

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 38

Senator Yuko

Cosponsors: Senators Brown, Tavares, Schiavoni, Skindell, Thomas

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
4177.01, 4177.02, 4177.03, 4177.04, 4177.05, 5
4177.06, 4177.07, 4177.08, 4177.09, 4177.10, 6
4177.11, 4177.12, 4177.13, 4177.14, 4177.15, 7
4177.16, 4177.17, 4177.18, and 4177.99 of the 8
Revised Code to raise the minimum wage; to 9
eliminate the prohibition against political 10
subdivisions establishing a different minimum 11
wage; to raise the salary threshold above which 12
certain employees are exempt from the overtime 13
law; and to create a uniform standard to 14
determine whether an individual performing 15
services for an employer is an employee of that 16
employer. 17

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

Section 1. That sections 119.14, 121.083, 1349.61, 18
4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 4113.15, 4115.03, 19

4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 be amended and 20
sections 4177.01, 4177.02, 4177.03, 4177.04, 4177.05, 4177.06, 21
4177.07, 4177.08, 4177.09, 4177.10, 4177.11, 4177.12, 4177.13, 22
4177.14, 4177.15, 4177.16, 4177.17, 4177.18, and 4177.99 of the 23
Revised Code be enacted to read as follows: 24

Sec. 119.14. (A) For any small business that engages in a 25
paperwork violation, the state agency or regulatory authority 26
that regulates the field of operation in which the business 27
operates shall waive any and all administrative fines or civil 28
penalties on that small business for the violation, if the 29
paperwork violation is a first-time offense. 30

(B) When an agency or regulatory authority waives an 31
administrative fine or civil penalty under this section, the 32
state agency or regulatory authority shall require the small 33
business to correct the violation within a reasonable period of 34
time. 35

(C) Notwithstanding this section, a state agency or 36
regulatory authority may impose administrative fines or civil 37
penalties on a small business for a paperwork violation that is 38
a first-time offense for any of the following reasons: 39

(1) The violation has the potential to cause serious harm 40
to the public interest as determined by a state agency or 41
regulatory authority director; 42

(2) The violation involves a small business knowingly or 43
willfully engaging in conduct that may result in a felony 44
conviction; 45

(3) Failure to impose an administrative fine or civil 46
penalty for the violation would impede or interfere with the 47
detection of criminal activity; 48

(4) The violation is of a law concerning the assessment or 49
collection of any tax, debt, revenue, or receipt; 50

(5) The violation presents a direct danger to the public 51
health or safety, results in a financial loss to an employee ~~as~~ 52
~~defined in section 4111.03 of the Revised Code~~, or presents the 53
risk of severe environmental harm, as determined by the head of 54
the agency or regulatory authority; 55

(6) The violation is a failure to comply with a federal 56
requirement for a program that has been delegated from the 57
federal government to a state agency or regulatory authority and 58
where the federal requirement includes a requirement to impose a 59
fine. 60

(D) (1) Nothing in this section shall prohibit a state 61
agency or regulatory authority from waiving administrative fines 62
or civil penalties incurred by a small business for a paperwork 63
violation that is not a first-time offense. 64

(2) Any administrative fine or civil penalty that is 65
waived under this section, may be reinstated and imposed in 66
addition to any additional fines or penalties associated with a 67
subsequent violation for noncompliance with the same paperwork 68
requirement. 69

(E) This section shall not apply to any violation by a 70
small business of a statutory or regulatory requirement 71
mandating the collection of information by a state agency or 72
regulatory body if that small business previously violated any 73
such requirement mandating the collection of information. 74

(F) Nothing in this section shall be construed to diminish 75
the responsibility for any citizen or business to apply for and 76
obtain a permit, license, or authorizing document that is 77

required to engage in a regulated activity, or otherwise comply 78
with state or federal law. 79

(G) As used in this section: 80

(1) "Small business" has the same meaning as defined by 81
the Code of Federal Regulations, Title 13, Chapter 1, Part 121. 82

(2) "Paperwork violation" means the violation of any 83
statutory or regulatory requirement in the Revised Code 84
mandating the collection of information by a state agency or 85
regulatory body. 86

(3) "First-time offense" means the first instance of a 87
violation of the particular statutory or regulatory requirement 88
mandating the collection of information by a state agency or 89
regulatory body. 90

(4) "Employee" means any individual employed by an 91
employer but does not include: 92

(a) Any individual employed by the United States; 93

(b) Any individual employed as a babysitter in the 94
employer's home, or a live-in companion to a sick, convalescing, 95
or elderly person whose principal duties do not include 96
housekeeping; 97

(c) Any individual engaged in the delivery of newspapers 98
to the consumer; 99

(d) Any individual employed as an outside salesperson 100
compensated by commissions or employed in a bona fide executive, 101
administrative, or professional capacity as such terms are 102
defined by the "Fair Labor Standards Act of 1938," 52 Stat. 103
1060, 29 U.S.C. 201, as amended; 104

(e) Any individual who works or provides personal services 105
of a charitable nature in a hospital or health institution for 106
which compensation is not sought or contemplated; 107

(f) A member of a police or fire protection agency or 108
student employed on a part-time or seasonal basis by a political 109
subdivision of this state; 110

(g) Any individual in the employ of a camp or recreational 111
area for children under eighteen years of age and owned and 112
operated by a nonprofit organization or group of organizations 113
described in section 501(c)(3) of the "Internal Revenue Code of 114
1954," and exempt from income tax under section 501(a) of that 115
code; 116

(h) Any individual employed directly by the house of 117
representatives or directly by the senate. 118

Sec. 121.083. The superintendent of industrial compliance 119
in the department of commerce shall do all of the following: 120

(A) Administer and enforce the general laws of this state 121
pertaining to buildings, pressure piping, boilers, bedding, 122
upholstered furniture, and stuffed toys, steam engineering, 123
elevators, plumbing, licensed occupations regulated by the 124
department, and travel agents, as they apply to plans review, 125
inspection, code enforcement, testing, licensing, registration, 126
and certification. 127

(B) Exercise the powers and perform the duties delegated 128
to the superintendent by the director of commerce under Chapters 129
4109., 4111., ~~and 4115.~~, and 4177. of the Revised Code. 130

(C) Collect and collate statistics as are necessary. 131

(D) Examine and license persons who desire to act as steam 132

engineers, to operate steam boilers, and to act as inspectors of 133
steam boilers, provide for the scope, conduct, and time of such 134
examinations, provide for, regulate, and enforce the renewal and 135
revocation of such licenses, inspect and examine steam boilers 136
and make, publish, and enforce rules and orders for the 137
construction, installation, inspection, and operation of steam 138
boilers, and do, require, and enforce all things necessary to 139
make such examination, inspection, and requirement efficient. 140

(E) Rent and furnish offices as needed in cities in this 141
state for the conduct of its affairs. 142

(F) Oversee a chief of construction and compliance, a 143
chief of operations and maintenance, a chief of licensing and 144
certification, a chief of worker protection, and other designees 145
appointed by the director to perform the duties described in 146
this section. 147

(G) Enforce the rules the board of building standards 148
adopts pursuant to division (A) (2) of section 4104.43 of the 149
Revised Code under the circumstances described in division (D) 150
of that section. 151

(H) Accept submissions, establish a fee for submissions, 152
and review submissions of certified welding and brazing 153
procedure specifications, procedure qualification records, and 154
performance qualification records for building services piping 155
as required by section 4104.44 of the Revised Code. 156

Sec. 1349.61. (A) (1) Subject to division (C) of this 157
section, no person or entity shall sell a gift card to a 158
purchaser containing an expiration date that is less than two 159
years after the date the gift card is issued. 160

(2) No person or entity, within two years after a gift 161

card is issued, shall charge service charges or fees relative to 162
that gift card, including dormancy fees, latency fees, or 163
administrative fees, that have the effect of reducing the total 164
amount for which the holder of the gift card may redeem the gift 165
card. 166

(B) A gift card sold without an expiration date is valid 167
until redeemed or replaced with a new gift card. 168

(C) Division (A) of this section does not apply to any of 169
the following gift cards: 170

(1) A gift card that is distributed by the issuer to a 171
consumer pursuant to an awards, loyalty, or promotional program 172
without any money or anything of value being given in exchange 173
for the gift card by the consumer; 174

(2) A gift card that is sold below face value at a volume 175
discount to employers or to nonprofit and charitable 176
organizations for fundraising purposes, if the expiration date 177
on that gift card is not more than thirty days after the date of 178
sale; 179

(3) A gift card that is sold by a nonprofit or charitable 180
organization for fundraising purposes; 181

(4) A gift card that an employer gives to an employee if 182
use of the gift card is limited to the employer's business 183
establishment, which may include a group of merchants that are 184
affiliated with that business establishment; 185

(5) A gift certificate issued in accordance with section 186
1533.131 of the Revised Code that may be used to obtain hunting 187
and fishing licenses, fur taker, special deer, and special wild 188
turkey permits, and wetlands habitat stamps; 189

(6) A gift card that is usable with multiple, unaffiliated sellers of goods or services;	190 191
(7) A gift card that an employer issues to an employee in recognition of services performed by the employee.	192 193
(D) Whoever violates division (A) (2) of this section is liable to the holder for any amount that the redemption value of the gift card was reduced, any court costs incurred, and reasonable attorney's fees.	194 195 196 197
(E) As used in this section:	198
(1) "Gift card" means a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value, including any electronic card issued by a merchant with a monetary value where the issuer has received payment for the full monetary value for the future purchase or delivery of goods or services and any certificate issued by a merchant where the issuer has received payment for the full monetary face value of the certificate for the future purchase or delivery of goods and services. "Gift card" does not include a prepaid calling card used to make telephone calls.	199 200 201 202 203 204 205 206 207 208 209 210 211
(2) "Employer" and "employee" have <u>has</u> the same meanings <u>meaning</u> as in section 4121.01 of the Revised Code.	212 213
(3) <u>"Employee" means every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go, or work, or be at any time in any place of employment.</u>	214 215 216 217
Sec. 4111.02. Every <u>(A) (1) Except as otherwise provided in</u>	218

this chapter, beginning January 1, 2018, every employer, as 219
defined in Section 34a of Article II, Ohio Constitution, shall 220
pay each of the employer's employees at a wage rate of not less 221
than the wage rate specified in Section 34a of Article II, Ohio 222
Constitution or ten dollars and fifteen cents per hour, 223
whichever is greater. 224

(2) If an employer is able to demonstrate that an employee 225
receives tips that combined with the wages paid by the employer 226
are equal to or greater than the minimum wage rate for all hours 227
worked, the employer may pay the employee at a rate of less 228
than, but not less than half and rounded up to the nearest cent, 229
the minimum wage rate required by division (A)(1) of this 230
section. 231

(3) An employer may pay an employee a wage rate not less 232
than the wage rate established under the federal "Fair Labor 233
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201 et seq., as 234
amended, or its successor law if authorized to do so under 235
Section 34a of Article II, Ohio Constitution. 236

(B) The director of commerce annually shall adjust the 237
wage rate as specified in Section 34a of Article II, Ohio 238
Constitution. 239

~~No political subdivision shall establish a minimum wage-~~ 240
~~rate different from the wage rate required under this section.~~ 241

(C) As used in this section, "employee" has the same 242
meaning as in section 4111.14 of the Revised Code. 243

Sec. 4111.03. (A) An employer shall pay an employee for 244
overtime at a wage rate of one and one-half times the employee's 245
wage rate for hours worked in excess of forty hours in one 246
workweek, in the manner and methods provided in and, except as 247

otherwise provided in division (D) of this section, subject to 248
the exemptions of section 7 and section 13 of the "Fair Labor 249
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 250
amended. 251

Any employee employed in agriculture shall not be covered 252
by the overtime provision of this section. 253

(B) If a county employee elects to take compensatory time 254
off in lieu of overtime pay, for any overtime worked, 255
compensatory time may be granted by the employee's 256
administrative superior, on a time and one-half basis, at a time 257
mutually convenient to the employee and the administrative 258
superior within one hundred eighty days after the overtime is 259
worked. 260

(C) A county appointing authority with the exception of 261
the county department of job and family services may, by rule or 262
resolution as is appropriate, indicate the authority's intention 263
not to be bound by division (B) of this section, and to adopt a 264
different policy for the calculation and payment of overtime 265
than that established by that division. Upon adoption, the 266
alternative overtime policy prevails. Prior to the adoption of 267
an alternative overtime policy, a county appointing authority 268
with the exception of the county department of job and family 269
services shall give a written notice of the alternative policy 270
to each employee at least ten days prior to its effective date. 271

(D) As used in this section: 272

(1) "Employ" means to suffer or to permit to work. 273

(2) "Employer" means the state of Ohio, its 274
instrumentalities, and its political subdivisions and their 275
instrumentalities, any individual, partnership, association, 276

corporation, business trust, or any person or group of persons, 277
acting in the interest of an employer in relation to an 278
employee, but does not include an employer whose annual gross 279
volume of sales made for business done is less than one hundred 280
fifty thousand dollars, exclusive of excise taxes at the retail 281
level which are separately stated. 282

(3) "Employee" means any individual employed by an 283
employer but does not include: 284

(a) Any individual employed by the United States; 285

(b) Any individual employed as a baby-sitter in the 286
employer's home, or a live-in companion to a sick, convalescing, 287
or elderly person whose principal duties do not include 288
housekeeping; 289

(c) Any individual engaged in the delivery of newspapers 290
to the consumer; 291

(d) Any individual employed as an outside salesperson 292
compensated by commissions ~~or~~; 293

(e) Any individual who is employed in a bona fide 294
executive, administrative, or professional capacity as such 295
terms are defined by the "Fair Labor Standards Act of 1938," 52 296
Stat. 1060, 29 U.S.C.A. 201, as amended, ~~and who is compensated~~ 297
on a salary basis of at least the following amounts: 298

(i) For the time period beginning January 1, 2018, and 299
ending December 31, 2018, fifty thousand dollars per year; 300

(ii) Beginning on and after January 1, 2019, sixty-nine 301
thousand dollars per year. 302

~~(e)-(f)~~ Any individual who works or provides personal 303
services of a charitable nature in a hospital or health 304

institution for which compensation is not sought or 305
contemplated; 306

~~(f)~~ (g) A member of a police or fire protection agency or 307
student employed on a part-time or seasonal basis by a political 308
subdivision of this state; 309

~~(g)~~ (h) Any individual in the employ of a camp or 310
recreational area for children under eighteen years of age and 311
owned and operated by a nonprofit organization or group of 312
organizations described in Section 501(c)(3) of the "Internal 313
Revenue Code of 1954," and exempt from income tax under Section 314
501(a) of that code; 315

~~(h)~~ (i) Any individual employed directly by the house of 316
representatives or directly by the senate. 317

Sec. 4111.09. Every employer subject to sections 4111.01 318
to 4111.17 of the Revised Code, or to any rules issued 319
thereunder, shall keep a summary of the sections, approved by 320
the director of commerce, and copies of any applicable rules 321
issued thereunder, or a summary of the rules, posted in a 322
conspicuous and accessible place in or about the premises 323
wherein any person subject thereto is employed. The director of 324
commerce shall make the summary described in this section 325
available on the web site of the department of commerce. The 326
director shall update this summary as necessary, but not less 327
than annually, in order to reflect changes in the minimum wage 328
rate as required under Section 34a of Article II, Ohio 329
Constitution and section 4111.02 of the Revised Code. Employees 330
and employers shall be furnished copies of the summaries and 331
rules by the state, on request, without charge. 332

Sec. 4111.13. (A) No employer shall hinder or delay the 333

director of commerce in the performance of the director's duties 334
in the enforcement of sections 4111.01 to 4111.17 of the Revised 335
Code, or refuse to admit the director to any place of 336
employment, or fail to make, keep, and preserve any records as 337
required under those sections, or falsify any of those records, 338
or refuse to make them accessible to the director upon demand, 339
or refuse to furnish them or any other information required for 340
the proper enforcement of those sections to the director upon 341
demand, or fail to post a summary of those sections or a copy of 342
any applicable rules as required by section 4111.09 of the 343
Revised Code. Each day of violation constitutes a separate 344
offense. 345

(B) No employer shall discharge or in any other manner 346
discriminate against any employee because the employee has made 347
any complaint to the employee's employer, or to the director, 348
that the employee has not been paid wages in accordance with 349
sections 4111.01 to 4111.17 of the Revised Code, or because the 350
employee has made any complaint or is about to cause to be 351
instituted any proceeding under or related to those sections, or 352
because the employee has testified or is about to testify in any 353
proceeding. 354

(C) No employer shall recklessly pay or agree to pay wages 355
at a rate less than the rate applicable under sections 4111.01 356
to 4111.17 of the Revised Code or recklessly fail to pay 357
overtime as required by those sections. Each week or portion 358
thereof for which the employer pays any employee less than the 359
rate applicable under those sections constitutes a separate 360
offense as to each employer. 361

(D) No employer shall otherwise violate sections 4111.01 362
to 4111.17 of the Revised Code, or any rule adopted thereunder. 363

Each day of violation constitutes a separate offense. 364

Sec. 4111.14. (A) Pursuant to the general assembly's 365
authority to establish a minimum wage under Section 34 of 366
Article II, Ohio Constitution, this section is in implementation 367
of Section 34a of Article II, Ohio Constitution. In implementing 368
Section 34a of Article II, Ohio Constitution, the general 369
assembly hereby finds that the purpose of Section 34a of Article 370
II, Ohio Constitution, is to: 371

(1) Ensure that Ohio employees, as defined in division (B) 372
(1) of this section, are paid the wage rate required by section 373
4111.02 of the Revised Code in accordance with Section 34a of 374
Article II, Ohio Constitution; 375

(2) Ensure that covered Ohio employers maintain certain 376
records that are directly related to the enforcement of the wage 377
rate requirements in of Section 34a of Article II, Ohio 378
Constitution and section 4111.02 of the Revised Code; 379

(3) Ensure that Ohio employees who are paid the wage rate 380
required by Section 34a of Article II, Ohio Constitution section 381
4111.02 of the Revised Code, may enforce their right to receive 382
that wage rate in the manner set forth in Section 34a of Article 383
II, Ohio Constitution; and 384

(4) Protect the privacy of Ohio employees' pay and 385
personal information specified in Section 34a of Article II, 386
Ohio Constitution, by restricting an employee's access, and 387
access by a person acting on behalf of that employee, to the 388
employee's own pay and personal information. 389

