer shall retaliate against an individual if 2330  
the individual does any of the following: 2331

(1) Makes a complaint to an employer, coworker, community 2332  
organization, or to a federal or state agency or at a public 2333  
hearing, stating that provisions of this chapter allegedly have 2334  
been violated; 2335

(2) Causes to be instituted any proceeding under or 2336  
related to this chapter; 2337

(3) Testifies or prepares to testify in an investigation 2338  
or proceeding under this chapter; 2339

(4) Opposes misclassification. 2340

(D) No employer shall attempt to cause or cause an 2341  
individual to waive the provisions of this chapter or to enter 2342  
into a predispute waiver. 2343

(E) No employer shall violate a rule adopted by the 2344

director pursuant to section 4175.06 of the Revised Code. 2345

(F) No person shall require or request an individual to 2346  
enter into an agreement or sign a document that results in the 2347  
misclassification of the individual as an independent contractor 2348  
or otherwise does not accurately reflect the individual's 2349  
relationship with an employer. 2350

**Sec. 4175.03.** This chapter shall apply only to 2351  
determinations as to whether an individual is an employer for 2352  
purposes of section 4111.02, 4111.14, 4113.15, or 4115.03 of the 2353  
Revised Code or Chapter 4121., 4123., 4141., or 5747. of the 2354  
Revised Code. Nothing in this chapter shall be construed as to 2355  
limit the application of any other remedies available at law or 2356  
in equity. 2357

**Sec. 4175.04.** An employer and the director of commerce 2358  
shall consider a sole proprietorship or partnership that 2359  
performs construction services for the employer to be a 2360  
legitimate sole proprietorship or a legitimate partnership if 2361  
the employer demonstrates all of the following: 2362

(A) The sole proprietorship or partnership performs the 2363  
construction service free from the direction or control of the 2364  
employer over the means and manner of providing the service, 2365  
subject only to the right of the employer for whom the service 2366  
is provided to specify the desired result. 2367

(B) The sole proprietorship or partnership is not subject 2368  
to cancellation or destruction upon severance of the 2369  
relationship with the employer. 2370

(C) The owner of the sole proprietorship or the partners 2371  
in the partnership have a substantial investment of capital in 2372  
the sole proprietorship or partnership beyond ordinary tools and 2373

equipment and a personal vehicle. 2374

(D) The sole proprietorship or partnership owns the 2375  
capital goods, gains the profits, and bears the losses of the 2376  
sole proprietorship or partnership. 2377

(E) The sole proprietorship or partnership makes its 2378  
construction services available to the general public or the 2379  
business community on a continuing basis. 2380

(F) The sole proprietorship or partnership reported a 2381  
profit or loss or earnings from self-employment on the sole 2382  
proprietorship or partnership's federal income tax schedule. 2383

(G) The sole proprietorship or partnership performs 2384  
construction services for the employer under the name of the 2385  
sole proprietorship or partnership. 2386

(H) If the construction services the sole proprietorship 2387  
or partnership provides to the employer require a license or 2388  
permit in order to provide those services, the sole 2389  
proprietorship or partnership obtains the appropriate license or 2390  
permit in the name of the sole proprietorship or partnership 2391  
name and directly pays for the appropriate license or permit. 2392

(I) The sole proprietorship or partnership furnishes the 2393  
tools and equipment necessary for the sole proprietorship or 2394  
partnership to provide the construction service for the 2395  
employer. 2396

(J) If necessary, the sole proprietorship or partnership 2397  
hires its own employees without obtaining approval from the 2398  
employer, pays those employees without direct reimbursement from 2399  
the employer, and reports the employees' income to the internal 2400  
revenue service. 2401

(K) The employer does not represent the sole 2402  
proprietorship or the partners of the partnership as an employee 2403  
of the employer to the employer's customers. 2404

(L) The sole proprietorship or partnership performs 2405  
similar construction services for others on whatever basis and 2406  
whenever the sole proprietorship or partnership chooses. 2407

If the director of commerce, using the factors listed in 2408  
this section, determines that a sole proprietorship or 2409  
partnership performing construction services for an employer is 2410  
not a legitimate sole proprietorship or a legitimate 2411  
partnership, the director shall consider the owner of the sole 2412  
proprietorship, each partner of the partnership, and each of the 2413  
employees of the sole proprietorship or partnership, as 2414  
applicable, as an employee of the employer for the purposes of 2415  
this chapter. 2416

**Sec. 4175.05.** The provisions of this chapter apply to all 2417  
subcontractors or lower tier subcontractors. 2418

A contractor is liable under this chapter for the failure 2419  
of any subcontractor or lower tier subcontractor to properly 2420  
classify individuals performing services related to construction 2421  
as employees. A subcontractor is liable under this chapter for 2422  
the failure of any lower tier subcontractor to properly classify 2423  
individuals performing services related to construction as 2424  
employees. 2425

**Sec. 4175.06.** The director of commerce shall enforce this 2426  
chapter. The director shall hire as many investigators and other 2427  
personnel as the director determines are necessary to administer 2428  
and enforce this chapter. The director may adopt reasonable 2429  
rules in accordance with Chapter 119. of the Revised Code to 2430

implement and administer this chapter. 2431

**Sec. 4175.07.** Any aggrieved party may file a complaint 2432  
with the director of commerce against an employer if the 2433  
aggrieved party reasonably believes that the employer is in 2434  
violation of section 4175.02 of the Revised Code. The director 2435  
shall conduct investigations in connection with the 2436  
administration and enforcement of this chapter. Any investigator 2437  
employed by the division of industrial compliance within the 2438  
department of commerce is authorized to visit and inspect, at 2439  
all reasonable times, all of the offices and job sites 2440  
maintained by the employer who is the subject of the complaint, 2441  
and is authorized to inspect and audit, at all reasonable times, 2442  
all documents necessary to determine whether an individual 2443  
performing services for the employer is an employee. The 2444  
director may compel, by subpoena, the attendance and testimony 2445  
of witnesses and the production of books, payrolls, records, 2446  
papers, and other evidence in any investigation, and may 2447  
administer oaths to witnesses. Upon completion of an 2448  
investigation under this section, the investigator shall submit 2449  
the results of the investigator's investigation to the 2450  
superintendent of industrial compliance. 2451

**Sec. 4175.08.** If, after receiving the results of an 2452  
investigation conducted pursuant to section 4175.07 of the 2453  
Revised Code, the superintendent of industrial compliance 2454  
determines that reasonable evidence exists that an employer has 2455  
violated section 4175.02 of the Revised Code, the superintendent 2456  
shall send a written notice to the director of commerce 2457  
informing the director of the superintendent's determination. 2458

Within seven days after the director receives a written 2459  
report from the superintendent, the director shall send a 2460

written notice to the employer who is the subject of the 2461  
investigation in the same manner as prescribed in section 119.07 2462  
of the Revised Code for licensees, except that the notice shall 2463  
specify that a hearing will be held and shall specify the date, 2464  
time, and place of the hearing. The director shall hold a 2465  
hearing regarding the alleged violation in the same manner 2466  
prescribed for an adjudication hearing under section 119.09 of 2467  
the Revised Code. If the director, after the hearing, determines 2468  
a violation has occurred, the director may discipline the 2469  
employer in accordance with section 4175.09 of the Revised Code. 2470  
The director's determination is an order that the person may 2471  
appeal in accordance with section 119.12 of the Revised Code. If 2472  
an employer who allegedly committed a violation of section 2473  
4175.02 of the Revised Code fails to appear for a hearing, the 2474  
director may request the court of common pleas of the county 2475  
where the alleged violation occurred to compel the person to 2476  
appear before the director for a hearing. 2477

**Sec. 4175.09.** (A) If, after a hearing held in accordance 2478  
with section 4175.08 of the Revised Code, the director of 2479  
commerce determines that an employer violated section 4175.02 of 2480  
the Revised Code, the director may do any of the following: 2481

(1) Issue and cause to be served on any party an order to 2482  
cease and desist from further violation of that section; 2483

(2) Take affirmative or other action the director 2484  
considers reasonable to eliminate the effect of the violation; 2485

(3) Collect the amount of any wages, salary, employment 2486  
benefits, or other compensation denied or lost to an individual 2487  
because the employer misclassified the individual; 2488

(4) Assess any civil penalty allowed under section 4175.10 2489

or 4175.11 of the Revised Code. 2490

(B) If the director assesses an employer a civil penalty 2491  
for a violation of section 4175.02 of the Revised Code and the 2492  
employer fails to pay that civil penalty within the time period 2493  
prescribed by the director, the director shall forward to the 2494  
attorney general the name of the employer and the amount of the 2495  
civil penalty for the purpose of collecting that civil penalty. 2496  
In addition to the civil penalty assessed pursuant to this 2497  
section, the employer also shall pay any fee assessed by the 2498  
attorney general for collection of the civil penalty. 2499