(B) In accordance with Section 34a of Article II, Ohio 390
Constitution, the terms "employer," ~~"employee,"~~ "employ," and 391
~~"person,"~~ and ~~"independent contractor"~~ have the same meanings as 392

in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 393
U.S.C. 203, as amended. In construing the meaning of these 394
terms, due consideration and great weight shall be given to the 395
United States department of labor's and federal courts' 396
interpretations of those terms under the Fair Labor Standards 397
Act and its regulations. As used in division (B) of this 398
section: 399

~~(1) "Employee" means individuals employed in Ohio, but 400
does not mean individuals who are excluded from the definition 401
of "employee" under 29 U.S.C. 203(e) or individuals who are 402
exempted from the minimum wage requirements in 29 U.S.C. 213 and 403
from the definition of "employee" in this chapter. 404~~

~~(2) "Employ" and "employee" do not include any person 405
acting as a volunteer. In construing who is a volunteer, 406
"volunteer" shall have the same meaning as in sections 553.101- 407
to 553.106 of Title 29 of the Code of Federal Regulations, as 408
amended, and due consideration and great weight shall be given 409
to the United States department of labor's and federal courts' 410
interpretations of the term "volunteer" under the Fair Labor 411
Standards Act and its regulations, "employee" has the same 412
meaning as in section 4177.01 of the Revised Code. 413~~

(C) In accordance with Section 34a of Article II, Ohio 414
Constitution, the state may issue licenses to employers 415
authorizing payment of a wage below that required by Section 34a 416
of Article II, Ohio Constitution, or section 4111.02 of the 417
Revised Code to individuals with mental or physical disabilities 418
that may otherwise adversely affect their opportunity for 419
employment. In issuing such licenses, the state shall abide by 420
the rules adopted pursuant to section 4111.06 of the Revised 421
Code. 422

(D) (1) In accordance with Section 34a of Article II, Ohio 423
Constitution, individuals employed in or about the property of 424
an employer or an individual's residence on a casual basis are 425
not included within the coverage of Section 34a of Article II, 426
Ohio Constitution. As used in division (D) of this section: 427

(a) "Casual basis" means employment that is irregular or 428
intermittent and that is not performed by an individual whose 429
vocation is to be employed in or about the property of the 430
employer or individual's residence. In construing who is 431
employed on a "casual basis," due consideration and great weight 432
shall be given to the United States department of labor's and 433
federal courts' interpretations of the term "casual basis" under 434
the Fair Labor Standards Act and its regulations. 435

(b) "An individual employed in or about the property of an 436
employer or individual's residence" means an individual employed 437
on a casual basis or an individual employed in or about a 438
residence on a casual basis, respectively. 439

(2) In accordance with Section 34a of Article II, Ohio 440
Constitution, employees of a solely family-owned and operated 441
business who are family members of an owner are not included 442
within the coverage of Section 34a of Article II, Ohio 443
Constitution. As used in division (D) (2) of this section, 444
"family member" means a parent, spouse, child, stepchild, 445
sibling, grandparent, grandchild, or other member of an owner's 446
immediate family. 447

(E) In accordance with Section 34a of Article II, Ohio 448
Constitution, an employer shall at the time of hire provide an 449
employee with the employer's name, address, telephone number, 450
and other contact information and update such information when 451
it changes. As used in division (E) of this section: 452

(1) "Other contact information" may include, where 453
applicable, the address of the employer's internet site on the 454
world wide web, the employer's electronic mail address, fax 455
number, or the name, address, and telephone number of the 456
employer's statutory agent. "Other contact information" does not 457
include the name, address, telephone number, fax number, 458
internet site address, or electronic mail address of any 459
employee, shareholder, officer, director, supervisor, manager, 460
or other individual employed by or associated with an employer. 461

(2) "When it changes" means that the employer shall 462
provide its employees with the change in its name, address, 463
telephone number, or other contact information within sixty 464
business days after the change occurs. The employer shall 465
provide the changed information by using any of its usual 466
methods of communicating with its employees, including, but not 467
limited to, listing the change on the employer's internet site 468
on the world wide web, internal computer network, or a bulletin 469
board where it commonly posts employee communications or by 470
insertion or inclusion with employees' paychecks or pay stubs. 471

(F) In accordance with Section 34a of Article II, Ohio 472
Constitution, an employer shall maintain a record of the name, 473
address, occupation, pay rate, hours worked for each day worked, 474
and each amount paid an employee for a period of not less than 475
three years following the last date the employee was employed by 476
that employer. As used in division (F) of this section: 477

(1) "Address" means an employee's home address as 478
maintained in the employer's personnel file or personnel 479
database for that employee. 480

(2) (a) With respect to employees who are not exempt from 481
the overtime pay requirements of the Fair Labor Standards Act or 482

this chapter, "pay rate" means an employee's base rate of pay. 483

(b) With respect to employees who are exempt from the 484
overtime pay requirements of the Fair Labor Standards Act or 485
this chapter, "pay rate" means an employee's annual base salary 486
or other rate of pay by which the particular employee qualifies 487
for that exemption under the Fair Labor Standards Act or this 488
chapter, but does not include bonuses, stock options, 489
incentives, deferred compensation, or any other similar form of 490
compensation. 491

(3) "Record" means the name, address, occupation, pay 492
rate, hours worked for each day worked, and each amount paid an 493
employee in one or more documents, databases, or other paper or 494
electronic forms of record-keeping maintained by an employer. No 495
one particular method or form of maintaining such a record or 496
records is required under this division. An employer is not 497
required to create or maintain a single record containing only 498
the employee's name, address, occupation, pay rate, hours worked 499
for each day worked, and each amount paid an employee. An 500
employer shall maintain a record or records from which the 501
employee or person acting on behalf of that employee could 502
reasonably review the information requested by the employee or 503
person. 504

An employer is not required to maintain the records 505
specified in division (F) (3) of this section for any period 506
before January 1, 2007. On and after January 1, 2007, the 507
employer shall maintain the records required by division (F) (3) 508
of this section for three years from the date the hours were 509
worked by the employee and for three years after the date the 510
employee's employment ends. 511

(4) (a) Except for individuals specified in division (F) (4) 512

(b) of this section, "hours worked for each day worked" means 513
the total amount of time worked by an employee in whatever 514
increments the employer uses for its payroll purposes during a 515
day worked by the employee. An employer is not required to keep 516
a record of the time of day an employee begins and ends work on 517
any given day. As used in division (F)(4) of this section, "day" 518
means a fixed period of twenty-four consecutive hours during 519
which an employee performs work for an employer. 520

(b) An employer is not required to keep records of "hours 521
worked for each day worked" for individuals for whom the 522
employer is not required to keep those records under the Fair 523
Labor Standards Act and its regulations or individuals who are 524
not subject to the overtime pay requirements specified in 525
section 4111.03 of the Revised Code. 526

(5) "Each amount paid an employee" means the total gross 527
wages paid to an employee for each pay period. As used in 528
division (F)(5) of this section, "pay period" means the period 529
of time designated by an employer to pay an employee the 530
employee's gross wages in accordance with the employer's payroll 531
practices under section 4113.15 of the Revised Code. 532

(G) In accordance with Section 34a of Article II, Ohio 533
Constitution, an employer must provide such information without 534
charge to an employee or person acting on behalf of an employee 535
upon request. As used in division (G) of this section: 536

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

employer. "Such information" does not include hours worked for 543
each day worked by individuals for whom an employer is not 544
required to keep that information under the Fair Labor Standards 545
Act and its regulations or individuals who are not subject to 546
the overtime pay requirements specified in section 4111.03 of 547
the Revised Code. 548

(2) "Acting on behalf of an employee" means a person 549
acting on behalf of an employee as any of the following: 550

(a) The certified or legally recognized collective 551
bargaining representative for that employee under the applicable 552
federal law or Chapter 4117. of the Revised Code; 553

(b) The employee's attorney; 554

(c) The employee's parent, guardian, or legal custodian. 555

A person "acting on behalf of an employee" must be 556
specifically authorized by an employee in order to make a 557
request for that employee's own name, address, occupation, pay 558
rate, hours worked for each day worked, and each amount paid to 559
that employee. 560

(3) "Provide" means that an employer shall provide the 561
requested information within thirty business days after the date 562
the employer receives the request, unless either of the 563
following occurs: 564

(a) The employer and the employee or person acting on 565
behalf of the employee agree to some alternative time period for 566
providing the information. 567

(b) The thirty-day period would cause a hardship on the 568
employer under the circumstances, in which case the employer 569
must provide the requested information as soon as practicable. 570

(4) A "request" made by an employee or a person acting on behalf of an employee means a request by an employee or a person acting on behalf of an employee for the employee's own information. The employer may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested. The employer may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the employee whose information is being requested and notarized and that reasonably specifies the particular information being requested.

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

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

(2) "Acting on behalf of one or more employees" has the same meaning as "acting on behalf of an employee" in division (G) (2) of this section. Each employee must provide a separate written and notarized authorization before the person acting on

that employee's or those employees' behalf may request the name, 601
address, occupation, pay rate, hours worked for each day worked, 602
and each amount paid for the particular employee. 603

(3) "Interested party" means a party who alleges to be 604
injured by the alleged violation and who has standing to file a 605
complaint under common law principles of standing. 606

(4) "Resolved by the state" means that the complaint has 607
been resolved to the satisfaction of the state. 608

(5) "Shall be kept confidential" means that the state 609
shall keep the name of the employee confidential as required by 610
division (H) of this section. 611

(I) In accordance with Section 34a of Article II, Ohio 612
Constitution, the state may on its own initiative investigate an 613
employer's compliance with Section 34a of Article II, Ohio 614
Constitution, and any law or regulation implementing Section 34a 615
of Article II, Ohio Constitution. The employer shall make 616
available to the state any records related to such investigation 617
and other information required for enforcement of Section 34a of 618
Article II, Ohio Constitution or any law or regulation 619
implementing Section 34a of Article II, Ohio Constitution. The 620
state shall investigate an employer's compliance with this 621
section in accordance with the procedures described in section 622
4111.04 of the Revised Code. All records and information related 623
to investigations by the state are confidential and are not a 624
public record subject to section 149.43 of the Revised Code. 625
This division does not prevent the state from releasing to or 626
exchanging with other state and federal wage and hour regulatory 627
authorities information related to investigations. 628

(J) In accordance with Section 34a of Article II, Ohio 629

Constitution, damages shall be calculated as an additional two 630
times the amount of the back wages and in the case of a 631
violation of an anti-retaliation provision an amount set by the 632
state or court sufficient to compensate the employee and deter 633
future violations, but not less than one hundred fifty dollars 634
for each day that the violation continued. The "not less than 635
one hundred fifty dollar" penalty specified in division (J) of 636
this section shall be imposed only for violations of the anti- 637
retaliation provision in Section 34a of Article II, Ohio 638
Constitution. 639

(K) In accordance with Section 34a of Article II, Ohio 640
Constitution, an action for equitable and monetary relief may be 641
brought against an employer by the attorney general and/or an 642
employee or person acting on behalf of an employee or all 643
similarly situated employees in any court of competent 644
jurisdiction, including the court of common pleas of an 645
employee's county of residence, for any violation of Section 34a 646
of Article II, Ohio Constitution, or any law or regulation 647
implementing its provisions within three years of the violation 648
or of when the violation ceased if it was of a continuing 649
nature, or within one year after notification to the employee of 650
final disposition by the state of a complaint for the same 651
violation, whichever is later. 652

(1) As used in division (K) of this section, 653
"notification" means the date on which the notice was sent to 654
the employee by the state. 655

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

unless that employee first gives written consent to become such 660
a party plaintiff and that consent is filed with the court in 661
which the action is brought. 662

(3) A civil action regarding an alleged violation of this 663
section shall be maintained only under division (K) of this 664
section. This division does not preclude the joinder in a single 665
civil action of an action under this division and an action 666
under section 4111.10 of the Revised Code. 667

(4) Any agreement between an employee and employer to work 668
for less than the wage rate specified in ~~Section 34a of Article~~ 669
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 670
defense to an action under this section. 671

(L) In accordance with Section 34a of Article II, Ohio 672
Constitution, there shall be no exhaustion requirement, no 673
procedural, pleading, or burden of proof requirements beyond 674
those that apply generally to civil suits in order to maintain 675
such action and no liability for costs or attorney's fees on an 676
employee except upon a finding that such action was frivolous in 677
accordance with the same standards that apply generally in civil 678
suits. Nothing in division (L) of this section affects the right 679
of an employer and employee to agree to submit a dispute under 680
this section to alternative dispute resolution, including, but 681
not limited to, arbitration, in lieu of maintaining the civil 682
suit specified in division (K) of this section. Nothing in this 683
division limits the state's ability to investigate or enforce 684
this section. 685

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

of providing that information to an employee or person acting on 690
behalf of an employee in response to a request by the employee 691
or person, and the employer shall not be subject to the 692
provisions of Chapters 1347. and 1349. of the Revised Code to 693
the extent that such provisions would otherwise apply. As used 694
in division (M) of this section, "such information," "acting on 695
behalf of an employee," and "request" have the same meanings as 696
in division (G) of this section. 697

(N) As used in this section, "the state" means the 698
director of commerce. 699

Sec. 4113.15. (A) Every individual, firm, partnership, 700
association, or corporation doing business in this state shall, 701
on or before the first day of each month, pay all its employees 702
the wages earned by them during the first half of the preceding 703
month ending with the fifteenth day thereof, and shall, on or 704
before the fifteenth day of each month, pay such employees the 705
wages earned by them during the last half of the preceding 706
calendar month. If at any time of payment an employee is absent 707
from ~~his~~ the employee's regular place of labor and does not 708
receive ~~his~~ payment of wages through an authorized 709
representative, such person shall be entitled to said payment at 710
any time thereafter upon demand upon the proper paymaster at the 711
place where such wages are usually paid and where such pay is 712
due. This section does not prohibit the daily or weekly payment 713
of wages. ~~The~~ or the use of a longer time lapse that is 714
customary to a given trade, profession or occupation, or 715
establishment of a different time lapse by written contract or 716
by operation of law. 717

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

scheduled payday is applicable, for sixty days beyond the filing 720
by the employee of a claim or for sixty days beyond the date of 721
the agreement, award, or other act making wages payable and no 722
contest court order or dispute of any wage claim including the 723
assertion of a counterclaim exists accounting for nonpayment, 724
the employer, in addition, as liquidated damages, is liable to 725
the employee in an amount equal to six per cent of the amount of 726
the claim still unpaid and not in contest or disputed or two 727
hundred dollars, whichever is greater. 728

(C) In the absence of a contest, court order or dispute, 729
an employer who is party to an agreement to pay or provide 730
fringe benefits to an employee or to make any employee 731
authorized deduction becomes a trustee of any funds required by 732
such agreement to be paid to any person, organization, or 733
governmental agency from the time that the duty to make such 734
payment arises. No person shall, without reasonable 735
justification or excuse for such failure, knowingly fail or 736
refuse to pay to the appropriate person, organization, or 737
governmental agency the amount necessary to provide the benefits 738
or accomplish the purpose of any employee authorized deduction, 739
within thirty days after the close of the pay period during 740
which the employee earned or had deducted the amount of money 741
necessary to pay for the fringe benefit or make any employee 742
authorized deduction. A failure or refusal to pay, regardless of 743
the number of employee pay accounts involved, constitutes one 744
offense for the first delinquency of thirty days and a separate 745
offense for each successive delinquency of thirty days. 746

(D) As used in this section and section 4113.16 of the 747
Revised Code: 748

(1) "Wage" means the net amount of money payable to an 749

employee, including any guaranteed pay or reimbursement for 750
expenses, less any federal, state, or local taxes withheld; any 751
deductions made pursuant to a written agreement for the purpose 752
of providing the employee with any fringe benefits; and any 753
employee authorized deduction. 754

(2) "Fringe benefits" includes but is not limited to 755
health, welfare, or retirement benefits, whether paid for 756
entirely by the employer or on the basis of a joint employer- 757
employee contribution, or vacation, separation, or holiday pay. 758

(3) "Employee authorized deduction" includes but is not 759
limited to deductions for the purpose of: ~~(a) purchase~~ any of 760
the following: 761

(a) Purchase of United States savings bonds or corporate 762
stocks or bonds, ~~(b) a~~; 763

(b) A charitable contribution, ~~(c) credit~~; 764

(c) Credit union savings or other regular savings program, ~~765~~
~~or (d) repayment~~; 766

(d) Repayment of a loan or other obligation. 767

(4) "Employee" has the same meaning as in section 4177.01 768
of the Revised Code. 769

Sec. 4115.03. As used in sections 4115.03 to 4115.16 of 770
the Revised Code: 771

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

such institutions made in whole or in part from public funds. 778

(B) "Construction" means any of the following: 779

(1) Except as provided in division (B) (3) of this section, 780
any new construction of a public improvement, the total overall 781
project cost of which is fairly estimated to be more than the 782
following amounts and performed by other than full-time 783
employees who have completed their probationary periods in the 784
classified service of a public authority: 785

(a) One hundred twenty-five thousand dollars, beginning on 786
September 29, 2011, and 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 September 801
29, 2011, and continuing for one year thereafter; 802

(b) Sixty thousand dollars, beginning when the time period 803
described in division (B) (2) (a) of this section expires and 804
continuing for one year thereafter; 805

(c) Seventy-five thousand dollars, beginning when the time 806
period described in division (B) (2) (b) of this section expires. 807

(3) Any new construction of a public improvement that 808
involves roads, streets, alleys, sewers, ditches, and other 809
works connected to road or bridge construction, the total 810
overall project cost of which is fairly estimated to be more 811
than seventy-eight thousand two hundred fifty-eight dollars 812
adjusted biennially by the director of commerce pursuant to 813
section 4115.034 of the Revised Code and performed by other than 814
full-time employees who have completed their probationary 815
periods in the classified service of a public authority; 816

(4) Any reconstruction, enlargement, alteration, repair, 817
remodeling, renovation, or painting of a public improvement that 818
involves roads, streets, alleys, sewers, ditches, and other 819
works connected to road or bridge construction, the total 820
overall project cost of which is fairly estimated to be more 821
than twenty-three thousand four hundred forty-seven dollars 822
adjusted biennially by the director of commerce pursuant to 823
section 4115.034 of the Revised Code and performed by other than 824
full-time employees who have completed their probationary 825
periods in the classified service of a public authority. 826

(C) "Public improvement" includes all buildings, roads, 827
streets, alleys, sewers, ditches, sewage disposal plants, water 828
works, and all other structures or works constructed by a public 829
authority of the state or any political subdivision thereof or 830
by any person who, pursuant to a contract with a public 831
authority, constructs any structure for a public authority of 832
the state or a political subdivision thereof. When a public 833
authority rents or leases a newly constructed structure within 834
six months after completion of such construction, all work 835

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 940.06 of the Revised Code that is constructed pursuant to a contract with a soil and water conservation district, as defined in section 940.01 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 940., 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 occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;	864 865 866
(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;	867 868
(e) Life insurance;	869
(f) Disability and sickness insurance;	870
(g) Accident insurance;	871
(h) Vacation and holiday pay;	872
(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;	873 874 875
(j) Other bona fide fringe benefits.	876
None of the benefits enumerated in division (E) (3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.	877 878 879 880
(F) "Interested party," with respect to a particular contract for construction of a public improvement, means:	881 882
(1) Any person who submits a bid for the purpose of securing the award of the contract;	883 884
(2) Any person acting as a subcontractor of a person described in division (F) (1) of this section;	885 886
(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person described in division (F) (1) or (2) of this section and which exists, in whole or in part, for the purpose of negotiating with	887 888 889 890

employers concerning the wages, hours, or terms and conditions 891
of employment of employees; 892

(4) Any association having as members any of the persons 893
described in division (F) (1) or (2) of this section. 894

(G) Except as used in division (A) of this section, 895
"officer" means an individual who has an ownership interest or 896
holds an office of trust, command, or authority in a 897
corporation, business trust, partnership, or association. 898

(H) "Employee" has the same meaning as in section 4177.01 899
of the Revised Code. 900

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 901
of the Revised Code: 902

(1) "Place of employment" means every place, whether 903
indoors or out, or underground, and the premises appurtenant 904
thereto, where either temporarily or permanently any industry, 905
trade, or business is carried on, or where any process or 906
operation, directly or indirectly related to any industry, 907
trade, or business, is carried on and where any person is 908
directly or indirectly employed by another for direct or 909
indirect gain or profit, but does not include any place where 910
persons are employed in private domestic service or agricultural 911
pursuits which do not involve the use of mechanical power. 912

(2) "Employment" means any trade, occupation, or process 913
of manufacture or any method of carrying on such trade, 914
occupation, or process of manufacture in which any person may be 915
engaged, except in such private domestic service or agricultural 916
pursuits as do not involve the use of mechanical power. 917

(3) "Employer" means every person, firm, corporation, 918
agent, manager, representative, or other person having control 919

or custody of any employment, place of employment, or employee. 920

(4) ~~"Employee" means every person who may be required or~~ 921
~~directed by any employer, in consideration of direct or indirect~~ 922
~~gain or profit, to engage in any employment, or to go, or work,~~ 923
~~or be at any time in any place of employment~~ has the same 924
meaning as in section 4177.01 of the Revised Code. 925

(5) "Frequenter" means every person, other than an 926
employee, who may go in or be in a place of employment under 927
circumstances which render the person other than a trespasser. 928

(6) "Deputy" means any person employed by the industrial 929
commission or the bureau of workers' compensation, designated as 930
a deputy by the commission or the administrator of workers' 931
compensation, who possesses special, technical, scientific, 932
managerial, professional, or personal abilities or qualities in 933
matters within the jurisdiction of the commission or the bureau, 934
and who may be engaged in the performance of duties under the 935
direction of the commission or the bureau calling for the 936
exercise of such abilities or qualities. 937

(7) "Order" means any decision, rule, regulation, 938
direction, requirement, or standard, or any other determination 939
or decision that the bureau is empowered to and does make. 940

(8) "General order" means an order that applies generally 941
throughout the state to all persons, employments, or places of 942
employment, or all persons, employments, or places of employment 943
of a class under the jurisdiction of the bureau. All other 944
orders shall be considered special orders. 945

(9) "Local order" means any ordinance, order, rule, or 946
determination of the legislative authority of any municipal 947
corporation, or any trustees, or board or officers of any 948

municipal corporation upon any matter over which the bureau has jurisdiction.	949 950
(10) "Welfare" means comfort, decency, and moral well-being.	951 952
(11) "Safe" or "safety," as applied to any employment or a place of employment, means such freedom from danger to the life, health, safety, or welfare of employees or frequenters as the nature of the employment will reasonably permit, including requirements as to the hours of labor with relation to the health and welfare of employees.	953 954 955 956 957 958
(12) "Employee organization" means any labor or bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.	959 960 961 962 963
(B) As used in the Revised Code:	964
(1) "Industrial commission" means the chairperson of the three-member industrial commission created pursuant to section 4121.02 of the Revised Code when the context refers to the authority vested in the chairperson as the chief executive officer of the three-member industrial commission pursuant to divisions (A), (B), (C), and (D) of section 4121.03 of the Revised Code.	965 966 967 968 969 970 971
(2) "Industrial commission" means the three-member industrial commission created pursuant to section 4121.02 of the Revised Code when the context refers to the authority vested in the three-member industrial commission pursuant to division (E) of section 4121.03 of the Revised Code.	972 973 974 975 976
(3) "Industrial commission" means the industrial	977

commission as a state agency when the context refers to the 978
authority vested in the industrial commission as a state agency. 979

Sec. 4123.01. As used in this chapter: 980

(A) (1) "Employee" means:— 981

~~(a) Every person in the service of the state, or of any 982
county, municipal corporation, township, or school district 983
therein, including has the same meaning as in section 4177.01 of 984
the Revised Code, except that "employee" also includes regular 985
members of lawfully constituted police and fire departments of 986
municipal corporations and townships, whether paid or volunteer, 987
and wherever serving within the state or on temporary assignment 988
outside thereof, and executive officers of boards of education, 989
under any appointment or contract of hire, express or implied, 990
oral or written, including any elected official of the state, or 991
of any county, municipal corporation, or township, or members of 992
boards of education.— 993~~

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

~~(i) (a) Off-duty peace officers. As used in division (A) 1003
(1) (a) (i) of this section, "peace officer" has the same meaning 1004
as in section 2935.01 of the Revised Code. 1005~~

~~(ii) (b) Off-duty firefighters, whether paid or volunteer, 1006~~

of a lawfully constituted fire department. 1007

~~(iii) (c) Off-duty first responders, emergency medical 1008
technicians-basic, emergency medical technicians-intermediate, 1009
or emergency medical technicians-paramedic, whether paid or 1010
volunteer, of an ambulance service organization or emergency 1011
medical service organization pursuant to Chapter 4765. of the 1012
Revised Code. 1013~~

~~(b) Every person in the service of any person, firm, or 1014
private corporation, including any public service corporation, 1015
that (i) employs one or more persons regularly in the same 1016
business or in or about the same establishment under any 1017
contract of hire, express or implied, oral or written, including 1018
aliens and minors, household workers who earn one hundred sixty 1019
dollars or more in cash in any calendar quarter from a single 1020
household and casual workers who earn one hundred sixty dollars 1021
or more in cash in any calendar quarter from a single employer, 1022
or (ii) is bound by any such contract of hire or by any other 1023
written contract, to pay into the state insurance fund the 1024
premiums provided by this chapter. 1025~~

~~(c) Every person who performs labor or provides services 1026
pursuant to a construction contract, as defined in section 1027
4123.79 of the Revised Code, if at least ten of the following 1028
criteria apply: 1029~~

~~(i) The person is required to comply with instructions 1030
from the other contracting party regarding the manner or method 1031
of performing services; 1032~~

~~(ii) The person is required by the other contracting party 1033
to have particular training; 1034~~

~~(iii) The person's services are integrated into the 1035~~

regular functioning of the other contracting party;	1036
(iv) The person is required to perform the work personally;	1037
	1038
(v) The person is hired, supervised, or paid by the other contracting party;	1039
	1040
(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;	1041
	1042
	1043
(vii) The person's hours of work are established by the other contracting party;	1044
	1045
(viii) The person is required to devote full time to the business of the other contracting party;	1046
	1047
(ix) The person is required to perform the work on the premises of the other contracting party;	1048
	1049
(x) The person is required to follow the order of work set by the other contracting party;	1050
	1051
(xi) The person is required to make oral or written reports of progress to the other contracting party;	1052
	1053
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	1054
	1055
(xiii) The person's expenses are paid for by the other contracting party;	1056
	1057
(xiv) The person's tools and materials are furnished by the other contracting party;	1058
	1059
(xv) The person is provided with the facilities used to perform services;	1060
	1061

~~(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;~~ 1062
1063

~~(xvii) The person is not performing services for a number of employers at the same time;~~ 1064
1065

~~(xviii) The person does not make the same services available to the general public;~~ 1066
1067

~~(xix) The other contracting party has a right to discharge the person;~~ 1068
1069

~~(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.~~ 1070
1071
1072

~~Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or if a self-insuring employer has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.~~ 1073
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(2) "Employee" does not mean any of the following: 1086

(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry; 1087
1088
1089

(b) Any officer of a family farm corporation; 1090

(c) ~~An individual incorporated as a corporation;~~ 1091

~~(d)~~An officer of a nonprofit corporation, as defined in 1092
section 1702.01 of the Revised Code, who volunteers the person's 1093
services as ~~a~~an officer; 1094

~~(e)~~(d) An individual who otherwise is an employee of an 1095
employer but who signs the waiver and affidavit specified in 1096
section 4123.15 of the Revised Code on the condition that the 1097
administrator of workers' compensation has granted a waiver and 1098
exception to the individual's employer under section 4123.15 of 1099
the Revised Code. 1100

Any employer may elect to include as an "employee" within 1101
this chapter, any person excluded from the definition of 1102
"employee" pursuant to division (A)(2)(a), (b), ~~(e)~~, or ~~(e)~~(d) 1103
of this section in accordance with rules adopted by the 1104
administrator, with the advice and consent of the bureau of 1105
workers' compensation board of directors. If an employer is a 1106
partnership, sole proprietorship, ~~individual incorporated as a~~ 1107
~~corporation~~, or family farm corporation, such employer may elect 1108
to include as an "employee" within this chapter, any member of 1109
such partnership, the owner of the sole proprietorship, ~~the~~ 1110
~~individual incorporated as a corporation~~, or the officers of the 1111
family farm corporation. Nothing in this section shall prohibit 1112
a partner, sole proprietor, or any person excluded from the 1113
definition of "employee" pursuant to division (A)(2)(a), (b), 1114
~~(e)~~, or ~~(e)~~(d) of this section from electing to be included as 1115
an "employee" under this chapter in accordance with rules 1116
adopted by the administrator, with the advice and consent of the 1117
board. 1118

In the event of an election, the employer or person 1119
electing coverage shall serve upon the bureau of workers' 1120
compensation written notice naming the person to be covered and 1121
include the person's remuneration for premium purposes in all 1122
future payroll reports. No partner, sole proprietor, or person 1123
excluded from the definition of "employee" pursuant to division 1124
(A) (2) (a), (b), ~~(c)~~, or ~~(c)~~-(d) of this section, shall receive 1125
benefits or compensation under this chapter until the bureau 1126
receives written notice of the election permitted by this 1127
section. 1128

For informational purposes only, the bureau shall 1129
prescribe such language as it considers appropriate, on such of 1130
its forms as it considers appropriate, to advise employers of 1131
their right to elect to include as an "employee" within this 1132
chapter a sole proprietor, any member of a partnership, or a 1133
person excluded from the definition of "employee" under division 1134
(A) (2) (a), (b), ~~(c)~~, or ~~(c)~~-(d) of this section, that they 1135
should check any health and disability insurance policy, or 1136
other form of health and disability plan or contract, presently 1137
covering them, or the purchase of which they may be considering, 1138
to determine whether such policy, plan, or contract excludes 1139
benefits for illness or injury that they might have elected to 1140
have covered by workers' compensation. 1141

(B) "Employer" means: 1142

(1) The state, including state hospitals, each county, 1143
municipal corporation, township, school district, and hospital 1144
owned by a political subdivision or subdivisions other than the 1145
state; 1146

(2) Every person, firm, professional employer 1147
organization, and private corporation, including any public 1148

service corporation, that (a) has in service one or more 1149
employees or shared employees regularly in the same business or 1150
in or about the same establishment under any contract of hire, 1151
express or implied, oral or written, or (b) is bound by any such 1152
contract of hire or by any other written contract, to pay into 1153
the insurance fund the premiums provided by this chapter. 1154

All such employers are subject to this chapter. Any member 1155
of a firm or association, who regularly performs manual labor in 1156
or about a mine, factory, or other establishment, including a 1157
household establishment, shall be considered an employee in 1158
determining whether such person, firm, or private corporation, 1159
or public service corporation, has in its service, one or more 1160
employees and the employer shall report the income derived from 1161
such labor to the bureau as part of the payroll of such 1162
employer, and such member shall thereupon be entitled to all the 1163
benefits of an employee. 1164

(C) "Injury" includes any injury, whether caused by 1165
external accidental means or accidental in character and result, 1166
received in the course of, and arising out of, the injured 1167
employee's employment. "Injury" does not include: 1168

(1) Psychiatric conditions except where the claimant's 1169
psychiatric conditions have arisen from an injury or 1170
occupational disease sustained by that claimant or where the 1171
claimant's psychiatric conditions have arisen from sexual 1172
conduct in which the claimant was forced by threat of physical 1173
harm to engage or participate; 1174

(2) Injury or disability caused primarily by the natural 1175
deterioration of tissue, an organ, or part of the body; 1176

(3) Injury or disability incurred in voluntary 1177

participation in an employer-sponsored recreation or fitness 1178
activity if the employee signs a waiver of the employee's right 1179
to compensation or benefits under this chapter prior to engaging 1180
in the recreation or fitness activity; 1181

(4) A condition that pre-existed an injury unless that 1182
pre-existing condition is substantially aggravated by the 1183
injury. Such a substantial aggravation must be documented by 1184
objective diagnostic findings, objective clinical findings, or 1185
objective test results. Subjective complaints may be evidence of 1186
such a substantial aggravation. However, subjective complaints 1187
without objective diagnostic findings, objective clinical 1188
findings, or objective test results are insufficient to 1189
substantiate a substantial aggravation. 1190

(D) "Child" includes a posthumous child and a child 1191
legally adopted prior to the injury. 1192

(E) "Family farm corporation" means a corporation founded 1193
for the purpose of farming agricultural land in which the 1194
majority of the voting stock is held by and the majority of the 1195
stockholders are persons or the spouse of persons related to 1196
each other within the fourth degree of kinship, according to the 1197
rules of the civil law, and at least one of the related persons 1198
is residing on or actively operating the farm, and none of whose 1199
stockholders are a corporation. A family farm corporation does 1200
not cease to qualify under this division where, by reason of any 1201
devise, bequest, or the operation of the laws of descent or 1202
distribution, the ownership of shares of voting stock is 1203
transferred to another person, as long as that person is within 1204
the degree of kinship stipulated in this division. 1205

(F) "Occupational disease" means a disease contracted in 1206
the course of employment, which by its causes and the 1207

characteristics of its manifestation or the condition of the 1208
employment results in a hazard which distinguishes the 1209
employment in character from employment generally, and the 1210
employment creates a risk of contracting the disease in greater 1211
degree and in a different manner from the public in general. 1212

(G) "Self-insuring employer" means an employer who is 1213
granted the privilege of paying compensation and benefits 1214
directly under section 4123.35 of the Revised Code, including a 1215
board of county commissioners for the sole purpose of 1216
constructing a sports facility as defined in section 307.696 of 1217
the Revised Code, provided that the electors of the county in 1218
which the sports facility is to be built have approved 1219
construction of a sports facility by ballot election no later 1220
than November 6, 1997. 1221

(H) "Private employer" means an employer as defined in 1222
division (B) (2) of this section. 1223

(I) "Professional employer organization" has the same 1224
meaning as in section 4125.01 of the Revised Code. 1225

(J) "Public employer" means an employer as defined in 1226
division (B) (1) of this section. 1227

(K) "Sexual conduct" means vaginal intercourse between a 1228
male and female; anal intercourse, fellatio, and cunnilingus 1229
between persons regardless of gender; and, without privilege to 1230
do so, the insertion, however slight, of any part of the body or 1231
any instrument, apparatus, or other object into the vaginal or 1232
anal cavity of another. Penetration, however slight, is 1233
sufficient to complete vaginal or anal intercourse. 1234

(L) "Other-states' insurer" means an insurance company 1235
that is authorized to provide workers' compensation insurance 1236

coverage in any of the states that permit employers to obtain 1237
insurance for workers' compensation claims through insurance 1238
companies. 1239

(M) "Other-states' coverage" means both of the following: 1240

(1) Insurance coverage secured by an eligible employer for 1241
workers' compensation claims of employees who are in employment 1242
relationships localized in a state other than this state or 1243
those employees' dependents; 1244

(2) Insurance coverage secured by an eligible employer for 1245
workers' compensation claims that arise in a state other than 1246
this state where an employer elects to obtain coverage through 1247
either the administrator or an other-states' insurer. 1248

(N) "Limited other-states coverage" means insurance 1249
coverage provided by the administrator to an eligible employer 1250
for workers' compensation claims of employees who are in an 1251
employment relationship localized in this state but are 1252
temporarily working in a state other than this state, or those 1253
employees' dependents. 1254

Sec. 4123.026. (A) The administrator of workers' 1255
compensation, or a self-insuring public employer for the peace 1256
officers, firefighters, and emergency medical workers employed 1257
by or volunteering for that self-insuring public employer, shall 1258
pay the costs of conducting post-exposure medical diagnostic 1259
services, consistent with the standards of medical care existing 1260
at the time of the exposure, to investigate whether an injury or 1261
occupational disease was sustained by a peace officer, 1262
firefighter, or emergency medical worker when coming into 1263
contact with the blood or other body fluid of another person in 1264
the course of and arising out of the peace officer's, 1265

firefighter's, or emergency medical worker's employment, or when 1266
responding to an inherently dangerous situation in the manner 1267
described in, and in accordance with the conditions specified 1268
under, division (A) (1) ~~(a)~~ of section 4123.01 of the Revised 1269
Code, through any of the following means: 1270

(1) Splash or spatter in the eye or mouth, including when 1271
received in the course of conducting mouth-to-mouth 1272
resuscitation; 1273

(2) A puncture in the skin; 1274

(3) A cut in the skin or another opening in the skin such 1275
as an open sore, wound, lesion, abrasion, or ulcer. 1276

(B) As used in this section: 1277

(1) "Peace officer" has the same meaning as in section 1278
2935.01 of the Revised Code. 1279

(2) "Firefighter" means a firefighter, whether paid or 1280
volunteer, of a lawfully constituted fire department. 1281