(C) The attorney general shall bring any action for relief 2500  
requested by the director in the name of the people of the state 2501  
of Ohio. 2502

**Sec. 4175.10.** (A) Except as otherwise provided in division 2503  
(B) of this section and section 4175.11 of the Revised Code, if, 2504  
after a hearing conducted pursuant to section 4175.08 of the 2505  
Revised Code, the director of commerce determines that an 2506  
employer has violated section 4175.02 of the Revised Code, the 2507  
employer may be subject to a civil penalty of one thousand five 2508  
hundred dollars for each violation. 2509

(B) Except as otherwise provided in section 4175.11 of the 2510  
Revised Code if, after a hearing held in accordance with section 2511  
4175.08 of the Revised Code, the director determines that the 2512  
employer has committed a violation of section 4175.02 of the 2513  
Revised Code and that violation occurred within five years after 2514  
the date the director made a determination that resulted in the 2515  
director assessing the employer a civil penalty under division 2516  
(A) or (B) of this section, the employer may be subject to a 2517  
civil penalty not less than one thousand five hundred dollars or 2518  
more than two thousand five hundred dollars for each violation 2519

found by the director that occurred during that five-year 2520  
period. 2521

(C) For purposes of this section, each violation of 2522  
section 4175.02 of the Revised Code constitutes a separate 2523  
violation for each individual or rule involved and for each day 2524  
the violation continues. 2525

(D) The director shall base the amount of any civil 2526  
penalty assessed under this section upon the director's 2527  
determination of the gravity of the violations committed by the 2528  
employer. 2529

**Sec. 4175.11.** (A) Whoever knowingly violates section 2530  
4175.02 of the Revised Code, or whoever obstructs the director 2531  
of commerce or any other person authorized to inspect places of 2532  
employment pursuant to section 4175.07 of the Revised Code may 2533  
be liable for penalties up to double the amount specified in 2534  
section 4175.10 of the Revised Code. 2535

(B) An employer who is liable under division (A) of this 2536  
section because the employer knowingly violated section 4175.02 2537  
of the Revised Code also is liable to the employee who was 2538  
injured by the employer's violation for punitive damages in an 2539  
amount equal to the amount of the penalties assessed against the 2540  
employer pursuant to division (A) of this section. 2541

(C) The director shall impose the penalties described in 2542  
divisions (A) and (B) of this section if a preponderance of the 2543  
evidence demonstrates that the employer acted knowingly when 2544  
committing the violation. 2545

**Sec. 4175.12.** If the director of commerce determines that 2546  
an alleged violation of this chapter has occurred that may 2547  
result in a penalty assessed pursuant to section 4175.99 of the 2548



Revised Code, the director shall refer the matter to the 2549  
appropriate prosecutorial authority. 2550

**Sec. 4175.13.** If the director of commerce believes that 2551  
any employer allegedly has violated a valid order issued by the 2552  
director pursuant to section 4175.09 of the Revised Code, the 2553  
director may commence an action in the court of common pleas in 2554  
the county where the alleged violation has occurred and obtain 2555  
from the court an order compelling the employer to obey the 2556  
order of the director or be found guilty of contempt of court 2557  
and punished in accordance with Chapter 2705. of the Revised 2558  
Code. 2559

**Sec. 4175.14.** (A) An aggrieved party may file suit in the 2560  
court of common pleas in the county where the alleged violation 2561  
occurred or where any individual who is party to the action 2562  
resides, without regard to exhaustion of any alternative 2563  
administrative remedies provided in this chapter. An aggrieved 2564  
party may bring an action on behalf of the aggrieved party or on 2565  
behalf of any other individual who is similarly situated to the 2566  
aggrieved party. If a court or a jury in a civil action brought 2567  
pursuant to this division determines that a violation of section 2568  
4175.02 of the Revised Code has occurred, the court shall award 2569  
to the plaintiff all of the following: 2570

(1) The amount of any wages, salary, employment benefits, 2571  
or other compensation denied or lost to an individual by reason 2572  
of the violation, plus an equal amount in liquidated damages; 2573

(2) Compensatory damages and an amount up to five hundred 2574  
dollars for each violation of section 4175.02 of the Revised 2575  
Code; 2576

(3) In the case of a violation of division (B) or (C) of 2577

section 4175.02 of the Revised Code, all legal or equitable 2578  
relief that the court determines appropriate; 2579

(4) Attorney's fees and costs. 2580

(B) An aggrieved party shall bring an action under 2581  
division (A) of this section not later than three years after 2582  
the last day the aggrieved individual or individual for whom the 2583  
aggrieved party is bringing the action performed services for an 2584  
employer who has allegedly violated section 4175.02 of the 2585  
Revised Code. The three-year period specified in this division 2586  
is tolled if the employer has deterred the ability of an 2587  
individual to bring an action under this section or to file a 2588  
complaint under section 4175.07 of the Revised Code. 2589

(C) If the director of commerce has determined under 2590  
section 4175.09 of the Revised Code that an employer is subject 2591  
to a civil penalty under section 4175.10 or 4175.11 of the 2592  
Revised Code for a violation of section 4175.02 of the Revised 2593  
Code, an aggrieved party, within ninety days after the director 2594  
issues that determination, may bring a civil action in the court 2595  
of common pleas in the county where the violation occurred to 2596  
enforce that penalty. If an aggrieved party elects to bring such 2597  
an action, the aggrieved party shall notify the director of that 2598  
election in writing. During that ninety-day period, the attorney 2599  
general shall not bring an action to enforce that penalty. After 2600  
the ninety-day period expires, only the attorney general, on 2601  
behalf of the director and in accordance with this chapter, may 2602  
bring an action to collect the civil penalty. In any civil 2603  
action brought by an aggrieved party pursuant to this division, 2604  
the court shall award the aggrieved party ten per cent of the 2605  
amount of the penalty owed by the employer, and the remaining 2606  
amount recovered shall be awarded to the director. 2607

Sec. 4175.15. (A) The director of commerce shall create a 2608  
summary of the requirements of this chapter in English and 2609  
Spanish and shall post that summary on the official web site 2610  
maintained by the department of commerce and on the bulletin 2611  
boards located in each of the offices of the department. 2612

(B) If an employer engages an individual to perform 2613  
services and that individual is not considered an employee, that 2614  
employer shall post and keep posted, in a conspicuous place on 2615  
each job site where that individual performs services and in 2616  
each of the employer's offices, the notice prepared by the 2617  
director pursuant to division (A) of this section. The director 2618  
shall furnish copies of the notice without charge to an employer 2619  
upon request. 2620

Sec. 4175.16. The director of commerce shall create a list 2621  
of employers who have committed multiple violations of section 2622  
4175.02 of the Revised Code. The director shall add an 2623  
employer's name to the list if the director assesses against the 2624  
employer the civil penalty described in division (B) of section 2625  
4175.10 of the Revised Code. The list shall include the name of 2626  
the employer and the date that the employer committed the 2627  
employer's most recent violation. The director shall notify an 2628  
employer that the employer will be added to this list within 2629  
five days after the director determines that the employer will 2630  
be added to the list. The director shall publish the list on the 2631  
web site maintained by the department of commerce. No state 2632  
agency shall enter into a contract with an employer included in 2633  
that list for a period of four years after the date of the 2634  
employer's most recent violation. The director shall remove an 2635  
employer's name and information from the list upon expiration of 2636  
the time period of the employer's debarment. 2637

Sec. 4175.17. The director of commerce, the director of 2638  
job and family services, the tax commissioner, and the 2639  
administrator of workers' compensation shall share information 2640  
concerning any suspected misclassification by an employer or 2641  
entity of one or more of the employer's employees as independent 2642  
contractors in violation of section 4175.02 of the Revised Code. 2643  
Upon determining that an employer has misclassified an employee 2644  
as an independent contractor in violation of division (A) of 2645  
that section, the director of commerce shall notify the director 2646  
of job and family services, the tax commissioner, and the 2647  
administrator, each of whom shall determine whether the 2648  
employer's violation of section 4175.02 of the Revised Code 2649  
results in the employer not complying with the requirements of 2650  
Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the 2651  
Revised Code, as applicable. The director of commerce shall 2652  
determine whether the employer's violation of section 4175.02 of 2653  
the Revised Code results in the employer not complying with the 2654  
requirements of sections 4111.02, 4111.14, 4113.15, or 4115.03 2655  
to 4115.21 of the Revised Code. The determination made by the 2656  
director of commerce that an employer has misclassified an 2657  
employee as an independent contractor is binding on the director 2658  
of job and family services, the tax commissioner, and the 2659  
administrator unless the individual is otherwise not considered 2660  
an employee under the applicable law. Notwithstanding any 2661  
provision of this section to the contrary, nothing in this 2662  
chapter shall be construed to limit or otherwise constrain the 2663  
duties and powers of the administrator under Chapters 4121., 2664  
4123., 4127., and 4131. of the Revised Code, the director of job 2665  
and family services under Chapter 4141. of the Revised Code, or 2666  
the tax commissioner under Chapter 5747. of the Revised Code. 2667