(3) "Emergency medical worker" means a first responder, 1282
emergency medical technician-basic, emergency medical 1283
technician-intermediate, or emergency medical technician- 1284
paramedic, certified under Chapter 4765. of the Revised Code, 1285
whether paid or volunteer. 1286

Sec. 4141.01. As used in this chapter, unless the context 1287
otherwise requires: 1288

(A) (1) "Employer" means the state, its instrumentalities, 1289
its political subdivisions and their instrumentalities, Indian 1290
tribes, and any individual or type of organization including any 1291
partnership, limited liability company, association, trust, 1292
estate, joint-stock company, insurance company, or corporation, 1293

whether domestic or foreign, or the receiver, trustee in 1294
bankruptcy, trustee, or the successor thereof, or the legal 1295
representative of a deceased person who subsequent to December 1296
31, 1971, or in the case of political subdivisions or their 1297
instrumentalities, subsequent to December 31, 1973: 1298

(a) Had in employment at least one individual, or in the 1299
case of a nonprofit organization, subsequent to December 31, 1300
1973, had not less than four individuals in employment for some 1301
portion of a day in each of twenty different calendar weeks, in 1302
either the current or the preceding calendar year whether or not 1303
the same individual was in employment in each such day; or 1304

(b) Except for a nonprofit organization, had paid for 1305
service in employment wages of fifteen hundred dollars or more 1306
in any calendar quarter in either the current or preceding 1307
calendar year; or 1308

(c) Had paid, subsequent to December 31, 1977, for 1309
employment in domestic service in a local college club, or local 1310
chapter of a college fraternity or sorority, cash remuneration 1311
of one thousand dollars or more in any calendar quarter in the 1312
current calendar year or the preceding calendar year, or had 1313
paid subsequent to December 31, 1977, for employment in domestic 1314
service in a private home cash remuneration of one thousand 1315
dollars in any calendar quarter in the current calendar year or 1316
the preceding calendar year: 1317

(i) For the purposes of divisions (A) (1) (a) and (b) of 1318
this section, there shall not be taken into account any wages 1319
paid to, or employment of, an individual performing domestic 1320
service as described in this division. 1321

(ii) An employer under this division shall not be an 1322

employer with respect to wages paid for any services other than 1323
domestic service unless the employer is also found to be an 1324
employer under division (A) (1) (a), (b), or (d) of this section. 1325

(d) As a farm operator or a crew leader subsequent to 1326
December 31, 1977, had in employment individuals in agricultural 1327
labor; and 1328

(i) During any calendar quarter in the current calendar 1329
year or the preceding calendar year, paid cash remuneration of 1330
twenty thousand dollars or more for the agricultural labor; or 1331

(ii) Had at least ten individuals in employment in 1332
agricultural labor, not including agricultural workers who are 1333
aliens admitted to the United States to perform agricultural 1334
labor pursuant to sections 1184(c) and 1101(a) (15) (H) of the 1335
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1336
1101(a) (15) (H) (ii) (a), 1184(c), for some portion of a day in 1337
each of the twenty different calendar weeks, in either the 1338
current or preceding calendar year whether or not the same 1339
individual was in employment in each day; or 1340

(e) Is not otherwise an employer as defined under division 1341
(A) (1) (a) or (b) of this section; and 1342

(i) For which, within either the current or preceding 1343
calendar year, service, except for domestic service in a private 1344
home not covered under division (A) (1) (c) of this section, is or 1345
was performed with respect to which such employer is liable for 1346
any federal tax against which credit may be taken for 1347
contributions required to be paid into a state unemployment 1348
fund; 1349

(ii) Which, as a condition for approval of this chapter 1350
for full tax credit against the tax imposed by the "Federal 1351

Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 1352
is required, pursuant to such act to be an employer under this 1353
chapter; or 1354

(iii) Who became an employer by election under division 1355
(A) (4) or (5) of this section and for the duration of such 1356
election; or 1357

(f) In the case of the state, its instrumentalities, its 1358
political subdivisions, and their instrumentalities, and Indian 1359
tribes, had in employment, as defined in divisions (B) (2) (a) and 1360
(B) (2) (1) of this section, at least one individual; 1361

(g) For the purposes of division (A) (1) (a) of this 1362
section, if any week includes both the thirty-first day of 1363
December and the first day of January, the days of that week 1364
before the first day of January shall be considered one calendar 1365
week and the days beginning the first day of January another 1366
week. 1367

(2) Each individual employed to perform or to assist in 1368
performing the work of any agent or employee of an employer is 1369
employed by such employer for all the purposes of this chapter, 1370
whether such individual was hired or paid directly by such 1371
employer or by such agent or employee, provided the employer had 1372
actual or constructive knowledge of the work. All individuals 1373
performing services for an employer of any person in this state 1374
who maintains two or more establishments within this state are 1375
employed by a single employer for the purposes of this chapter. 1376

(3) An employer subject to this chapter within any 1377
calendar year is subject to this chapter during the whole of 1378
such year and during the next succeeding calendar year. 1379

(4) An employer not otherwise subject to this chapter who 1380

files with the director of job and family services a written 1381
election to become an employer subject to this chapter for not 1382
less than two calendar years shall, with the written approval of 1383
such election by the director, become an employer subject to 1384
this chapter to the same extent as all other employers as of the 1385
date stated in such approval, and shall cease to be subject to 1386
this chapter as of the first day of January of any calendar year 1387
subsequent to such two calendar years only if at least thirty 1388
days prior to such first day of January the employer has filed 1389
with the director a written notice to that effect. 1390

(5) Any employer for whom services that do not constitute 1391
employment are performed may file with the director a written 1392
election that all such services performed by individuals in the 1393
employer's employ in one or more distinct establishments or 1394
places of business shall be deemed to constitute employment for 1395
all the purposes of this chapter, for not less than two calendar 1396
years. Upon written approval of the election by the director, 1397
such services shall be deemed to constitute employment subject 1398
to this chapter from and after the date stated in such approval. 1399
Such services shall cease to be employment subject to this 1400
chapter as of the first day of January of any calendar year 1401
subsequent to such two calendar years only if at least thirty 1402
days prior to such first day of January such employer has filed 1403
with the director a written notice to that effect. 1404

(B) (1) "Employment" means service performed by an 1405
individual for remuneration under any contract of hire, written 1406
or oral, express or implied, including service performed in 1407
interstate commerce and service performed by an officer of a 1408
corporation, without regard to whether such service is 1409
executive, managerial, or manual in nature, and without regard 1410
to whether such officer is a stockholder or a member of the 1411

board of directors of the corporation, unless it is shown to the 1412
satisfaction of the director, based upon a determination made by 1413
the director of commerce under Chapter 4177. of the Revised 1414
Code, that such individual has been and will continue to be free 1415
from direction or control over the performance of such service, 1416
both under a contract of service and in fact. ~~The director shall~~ 1417
~~adopt rules to define "direction or control."~~ 1418

(2) "Employment" includes: 1419

(a) Service performed after December 31, 1977, by an 1420
individual in the employ of the state or any of its 1421
instrumentalities, or any political subdivision thereof or any 1422
of its instrumentalities or any instrumentality of more than one 1423
of the foregoing or any instrumentality of any of the foregoing 1424
and one or more other states or political subdivisions and 1425
without regard to divisions (A) (1) (a) and (b) of this section, 1426
provided that such service is excluded from employment as 1427
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1428
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 1429
(3) of this section; or the services of employees covered by 1430
voluntary election, as provided under divisions (A) (4) and (5) 1431
of this section; 1432

(b) Service performed after December 31, 1971, by an 1433
individual in the employ of a religious, charitable, 1434
educational, or other organization which is excluded from the 1435
term "employment" as defined in the "Federal Unemployment Tax 1436
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1437
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 1438
excluded under division (B) (3) of this section; 1439

(c) Domestic service performed after December 31, 1977, 1440
for an employer, as provided in division (A) (1) (c) of this 1441

section; 1442

(d) Agricultural labor performed after December 31, 1977, 1443
for a farm operator or a crew leader, as provided in division 1444
(A) (1) (d) of this section; 1445

(e) Service not covered under division (B) (1) of this 1446
section which is performed after December 31, 1971: 1447

(i) ~~As an agent driver or commission driver~~ a delivery 1448
driver engaged in distributing meat products, vegetable 1449
products, fruit products, bakery products, beverages ~~other than~~ 1450
~~milk, laundry, or parcels, freight, dry-cleaning services, for~~ 1451
~~the individual's employer or principal~~ similar products; 1452

(ii) As a traveling or city salesperson, other than as ~~an~~ 1453
~~agent driver or commission driver~~ a delivery driver, engaged on a 1454
full-time basis in the solicitation on behalf of and in the 1455
transmission to the salesperson's employer or principal except 1456
for sideline sales activities on behalf of some other person of 1457
orders from wholesalers, retailers, contractors, or operators of 1458
hotels, restaurants, or other similar establishments for 1459
merchandise for resale, or supplies for use in their business 1460
operations, ~~provided that for the purposes of division (B) (2) (e)~~ 1461
~~(ii) of this section, the services shall be deemed employment if~~ 1462
~~the contract of service contemplates that substantially all of~~ 1463
~~the services are to be performed personally by the individual~~ 1464
~~and that the individual does not have a substantial investment~~ 1465
~~in facilities used in connection with the performance of the~~ 1466
~~services other than in facilities for transportation, and the~~ 1467
~~services are not in the nature of a single transaction that is~~ 1468
~~not a part of a continuing relationship with the person for whom~~ 1469
~~the services are performed.~~ 1470

(f) An individual's entire service performed within or	1471
both within and without the state if:	1472
(i) The service is localized in this state.	1473
(ii) The service is not localized in any state, but some	1474
of the service is performed in this state and either the base of	1475
operations, or if there is no base of operations then the place	1476
from which such service is directed or controlled, is in this	1477
state or the base of operations or place from which such service	1478
is directed or controlled is not in any state in which some part	1479
of the service is performed but the individual's residence is in	1480
this state.	1481
(g) Service not covered under division (B) (2) (f) (ii) of	1482
this section and performed entirely without this state, with	1483
respect to no part of which contributions are required and paid	1484
under an unemployment compensation law of any other state, the	1485
Virgin Islands, Canada, or of the United States, if the	1486
individual performing such service is a resident of this state	1487
and the director approves the election of the employer for whom	1488
such services are performed; or, if the individual is not a	1489
resident of this state but the place from which the service is	1490
directed or controlled is in this state, the entire services of	1491
such individual shall be deemed to be employment subject to this	1492
chapter, provided service is deemed to be localized within this	1493
state if the service is performed entirely within this state or	1494
if the service is performed both within and without this state	1495
but the service performed without this state is incidental to	1496
the individual's service within the state, for example, is	1497
temporary or transitory in nature or consists of isolated	1498
transactions;	1499
(h) Service of an individual who is a citizen of the	1500

United States, performed outside the United States except in 1501
Canada after December 31, 1971, or the Virgin Islands, after 1502
December 31, 1971, and before the first day of January of the 1503
year following that in which the United States secretary of 1504
labor approves the Virgin Islands law for the first time, in the 1505
employ of an American employer, other than service which is 1506
"employment" under divisions (B) (2) (f) and (g) of this section 1507
or similar provisions of another state's law, if: 1508

(i) The employer's principal place of business in the 1509
United States is located in this state; 1510

(ii) The employer has no place of business in the United 1511
States, but the employer is an individual who is a resident of 1512
this state; or the employer is a corporation which is organized 1513
under the laws of this state, or the employer is a partnership 1514
or a trust and the number of partners or trustees who are 1515
residents of this state is greater than the number who are 1516
residents of any other state; or 1517

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1518
(ii) of this section is met but the employer has elected 1519
coverage in this state or the employer having failed to elect 1520
coverage in any state, the individual has filed a claim for 1521
benefits, based on such service, under this chapter. 1522

(i) For the purposes of division (B) (2) (h) of this 1523
section, the term "American employer" means an employer who is 1524
an individual who is a resident of the United States; or a 1525
partnership, if two-thirds or more of the partners are residents 1526
of the United States; or a trust, if all of the trustees are 1527
residents of the United States; or a corporation organized under 1528
the laws of the United States or of any state, provided the term 1529
"United States" includes the states, the District of Columbia, 1530

the Commonwealth of Puerto Rico, and the Virgin Islands. 1531

(j) Notwithstanding any other provisions of divisions (B) 1532
(1) and (2) of this section, service, except for domestic 1533
service in a private home not covered under division (A) (1) (c) 1534
of this section, with respect to which a tax is required to be 1535
paid under any federal law imposing a tax against which credit 1536
may be taken for contributions required to be paid into a state 1537
unemployment fund, or service, except for domestic service in a 1538
private home not covered under division (A) (1) (c) of this 1539
section, which, as a condition for full tax credit against the 1540
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1541
26 U.S.C.A. 3301 to 3311, is required to be covered under this 1542
chapter. 1543

(k) Construction services performed by any individual 1544
under a construction contract, as defined in section 4141.39 of 1545
the Revised Code, ~~if the director determines that the employer~~ 1546
~~for whom services are performed has the right to direct or~~ 1547
~~control the performance of the services and that the individuals~~ 1548
~~who perform the services receive remuneration for the services~~ 1549
~~performed. The director shall presume that the employer for whom~~ 1550
~~services are performed has the right to direct or control the~~ 1551
~~performance of the services if ten or more of the following~~ 1552
~~criteria apply:~~ 1553

~~(i) The employer directs or controls the manner or method~~ 1554
~~by which instructions are given to the individual performing~~ 1555
~~services;~~ 1556

~~(ii) The employer requires particular training for the~~ 1557
~~individual performing services;~~ 1558

~~(iii) Services performed by the individual are integrated~~ 1559

into the regular functioning of the employer;	1560
(iv) The employer requires that services be provided by a particular individual;	1561
(v) The employer hires, supervises, or pays the wages of the individual performing services;	1563
(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full-time work;	1564
(vii) The employer requires the individual to perform services during established hours;	1565
(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;	1566
(ix) The employer requires the individual to perform services on the employer's premises;	1567
(x) The employer requires the individual performing services to follow the order of work established by the employer;	1568
(xi) The employer requires the individual performing services to make oral or written reports of progress;	1569
(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;	1570
(xiii) The employer pays expenses for the individual performing services;	1571
(xiv) The employer furnishes the tools and materials for use by the individual to perform services;	1572
(xv) The individual performing services has not invested	1573
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~~in the facilities used to perform services;~~ 1587

~~(xvi) The individual performing services does not realize
a profit or suffer a loss as a result of the performance of the
services;~~ 1588
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~~(xvii) The individual performing services is not
performing services for more than two employers simultaneously;~~ 1591
1592

~~(xviii) The individual performing services does not make
the services available to the general public;~~ 1593
1594

~~(xix) The employer has a right to discharge the individual
performing services;~~ 1595
1596

~~(xx) The individual performing services has the right to
end the individual's relationship with the employer without
incurring liability pursuant to an employment contract or
agreement.~~ 1597
1598
1599
1600

(1) Service performed by an individual in the employ of an 1601
Indian tribe as defined by section 4(e) of the "Indian Self- 1602
Determination and Education Assistance Act," 88 Stat. 2204 1603
(1975), 25 U.S.C.A. 450b(e), including any subdivision, 1604
subsidiary, or business enterprise wholly owned by an Indian 1605
tribe provided that the service is excluded from employment as 1606
defined in the "Federal Unemployment Tax Act," 53 Stat. 183 1607
(1939), 26 U.S.C.A. 3301 and 3306(c) (7) and is not excluded 1608
under division (B) (3) of this section. 1609

(3) "Employment" does not include the following services 1610
if they are found not subject to the "Federal Unemployment Tax 1611
Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the 1612
services are not required to be included under division (B) (2) 1613
(j) of this section: 1614

(a) Service performed after December 31, 1977, in	1615
agricultural labor, except as provided in division (A) (1) (d) of	1616
this section;	1617
(b) Domestic service performed after December 31, 1977, in	1618
a private home, local college club, or local chapter of a	1619
college fraternity or sorority except as provided in division	1620
(A) (1) (c) of this section;	1621
(c) Service performed after December 31, 1977, for this	1622
state or a political subdivision as described in division (B) (2)	1623
(a) of this section when performed:	1624
(i) As a publicly elected official;	1625
(ii) As a member of a legislative body, or a member of the	1626
judiciary;	1627
(iii) As a military member of the Ohio national guard;	1628
(iv) As an employee, not in the classified service as	1629
defined in section 124.11 of the Revised Code, serving on a	1630
temporary basis in case of fire, storm, snow, earthquake, flood,	1631
or similar emergency;	1632
(v) In a position which, under or pursuant to law, is	1633
designated as a major nontenured policymaking or advisory	1634
position, not in the classified service of the state, or a	1635
policymaking or advisory position the performance of the duties	1636
of which ordinarily does not require more than eight hours per	1637
week.	1638
(d) In the employ of any governmental unit or	1639
instrumentality of the United States;	1640
(e) Service performed after December 31, 1971:	1641

(i) Service in the employ of an educational institution or 1642
institution of higher education, including those operated by the 1643
state or a political subdivision, if such service is performed 1644
by a student who is enrolled and is regularly attending classes 1645
at the educational institution or institution of higher 1646
education; or 1647

(ii) By an individual who is enrolled at a nonprofit or 1648
public educational institution which normally maintains a 1649
regular faculty and curriculum and normally has a regularly 1650
organized body of students in attendance at the place where its 1651
educational activities are carried on as a student in a full- 1652
time program, taken for credit at the institution, which 1653
combines academic instruction with work experience, if the 1654
service is an integral part of the program, and the institution 1655
has so certified to the employer, provided that this subdivision 1656
shall not apply to service performed in a program established 1657
for or on behalf of an employer or group of employers. 1658

(f) Service performed by an individual in the employ of 1659
the individual's son, daughter, or spouse and service performed 1660
by a child under the age of eighteen in the employ of the 1661
child's father or mother; 1662

~~(g) Service performed for one or more principals by an 1663
individual who is compensated on a commission basis, who in the 1664
performance of the work is master of the individual's own time 1665
and efforts, and whose remuneration is wholly dependent on the 1666
amount of effort the individual chooses to expend, and which 1667
service is not subject to the "Federal Unemployment Tax Act," 53- 1668
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1669
after December 31, 1971: 1670~~

(i) By an individual for an employer as an insurance agent 1671

or as an insurance solicitor, if all this service is performed 1672
for remuneration solely by way of commission; 1673

(ii) As a home worker performing work, according to 1674
specifications furnished by the employer for whom the services 1675
are performed, on materials or goods furnished by such employer 1676
which are required to be returned to the employer or to a person 1677
designated for that purpose. 1678

(h) Service performed after December 31, 1971: 1679

(i) In the employ of a church or convention or association 1680
of churches, or in an organization which is operated primarily 1681
for religious purposes and which is operated, supervised, 1682
controlled, or principally supported by a church or convention 1683
or association of churches; 1684

(ii) By a duly ordained, commissioned, or licensed 1685
minister of a church in the exercise of the individual's 1686
ministry or by a member of a religious order in the exercise of 1687
duties required by such order; or 1688

(iii) In a facility conducted for the purpose of carrying 1689
out a program of rehabilitation for individuals whose earning 1690
capacity is impaired by age or physical or mental deficiency or 1691
injury, or providing remunerative work for individuals who 1692
because of their impaired physical or mental capacity cannot be 1693
readily absorbed in the competitive labor market, by an 1694
individual receiving such rehabilitation or remunerative work. 1695

(i) Service performed after June 30, 1939, with respect to 1696
which unemployment compensation is payable under the "Railroad 1697
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1698
351; 1699

(j) Service performed by an individual in the employ of 1700

any organization exempt from income tax under section 501 of the 1701
"Internal Revenue Code of 1954," if the remuneration for such 1702
service does not exceed fifty dollars in any calendar quarter, 1703
or if such service is in connection with the collection of dues 1704
or premiums for a fraternal beneficial society, order, or 1705
association and is performed away from the home office or is 1706
ritualistic service in connection with any such society, order, 1707
or association; 1708

(k) Casual labor not in the course of an employer's trade 1709
or business; incidental service performed by an officer, 1710
appraiser, or member of a finance committee of a bank, building 1711
and loan association, savings and loan association, or savings 1712
association when the remuneration for such incidental service 1713
exclusive of the amount paid or allotted for directors' fees 1714
does not exceed sixty dollars per calendar quarter is casual 1715
labor; 1716

(l) Service performed in the employ of a voluntary 1717
employees' beneficial association providing for the payment of 1718
life, sickness, accident, or other benefits to the members of 1719
such association or their dependents or their designated 1720
beneficiaries, if admission to a membership in such association 1721
is limited to individuals who are officers or employees of a 1722
municipal or public corporation, of a political subdivision of 1723
the state, or of the United States and no part of the net 1724
earnings of such association inures, other than through such 1725
payments, to the benefit of any private shareholder or 1726
individual; 1727

(m) Service performed by an individual in the employ of a 1728
foreign government, including service as a consular or other 1729
officer or employee or of a nondiplomatic representative; 1730

(n) Service performed in the employ of an instrumentality 1731
wholly owned by a foreign government if the service is of a 1732
character similar to that performed in foreign countries by 1733
employees of the United States or of an instrumentality thereof 1734
and if the director finds that the secretary of state of the 1735
United States has certified to the secretary of the treasury of 1736
the United States that the foreign government, with respect to 1737
whose instrumentality exemption is claimed, grants an equivalent 1738
exemption with respect to similar service performed in the 1739
foreign country by employees of the United States and of 1740
instrumentalities thereof; 1741

(o) Service with respect to which unemployment 1742
compensation is payable under an unemployment compensation 1743
system established by an act of congress; 1744

(p) Service performed as a student nurse in the employ of 1745
a hospital or a nurses' training school by an individual who is 1746
enrolled and is regularly attending classes in a nurses' 1747
training school chartered or approved pursuant to state law, and 1748
service performed as an intern in the employ of a hospital by an 1749
individual who has completed a four years' course in a medical 1750
school chartered or approved pursuant to state law; 1751

(q) Service performed by an individual under the age of 1752
eighteen in the delivery or distribution of newspapers or 1753
shopping news, not including delivery or distribution to any 1754
point for subsequent delivery or distribution; 1755

(r) Service performed in the employ of the United States 1756
or an instrumentality of the United States immune under the 1757
Constitution of the United States from the contributions imposed 1758
by this chapter, except that to the extent that congress permits 1759
states to require any instrumentalities of the United States to 1760

make payments into an unemployment fund under a state 1761
unemployment compensation act, this chapter shall be applicable 1762
to such instrumentalities and to services performed for such 1763
instrumentalities in the same manner, to the same extent, and on 1764
the same terms as to all other employers, individuals, and 1765
services, provided that if this state is not certified for any 1766
year by the proper agency of the United States under section 1767
3304 of the "Internal Revenue Code of 1954," the payments 1768
required of such instrumentalities with respect to such year 1769
shall be refunded by the director from the fund in the same 1770
manner and within the same period as is provided in division (E) 1771
of section 4141.09 of the Revised Code with respect to 1772
contributions erroneously collected; 1773

(s) Service performed by an individual as a member of a 1774
band or orchestra, provided such service does not represent the 1775
principal occupation of such individual, and which service is 1776
not subject to or required to be covered for full tax credit 1777
against the tax imposed by the "Federal Unemployment Tax Act," 1778
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1779

(t) Service performed in the employ of a day camp whose 1780
camping season does not exceed twelve weeks in any calendar 1781
year, and which service is not subject to the "Federal 1782
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1783
3311. Service performed after December 31, 1971: 1784

(i) In the employ of a hospital, if the service is 1785
performed by a patient of the hospital, as defined in division 1786
(W) of this section; 1787

(ii) For a prison or other correctional institution by an 1788
inmate of the prison or correctional institution; 1789

(iii) Service performed after December 31, 1977, by an 1790
inmate of a custodial institution operated by the state, a 1791
political subdivision, or a nonprofit organization. 1792

(u) Service that is performed by a nonresident alien 1793
individual for the period the individual temporarily is present 1794
in the United States as a nonimmigrant under division (F), (J), 1795
(M), or (Q) of section 101(a)(15) of the "Immigration and 1796
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1797
that is excluded under section 3306(c)(19) of the "Federal 1798
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1799
3311. 1800

(v) Notwithstanding any other provisions of division (B) 1801
(3) of this section, services that are excluded under divisions 1802
(B)(3)(g), (j), (k), and (l) of this section shall not be 1803
excluded from employment when performed for a nonprofit 1804
organization, as defined in division (X) of this section, or for 1805
this state or its instrumentalities, or for a political 1806
subdivision or its instrumentalities or for Indian tribes; 1807

(w) Service that is performed by an individual working as 1808
an election official or election worker if the amount of 1809
remuneration received by the individual during the calendar year 1810
for services as an election official or election worker is less 1811
than one thousand dollars; 1812

(x) Service performed for an elementary or secondary 1813
school that is operated primarily for religious purposes, that 1814
is described in subsection 501(c)(3) and exempt from federal 1815
income taxation under subsection 501(a) of the Internal Revenue 1816
Code, 26 U.S.C.A. 501; 1817

(y) Service performed by a person committed to a penal 1818

institution.	1819
(z) Service performed for an Indian tribe as described in	1820
division (B) (2) (1) of this section when performed in any of the	1821
following manners:	1822
(i) As a publicly elected official;	1823
(ii) As a member of an Indian tribal council;	1824
(iii) As a member of a legislative or judiciary body;	1825
(iv) In a position which, pursuant to Indian tribal law,	1826
is designated as a major nontenured policymaking or advisory	1827
position, or a policymaking or advisory position where the	1828
performance of the duties ordinarily does not require more than	1829
eight hours of time per week;	1830
(v) As an employee serving on a temporary basis in the	1831
case of a fire, storm, snow, earthquake, flood, or similar	1832
emergency.	1833
(aa) Service performed after December 31, 1971, for a	1834
nonprofit organization, this state or its instrumentalities, a	1835
political subdivision or its instrumentalities, or an Indian	1836
tribe as part of an unemployment work-relief or work-training	1837
program assisted or financed in whole or in part by any federal	1838
agency or an agency of a state or political subdivision,	1839
thereof, by an individual receiving the work-relief or work-	1840
training.	1841
(bb) Participation in a learn to earn program as defined	1842
in section 4141.293 of the Revised Code.	1843
(4) If the services performed during one half or more of	1844
any pay period by an employee for the person employing that	1845
employee constitute employment, all the services of such	1846

employee for such period shall be deemed to be employment; but 1847
if the services performed during more than one half of any such 1848
pay period by an employee for the person employing that employee 1849
do not constitute employment, then none of the services of such 1850
employee for such period shall be deemed to be employment. As 1851
used in division (B)(4) of this section, "pay period" means a 1852
period, of not more than thirty-one consecutive days, for which 1853
payment of remuneration is ordinarily made to the employee by 1854
the person employing that employee. Division (B)(4) of this 1855
section does not apply to services performed in a pay period by 1856
an employee for the person employing that employee, if any of 1857
such service is excepted by division (B)(3)(o) of this section. 1858

(C) "Benefits" means money payments payable to an 1859
individual who has established benefit rights, as provided in 1860
this chapter, for loss of remuneration due to the individual's 1861
unemployment. 1862

(D) "Benefit rights" means the weekly benefit amount and 1863
the maximum benefit amount that may become payable to an 1864
individual within the individual's benefit year as determined by 1865
the director. 1866

(E) "Claim for benefits" means a claim for waiting period 1867
or benefits for a designated week. 1868

(F) "Additional claim" means the first claim for benefits 1869
filed following any separation from employment during a benefit 1870
year; "continued claim" means any claim other than the first 1871
claim for benefits and other than an additional claim. 1872

(G) (1) "Wages" means remuneration paid to an employee by 1873
each of the employee's employers with respect to employment; 1874
except that wages shall not include that part of remuneration 1875

paid during any calendar year to an individual by an employer or 1876
such employer's predecessor in interest in the same business or 1877
enterprise, which in any calendar year is in excess of eight 1878
thousand two hundred fifty dollars on and after January 1, 1992; 1879
eight thousand five hundred dollars on and after January 1, 1880
1993; eight thousand seven hundred fifty dollars on and after 1881
January 1, 1994; and nine thousand dollars on and after January 1882
1, 1995. Remuneration in excess of such amounts shall be deemed 1883
wages subject to contribution to the same extent that such 1884
remuneration is defined as wages under the "Federal Unemployment 1885
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1886
amended. The remuneration paid an employee by an employer with 1887
respect to employment in another state, upon which contributions 1888
were required and paid by such employer under the unemployment 1889
compensation act of such other state, shall be included as a 1890
part of remuneration in computing the amount specified in this 1891
division. 1892

(2) Notwithstanding division (G)(1) of this section, if, 1893
as of the computation date for any calendar year, the director 1894
determines that the level of the unemployment compensation fund 1895
is sixty per cent or more below the minimum safe level as 1896
defined in section 4141.25 of the Revised Code, then, effective 1897
the first day of January of the following calendar year, wages 1898
subject to this chapter shall not include that part of 1899
remuneration paid during any calendar year to an individual by 1900
an employer or such employer's predecessor in interest in the 1901
same business or enterprise which is in excess of nine thousand 1902
dollars. The increase in the dollar amount of wages subject to 1903
this chapter under this division shall remain in effect from the 1904
date of the director's determination pursuant to division (G)(2) 1905
of this section and thereafter notwithstanding the fact that the 1906

level in the fund may subsequently become less than sixty per 1907
cent below the minimum safe level. 1908

(H) (1) "Remuneration" means all compensation for personal 1909
services, including commissions and bonuses and the cash value 1910
of all compensation in any medium other than cash, except that 1911
in the case of agricultural or domestic service, "remuneration" 1912
includes only cash remuneration. Gratuities customarily received 1913
by an individual in the course of the individual's employment 1914
from persons other than the individual's employer and which are 1915
accounted for by such individual to the individual's employer 1916
are taxable wages. 1917

The reasonable cash value of compensation paid in any 1918
medium other than cash shall be estimated and determined in 1919
accordance with rules prescribed by the director, provided that 1920
"remuneration" does not include: 1921

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1922
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1923
713, 26 U.S.C.A. 3301 to 3311, as amended; 1924

(b) The payment by an employer, without deduction from the 1925
remuneration of the individual in the employer's employ, of the 1926
tax imposed upon an individual in the employer's employ under 1927
section 3101 of the "Internal Revenue Code of 1954," with 1928
respect to services performed after October 1, 1941. 1929

(2) "Cash remuneration" means all remuneration paid in 1930
cash, including commissions and bonuses, but not including the 1931
cash value of all compensation in any medium other than cash. 1932

(I) "Interested party" means the director and any party to 1933
whom notice of a determination of an application for benefit 1934
rights or a claim for benefits is required to be given under 1935

section 4141.28 of the Revised Code. 1936

(J) "Annual payroll" means the total amount of wages 1937
subject to contributions during a twelve-month period ending 1938
with the last day of the second calendar quarter of any calendar 1939
year. 1940

(K) "Average annual payroll" means the average of the last 1941
three annual payrolls of an employer, provided that if, as of 1942
any computation date, the employer has had less than three 1943
annual payrolls in such three-year period, such average shall be 1944
based on the annual payrolls which the employer has had as of 1945
such date. 1946

(L) (1) "Contributions" means the money payments to the 1947
state unemployment compensation fund required of employers by 1948
section 4141.25 of the Revised Code and of the state and any of 1949
its political subdivisions electing to pay contributions under 1950
section 4141.242 of the Revised Code. Employers paying 1951
contributions shall be described as "contributory employers." 1952

(2) "Payments in lieu of contributions" means the money 1953
payments to the state unemployment compensation fund required of 1954
reimbursing employers under sections 4141.241 and 4141.242 of 1955
the Revised Code. 1956

(M) An individual is "totally unemployed" in any week 1957
during which the individual performs no services and with 1958
respect to such week no remuneration is payable to the 1959
individual. 1960

(N) An individual is "partially unemployed" in any week 1961
if, due to involuntary loss of work, the total remuneration 1962
payable to the individual for such week is less than the 1963
individual's weekly benefit amount. 1964

(O) "Week" means the calendar week ending at midnight 1965
Saturday unless an equivalent week of seven consecutive calendar 1966
days is prescribed by the director. 1967

(1) "Qualifying week" means any calendar week in an 1968
individual's base period with respect to which the individual 1969
earns or is paid remuneration in employment subject to this 1970
chapter. A calendar week with respect to which an individual 1971
earns remuneration but for which payment was not made within the 1972
base period, when necessary to qualify for benefit rights, may 1973
be considered to be a qualifying week. The number of qualifying 1974
weeks which may be established in a calendar quarter shall not 1975
exceed the number of calendar weeks in the quarter. 1976

(2) "Average weekly wage" means the amount obtained by 1977
dividing an individual's total remuneration for all qualifying 1978
weeks during the base period by the number of such qualifying 1979
weeks, provided that if the computation results in an amount 1980
that is not a multiple of one dollar, such amount shall be 1981
rounded to the next lower multiple of one dollar. 1982

(P) "Weekly benefit amount" means the amount of benefits 1983
an individual would be entitled to receive for one week of total 1984
unemployment. 1985

(Q) (1) "Base period" means the first four of the last five 1986
completed calendar quarters immediately preceding the first day 1987
of an individual's benefit year, except as provided in division 1988
(Q) (2) of this section. 1989

(2) If an individual does not have sufficient qualifying 1990
weeks and wages in the base period to qualify for benefit 1991
rights, the individual's base period shall be the four most 1992
recently completed calendar quarters preceding the first day of 1993

the individual's benefit year. Such base period shall be known 1994
as the "alternate base period." If information as to weeks and 1995
wages for the most recent quarter of the alternate base period 1996
is not available to the director from the regular quarterly 1997
reports of wage information, which are systematically 1998
accessible, the director may, consistent with the provisions of 1999
section 4141.28 of the Revised Code, base the determination of 2000
eligibility for benefits on the affidavit of the claimant with 2001
respect to weeks and wages for that calendar quarter. The 2002
claimant shall furnish payroll documentation, where available, 2003
in support of the affidavit. The determination based upon the 2004
alternate base period as it relates to the claimant's benefit 2005
rights, shall be amended when the quarterly report of wage 2006
information from the employer is timely received and that 2007
information causes a change in the determination. As provided in 2008
division (B) of section 4141.28 of the Revised Code, any 2009
benefits paid and charged to an employer's account, based upon a 2010
claimant's affidavit, shall be adjusted effective as of the 2011
beginning of the claimant's benefit year. No calendar quarter in 2012
a base period or alternate base period shall be used to 2013
establish a subsequent benefit year. 2014

(3) The "base period" of a combined wage claim, as 2015
described in division (H) of section 4141.43 of the Revised 2016
Code, shall be the base period prescribed by the law of the 2017
state in which the claim is allowed. 2018

(4) For purposes of determining the weeks that comprise a 2019
completed calendar quarter under this division, only those weeks 2020
ending at midnight Saturday within the calendar quarter shall be 2021
utilized. 2022

(R) (1) "Benefit year" with respect to an individual means 2023

the fifty-two week period beginning with the first day of that 2024
week with respect to which the individual first files a valid 2025
application for determination of benefit rights, and thereafter 2026
the fifty-two week period beginning with the first day of that 2027
week with respect to which the individual next files a valid 2028
application for determination of benefit rights after the 2029
termination of the individual's last preceding benefit year, 2030
except that the application shall not be considered valid unless 2031
the individual has had employment in six weeks that is subject 2032
to this chapter or the unemployment compensation act of another 2033
state, or the United States, and has, since the beginning of the 2034
individual's previous benefit year, in the employment earned 2035
three times the average weekly wage determined for the previous 2036
benefit year. The "benefit year" of a combined wage claim, as 2037
described in division (H) of section 4141.43 of the Revised 2038
Code, shall be the benefit year prescribed by the law of the 2039
state in which the claim is allowed. Any application for 2040
determination of benefit rights made in accordance with section 2041
4141.28 of the Revised Code is valid if the individual filing 2042
such application is unemployed, has been employed by an employer 2043
or employers subject to this chapter in at least twenty 2044
qualifying weeks within the individual's base period, and has 2045
earned or been paid remuneration at an average weekly wage of 2046
not less than twenty-seven and one-half per cent of the 2047
statewide average weekly wage for such weeks. For purposes of 2048
determining whether an individual has had sufficient employment 2049
since the beginning of the individual's previous benefit year to 2050
file a valid application, "employment" means the performance of 2051
services for which remuneration is payable. 2052

(2) Effective for benefit years beginning on and after 2053
December 26, 2004, any application for determination of benefit 2054

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

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

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

(S) "Calendar quarter" means the period of three 2085
consecutive calendar months ending on the thirty-first day of 2086
March, the thirtieth day of June, the thirtieth day of 2087
September, and the thirty-first day of December, or the 2088
equivalent thereof as the director prescribes by rule. 2089