Sec. 4175.18. There is hereby created in the state 2668

treasury the employee classification fund. The director of 2669  
commerce shall deposit all moneys the director receives under 2670  
this chapter, including civil penalties, into the fund. The 2671  
director shall use the fund for the administration, 2672  
investigation, and other expenses incurred in carrying out the 2673  
director's powers and duties under this chapter. If, at the end 2674  
of a fiscal year, the director determines that excess moneys 2675  
exist in the fund, the director shall coordinate with the 2676  
director of budget and management to transfer the excess funds 2677  
to the division of administration fund created under section 2678  
121.08 of the Revised Code. 2679

**Sec. 4175.99.** (A) An employer or person who knowingly 2680  
violates division (A), (B), (C), (E), or (F) of section 4175.02 2681  
of the Revised Code, for the first offense, is guilty of a 2682  
misdemeanor of the fourth degree, and for any subsequent 2683  
violation of division (A), (B), (C), (E), or (F) of section 2684  
4175.02 of the Revised Code committed within a five-year period 2685  
beginning on the date the employer or person previously was 2686  
convicted of or pleaded guilty to the first violation, the 2687  
employer or entity is guilty of a felony of the fifth degree. 2688

(B) Whoever knowingly violates division (D) of section 2689  
4175.02 of the Revised Code is guilty of a misdemeanor of the 2690  
fourth degree. 2691

**Sec. 5747.01.** Except as otherwise expressly provided or 2692  
clearly appearing from the context, any term used in this 2693  
chapter that is not otherwise defined in this section has the 2694  
same meaning as when used in a comparable context in the laws of 2695  
the United States relating to federal income taxes or if not 2696  
used in a comparable context in those laws, has the same meaning 2697  
as in section 5733.40 of the Revised Code. Any reference in this 2698

chapter to the Internal Revenue Code includes other laws of the	2699
United States relating to federal income taxes.	2700
As used in this chapter:	2701
(A) "Adjusted gross income" or "Ohio adjusted gross	2702
income" means federal adjusted gross income, as defined and used	2703
in the Internal Revenue Code, adjusted as provided in this	2704
section:	2705
(1) Add interest or dividends on obligations or securities	2706
of any state or of any political subdivision or authority of any	2707
state, other than this state and its subdivisions and	2708
authorities.	2709
(2) Add interest or dividends on obligations of any	2710
authority, commission, instrumentality, territory, or possession	2711
of the United States to the extent that the interest or	2712
dividends are exempt from federal income taxes but not from	2713
state income taxes.	2714
(3) Deduct interest or dividends on obligations of the	2715
United States and its territories and possessions or of any	2716
authority, commission, or instrumentality of the United States	2717
to the extent that the interest or dividends are included in	2718
federal adjusted gross income but exempt from state income taxes	2719
under the laws of the United States.	2720
(4) Deduct disability and survivor's benefits to the	2721
extent included in federal adjusted gross income.	2722
(5) Deduct benefits under Title II of the Social Security	2723
Act and tier 1 railroad retirement benefits to the extent	2724
included in federal adjusted gross income under section 86 of	2725
the Internal Revenue Code.	2726

(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a) (i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b) (i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.

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

(8) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the

interest or interest equivalent is included in federal adjusted 2758  
gross income. 2759

(9) Add any loss or deduct any gain resulting from the 2760  
sale, exchange, or other disposition of public obligations to 2761  
the extent that the loss has been deducted or the gain has been 2762  
included in computing federal adjusted gross income. 2763

(10) Deduct or add amounts, as provided under section 2764  
5747.70 of the Revised Code, related to contributions to 2765  
variable college savings program accounts made or tuition units 2766  
purchased pursuant to Chapter 3334. of the Revised Code. 2767

(11) (a) Deduct, to the extent not otherwise allowable as a 2768  
deduction or exclusion in computing federal or Ohio adjusted 2769  
gross income for the taxable year, the amount the taxpayer paid 2770  
during the taxable year for medical care insurance and qualified 2771  
long-term care insurance for the taxpayer, the taxpayer's 2772  
spouse, and dependents. No deduction for medical care insurance 2773  
under division (A) (11) of this section shall be allowed either 2774  
to any taxpayer who is eligible to participate in any subsidized 2775  
health plan maintained by any employer of the taxpayer or of the 2776  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2777  
application would be entitled to, benefits under part A of Title 2778  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 2779  
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 2780  
of this section, "subsidized health plan" means a health plan 2781  
for which the employer pays any portion of the plan's cost. The 2782  
deduction allowed under division (A) (11) (a) of this section 2783  
shall be the net of any related premium refunds, related premium 2784  
reimbursements, or related insurance premium dividends received 2785  
during the taxable year. 2786

(b) Deduct, to the extent not otherwise deducted or 2787



excluded in computing federal or Ohio adjusted gross income 2788  
during the taxable year, the amount the taxpayer paid during the 2789  
taxable year, not compensated for by any insurance or otherwise, 2790  
for medical care of the taxpayer, the taxpayer's spouse, and 2791  
dependents, to the extent the expenses exceed seven and one-half 2792  
per cent of the taxpayer's federal adjusted gross income. 2793

(c) Deduct, to the extent not otherwise deducted or 2794  
excluded in computing federal or Ohio adjusted gross income, any 2795  
amount included in federal adjusted gross income under section 2796  
105 or not excluded under section 106 of the Internal Revenue 2797  
Code solely because it relates to an accident and health plan 2798  
for a person who otherwise would be a "qualifying relative" and 2799  
thus a "dependent" under section 152 of the Internal Revenue 2800  
Code but for the fact that the person fails to meet the income 2801  
and support limitations under section 152(d)(1)(B) and (C) of 2802  
the Internal Revenue Code. 2803

(d) For purposes of division (A)(11) of this section, 2804  
"medical care" has the meaning given in section 213 of the 2805  
Internal Revenue Code, subject to the special rules, 2806  
limitations, and exclusions set forth therein, and "qualified 2807  
long-term care" has the same meaning given in section 7702B(c) 2808  
of the Internal Revenue Code. Solely for purposes of divisions 2809  
(A)(11)(a) and (c) of this section, "dependent" includes a 2810  
person who otherwise would be a "qualifying relative" and thus a 2811  
"dependent" under section 152 of the Internal Revenue Code but 2812  
for the fact that the person fails to meet the income and 2813  
support limitations under section 152(d)(1)(B) and (C) of the 2814  
Internal Revenue Code. 2815

(12)(a) Deduct any amount included in federal adjusted 2816  
gross income solely because the amount represents a 2817

reimbursement or refund of expenses that in any year the 2818  
taxpayer had deducted as an itemized deduction pursuant to 2819  
section 63 of the Internal Revenue Code and applicable United 2820  
States department of the treasury regulations. The deduction 2821  
otherwise allowed under division (A)(12)(a) of this section 2822  
shall be reduced to the extent the reimbursement is attributable 2823  
to an amount the taxpayer deducted under this section in any 2824  
taxable year. 2825

(b) Add any amount not otherwise included in Ohio adjusted 2826  
gross income for any taxable year to the extent that the amount 2827  
is attributable to the recovery during the taxable year of any 2828  
amount deducted or excluded in computing federal or Ohio 2829  
adjusted gross income in any taxable year. 2830

(13) Deduct any portion of the deduction described in 2831  
section 1341(a)(2) of the Internal Revenue Code, for repaying 2832  
previously reported income received under a claim of right, that 2833  
meets both of the following requirements: 2834

(a) It is allowable for repayment of an item that was 2835  
included in the taxpayer's adjusted gross income for a prior 2836  
taxable year and did not qualify for a credit under division (A) 2837  
or (B) of section 5747.05 of the Revised Code for that year; 2838

(b) It does not otherwise reduce the taxpayer's adjusted 2839  
gross income for the current or any other taxable year. 2840

(14) Deduct an amount equal to the deposits made to, and 2841  
net investment earnings of, a medical savings account during the 2842  
taxable year, in accordance with section 3924.66 of the Revised 2843  
Code. The deduction allowed by division (A)(14) of this section 2844  
does not apply to medical savings account deposits and earnings 2845  
otherwise deducted or excluded for the current or any other 2846

taxable year from the taxpayer's federal adjusted gross income. 2847

(15) (a) Add an amount equal to the funds withdrawn from a 2848  
medical savings account during the taxable year, and the net 2849  
investment earnings on those funds, when the funds withdrawn 2850  
were used for any purpose other than to reimburse an account 2851  
holder for, or to pay, eligible medical expenses, in accordance 2852  
with section 3924.66 of the Revised Code; 2853

(b) Add the amounts distributed from a medical savings 2854  
account under division (A) (2) of section 3924.68 of the Revised 2855  
Code during the taxable year. 2856