(T) "Computation date" means the first day of the third 2090
calendar quarter of any calendar year. 2091

(U) "Contribution period" means the calendar year 2092
beginning on the first day of January of any year. 2093

(V) "Agricultural labor," for the purpose of this 2094
division, means any service performed prior to January 1, 1972, 2095
which was agricultural labor as defined in this division prior 2096
to that date, and service performed after December 31, 1971: 2097

(1) On a farm, in the employ of any person, in connection 2098
with cultivating the soil, or in connection with raising or 2099
harvesting any agricultural or horticultural commodity, 2100
including the raising, shearing, feeding, caring for, training, 2101
and management of livestock, bees, poultry, and fur-bearing 2102
animals and wildlife; 2103

(2) In the employ of the owner or tenant or other operator 2104
of a farm in connection with the operation, management, 2105
conservation, improvement, or maintenance of such farm and its 2106
tools and equipment, or in salvaging timber or clearing land of 2107
brush and other debris left by hurricane, if the major part of 2108
such service is performed on a farm; 2109

(3) In connection with the production or harvesting of any 2110
commodity defined as an agricultural commodity in section 15 (g) 2111
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 2112
U.S.C. 1141j, as amended, or in connection with the ginning of 2113

cotton, or in connection with the operation or maintenance of 2114
ditches, canals, reservoirs, or waterways, not owned or operated 2115
for profit, used exclusively for supplying and storing water for 2116
farming purposes; 2117

(4) In the employ of the operator of a farm in handling, 2118
planting, drying, packing, packaging, processing, freezing, 2119
grading, storing, or delivering to storage or to market or to a 2120
carrier for transportation to market, in its unmanufactured 2121
state, any agricultural or horticultural commodity, but only if 2122
the operator produced more than one half of the commodity with 2123
respect to which such service is performed; 2124

(5) In the employ of a group of operators of farms, or a 2125
cooperative organization of which the operators are members, in 2126
the performance of service described in division (V) (4) of this 2127
section, but only if the operators produced more than one-half 2128
of the commodity with respect to which the service is performed; 2129

(6) Divisions (V) (4) and (5) of this section shall not be 2130
deemed to be applicable with respect to service performed: 2131

(a) In connection with commercial canning or commercial 2132
freezing or in connection with any agricultural or horticultural 2133
commodity after its delivery to a terminal market for 2134
distribution for consumption; or 2135

(b) On a farm operated for profit if the service is not in 2136
the course of the employer's trade or business. 2137

As used in division (V) of this section, "farm" includes 2138
stock, dairy, poultry, fruit, fur-bearing animal, and truck 2139
farms, plantations, ranches, nurseries, ranges, greenhouses, or 2140
other similar structures used primarily for the raising of 2141
agricultural or horticultural commodities and orchards. 2142

(W) "Hospital" means an institution which has been 2143
registered or licensed by the Ohio department of health as a 2144
hospital. 2145

(X) "Nonprofit organization" means an organization, or 2146
group of organizations, described in section 501(c)(3) of the 2147
"Internal Revenue Code of 1954," and exempt from income tax 2148
under section 501(a) of that code. 2149

(Y) "Institution of higher education" means a public or 2150
nonprofit educational institution, including an educational 2151
institution operated by an Indian tribe, which: 2152

(1) Admits as regular students only individuals having a 2153
certificate of graduation from a high school, or the recognized 2154
equivalent; 2155

(2) Is legally authorized in this state or by the Indian 2156
tribe to provide a program of education beyond high school; and 2157

(3) Provides an educational program for which it awards a 2158
bachelor's or higher degree, or provides a program which is 2159
acceptable for full credit toward such a degree, a program of 2160
post-graduate or post-doctoral studies, or a program of training 2161
to prepare students for gainful employment in a recognized 2162
occupation. 2163

For the purposes of this division, all colleges and 2164
universities in this state are institutions of higher education. 2165

(Z) For the purposes of this chapter, "states" includes 2166
the District of Columbia, the Commonwealth of Puerto Rico, and 2167
the Virgin Islands. 2168

(AA) "Alien" means, for the purposes of division (A)(1)(d) 2169
of this section, an individual who is an alien admitted to the 2170

United States to perform service in agricultural labor pursuant 2171
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 2172
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 2173

(BB) (1) "Crew leader" means an individual who furnishes 2174
individuals to perform agricultural labor for any other employer 2175
or farm operator, and: 2176

(a) Pays, either on the individual's own behalf or on 2177
behalf of the other employer or farm operator, the individuals 2178
so furnished by the individual for the service in agricultural 2179
labor performed by them; 2180

(b) Has not entered into a written agreement with the 2181
other employer or farm operator under which the agricultural 2182
worker is designated as in the employ of the other employer or 2183
farm operator. 2184

(2) For the purposes of this chapter, any individual who 2185
is a member of a crew furnished by a crew leader to perform 2186
service in agricultural labor for any other employer or farm 2187
operator shall be treated as an employee of the crew leader if: 2188

(a) The crew leader holds a valid certificate of 2189
registration under the "Farm Labor Contractor Registration Act 2190
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 2191

(b) Substantially all the members of the crew operate or 2192
maintain tractors, mechanized harvesting or crop-dusting 2193
equipment, or any other mechanized equipment, which is provided 2194
by the crew leader; and 2195

(c) If the individual is not in the employment of the 2196
other employer or farm operator within the meaning of division 2197
(B) (1) of this section. 2198

(3) For the purposes of this division, any individual who 2199
is furnished by a crew leader to perform service in agricultural 2200
labor for any other employer or farm operator and who is not 2201
treated as in the employment of the crew leader under division 2202
(BB)(2) of this section shall be treated as the employee of the 2203
other employer or farm operator and not of the crew leader. The 2204
other employer or farm operator shall be treated as having paid 2205
cash remuneration to the individual in an amount equal to the 2206
amount of cash remuneration paid to the individual by the crew 2207
leader, either on the crew leader's own behalf or on behalf of 2208
the other employer or farm operator, for the service in 2209
agricultural labor performed for the other employer or farm 2210
operator. 2211

(CC) "Educational institution" means an institution other 2212
than an institution of higher education as defined in division 2213
(Y) of this section, including an educational institution 2214
operated by an Indian tribe, which: 2215

(1) Offers participants, trainees, or students an 2216
organized course of study or training designed to transfer to 2217
them knowledge, skills, information, doctrines, attitudes, or 2218
abilities from, by, or under the guidance of an instructor or 2219
teacher; and 2220

(2) Is approved, chartered, or issued a permit to operate 2221
as a school by the state board of education, other government 2222
agency, or Indian tribe that is authorized within the state to 2223
approve, charter, or issue a permit for the operation of a 2224
school. 2225

For the purposes of this division, the courses of study or 2226
training which the institution offers may be academic, 2227
technical, trade, or preparation for gainful employment in a 2228

recognized occupation. 2229

(DD) "Cost savings day" means any unpaid day off from work 2230
in which employees continue to accrue employee benefits which 2231
have a determinable value including, but not limited to, 2232
vacation, pension contribution, sick time, and life and health 2233
insurance. 2234

(EE) "Employee" has the same meaning as in section 4177.01 2235
of the Revised Code, unless the services performed by the 2236
individual do not constitute "employment" as defined in division 2237
(B) of this section. 2238

Sec. 4177.01. As used in this chapter: 2239

(A) "Aggrieved party" means any of the following 2240
individuals or entities that believes that the individual or 2241
entity has been injured by an employer's alleged violation of 2242
section 4177.02 of the Revised Code: 2243

(1) An employee; 2244

(2) An employer association; 2245

(3) An interested party; 2246

(4) A labor organization. 2247

(B) "Construction" means any constructing, altering, 2248
reconstructing, repairing, rehabilitating, refinishing, 2249
refurbishing, remodeling, remediating, renovating, custom 2250
fabricating, maintenance, landscaping, improving, wrecking, 2251
painting, decorating, demolishing, and adding to or subtracting 2252
from any building, structure, highway, roadway, street, bridge, 2253
alley, sewer, ditch, sewage disposal plant, water works, parking 2254
facility, railroad, excavation, or other structure, project, 2255
development, real property or improvement, or to do any part 2256

thereof, regardless of whether the performance of the work 2257
involves the addition to or fabrication of any material or 2258
article of merchandise into any structure, project, development, 2259
real property, or improvement. "Construction" includes moving 2260
construction-related materials to the job site and removing 2261
construction-related materials from the job site. 2262

(C) "Contractor" means any sole proprietorship, 2263
partnership, firm, corporation, limited liability company, 2264
association, or other entity permitted by law to do business 2265
within this state that engages in construction. "Contractor" 2266
does not include either of the following: 2267

(1) The state or its officers, agencies, or political 2268
subdivisions; 2269

(2) The federal government. 2270

(D) (1) "Employee" means an individual who performs 2271
services for compensation for an employer. 2272

(2) "Employee" does not mean an individual who performs 2273
services for an employer and to whom all of the following 2274
conditions apply: 2275

(a) The individual has been and continues to be free from 2276
control and direction in connection with the performance of the 2277
service. 2278

(b) The individual customarily is engaged in an 2279
independently established trade, occupation, profession, or 2280
business of the same nature of the trade, occupation, 2281
profession, or business involved in the service performed. 2282

(c) The individual is a separate and distinct business 2283
entity from the entity for which the service is being performed 2284

or if the individual is providing construction services and is a 2285
sole proprietorship or a partner in a partnership, the 2286
individual is a legitimate sole proprietorship or a partner in a 2287
legitimate partnership to which section 4177.04 of the Revised 2288
Code applies, as applicable. 2289

(d) The individual incurs the main expenses and has 2290
continuing or recurring business liabilities related to the 2291
service performed. 2292

(e) The individual is liable for breach of contract for 2293
failure to complete the service. 2294

(f) An agreement, written or oral, express or implied, 2295
exists describing the service to be performed, the payment the 2296
individual will receive for performance of the service, and the 2297
time frame for completion of the service. 2298

(g) The service performed by the individual is outside of 2299
the usual course of business of the employer. 2300

(E) "Employer" means any person, the state, any agency or 2301
instrumentality of the state, and any municipal corporation, 2302
county, township, school district, or other political 2303
subdivision or any agency or instrumentality thereof that 2304
engages an individual to perform services. 2305

(F) "Interested party" means any of the following 2306
entities: 2307

(1) Any contractor who submits a bid for the purpose of 2308
securing the award of a contract for construction of a public 2309
improvement as that term is defined in section 4115.03 of the 2310
Revised Code; 2311

(2) Any person acting as a subcontractor of a contractor 2312

described in division (F) (1) of this section; 2313

(3) Any bona fide labor organization that has as members 2314
or is authorized to represent employees of a person described in 2315
division (F) (1) or (2) of this section; 2316

(4) Any association having as members any of the persons 2317
described in division (F) (1) or (2) of this section. 2318

(G) "Labor organization" has the same meaning as in 2319
section 3517.01 of the Revised Code. 2320

(H) "State agency" has the same meaning as in section 1.60 2321
of the Revised Code. 2322

(I) "Subcontractor" means any person who undertakes to 2323
perform construction services under a contract with any 2324
individual other than the owner, part owner, or lessee. 2325

Sec. 4177.02. (A) No employer shall fail to designate an 2326
individual who performs services for the employer as an employee 2327
unless the conditions described in division (D) (2) of section 2328
4177.01 of the Revised Code apply to that individual. The 2329
director of commerce shall not use an employer's failure to 2330
withhold federal or state income taxes with respect to an 2331
individual or to include remuneration paid to an individual for 2332
purposes of section 4123.26, 4123.41, or 4141.20 of the Revised 2333
Code when making a determination as to whether the employer 2334
violated this division. The director shall not use an 2335
individual's election to obtain workers' compensation coverage 2336
as a sole proprietor or a partnership in making a determination 2337
as to whether the individual has violated this division. The 2338
burden of proof is on the party asserting that an individual is 2339
not an employee. 2340

(B) No employer shall retaliate through discharge, or in 2341

any other manner, against any individual for exercising any 2342
rights granted under this chapter. 2343

(C) No employer shall retaliate against an individual if 2344
the individual does any of the following: 2345

(1) Makes a complaint to an employer, coworker, community 2346
organization, or to a federal or state agency or at a public 2347
hearing, stating that provisions of this chapter allegedly have 2348
been violated; 2349

(2) Causes to be instituted any proceeding under or 2350
related to this chapter; 2351

(3) Testifies or prepares to testify in an investigation 2352
or proceeding under this chapter; 2353

(4) Opposes misclassification. 2354

(D) No employer shall attempt to cause or cause an 2355
individual to waive the provisions of this chapter or to enter 2356
into a predispute waiver. 2357

(E) No employer shall violate a rule adopted by the 2358
director pursuant to section 4177.06 of the Revised Code. 2359

(F) No person shall require or request an individual to 2360
enter into an agreement or sign a document that results in the 2361
misclassification of the individual as an independent contractor 2362
or otherwise does not accurately reflect the individual's 2363
relationship with an employer. 2364

Sec. 4177.03. This chapter shall apply only to 2365
determinations as to whether an individual is an employer for 2366
purposes of section 4111.02, 4111.14, 4113.15, or 4115.03 of the 2367
Revised Code or Chapter 4121., 4123., 4141., or 5747. of the 2368
Revised Code. Nothing in this chapter shall be construed as to 2369

limit the application of any other remedies available at law or 2370
in equity. 2371

Sec. 4177.04. An employer and the director of commerce 2372
shall consider a sole proprietorship or partnership that 2373
performs construction services for the employer to be a 2374
legitimate sole proprietorship or a legitimate partnership if 2375
the employer demonstrates all of the following: 2376

(A) The sole proprietorship or partnership performs the 2377
construction service free from the direction or control of the 2378
employer over the means and manner of providing the service, 2379
subject only to the right of the employer for whom the service 2380
is provided to specify the desired result. 2381

(B) The sole proprietorship or partnership is not subject 2382
to cancellation or destruction upon severance of the 2383
relationship with the employer. 2384

(C) The owner of the sole proprietorship or the partners 2385
in the partnership have a substantial investment of capital in 2386
the sole proprietorship or partnership beyond ordinary tools and 2387
equipment and a personal vehicle. 2388

(D) The sole proprietorship or partnership owns the 2389
capital goods, gains the profits, and bears the losses of the 2390
sole proprietorship or partnership. 2391

(E) The sole proprietorship or partnership makes its 2392
construction services available to the general public or the 2393
business community on a continuing basis. 2394

(F) The sole proprietorship or partnership reported a 2395
profit or loss or earnings from self-employment on the sole 2396
proprietorship or partnership's federal income tax schedule. 2397

(G) The sole proprietorship or partnership performs 2398
construction services for the employer under the name of the 2399
sole proprietorship or partnership. 2400

(H) If the construction services the sole proprietorship 2401
or partnership provides to the employer require a license or 2402
permit in order to provide those services, the sole 2403
proprietorship or partnership obtains the appropriate license or 2404
permit in the name of the sole proprietorship or partnership 2405
name and directly pays for the appropriate license or permit. 2406

(I) The sole proprietorship or partnership furnishes the 2407
tools and equipment necessary for the sole proprietorship or 2408
partnership to provide the construction service for the 2409
employer. 2410

(J) If necessary, the sole proprietorship or partnership 2411
hires its own employees without obtaining approval from the 2412
employer, pays those employees without direct reimbursement from 2413
the employer, and reports the employees' income to the internal 2414
revenue service. 2415

(K) The employer does not represent the sole 2416
proprietorship or the partners of the partnership as an employee 2417
of the employer to the employer's customers. 2418

(L) The sole proprietorship or partnership performs 2419
similar construction services for others on whatever basis and 2420
whenever the sole proprietorship or partnership chooses. 2421

If the director of commerce, using the factors listed in 2422
this section, determines that a sole proprietorship or 2423
partnership performing construction services for an employer is 2424
not a legitimate sole proprietorship or a legitimate 2425
partnership, the director shall consider the owner of the sole 2426

proprietorship, each partner of the partnership, and each of the 2427
employees of the sole proprietorship or partnership, as 2428
applicable, as an employee of the employer for the purposes of 2429
this chapter. 2430

Sec. 4177.05. The provisions of this chapter apply to all 2431
subcontractors or lower tier subcontractors. 2432

A contractor is liable under this chapter for the failure 2433
of any subcontractor or lower tier subcontractor to properly 2434
classify individuals performing services related to construction 2435
as employees. A subcontractor is liable under this chapter for 2436
the failure of any lower tier subcontractor to properly classify 2437
individuals performing services related to construction as 2438
employees. 2439

Sec. 4177.06. The director of commerce shall enforce this 2440
chapter. The director shall hire as many investigators and other 2441
personnel as the director determines are necessary to administer 2442
and enforce this chapter. The director may adopt reasonable 2443
rules in accordance with Chapter 119. of the Revised Code to 2444
implement and administer this chapter. 2445

Sec. 4177.07. Any aggrieved party may file a complaint 2446
with the director of commerce against an employer if the 2447
aggrieved party reasonably believes that the employer is in 2448
violation of section 4177.02 of the Revised Code. The director 2449
shall conduct investigations in connection with the 2450
administration and enforcement of this chapter. Any investigator 2451
employed by the division of industrial compliance within the 2452
department of commerce is authorized to visit and inspect, at 2453
all reasonable times, all of the offices and job sites 2454
maintained by the employer who is the subject of the complaint, 2455
and is authorized to inspect and audit, at all reasonable times, 2456

all documents necessary to determine whether an individual 2457
performing services for the employer is an employee. The 2458
director may compel, by subpoena, the attendance and testimony 2459
of witnesses and the production of books, payrolls, records, 2460
papers, and other evidence in any investigation, and may 2461
administer oaths to witnesses. Upon completion of an 2462
investigation under this section, the investigator shall submit 2463
the results of the investigator's investigation to the 2464
superintendent of industrial compliance. 2465

Sec. 4177.08. If, after receiving the results of an 2466
investigation conducted pursuant to section 4177.07 of the 2467
Revised Code, the superintendent of industrial compliance 2468
determines that reasonable evidence exists that an employer has 2469
violated section 4177.02 of the Revised Code, the superintendent 2470
shall send a written notice to the director of commerce 2471
informing the director of the superintendent's determination. 2472

Within seven days after the director receives a written 2473
report from the superintendent, the director shall send a 2474
written notice to the employer who is the subject of the 2475
investigation in the same manner as prescribed in section 119.07 2476
of the Revised Code for licensees, except that the notice shall 2477
specify that a hearing will be held and shall specify the date, 2478
time, and place of the hearing. The director shall hold a 2479
hearing regarding the alleged violation in the same manner 2480
prescribed for an adjudication hearing under section 119.09 of 2481
the Revised Code. If the director, after the hearing, determines 2482
a violation has occurred, the director may discipline the 2483
employer in accordance with section 4177.09 of the Revised Code. 2484
The director's determination is an order that the person may 2485
appeal in accordance with section 119.12 of the Revised Code. If 2486
an employer who allegedly committed a violation of section 2487

4177.02 of the Revised Code fails to appear for a hearing, the 2488
director may request the court of common pleas of the county 2489
where the alleged violation occurred to compel the person to 2490
appear before the director for a hearing. 2491

Sec. 4177.09. (A) If, after a hearing held in accordance 2492
with section 4177.08 of the Revised Code, the director of 2493
commerce determines that an employer violated section 4177.02 of 2494
the Revised Code, the director may do any of the following: 2495

(1) Issue and cause to be served on any party an order to 2496
cease and desist from further violation of that section; 2497

(2) Take affirmative or other action the director 2498
considers reasonable to eliminate the effect of the violation; 2499

(3) Collect the amount of any wages, salary, employment 2500
benefits, or other compensation denied or lost to an individual 2501
because the employer misclassified the individual; 2502

(4) Assess any civil penalty allowed under section 4177.10 2503
or 4177.11 of the Revised Code. 2504

(B) If the director assesses an employer a civil penalty 2505
for a violation of section 4177.02 of the Revised Code and the 2506
employer fails to pay that civil penalty within the time period 2507
prescribed by the director, the director shall forward to the 2508
attorney general the name of the employer and the amount of the 2509
civil penalty for the purpose of collecting that civil penalty. 2510
In addition to the civil penalty assessed pursuant to this 2511
section, the employer also shall pay any fee assessed by the 2512
attorney general for collection of the civil penalty. 2513

(C) The attorney general shall bring any action for relief 2514
requested by the director in the name of the people of the state 2515
of Ohio. 2516

Sec. 4177.10. (A) Except as otherwise provided in division 2517
(B) of this section and section 4177.11 of the Revised Code, if, 2518
after a hearing conducted pursuant to section 4177.08 of the 2519
Revised Code, the director of commerce determines that an 2520
employer has violated section 4177.02 of the Revised Code, the 2521
employer may be subject to a civil penalty of one thousand five 2522
hundred dollars for each violation. 2523

(B) Except as otherwise provided in section 4177.11 of the 2524
Revised Code if, after a hearing held in accordance with section 2525
4177.08 of the Revised Code, the director determines that the 2526
employer has committed a violation of section 4177.02 of the 2527
Revised Code and that violation occurred within five years after 2528
the date the director made a determination that resulted in the 2529
director assessing the employer a civil penalty under division 2530
(A) or (B) of this section, the employer may be subject to a 2531
civil penalty not less than one thousand five hundred dollars or 2532
more than two thousand five hundred dollars for each violation 2533
found by the director that occurred during that five-year 2534
period. 2535

(C) For purposes of this section, each violation of 2536
section 4177.02 of the Revised Code constitutes a separate 2537
violation for each individual or rule involved and for each day 2538
the violation continues. 2539

(D) The director shall base the amount of any civil 2540
penalty assessed under this section upon the director's 2541
determination of the gravity of the violations committed by the 2542
employer. 2543

Sec. 4177.11. (A) Whoever knowingly violates section 2544
4177.02 of the Revised Code, or whoever obstructs the director 2545
of commerce or any other person authorized to inspect places of 2546

employment pursuant to section 4177.07 of the Revised Code may 2547
be liable for penalties up to double the amount specified in 2548
section 4177.10 of the Revised Code. 2549

(B) An employer who is liable under division (A) of this 2550
section because the employer knowingly violated section 4177.02 2551
of the Revised Code also is liable to the employee who was 2552
injured by the employer's violation for punitive damages in an 2553
amount equal to the amount of the penalties assessed against the 2554
employer pursuant to division (A) of this section. 2555

(C) The director shall impose the penalties described in 2556
divisions (A) and (B) of this section if a preponderance of the 2557
evidence demonstrates that the employer acted knowingly when 2558
committing the violation. 2559

Sec. 4177.12. If the director of commerce determines that 2560
an alleged violation of this chapter has occurred that may 2561
result in a penalty assessed pursuant to section 4177.99 of the 2562
Revised Code, the director shall refer the matter to the 2563
appropriate prosecutorial authority. 2564

Sec. 4177.13. If the director of commerce believes that 2565
any employer allegedly has violated a valid order issued by the 2566
director pursuant to section 4177.09 of the Revised Code, the 2567
director may commence an action in the court of common pleas in 2568
the county where the alleged violation has occurred and obtain 2569
from the court an order compelling the employer to obey the 2570
order of the director or be found guilty of contempt of court 2571
and punished in accordance with Chapter 2705. of the Revised 2572
Code. 2573

Sec. 4177.14. (A) An aggrieved party may file suit in the 2574
court of common pleas in the county where the alleged violation 2575

occurred or where any individual who is party to the action 2576
resides, without regard to exhaustion of any alternative 2577
administrative remedies provided in this chapter. An aggrieved 2578
party may bring an action on behalf of the aggrieved party or on 2579
behalf of any other individual who is similarly situated to the 2580
aggrieved party. If a court or a jury in a civil action brought 2581
pursuant to this division determines that a violation of section 2582
4177.02 of the Revised Code has occurred, the court shall award 2583
to the plaintiff all of the following: 2584

(1) The amount of any wages, salary, employment benefits, 2585
or other compensation denied or lost to an individual by reason 2586
of the violation, plus an equal amount in liquidated damages; 2587

(2) Compensatory damages and an amount up to five hundred 2588
dollars for each violation of section 4177.02 of the Revised 2589
Code; 2590

(3) In the case of a violation of division (B) or (C) of 2591
section 4177.02 of the Revised Code, all legal or equitable 2592
relief that the court determines appropriate; 2593

(4) Attorney's fees and costs. 2594

(B) An aggrieved party shall bring an action under 2595
division (A) of this section not later than three years after 2596
the last day the aggrieved individual or individual for whom the 2597
aggrieved party is bringing the action performed services for an 2598
employer who has allegedly violated section 4177.02 of the 2599
Revised Code. The three-year period specified in this division 2600
is tolled if the employer has deterred the ability of an 2601
individual to bring an action under this section or to file a 2602
complaint under section 4177.07 of the Revised Code. 2603

(C) If the director of commerce has determined under 2604

section 4177.09 of the Revised Code that an employer is subject 2605
to a civil penalty under section 4177.10 or 4177.11 of the 2606
Revised Code for a violation of section 4177.02 of the Revised 2607
Code, an aggrieved party, within ninety days after the director 2608
issues that determination, may bring a civil action in the court 2609
of common pleas in the county where the violation occurred to 2610
enforce that penalty. If an aggrieved party elects to bring such 2611
an action, the aggrieved party shall notify the director of that 2612
election in writing. During that ninety-day period, the attorney 2613
general shall not bring an action to enforce that penalty. After 2614
the ninety-day period expires, only the attorney general, on 2615
behalf of the director and in accordance with this chapter, may 2616
bring an action to collect the civil penalty. In any civil 2617
action brought by an aggrieved party pursuant to this division, 2618
the court shall award the aggrieved party ten per cent of the 2619
amount of the penalty owed by the employer, and the remaining 2620
amount recovered shall be awarded to the director. 2621

Sec. 4177.15. (A) The director of commerce shall create a 2622
summary of the requirements of this chapter in English and 2623
Spanish and shall post that summary on the official web site 2624
maintained by the department of commerce and on the bulletin 2625
boards located in each of the offices of the department. 2626

(B) If an employer engages an individual to perform 2627
services and that individual is not considered an employee, that 2628
employer shall post and keep posted, in a conspicuous place on 2629
each job site where that individual performs services and in 2630
each of the employer's offices, the notice prepared by the 2631
director pursuant to division (A) of this section. The director 2632
shall furnish copies of the notice without charge to an employer 2633
upon request. 2634

Sec. 4177.16. The director of commerce shall create a list 2635
of employers who have committed multiple violations of section 2636
4177.02 of the Revised Code. The director shall add an 2637
employer's name to the list if the director assesses against the 2638
employer the civil penalty described in division (B) of section 2639
4177.10 of the Revised Code. The list shall include the name of 2640
the employer and the date that the employer committed the 2641
employer's most recent violation. The director shall notify an 2642
employer that the employer will be added to this list within 2643
five days after the director determines that the employer will 2644
be added to the list. The director shall publish the list on the 2645
web site maintained by the department of commerce. No state 2646
agency shall enter into a contract with an employer included in 2647
that list for a period of four years after the date of the 2648
employer's most recent violation. The director shall remove an 2649
employer's name and information from the list upon expiration of 2650
the time period of the employer's debarment. 2651

Sec. 4177.17. The director of commerce, the director of 2652
job and family services, the tax commissioner, and the 2653
administrator of workers' compensation shall share information 2654
concerning any suspected misclassification by an employer or 2655
entity of one or more of the employer's employees as independent 2656
contractors in violation of section 4177.02 of the Revised Code. 2657
Upon determining that an employer has misclassified an employee 2658
as an independent contractor in violation of division (A) of 2659
that section, the director of commerce shall notify the director 2660
of job and family services, the tax commissioner, and the 2661
administrator, each of whom shall determine whether the 2662
employer's violation of section 4177.02 of the Revised Code 2663
results in the employer not complying with the requirements of 2664
Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the 2665

Revised Code, as applicable. The director of commerce shall 2666
determine whether the employer's violation of section 4177.02 of 2667
the Revised Code results in the employer not complying with the 2668
requirements of sections 4111.02, 4111.14, 4113.15, or 4115.03 2669
to 4115.21 of the Revised Code. The determination made by the 2670
director of commerce that an employer has misclassified an 2671
employee as an independent contractor is binding on the director 2672
of job and family services, the tax commissioner, and the 2673
administrator unless the individual is otherwise not considered 2674
an employee under the applicable law. Notwithstanding any 2675
provision of this section to the contrary, nothing in this 2676
chapter shall be construed to limit or otherwise constrain the 2677
duties and powers of the administrator under Chapters 4121., 2678
4123., 4127., and 4131. of the Revised Code, the director of job 2679
and family services under Chapter 4141. of the Revised Code, or 2680
the tax commissioner under Chapter 5747. of the Revised Code. 2681

Sec. 4177.18. There is hereby created in the state 2682
treasury the employee classification fund. The director of 2683
commerce shall deposit all moneys the director receives under 2684
this chapter, including civil penalties, into the fund. The 2685
director shall use the fund for the administration, 2686
investigation, and other expenses incurred in carrying out the 2687
director's powers and duties under this chapter. If, at the end 2688
of a fiscal year, the director determines that excess moneys 2689
exist in the fund, the director shall coordinate with the 2690
director of budget and management to transfer the excess funds 2691
to the division of administration fund created under section 2692
121.08 of the Revised Code. 2693

Sec. 4177.99. (A) An employer or person who knowingly 2694
violates division (A), (B), (C), (E), or (F) of section 4177.02 2695
of the Revised Code, for the first offense, is guilty of a 2696

misdemeanor of the fourth degree, and for any subsequent 2697
violation of division (A), (B), (C), (E), or (F) of section 2698
4177.02 of the Revised Code committed within a five-year period 2699
beginning on the date the employer or person previously was 2700
convicted of or pleaded guilty to the first violation, the 2701
employer or entity is guilty of a felony of the fifth degree. 2702

(B) Whoever knowingly violates division (D) of section 2703
4177.02 of the Revised Code is guilty of a misdemeanor of the 2704
fourth degree. 2705

Sec. 5747.01. Except as otherwise expressly provided or 2706
clearly appearing from the context, any term used in this 2707
chapter that is not otherwise defined in this section has the 2708
same meaning as when used in a comparable context in the laws of 2709
the United States relating to federal income taxes or if not 2710
used in a comparable context in those laws, has the same meaning 2711
as in section 5733.40 of the Revised Code. Any reference in this 2712
chapter to the Internal Revenue Code includes other laws of the 2713
United States relating to federal income taxes. 2714

As used in this chapter: 2715

(A) "Adjusted gross income" or "Ohio adjusted gross 2716
income" means federal adjusted gross income, as defined and used 2717
in the Internal Revenue Code, adjusted as provided in this 2718
section: 2719

(1) Add interest or dividends on obligations or securities 2720
of any state or of any political subdivision or authority of any 2721
state, other than this state and its subdivisions and 2722
authorities. 2723

(2) Add interest or dividends on obligations of any 2724
authority, commission, instrumentality, territory, or possession 2725

of the United States to the extent that the interest or 2726
dividends are exempt from federal income taxes but not from 2727
state income taxes. 2728

(3) Deduct interest or dividends on obligations of the 2729
United States and its territories and possessions or of any 2730
authority, commission, or instrumentality of the United States 2731
to the extent that the interest or dividends are included in 2732
federal adjusted gross income but exempt from state income taxes 2733
under the laws of the United States. 2734

(4) Deduct disability and survivor's benefits to the 2735
extent included in federal adjusted gross income. 2736

(5) Deduct benefits under Title II of the Social Security 2737
Act and tier 1 railroad retirement benefits to the extent 2738
included in federal adjusted gross income under section 86 of 2739
the Internal Revenue Code. 2740

(6) In the case of a taxpayer who is a beneficiary of a 2741
trust that makes an accumulation distribution as defined in 2742
section 665 of the Internal Revenue Code, add, for the 2743
beneficiary's taxable years beginning before 2002, the portion, 2744
if any, of such distribution that does not exceed the 2745
undistributed net income of the trust for the three taxable 2746
years preceding the taxable year in which the distribution is 2747
made to the extent that the portion was not included in the 2748
trust's taxable income for any of the trust's taxable years 2749
beginning in 2002 or thereafter. "Undistributed net income of a 2750
trust" means the taxable income of the trust increased by (a) (i) 2751
the additions to adjusted gross income required under division 2752
(A) of this section and (ii) the personal exemptions allowed to 2753
the trust pursuant to section 642(b) of the Internal Revenue 2754
Code, and decreased by (b) (i) the deductions to adjusted gross 2755

income required under division (A) of this section, (ii) the 2756
amount of federal income taxes attributable to such income, and 2757
(iii) the amount of taxable income that has been included in the 2758
adjusted gross income of a beneficiary by reason of a prior 2759
accumulation distribution. Any undistributed net income included 2760
in the adjusted gross income of a beneficiary shall reduce the 2761
undistributed net income of the trust commencing with the 2762
earliest years of the accumulation period. 2763

(7) Deduct the amount of wages and salaries, if any, not 2764
otherwise allowable as a deduction but that would have been 2765
allowable as a deduction in computing federal adjusted gross 2766
income for the taxable year, had the targeted jobs credit 2767
allowed and determined under sections 38, 51, and 52 of the 2768
Internal Revenue Code not been in effect. 2769

(8) Deduct any interest or interest equivalent on public 2770
obligations and purchase obligations to the extent that the 2771
interest or interest equivalent is included in federal adjusted 2772
gross income. 2773

(9) Add any loss or deduct any gain resulting from the 2774
sale, exchange, or other disposition of public obligations to 2775
the extent that the loss has been deducted or the gain has been 2776
included in computing federal adjusted gross income. 2777

(10) Deduct or add amounts, as provided under section 2778
5747.70 of the Revised Code, related to contributions to 2779
variable college savings program accounts made or tuition units 2780
purchased pursuant to Chapter 3334. of the Revised Code. 2781

(11) (a) Deduct, to the extent not otherwise allowable as a 2782
deduction or exclusion in computing federal or Ohio adjusted 2783
gross income for the taxable year, the amount the taxpayer paid 2784

during the taxable year for medical care insurance and qualified 2785
long-term care insurance for the taxpayer, the taxpayer's 2786
spouse, and dependents. No deduction for medical care insurance 2787
under division (A) (11) of this section shall be allowed either 2788
to any taxpayer who is eligible to participate in any subsidized 2789
health plan maintained by any employer of the taxpayer or of the 2790
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2791
application would be entitled to, benefits under part A of Title 2792
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 2793
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 2794
of this section, "subsidized health plan" means a health plan 2795
for which the employer pays any portion of the plan's cost. The 2796
deduction allowed under division (A) (11) (a) of this section 2797
shall be the net of any related premium refunds, related premium 2798
reimbursements, or related insurance premium dividends received 2799
during the taxable year. 2800

(b) Deduct, to the extent not otherwise deducted or 2801
excluded in computing federal or Ohio adjusted gross income 2802
during the taxable year, the amount the taxpayer paid during the 2803
taxable year, not compensated for by any insurance or otherwise, 2804
for medical care of the taxpayer, the taxpayer's spouse, and 2805
dependents, to the extent the expenses exceed seven and one-half 2806
per cent of the taxpayer's federal adjusted gross income. 2807

(c) Deduct, to the extent not otherwise deducted or 2808
excluded in computing federal or Ohio adjusted gross income, any 2809
amount included in federal adjusted gross income under section 2810
105 or not excluded under section 106 of the Internal Revenue 2811
Code solely because it relates to an accident and health plan 2812
for a person who otherwise would be a "qualifying relative" and 2813
thus a "dependent" under section 152 of the Internal Revenue 2814
Code but for the fact that the person fails to meet the income 2815

and support limitations under section 152(d)(1)(B) and (C) of 2816
the Internal Revenue Code. 2817

(d) For purposes of division (A)(11) of this section, 2818
"medical care" has the meaning given in section 213 of the 2819
Internal Revenue Code, subject to the special rules, 2820
limitations, and exclusions set forth therein, and "qualified 2821
long-term care" has the same meaning given in section 7702B(c) 2822
of the Internal Revenue Code. Solely for purposes of divisions 2823
(A)(11)(a) and (c) of this section, "dependent" includes a 2824
person who otherwise would be a "qualifying relative" and thus a 2825
"dependent" under section 152 of the Internal Revenue Code but 2826
for the fact that the person fails to meet the income and 2827
support limitations under section 152(d)(1)(B) and (C) of the 2828
Internal Revenue Code. 2829