(16) Add any amount claimed as a credit under section 2857  
5747.059 or 5747.65 of the Revised Code to the extent that such 2858  
amount satisfies either of the following: 2859

(a) The amount was deducted or excluded from the 2860  
computation of the taxpayer's federal adjusted gross income as 2861  
required to be reported for the taxpayer's taxable year under 2862  
the Internal Revenue Code; 2863

(b) The amount resulted in a reduction of the taxpayer's 2864  
federal adjusted gross income as required to be reported for any 2865  
of the taxpayer's taxable years under the Internal Revenue Code. 2866

(17) Deduct the amount contributed by the taxpayer to an 2867  
individual development account program established by a county 2868  
department of job and family services pursuant to sections 2869  
329.11 to 329.14 of the Revised Code for the purpose of matching 2870  
funds deposited by program participants. On request of the tax 2871  
commissioner, the taxpayer shall provide any information that, 2872  
in the tax commissioner's opinion, is necessary to establish the 2873  
amount deducted under division (A) (17) of this section. 2874

(18) Beginning in taxable year 2001 but not for any 2875

taxable year beginning after December 31, 2005, if the taxpayer 2876  
is married and files a joint return and the combined federal 2877  
adjusted gross income of the taxpayer and the taxpayer's spouse 2878  
for the taxable year does not exceed one hundred thousand 2879  
dollars, or if the taxpayer is single and has a federal adjusted 2880  
gross income for the taxable year not exceeding fifty thousand 2881  
dollars, deduct amounts paid during the taxable year for 2882  
qualified tuition and fees paid to an eligible institution for 2883  
the taxpayer, the taxpayer's spouse, or any dependent of the 2884  
taxpayer, who is a resident of this state and is enrolled in or 2885  
attending a program that culminates in a degree or diploma at an 2886  
eligible institution. The deduction may be claimed only to the 2887  
extent that qualified tuition and fees are not otherwise 2888  
deducted or excluded for any taxable year from federal or Ohio 2889  
adjusted gross income. The deduction may not be claimed for 2890  
educational expenses for which the taxpayer claims a credit 2891  
under section 5747.27 of the Revised Code. 2892

(19) Add any reimbursement received during the taxable 2893  
year of any amount the taxpayer deducted under division (A) (18) 2894  
of this section in any previous taxable year to the extent the 2895  
amount is not otherwise included in Ohio adjusted gross income. 2896

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 2897  
(v) of this section, add five-sixths of the amount of 2898  
depreciation expense allowed by subsection (k) of section 168 of 2899  
the Internal Revenue Code, including the taxpayer's 2900  
proportionate or distributive share of the amount of 2901  
depreciation expense allowed by that subsection to a pass- 2902  
through entity in which the taxpayer has a direct or indirect 2903  
ownership interest. 2904

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2905

of this section, add five-sixths of the amount of qualifying 2906  
section 179 depreciation expense, including the taxpayer's 2907  
proportionate or distributive share of the amount of qualifying 2908  
section 179 depreciation expense allowed to any pass-through 2909  
entity in which the taxpayer has a direct or indirect ownership 2910  
interest. 2911

(iii) Subject to division (A)(20)(a)(v) of this section, 2912  
for taxable years beginning in 2012 or thereafter, if the 2913  
increase in income taxes withheld by the taxpayer is equal to or 2914  
greater than ten per cent of income taxes withheld by the 2915  
taxpayer during the taxpayer's immediately preceding taxable 2916  
year, "two-thirds" shall be substituted for "five-sixths" for 2917  
the purpose of divisions (A)(20)(a)(i) and (ii) of this section. 2918

(iv) Subject to division (A)(20)(a)(v) of this section, 2919  
for taxable years beginning in 2012 or thereafter, a taxpayer is 2920  
not required to add an amount under division (A)(20) of this 2921  
section if the increase in income taxes withheld by the taxpayer 2922  
and by any pass-through entity in which the taxpayer has a 2923  
direct or indirect ownership interest is equal to or greater 2924  
than the sum of (I) the amount of qualifying section 179 2925  
depreciation expense and (II) the amount of depreciation expense 2926  
allowed to the taxpayer by subsection (k) of section 168 of the 2927  
Internal Revenue Code, and including the taxpayer's 2928  
proportionate or distributive shares of such amounts allowed to 2929  
any such pass-through entities. 2930

(v) If a taxpayer directly or indirectly incurs a net 2931  
operating loss for the taxable year for federal income tax 2932  
purposes, to the extent such loss resulted from depreciation 2933  
expense allowed by subsection (k) of section 168 of the Internal 2934  
Revenue Code and by qualifying section 179 depreciation expense, 2935

"the entire" shall be substituted for "five-sixths of the" for 2936  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2937

The tax commissioner, under procedures established by the 2938  
commissioner, may waive the add-backs related to a pass-through 2939  
entity if the taxpayer owns, directly or indirectly, less than 2940  
five per cent of the pass-through entity. 2941

(b) Nothing in division (A) (20) of this section shall be 2942  
construed to adjust or modify the adjusted basis of any asset. 2943

(c) To the extent the add-back required under division (A) 2944  
(20) (a) of this section is attributable to property generating 2945  
nonbusiness income or loss allocated under section 5747.20 of 2946  
the Revised Code, the add-back shall be situated to the same 2947  
location as the nonbusiness income or loss generated by the 2948  
property for the purpose of determining the credit under 2949  
division (A) of section 5747.05 of the Revised Code. Otherwise, 2950  
the add-back shall be apportioned, subject to one or more of the 2951  
four alternative methods of apportionment enumerated in section 2952  
5747.21 of the Revised Code. 2953

(d) For the purposes of division (A) (20) (a) (v) of this 2954  
section, net operating loss carryback and carryforward shall not 2955  
include the allowance of any net operating loss deduction 2956  
carryback or carryforward to the taxable year to the extent such 2957  
loss resulted from depreciation allowed by section 168(k) of the 2958  
Internal Revenue Code and by the qualifying section 179 2959  
depreciation expense amount. 2960

(e) For the purposes of divisions (A) (20) and (21) of this 2961  
section: 2962

(i) "Income taxes withheld" means the total amount 2963  
withheld and remitted under sections 5747.06 and 5747.07 of the 2964

Revised Code by an employer during the employer's taxable year. 2965

(ii) "Increase in income taxes withheld" means the amount 2966  
by which the amount of income taxes withheld by an employer 2967  
during the employer's current taxable year exceeds the amount of 2968  
income taxes withheld by that employer during the employer's 2969  
immediately preceding taxable year. 2970

(iii) "Qualifying section 179 depreciation expense" means 2971  
the difference between (I) the amount of depreciation expense 2972  
directly or indirectly allowed to a taxpayer under section 179 2973  
of the Internal Revised Code, and (II) the amount of 2974  
depreciation expense directly or indirectly allowed to the 2975  
taxpayer under section 179 of the Internal Revenue Code as that 2976  
section existed on December 31, 2002. 2977

(21) (a) If the taxpayer was required to add an amount 2978  
under division (A) (20) (a) of this section for a taxable year, 2979  
deduct one of the following: 2980

(i) One-fifth of the amount so added for each of the five 2981  
succeeding taxable years if the amount so added was five-sixths 2982  
of qualifying section 179 depreciation expense or depreciation 2983  
expense allowed by subsection (k) of section 168 of the Internal 2984  
Revenue Code; 2985

(ii) One-half of the amount so added for each of the two 2986  
succeeding taxable years if the amount so added was two-thirds 2987  
of such depreciation expense; 2988

(iii) One-sixth of the amount so added for each of the six 2989  
succeeding taxable years if the entire amount of such 2990  
depreciation expense was so added. 2991

(b) If the amount deducted under division (A) (21) (a) of 2992  
this section is attributable to an add-back allocated under 2993

division (A) (20) (c) of this section, the amount deducted shall 2994  
be sitused to the same location. Otherwise, the add-back shall 2995  
be apportioned using the apportionment factors for the taxable 2996  
year in which the deduction is taken, subject to one or more of 2997  
the four alternative methods of apportionment enumerated in 2998  
section 5747.21 of the Revised Code. 2999

(c) No deduction is available under division (A) (21) (a) of 3000  
this section with regard to any depreciation allowed by section 3001  
168(k) of the Internal Revenue Code and by the qualifying 3002  
section 179 depreciation expense amount to the extent that such 3003  
depreciation results in or increases a federal net operating 3004  
loss carryback or carryforward. If no such deduction is 3005  
available for a taxable year, the taxpayer may carry forward the 3006  
amount not deducted in such taxable year to the next taxable 3007  
year and add that amount to any deduction otherwise available 3008  
under division (A) (21) (a) of this section for that next taxable 3009  
year. The carryforward of amounts not so deducted shall continue 3010  
until the entire addition required by division (A) (20) (a) of 3011  
this section has been deducted. 3012

(d) No refund shall be allowed as a result of adjustments 3013  
made by division (A) (21) of this section. 3014

(22) Deduct, to the extent not otherwise deducted or 3015  
excluded in computing federal or Ohio adjusted gross income for 3016  
the taxable year, the amount the taxpayer received during the 3017  
taxable year as reimbursement for life insurance premiums under 3018  
section 5919.31 of the Revised Code. 3019

(23) Deduct, to the extent not otherwise deducted or 3020  
excluded in computing federal or Ohio adjusted gross income for 3021  
the taxable year, the amount the taxpayer received during the 3022  
taxable year as a death benefit paid by the adjutant general 3023



under section 5919.33 of the Revised Code. 3024

(24) Deduct, to the extent included in federal adjusted 3025  
gross income and not otherwise allowable as a deduction or 3026  
exclusion in computing federal or Ohio adjusted gross income for 3027  
the taxable year, military pay and allowances received by the 3028  
taxpayer during the taxable year for active duty service in the 3029  
United States army, air force, navy, marine corps, or coast 3030  
guard or reserve components thereof or the national guard. The 3031  
deduction may not be claimed for military pay and allowances 3032  
received by the taxpayer while the taxpayer is stationed in this 3033  
state. 3034

(25) Deduct, to the extent not otherwise allowable as a 3035  
deduction or exclusion in computing federal or Ohio adjusted 3036  
gross income for the taxable year and not otherwise compensated 3037  
for by any other source, the amount of qualified organ donation 3038  
expenses incurred by the taxpayer during the taxable year, not 3039  
to exceed ten thousand dollars. A taxpayer may deduct qualified 3040  
organ donation expenses only once for all taxable years 3041  
beginning with taxable years beginning in 2007. 3042

For the purposes of division (A) (25) of this section: 3043

(a) "Human organ" means all or any portion of a human 3044  
liver, pancreas, kidney, intestine, or lung, and any portion of 3045  
human bone marrow. 3046

(b) "Qualified organ donation expenses" means travel 3047  
expenses, lodging expenses, and wages and salary forgone by a 3048  
taxpayer in connection with the taxpayer's donation, while 3049  
living, of one or more of the taxpayer's human organs to another 3050  
human being. 3051

(26) Deduct, to the extent not otherwise deducted or 3052

excluded in computing federal or Ohio adjusted gross income for 3053  
the taxable year, amounts received by the taxpayer as retired 3054  
personnel pay for service in the uniformed services or reserve 3055  
components thereof, or the national guard, or received by the 3056  
surviving spouse or former spouse of such a taxpayer under the 3057  
survivor benefit plan on account of such a taxpayer's death. If 3058  
the taxpayer receives income on account of retirement paid under 3059  
the federal civil service retirement system or federal employees 3060  
retirement system, or under any successor retirement program 3061  
enacted by the congress of the United States that is established 3062  
and maintained for retired employees of the United States 3063  
government, and such retirement income is based, in whole or in 3064  
part, on credit for the taxpayer's uniformed service, the 3065  
deduction allowed under this division shall include only that 3066  
portion of such retirement income that is attributable to the 3067  
taxpayer's uniformed service, to the extent that portion of such 3068  
retirement income is otherwise included in federal adjusted 3069  
gross income and is not otherwise deducted under this section. 3070  
Any amount deducted under division (A) (26) of this section is 3071  
not included in a taxpayer's adjusted gross income for the 3072  
purposes of section 5747.055 of the Revised Code. No amount may 3073  
be deducted under division (A) (26) of this section on the basis 3074  
of which a credit was claimed under section 5747.055 of the 3075  
Revised Code. 3076

(27) Deduct, to the extent not otherwise deducted or 3077  
excluded in computing federal or Ohio adjusted gross income for 3078  
the taxable year, the amount the taxpayer received during the 3079  
taxable year from the military injury relief fund created in 3080  
section 5101.98 of the Revised Code. 3081

(28) Deduct, to the extent not otherwise deducted or 3082  
excluded in computing federal or Ohio adjusted gross income for 3083

the taxable year, the amount the taxpayer received as a veterans 3084  
bonus during the taxable year from the Ohio department of 3085  
veterans services as authorized by Section 2r of Article VIII, 3086  
Ohio Constitution. 3087

(29) Deduct, to the extent not otherwise deducted or 3088  
excluded in computing federal or Ohio adjusted gross income for 3089  
the taxable year, any income derived from a transfer agreement 3090  
or from the enterprise transferred under that agreement under 3091  
section 4313.02 of the Revised Code. 3092

(30) Deduct, to the extent not otherwise deducted or 3093  
excluded in computing federal or Ohio adjusted gross income for 3094  
the taxable year, Ohio college opportunity or federal Pell grant 3095  
amounts received by the taxpayer or the taxpayer's spouse or 3096  
dependent pursuant to section 3333.122 of the Revised Code or 20 3097  
U.S.C. 1070a, et seq., and used to pay room or board furnished 3098  
by the educational institution for which the grant was awarded 3099  
at the institution's facilities, including meal plans 3100  
administered by the institution. For the purposes of this 3101  
division, receipt of a grant includes the distribution of a 3102  
grant directly to an educational institution and the crediting 3103  
of the grant to the enrollee's account with the institution. 3104

(31) Deduct one-half of the taxpayer's Ohio small business 3105  
investor income, the deduction not to exceed sixty-two thousand 3106  
five hundred dollars for each spouse if spouses file separate 3107  
returns under section 5747.08 of the Revised Code or one hundred 3108  
twenty-five thousand dollars for all other taxpayers. No pass- 3109  
through entity may claim a deduction under this division. 3110

For the purposes of this division, "Ohio small business 3111  
investor income" means the portion of a taxpayer's adjusted 3112  
gross income that is business income reduced by deductions from 3113

business income and apportioned or allocated to this state under 3114  
sections 5747.21 and 5747.22 of the Revised Code, to the extent 3115  
not otherwise deducted or excluded in computing federal or Ohio 3116  
adjusted gross income for the taxable year. 3117

(B) "Business income" means income, including gain or 3118  
loss, arising from transactions, activities, and sources in the 3119  
regular course of a trade or business and includes income, gain, 3120  
or loss from real property, tangible property, and intangible 3121  
property if the acquisition, rental, management, and disposition 3122  
of the property constitute integral parts of the regular course 3123  
of a trade or business operation. "Business income" includes 3124  
income, including gain or loss, from a partial or complete 3125  
liquidation of a business, including, but not limited to, gain 3126  
or loss from the sale or other disposition of goodwill. 3127

(C) "Nonbusiness income" means all income other than 3128  
business income and may include, but is not limited to, 3129  
compensation, rents and royalties from real or tangible personal 3130  
property, capital gains, interest, dividends and distributions, 3131  
patent or copyright royalties, or lottery winnings, prizes, and 3132  
awards. 3133

(D) "Compensation" means any form of remuneration paid to 3134  
an employee for personal services. 3135

(E) "Fiduciary" means a guardian, trustee, executor, 3136  
administrator, receiver, conservator, or any other person acting 3137  
in any fiduciary capacity for any individual, trust, or estate. 3138

(F) "Fiscal year" means an accounting period of twelve 3139  
months ending on the last day of any month other than December. 3140

(G) "Individual" means any natural person. 3141

(H) "Internal Revenue Code" means the "Internal Revenue 3142

Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 3143

(I) "Resident" means any of the following, provided that 3144  
division (I)(3) of this section applies only to taxable years of 3145  
a trust beginning in 2002 or thereafter: 3146

(1) An individual who is domiciled in this state, subject 3147  
to section 5747.24 of the Revised Code; 3148

(2) The estate of a decedent who at the time of death was 3149  
domiciled in this state. The domicile tests of section 5747.24 3150  
of the Revised Code are not controlling for purposes of division 3151  
(I)(2) of this section. 3152

(3) A trust that, in whole or part, resides in this state. 3153  
If only part of a trust resides in this state, the trust is a 3154  
resident only with respect to that part. 3155

For the purposes of division (I)(3) of this section: 3156

(a) A trust resides in this state for the trust's current 3157  
taxable year to the extent, as described in division (I)(3)(d) 3158  
of this section, that the trust consists directly or indirectly, 3159  
in whole or in part, of assets, net of any related liabilities, 3160  
that were transferred, or caused to be transferred, directly or 3161  
indirectly, to the trust by any of the following: 3162

(i) A person, a court, or a governmental entity or 3163  
instrumentality on account of the death of a decedent, but only 3164  
if the trust is described in division (I)(3)(e)(i) or (ii) of 3165  
this section; 3166

(ii) A person who was domiciled in this state for the 3167  
purposes of this chapter when the person directly or indirectly 3168  
transferred assets to an irrevocable trust, but only if at least 3169  
one of the trust's qualifying beneficiaries is domiciled in this 3170

state for the purposes of this chapter during all or some 3171  
portion of the trust's current taxable year; 3172

(iii) A person who was domiciled in this state for the 3173  
purposes of this chapter when the trust document or instrument 3174  
or part of the trust document or instrument became irrevocable, 3175  
but only if at least one of the trust's qualifying beneficiaries 3176  
is a resident domiciled in this state for the purposes of this 3177  
chapter during all or some portion of the trust's current 3178  
taxable year. If a trust document or instrument became 3179  
irrevocable upon the death of a person who at the time of death 3180  
was domiciled in this state for purposes of this chapter, that 3181  
person is a person described in division (I) (3) (a) (iii) of this 3182  
section. 3183

(b) A trust is irrevocable to the extent that the 3184  
transferor is not considered to be the owner of the net assets 3185  
of the trust under sections 671 to 678 of the Internal Revenue 3186  
Code. 3187

(c) With respect to a trust other than a charitable lead 3188  
trust, "qualifying beneficiary" has the same meaning as 3189  
"potential current beneficiary" as defined in section 1361(e) (2) 3190  
of the Internal Revenue Code, and with respect to a charitable 3191  
lead trust "qualifying beneficiary" is any current, future, or 3192  
contingent beneficiary, but with respect to any trust 3193  
"qualifying beneficiary" excludes a person or a governmental 3194  
entity or instrumentality to any of which a contribution would 3195  
qualify for the charitable deduction under section 170 of the 3196  
Internal Revenue Code. 3197

(d) For the purposes of division (I) (3) (a) of this 3198  
section, the extent to which a trust consists directly or 3199  
indirectly, in whole or in part, of assets, net of any related 3200

liabilities, that were transferred directly or indirectly, in 3201  
whole or part, to the trust by any of the sources enumerated in 3202  
that division shall be ascertained by multiplying the fair 3203  
market value of the trust's assets, net of related liabilities, 3204  
by the qualifying ratio, which shall be computed as follows: 3205

(i) The first time the trust receives assets, the 3206  
numerator of the qualifying ratio is the fair market value of 3207  
those assets at that time, net of any related liabilities, from 3208  
sources enumerated in division (I) (3) (a) of this section. The 3209  
denominator of the qualifying ratio is the fair market value of 3210  
all the trust's assets at that time, net of any related 3211  
liabilities. 3212

(ii) Each subsequent time the trust receives assets, a 3213  
revised qualifying ratio shall be computed. The numerator of the 3214  
revised qualifying ratio is the sum of (1) the fair market value 3215  
of the trust's assets immediately prior to the subsequent 3216  
transfer, net of any related liabilities, multiplied by the 3217  
qualifying ratio last computed without regard to the subsequent 3218  
transfer, and (2) the fair market value of the subsequently 3219  
transferred assets at the time transferred, net of any related 3220  
liabilities, from sources enumerated in division (I) (3) (a) of 3221  
this section. The denominator of the revised qualifying ratio is 3222  
the fair market value of all the trust's assets immediately 3223  
after the subsequent transfer, net of any related liabilities. 3224

(iii) Whether a transfer to the trust is by or from any of 3225  
the sources enumerated in division (I) (3) (a) of this section 3226  
shall be ascertained without regard to the domicile of the 3227  
trust's beneficiaries. 3228

(e) For the purposes of division (I) (3) (a) (i) of this 3229  
section: 3230

(i) A trust is described in division (I) (3) (e) (i) of this 3231  
section if the trust is a testamentary trust and the testator of 3232  
that testamentary trust was domiciled in this state at the time 3233  
of the testator's death for purposes of the taxes levied under 3234  
Chapter 5731. of the Revised Code. 3235

(ii) A trust is described in division (I) (3) (e) (ii) of 3236  
this section if the transfer is a qualifying transfer described 3237  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 3238  
trust is an irrevocable inter vivos trust, and at least one of 3239  
the trust's qualifying beneficiaries is domiciled in this state 3240  
for purposes of this chapter during all or some portion of the 3241  
trust's current taxable year. 3242

(f) For the purposes of division (I) (3) (e) (ii) of this 3243  
section, a "qualifying transfer" is a transfer of assets, net of 3244  
any related liabilities, directly or indirectly to a trust, if 3245  
the transfer is described in any of the following: 3246

(i) The transfer is made to a trust, created by the 3247  
decedent before the decedent's death and while the decedent was 3248  
domiciled in this state for the purposes of this chapter, and, 3249  
prior to the death of the decedent, the trust became irrevocable 3250  
while the decedent was domiciled in this state for the purposes 3251  
of this chapter. 3252

(ii) The transfer is made to a trust to which the 3253  
decedent, prior to the decedent's death, had directly or 3254  
indirectly transferred assets, net of any related liabilities, 3255  
while the decedent was domiciled in this state for the purposes 3256  
of this chapter, and prior to the death of the decedent the 3257  
trust became irrevocable while the decedent was domiciled in 3258  
this state for the purposes of this chapter. 3259



(iii) The transfer is made on account of a contractual 3260  
relationship existing directly or indirectly between the 3261  
transferor and either the decedent or the estate of the decedent 3262  
at any time prior to the date of the decedent's death, and the 3263  
decedent was domiciled in this state at the time of death for 3264  
purposes of the taxes levied under Chapter 5731. of the Revised 3265  
Code. 3266

(iv) The transfer is made to a trust on account of a 3267  
contractual relationship existing directly or indirectly between 3268  
the transferor and another person who at the time of the 3269  
decedent's death was domiciled in this state for purposes of 3270  
this chapter. 3271

(v) The transfer is made to a trust on account of the will 3272  
of a testator who was domiciled in this state at the time of the 3273  
testator's death for purposes of the taxes levied under Chapter 3274  
5731. of the Revised Code. 3275

(vi) The transfer is made to a trust created by or caused 3276  
to be created by a court, and the trust was directly or 3277  
indirectly created in connection with or as a result of the 3278  
death of an individual who, for purposes of the taxes levied 3279  
under Chapter 5731. of the Revised Code, was domiciled in this 3280  
state at the time of the individual's death. 3281

(g) The tax commissioner may adopt rules to ascertain the 3282  
part of a trust residing in this state. 3283

(J) "Nonresident" means an individual or estate that is 3284  
not a resident. An individual who is a resident for only part of 3285  
a taxable year is a nonresident for the remainder of that 3286  
taxable year. 3287

(K) "Pass-through entity" has the same meaning as in 3288

section 5733.04 of the Revised Code. 3289

(L) "Return" means the notifications and reports required 3290  
to be filed pursuant to this chapter for the purpose of 3291  
reporting the tax due and includes declarations of estimated tax 3292  
when so required. 3293

(M) "Taxable year" means the calendar year or the 3294  
taxpayer's fiscal year ending during the calendar year, or 3295  
fractional part thereof, upon which the adjusted gross income is 3296  
calculated pursuant to this chapter. 3297

(N) "Taxpayer" means any person subject to the tax imposed 3298  
by section 5747.02 of the Revised Code or any pass-through 3299  
entity that makes the election under division (D) of section 3300  
5747.08 of the Revised Code. 3301

(O) "Dependents" means dependents as defined in the 3302  
Internal Revenue Code and as claimed in the taxpayer's federal 3303  
income tax return for the taxable year or which the taxpayer 3304  
would have been permitted to claim had the taxpayer filed a 3305  
federal income tax return. 3306

(P) "Principal county of employment" means, in the case of 3307  
a nonresident, the county within the state in which a taxpayer 3308  
performs services for an employer or, if those services are 3309  
performed in more than one county, the county in which the major 3310  
portion of the services are performed. 3311

(Q) As used in sections 5747.50 to 5747.55 of the Revised 3312  
Code: 3313

(1) "Subdivision" means any county, municipal corporation, 3314  
park district, or township. 3315

(2) "Essential local government purposes" includes all 3316

functions that any subdivision is required by general law to 3317  
exercise, including like functions that are exercised under a 3318  
charter adopted pursuant to the Ohio Constitution. 3319

(R) "Overpayment" means any amount already paid that 3320  
exceeds the figure determined to be the correct amount of the 3321  
tax. 3322

(S) "Taxable income" or "Ohio taxable income" applies only 3323  
to estates and trusts, and means federal taxable income, as 3324  
defined and used in the Internal Revenue Code, adjusted as 3325  
follows: 3326

(1) Add interest or dividends, net of ordinary, necessary, 3327  
and reasonable expenses not deducted in computing federal 3328  
taxable income, on obligations or securities of any state or of 3329  
any political subdivision or authority of any state, other than 3330  
this state and its subdivisions and authorities, but only to the 3331  
extent that such net amount is not otherwise includible in Ohio 3332  
taxable income and is described in either division (S) (1) (a) or 3333  
(b) of this section: 3334

(a) The net amount is not attributable to the S portion of 3335  
an electing small business trust and has not been distributed to 3336  
beneficiaries for the taxable year; 3337

(b) The net amount is attributable to the S portion of an 3338  
electing small business trust for the taxable year. 3339

(2) Add interest or dividends, net of ordinary, necessary, 3340  
and reasonable expenses not deducted in computing federal 3341  
taxable income, on obligations of any authority, commission, 3342  
instrumentality, territory, or possession of the United States 3343  
to the extent that the interest or dividends are exempt from 3344  
federal income taxes but not from state income taxes, but only 3345

to the extent that such net amount is not otherwise includible 3346  
in Ohio taxable income and is described in either division (S) 3347  
(1) (a) or (b) of this section; 3348

(3) Add the amount of personal exemption allowed to the 3349  
estate pursuant to section 642(b) of the Internal Revenue Code; 3350

(4) Deduct interest or dividends, net of related expenses 3351  
deducted in computing federal taxable income, on obligations of 3352  
the United States and its territories and possessions or of any 3353  
authority, commission, or instrumentality of the United States 3354  
to the extent that the interest or dividends are exempt from 3355  
state taxes under the laws of the United States, but only to the 3356  
extent that such amount is included in federal taxable income 3357  
and is described in either division (S) (1) (a) or (b) of this 3358  
section; 3359

(5) Deduct the amount of wages and salaries, if any, not 3360  
otherwise allowable as a deduction but that would have been 3361  
allowable as a deduction in computing federal taxable income for 3362  
the taxable year, had the targeted jobs credit allowed under 3363  
sections 38, 51, and 52 of the Internal Revenue Code not been in 3364  
effect, but only to the extent such amount relates either to 3365  
income included in federal taxable income for the taxable year 3366  
or to income of the S portion of an electing small business 3367  
trust for the taxable year; 3368

(6) Deduct any interest or interest equivalent, net of 3369  
related expenses deducted in computing federal taxable income, 3370  
on public obligations and purchase obligations, but only to the 3371  
extent that such net amount relates either to income included in 3372  
federal taxable income for the taxable year or to income of the 3373  
S portion of an electing small business trust for the taxable 3374  
year; 3375

(7) Add any loss or deduct any gain resulting from sale, 3376  
exchange, or other disposition of public obligations to the 3377  
extent that such loss has been deducted or such gain has been 3378  
included in computing either federal taxable income or income of 3379  
the S portion of an electing small business trust for the 3380  
taxable year; 3381

(8) Except in the case of the final return of an estate, 3382  
add any amount deducted by the taxpayer on both its Ohio estate 3383  
tax return pursuant to section 5731.14 of the Revised Code, and 3384  
on its federal income tax return in determining federal taxable 3385  
income; 3386

(9) (a) Deduct any amount included in federal taxable 3387  
income solely because the amount represents a reimbursement or 3388  
refund of expenses that in a previous year the decedent had 3389  
deducted as an itemized deduction pursuant to section 63 of the 3390  
Internal Revenue Code and applicable treasury regulations. The 3391  
deduction otherwise allowed under division (S) (9) (a) of this 3392  
section shall be reduced to the extent the reimbursement is 3393  
attributable to an amount the taxpayer or decedent deducted 3394  
under this section in any taxable year. 3395

(b) Add any amount not otherwise included in Ohio taxable 3396  
income for any taxable year to the extent that the amount is 3397  
attributable to the recovery during the taxable year of any 3398  
amount deducted or excluded in computing federal or Ohio taxable 3399  
income in any taxable year, but only to the extent such amount 3400  
has not been distributed to beneficiaries for the taxable year. 3401

(10) Deduct any portion of the deduction described in 3402  
section 1341(a) (2) of the Internal Revenue Code, for repaying 3403  
previously reported income received under a claim of right, that 3404  
meets both of the following requirements: 3405

(a) It is allowable for repayment of an item that was 3406  
included in the taxpayer's taxable income or the decedent's 3407  
adjusted gross income for a prior taxable year and did not 3408  
qualify for a credit under division (A) or (B) of section 3409  
5747.05 of the Revised Code for that year. 3410

(b) It does not otherwise reduce the taxpayer's taxable 3411  
income or the decedent's adjusted gross income for the current 3412  
or any other taxable year. 3413

(11) Add any amount claimed as a credit under section 3414  
5747.059 or 5747.65 of the Revised Code to the extent that the 3415  
amount satisfies either of the following: 3416

(a) The amount was deducted or excluded from the 3417  
computation of the taxpayer's federal taxable income as required 3418  
to be reported for the taxpayer's taxable year under the 3419  
Internal Revenue Code; 3420

(b) The amount resulted in a reduction in the taxpayer's 3421  
federal taxable income as required to be reported for any of the 3422  
taxpayer's taxable years under the Internal Revenue Code. 3423

(12) Deduct any amount, net of related expenses deducted 3424  
in computing federal taxable income, that a trust is required to 3425  
report as farm income on its federal income tax return, but only 3426  
if the assets of the trust include at least ten acres of land 3427  
satisfying the definition of "land devoted exclusively to 3428  
agricultural use" under section 5713.30 of the Revised Code, 3429  
regardless of whether the land is valued for tax purposes as 3430  
such land under sections 5713.30 to 5713.38 of the Revised Code. 3431  
If the trust is a pass-through entity investor, section 5747.231 3432  
of the Revised Code applies in ascertaining if the trust is 3433  
eligible to claim the deduction provided by division (S) (12) of 3434

this section in connection with the pass-through entity's farm 3435  
income. 3436

Except for farm income attributable to the S portion of an 3437  
electing small business trust, the deduction provided by 3438  
division (S) (12) of this section is allowed only to the extent 3439  
that the trust has not distributed such farm income. Division 3440  
(S) (12) of this section applies only to taxable years of a trust 3441  
beginning in 2002 or thereafter. 3442

(13) Add the net amount of income described in section 3443  
641(c) of the Internal Revenue Code to the extent that amount is 3444  
not included in federal taxable income. 3445

(14) Add or deduct the amount the taxpayer would be 3446  
required to add or deduct under division (A) (20) or (21) of this 3447  
section if the taxpayer's Ohio taxable income were computed in 3448  
the same manner as an individual's Ohio adjusted gross income is 3449  
computed under this section. In the case of a trust, division 3450  
(S) (14) of this section applies only to any of the trust's 3451  
taxable years beginning in 2002 or thereafter. 3452

(T) "School district income" and "school district income 3453  
tax" have the same meanings as in section 5748.01 of the Revised 3454  
Code. 3455

(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) 3456  
(7) of this section, "public obligations," "purchase 3457  
obligations," and "interest or interest equivalent" have the 3458  
same meanings as in section 5709.76 of the Revised Code. 3459

(V) "Limited liability company" means any limited 3460  
liability company formed under Chapter 1705. of the Revised Code 3461  
or under the laws of any other state. 3462

(W) "Pass-through entity investor" means any person who, 3463

during any portion of a taxable year of a pass-through entity, 3464  
is a partner, member, shareholder, or equity investor in that 3465  
pass-through entity. 3466

(X) "Banking day" has the same meaning as in section 3467  
1304.01 of the Revised Code. 3468

(Y) "Month" means a calendar month. 3469

(Z) "Quarter" means the first three months, the second 3470  
three months, the third three months, or the last three months 3471  
of the taxpayer's taxable year. 3472

(AA) (1) "Eligible institution" means a state university or 3473  
state institution of higher education as defined in section 3474  
3345.011 of the Revised Code, or a private, nonprofit college, 3475  
university, or other post-secondary institution located in this 3476  
state that possesses a certificate of authorization issued by 3477  
the Ohio board of regents pursuant to Chapter 1713. of the 3478  
Revised Code or a certificate of registration issued by the 3479  
state board of career colleges and schools under Chapter 3332. 3480  
of the Revised Code. 3481

(2) "Qualified tuition and fees" means tuition and fees 3482  
imposed by an eligible institution as a condition of enrollment 3483  
or attendance, not exceeding two thousand five hundred dollars 3484  
in each of the individual's first two years of post-secondary 3485  
education. If the individual is a part-time student, "qualified 3486  
tuition and fees" includes tuition and fees paid for the 3487  
academic equivalent of the first two years of post-secondary 3488  
education during a maximum of five taxable years, not exceeding 3489  
a total of five thousand dollars. "Qualified tuition and fees" 3490  
does not include: 3491

(a) Expenses for any course or activity involving sports, 3492



games, or hobbies unless the course or activity is part of the 3493  
individual's degree or diploma program; 3494

(b) The cost of books, room and board, student activity 3495  
fees, athletic fees, insurance expenses, or other expenses 3496  
unrelated to the individual's academic course of instruction; 3497

(c) Tuition, fees, or other expenses paid or reimbursed 3498  
through an employer, scholarship, grant in aid, or other 3499  
educational benefit program. 3500

(BB) (1) "Modified business income" means the business 3501  
income included in a trust's Ohio taxable income after such 3502  
taxable income is first reduced by the qualifying trust amount, 3503  
if any. 3504

(2) "Qualifying trust amount" of a trust means capital 3505  
gains and losses from the sale, exchange, or other disposition 3506  
of equity or ownership interests in, or debt obligations of, a 3507  
qualifying investee to the extent included in the trust's Ohio 3508  
taxable income, but only if the following requirements are 3509  
satisfied: 3510

(a) The book value of the qualifying investee's physical 3511  
assets in this state and everywhere, as of the last day of the 3512  
qualifying investee's fiscal or calendar year ending immediately 3513  
prior to the date on which the trust recognizes the gain or 3514  
loss, is available to the trust. 3515

(b) The requirements of section 5747.011 of the Revised 3516  
Code are satisfied for the trust's taxable year in which the 3517  
trust recognizes the gain or loss. 3518

Any gain or loss that is not a qualifying trust amount is 3519  
modified business income, qualifying investment income, or 3520  
modified nonbusiness income, as the case may be. 3521

(3) "Modified nonbusiness income" means a trust's Ohio 3522  
taxable income other than modified business income, other than 3523  
the qualifying trust amount, and other than qualifying 3524  
investment income, as defined in section 5747.012 of the Revised 3525  
Code, to the extent such qualifying investment income is not 3526  
otherwise part of modified business income. 3527

(4) "Modified Ohio taxable income" applies only to trusts, 3528  
and means the sum of the amounts described in divisions (BB) (4) 3529  
(a) to (c) of this section: 3530

(a) The fraction, calculated under section 5747.013, and 3531  
applying section 5747.231 of the Revised Code, multiplied by the 3532  
sum of the following amounts: 3533

(i) The trust's modified business income; 3534

(ii) The trust's qualifying investment income, as defined 3535  
in section 5747.012 of the Revised Code, but only to the extent 3536  
the qualifying investment income does not otherwise constitute 3537  
modified business income and does not otherwise constitute a 3538  
qualifying trust amount. 3539

(b) The qualifying trust amount multiplied by a fraction, 3540  
the numerator of which is the sum of the book value of the 3541  
qualifying investee's physical assets in this state on the last 3542  
day of the qualifying investee's fiscal or calendar year ending 3543  
immediately prior to the day on which the trust recognizes the 3544  
qualifying trust amount, and the denominator of which is the sum 3545  
of the book value of the qualifying investee's total physical 3546  
assets everywhere on the last day of the qualifying investee's 3547  
fiscal or calendar year ending immediately prior to the day on 3548  
which the trust recognizes the qualifying trust amount. If, for 3549  
a taxable year, the trust recognizes a qualifying trust amount 3550

with respect to more than one qualifying investee, the amount 3551  
described in division (BB) (4) (b) of this section shall equal the 3552  
sum of the products so computed for each such qualifying 3553  
investee. 3554

(c) (i) With respect to a trust or portion of a trust that 3555  
is a resident as ascertained in accordance with division (I) (3) 3556  
(d) of this section, its modified nonbusiness income. 3557

(ii) With respect to a trust or portion of a trust that is 3558  
not a resident as ascertained in accordance with division (I) (3) 3559  
(d) of this section, the amount of its modified nonbusiness 3560  
income satisfying the descriptions in divisions (B) (2) to (5) of 3561  
section 5747.20 of the Revised Code, except as otherwise 3562  
provided in division (BB) (4) (c) (ii) of this section. With 3563  
respect to a trust or portion of a trust that is not a resident 3564  
as ascertained in accordance with division (I) (3) (d) of this 3565  
section, the trust's portion of modified nonbusiness income 3566  
recognized from the sale, exchange, or other disposition of a 3567  
debt interest in or equity interest in a section 5747.212 3568  
entity, as defined in section 5747.212 of the Revised Code, 3569  
without regard to division (A) of that section, shall not be 3570  
allocated to this state in accordance with section 5747.20 of 3571  
the Revised Code but shall be apportioned to this state in 3572  
accordance with division (B) of section 5747.212 of the Revised 3573  
Code without regard to division (A) of that section. 3574

If the allocation and apportionment of a trust's income 3575  
under divisions (BB) (4) (a) and (c) of this section do not fairly 3576  
represent the modified Ohio taxable income of the trust in this 3577  
state, the alternative methods described in division (C) of 3578  
section 5747.21 of the Revised Code may be applied in the manner 3579  
and to the same extent provided in that section. 3580

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

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

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

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

An upper level pass-through entity, whether or not it is also a qualifying investee, is deemed to own, on the last day of the upper level pass-through entity's calendar or fiscal year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's calendar or fiscal year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's calendar or fiscal year in which or with which ends the calendar or fiscal year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower pass-through entity is not available to the upper level pass-through entity, then solely for purposes of ascertaining if a gain or loss constitutes a qualifying trust amount, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's calendar or fiscal year. Nothing in division (BB) (5) (a) (iii) of this section shall be construed to provide for any deduction or exclusion in computing any trust's Ohio taxable income.

(b) With respect to a trust that is not a resident for the 3642  
taxable year and with respect to a part of a trust that is not a 3643  
resident for the taxable year, "qualifying investee" for that 3644  
taxable year does not include a C corporation if both of the 3645  
following apply: 3646

(i) During the taxable year the trust or part of the trust 3647  
recognizes a gain or loss from the sale, exchange, or other 3648  
disposition of equity or ownership interests in, or debt 3649  
obligations of, the C corporation. 3650

(ii) Such gain or loss constitutes nonbusiness income. 3651

(6) "Available" means information is such that a person is 3652  
able to learn of the information by the due date plus 3653  
extensions, if any, for filing the return for the taxable year 3654  
in which the trust recognizes the gain or loss. 3655

(CC) "Qualifying controlled group" has the same meaning as 3656  
in section 5733.04 of the Revised Code. 3657

(DD) "Related member" has the same meaning as in section 3658  
5733.042 of the Revised Code. 3659

(EE) (1) For the purposes of division (EE) of this section: 3660

(a) "Qualifying person" means any person other than a 3661  
qualifying corporation. 3662

(b) "Qualifying corporation" means any person classified 3663  
for federal income tax purposes as an association taxable as a 3664  
corporation, except either of the following: 3665

(i) A corporation that has made an election under 3666  
subchapter S, chapter one, subtitle A, of the Internal Revenue 3667  
Code for its taxable year ending within, or on the last day of, 3668  
the investor's taxable year; 3669

(ii) A subsidiary that is wholly owned by any corporation 3670  
that has made an election under subchapter S, chapter one, 3671  
subtitle A of the Internal Revenue Code for its taxable year 3672  
ending within, or on the last day of, the investor's taxable 3673  
year. 3674

(2) For the purposes of this chapter, unless expressly 3675  
stated otherwise, no qualifying person indirectly owns any asset 3676  
directly or indirectly owned by any qualifying corporation. 3677

(FF) For purposes of this chapter and Chapter 5751. of the 3678  
Revised Code: 3679

(1) "Trust" does not include a qualified pre-income tax 3680  
trust. 3681

(2) A "qualified pre-income tax trust" is any pre-income 3682  
tax trust that makes a qualifying pre-income tax trust election 3683  
as described in division (FF)(3) of this section. 3684

(3) A "qualifying pre-income tax trust election" is an 3685  
election by a pre-income tax trust to subject to the tax imposed 3686  
by section 5751.02 of the Revised Code the pre-income tax trust 3687  
and all pass-through entities of which the trust owns or 3688  
controls, directly, indirectly, or constructively through 3689  
related interests, five per cent or more of the ownership or 3690  
equity interests. The trustee shall notify the tax commissioner 3691  
in writing of the election on or before April 15, 2006. The 3692  
election, if timely made, shall be effective on and after 3693  
January 1, 2006, and shall apply for all tax periods and tax 3694  
years until revoked by the trustee of the trust. 3695

(4) A "pre-income tax trust" is a trust that satisfies all 3696  
of the following requirements: 3697

(a) The document or instrument creating the trust was 3698

executed by the grantor before January 1, 1972; 3699

(b) The trust became irrevocable upon the creation of the 3700  
trust; and 3701

(c) The grantor was domiciled in this state at the time 3702  
the trust was created. 3703

(GG) "Uniformed services" has the same meaning as in 10 3704  
U.S.C. 101. 3705

(HH) "Employee" has the same meaning as in section 4175.01 3706  
of the Revised Code, unless the internal revenue service has 3707  
accepted the classification of an individual as an independent 3708  
contractor made by the individual and the individual's payer. 3709

**Section 2.** That existing sections 119.14, 121.083, 3710  
1349.61, 4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 4113.15, 3711  
4115.03, 4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 of the 3712  
Revised Code are hereby repealed. 3713

**Section 3.** Section 4111.03 of the Revised Code is 3714  
presented in this act as a composite of the section as amended 3715  
by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General 3716  
Assembly. The General Assembly, applying the principle stated in 3717  
division (B) of section 1.52 of the Revised Code that amendments 3718  
are to be harmonized if reasonably capable of simultaneous 3719  
operation, finds that the composite is the resulting version of 3720  
the section in effect prior to the effective date of the section 3721  
as presented in this act. 3722