(12)(a) Deduct any amount included in federal adjusted 2830
gross income solely because the amount represents a 2831
reimbursement or refund of expenses that in any year the 2832
taxpayer had deducted as an itemized deduction pursuant to 2833
section 63 of the Internal Revenue Code and applicable United 2834
States department of the treasury regulations. The deduction 2835
otherwise allowed under division (A)(12)(a) of this section 2836
shall be reduced to the extent the reimbursement is attributable 2837
to an amount the taxpayer deducted under this section in any 2838
taxable year. 2839

(b) Add any amount not otherwise included in Ohio adjusted 2840
gross income for any taxable year to the extent that the amount 2841
is attributable to the recovery during the taxable year of any 2842
amount deducted or excluded in computing federal or Ohio 2843
adjusted gross income in any taxable year. 2844

(13) Deduct any portion of the deduction described in 2845

section 1341(a)(2) of the Internal Revenue Code, for repaying 2846
previously reported income received under a claim of right, that 2847
meets both of the following requirements: 2848

(a) It is allowable for repayment of an item that was 2849
included in the taxpayer's adjusted gross income for a prior 2850
taxable year and did not qualify for a credit under division (A) 2851
or (B) of section 5747.05 of the Revised Code for that year; 2852

(b) It does not otherwise reduce the taxpayer's adjusted 2853
gross income for the current or any other taxable year. 2854

(14) Deduct an amount equal to the deposits made to, and 2855
net investment earnings of, a medical savings account during the 2856
taxable year, in accordance with section 3924.66 of the Revised 2857
Code. The deduction allowed by division (A)(14) of this section 2858
does not apply to medical savings account deposits and earnings 2859
otherwise deducted or excluded for the current or any other 2860
taxable year from the taxpayer's federal adjusted gross income. 2861

(15)(a) Add an amount equal to the funds withdrawn from a 2862
medical savings account during the taxable year, and the net 2863
investment earnings on those funds, when the funds withdrawn 2864
were used for any purpose other than to reimburse an account 2865
holder for, or to pay, eligible medical expenses, in accordance 2866
with section 3924.66 of the Revised Code; 2867

(b) Add the amounts distributed from a medical savings 2868
account under division (A)(2) of section 3924.68 of the Revised 2869
Code during the taxable year. 2870

(16) Add any amount claimed as a credit under section 2871
5747.059 or 5747.65 of the Revised Code to the extent that such 2872
amount satisfies either of the following: 2873

(a) The amount was deducted or excluded from the 2874

computation of the taxpayer's federal adjusted gross income as 2875
required to be reported for the taxpayer's taxable year under 2876
the Internal Revenue Code; 2877

(b) The amount resulted in a reduction of the taxpayer's 2878
federal adjusted gross income as required to be reported for any 2879
of the taxpayer's taxable years under the Internal Revenue Code. 2880

(17) Deduct the amount contributed by the taxpayer to an 2881
individual development account program established by a county 2882
department of job and family services pursuant to sections 2883
329.11 to 329.14 of the Revised Code for the purpose of matching 2884
funds deposited by program participants. On request of the tax 2885
commissioner, the taxpayer shall provide any information that, 2886
in the tax commissioner's opinion, is necessary to establish the 2887
amount deducted under division (A) (17) of this section. 2888

(18) Beginning in taxable year 2001 but not for any 2889
taxable year beginning after December 31, 2005, if the taxpayer 2890
is married and files a joint return and the combined federal 2891
adjusted gross income of the taxpayer and the taxpayer's spouse 2892
for the taxable year does not exceed one hundred thousand 2893
dollars, or if the taxpayer is single and has a federal adjusted 2894
gross income for the taxable year not exceeding fifty thousand 2895
dollars, deduct amounts paid during the taxable year for 2896
qualified tuition and fees paid to an eligible institution for 2897
the taxpayer, the taxpayer's spouse, or any dependent of the 2898
taxpayer, who is a resident of this state and is enrolled in or 2899
attending a program that culminates in a degree or diploma at an 2900
eligible institution. The deduction may be claimed only to the 2901
extent that qualified tuition and fees are not otherwise 2902
deducted or excluded for any taxable year from federal or Ohio 2903
adjusted gross income. The deduction may not be claimed for 2904

educational expenses for which the taxpayer claims a credit 2905
under section 5747.27 of the Revised Code. 2906

(19) Add any reimbursement received during the taxable 2907
year of any amount the taxpayer deducted under division (A) (18) 2908
of this section in any previous taxable year to the extent the 2909
amount is not otherwise included in Ohio adjusted gross income. 2910

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 2911
(v) of this section, add five-sixths of the amount of 2912
depreciation expense allowed by subsection (k) of section 168 of 2913
the Internal Revenue Code, including the taxpayer's 2914
proportionate or distributive share of the amount of 2915
depreciation expense allowed by that subsection to a pass- 2916
through entity in which the taxpayer has a direct or indirect 2917
ownership interest. 2918

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2919
of this section, add five-sixths of the amount of qualifying 2920
section 179 depreciation expense, including the taxpayer's 2921
proportionate or distributive share of the amount of qualifying 2922
section 179 depreciation expense allowed to any pass-through 2923
entity in which the taxpayer has a direct or indirect ownership 2924
interest. 2925

(iii) Subject to division (A) (20) (a) (v) of this section, 2926
for taxable years beginning in 2012 or thereafter, if the 2927
increase in income taxes withheld by the taxpayer is equal to or 2928
greater than ten per cent of income taxes withheld by the 2929
taxpayer during the taxpayer's immediately preceding taxable 2930
year, "two-thirds" shall be substituted for "five-sixths" for 2931
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2932

(iv) Subject to division (A) (20) (a) (v) of this section, 2933

for taxable years beginning in 2012 or thereafter, a taxpayer is 2934
not required to add an amount under division (A) (20) of this 2935
section if the increase in income taxes withheld by the taxpayer 2936
and by any pass-through entity in which the taxpayer has a 2937
direct or indirect ownership interest is equal to or greater 2938
than the sum of (I) the amount of qualifying section 179 2939
depreciation expense and (II) the amount of depreciation expense 2940
allowed to the taxpayer by subsection (k) of section 168 of the 2941
Internal Revenue Code, and including the taxpayer's 2942
proportionate or distributive shares of such amounts allowed to 2943
any such pass-through entities. 2944

(v) If a taxpayer directly or indirectly incurs a net 2945
operating loss for the taxable year for federal income tax 2946
purposes, to the extent such loss resulted from depreciation 2947
expense allowed by subsection (k) of section 168 of the Internal 2948
Revenue Code and by qualifying section 179 depreciation expense, 2949
"the entire" shall be substituted for "five-sixths of the" for 2950
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2951

The tax commissioner, under procedures established by the 2952
commissioner, may waive the add-backs related to a pass-through 2953
entity if the taxpayer owns, directly or indirectly, less than 2954
five per cent of the pass-through entity. 2955

(b) Nothing in division (A) (20) of this section shall be 2956
construed to adjust or modify the adjusted basis of any asset. 2957

(c) To the extent the add-back required under division (A) 2958
(20) (a) of this section is attributable to property generating 2959
nonbusiness income or loss allocated under section 5747.20 of 2960
the Revised Code, the add-back shall be situated to the same 2961
location as the nonbusiness income or loss generated by the 2962
property for the purpose of determining the credit under 2963

division (A) of section 5747.05 of the Revised Code. Otherwise, 2964
the add-back shall be apportioned, subject to one or more of the 2965
four alternative methods of apportionment enumerated in section 2966
5747.21 of the Revised Code. 2967

(d) For the purposes of division (A) (20) (a) (v) of this 2968
section, net operating loss carryback and carryforward shall not 2969
include the allowance of any net operating loss deduction 2970
carryback or carryforward to the taxable year to the extent such 2971
loss resulted from depreciation allowed by section 168(k) of the 2972
Internal Revenue Code and by the qualifying section 179 2973
depreciation expense amount. 2974

(e) For the purposes of divisions (A) (20) and (21) of this 2975
section: 2976

(i) "Income taxes withheld" means the total amount 2977
withheld and remitted under sections 5747.06 and 5747.07 of the 2978
Revised Code by an employer during the employer's taxable year. 2979

(ii) "Increase in income taxes withheld" means the amount 2980
by which the amount of income taxes withheld by an employer 2981
during the employer's current taxable year exceeds the amount of 2982
income taxes withheld by that employer during the employer's 2983
immediately preceding taxable year. 2984

(iii) "Qualifying section 179 depreciation expense" means 2985
the difference between (I) the amount of depreciation expense 2986
directly or indirectly allowed to a taxpayer under section 179 2987
of the Internal Revised Code, and (II) the amount of 2988
depreciation expense directly or indirectly allowed to the 2989
taxpayer under section 179 of the Internal Revenue Code as that 2990
section existed on December 31, 2002. 2991

(21) (a) If the taxpayer was required to add an amount 2992

under division (A) (20) (a) of this section for a taxable year, 2993
deduct one of the following: 2994

(i) One-fifth of the amount so added for each of the five 2995
succeeding taxable years if the amount so added was five-sixths 2996
of qualifying section 179 depreciation expense or depreciation 2997
expense allowed by subsection (k) of section 168 of the Internal 2998
Revenue Code; 2999

(ii) One-half of the amount so added for each of the two 3000
succeeding taxable years if the amount so added was two-thirds 3001
of such depreciation expense; 3002

(iii) One-sixth of the amount so added for each of the six 3003
succeeding taxable years if the entire amount of such 3004
depreciation expense was so added. 3005

(b) If the amount deducted under division (A) (21) (a) of 3006
this section is attributable to an add-back allocated under 3007
division (A) (20) (c) of this section, the amount deducted shall 3008
be situated to the same location. Otherwise, the add-back shall 3009
be apportioned using the apportionment factors for the taxable 3010
year in which the deduction is taken, subject to one or more of 3011
the four alternative methods of apportionment enumerated in 3012
section 5747.21 of the Revised Code. 3013

(c) No deduction is available under division (A) (21) (a) of 3014
this section with regard to any depreciation allowed by section 3015
168(k) of the Internal Revenue Code and by the qualifying 3016
section 179 depreciation expense amount to the extent that such 3017
depreciation results in or increases a federal net operating 3018
loss carryback or carryforward. If no such deduction is 3019
available for a taxable year, the taxpayer may carry forward the 3020
amount not deducted in such taxable year to the next taxable 3021

year and add that amount to any deduction otherwise available 3022
under division (A) (21) (a) of this section for that next taxable 3023
year. The carryforward of amounts not so deducted shall continue 3024
until the entire addition required by division (A) (20) (a) of 3025
this section has been deducted. 3026

(d) No refund shall be allowed as a result of adjustments 3027
made by division (A) (21) of this section. 3028

(22) Deduct, to the extent not otherwise deducted or 3029
excluded in computing federal or Ohio adjusted gross income for 3030
the taxable year, the amount the taxpayer received during the 3031
taxable year as reimbursement for life insurance premiums under 3032
section 5919.31 of the Revised Code. 3033

(23) Deduct, to the extent not otherwise deducted or 3034
excluded in computing federal or Ohio adjusted gross income for 3035
the taxable year, the amount the taxpayer received during the 3036
taxable year as a death benefit paid by the adjutant general 3037
under section 5919.33 of the Revised Code. 3038

(24) Deduct, to the extent included in federal adjusted 3039
gross income and not otherwise allowable as a deduction or 3040
exclusion in computing federal or Ohio adjusted gross income for 3041
the taxable year, military pay and allowances received by the 3042
taxpayer during the taxable year for active duty service in the 3043
United States army, air force, navy, marine corps, or coast 3044
guard or reserve components thereof or the national guard. The 3045
deduction may not be claimed for military pay and allowances 3046
received by the taxpayer while the taxpayer is stationed in this 3047
state. 3048

(25) Deduct, to the extent not otherwise allowable as a 3049
deduction or exclusion in computing federal or Ohio adjusted 3050

gross income for the taxable year and not otherwise compensated 3051
for by any other source, the amount of qualified organ donation 3052
expenses incurred by the taxpayer during the taxable year, not 3053
to exceed ten thousand dollars. A taxpayer may deduct qualified 3054
organ donation expenses only once for all taxable years 3055
beginning with taxable years beginning in 2007. 3056

For the purposes of division (A) (25) of this section: 3057

(a) "Human organ" means all or any portion of a human 3058
liver, pancreas, kidney, intestine, or lung, and any portion of 3059
human bone marrow. 3060

(b) "Qualified organ donation expenses" means travel 3061
expenses, lodging expenses, and wages and salary forgone by a 3062
taxpayer in connection with the taxpayer's donation, while 3063
living, of one or more of the taxpayer's human organs to another 3064
human being. 3065

(26) Deduct, to the extent not otherwise deducted or 3066
excluded in computing federal or Ohio adjusted gross income for 3067
the taxable year, amounts received by the taxpayer as retired 3068
personnel pay for service in the uniformed services or reserve 3069
components thereof, or the national guard, or received by the 3070
surviving spouse or former spouse of such a taxpayer under the 3071
survivor benefit plan on account of such a taxpayer's death. If 3072
the taxpayer receives income on account of retirement paid under 3073
the federal civil service retirement system or federal employees 3074
retirement system, or under any successor retirement program 3075
enacted by the congress of the United States that is established 3076
and maintained for retired employees of the United States 3077
government, and such retirement income is based, in whole or in 3078
part, on credit for the taxpayer's uniformed service, the 3079
deduction allowed under this division shall include only that 3080

portion of such retirement income that is attributable to the 3081
taxpayer's uniformed service, to the extent that portion of such 3082
retirement income is otherwise included in federal adjusted 3083
gross income and is not otherwise deducted under this section. 3084
Any amount deducted under division (A) (26) of this section is 3085
not included in a taxpayer's adjusted gross income for the 3086
purposes of section 5747.055 of the Revised Code. No amount may 3087
be deducted under division (A) (26) of this section on the basis 3088
of which a credit was claimed under section 5747.055 of the 3089
Revised Code. 3090

(27) Deduct, to the extent not otherwise deducted or 3091
excluded in computing federal or Ohio adjusted gross income for 3092
the taxable year, the amount the taxpayer received during the 3093
taxable year from the military injury relief fund created in 3094
section 5902.05 of the Revised Code. 3095

(28) Deduct, to the extent not otherwise deducted or 3096
excluded in computing federal or Ohio adjusted gross income for 3097
the taxable year, the amount the taxpayer received as a veterans 3098
bonus during the taxable year from the Ohio department of 3099
veterans services as authorized by Section 2r of Article VIII, 3100
Ohio Constitution. 3101

(29) Deduct, to the extent not otherwise deducted or 3102
excluded in computing federal or Ohio adjusted gross income for 3103
the taxable year, any income derived from a transfer agreement 3104
or from the enterprise transferred under that agreement under 3105
section 4313.02 of the Revised Code. 3106

(30) Deduct, to the extent not otherwise deducted or 3107
excluded in computing federal or Ohio adjusted gross income for 3108
the taxable year, Ohio college opportunity or federal Pell grant 3109
amounts received by the taxpayer or the taxpayer's spouse or 3110

dependent pursuant to section 3333.122 of the Revised Code or 20 3111
U.S.C. 1070a, et seq., and used to pay room or board furnished 3112
by the educational institution for which the grant was awarded 3113
at the institution's facilities, including meal plans 3114
administered by the institution. For the purposes of this 3115
division, receipt of a grant includes the distribution of a 3116
grant directly to an educational institution and the crediting 3117
of the grant to the enrollee's account with the institution. 3118

(31) (a) For taxable years beginning in 2015, deduct from 3119
the portion of an individual's adjusted gross income that is 3120
business income, to the extent not otherwise deducted or 3121
excluded in computing federal or Ohio adjusted gross income for 3122
the taxable year, the lesser of the following amounts: 3123

(i) Seventy-five per cent of the individual's business 3124
income; 3125

(ii) Ninety-three thousand seven hundred fifty dollars for 3126
each spouse if spouses file separate returns under section 3127
5747.08 of the Revised Code or one hundred eighty-seven thousand 3128
five hundred dollars for all other individuals. 3129

(b) For taxable years beginning in 2016 or thereafter, 3130
deduct from the portion of an individual's adjusted gross income 3131
that is business income, to the extent not otherwise deducted or 3132
excluded in computing federal adjusted gross income for the 3133
taxable year, one hundred twenty-five thousand dollars for each 3134
spouse if spouses file separate returns under section 5747.08 of 3135
the Revised Code or two hundred fifty thousand dollars for all 3136
other individuals. 3137

(32) Deduct, as provided under section 5747.78 of the 3138
Revised Code, contributions to ABLE savings accounts made in 3139

accordance with sections 113.50 to 113.56 of the Revised Code.	3140
(B) "Business income" means income, including gain or	3141
loss, arising from transactions, activities, and sources in the	3142
regular course of a trade or business and includes income, gain,	3143
or loss from real property, tangible property, and intangible	3144
property if the acquisition, rental, management, and disposition	3145
of the property constitute integral parts of the regular course	3146
of a trade or business operation. "Business income" includes	3147
income, including gain or loss, from a partial or complete	3148
liquidation of a business, including, but not limited to, gain	3149
or loss from the sale or other disposition of goodwill.	3150
(C) "Nonbusiness income" means all income other than	3151
business income and may include, but is not limited to,	3152
compensation, rents and royalties from real or tangible personal	3153
property, capital gains, interest, dividends and distributions,	3154
patent or copyright royalties, or lottery winnings, prizes, and	3155
awards.	3156
(D) "Compensation" means any form of remuneration paid to	3157
an employee for personal services.	3158
(E) "Fiduciary" means a guardian, trustee, executor,	3159
administrator, receiver, conservator, or any other person acting	3160
in any fiduciary capacity for any individual, trust, or estate.	3161
(F) "Fiscal year" means an accounting period of twelve	3162
months ending on the last day of any month other than December.	3163
(G) "Individual" means any natural person.	3164
(H) "Internal Revenue Code" means the "Internal Revenue	3165
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	3166
(I) "Resident" means any of the following, provided that	3167

division (I) (3) of this section applies only to taxable years of	3168
a trust beginning in 2002 or thereafter:	3169
(1) An individual who is domiciled in this state, subject	3170
to section 5747.24 of the Revised Code;	3171
(2) The estate of a decedent who at the time of death was	3172
domiciled in this state. The domicile tests of section 5747.24	3173
of the Revised Code are not controlling for purposes of division	3174
(I) (2) of this section.	3175
(3) A trust that, in whole or part, resides in this state.	3176
If only part of a trust resides in this state, the trust is a	3177
resident only with respect to that part.	3178
For the purposes of division (I) (3) of this section:	3179
(a) A trust resides in this state for the trust's current	3180
taxable year to the extent, as described in division (I) (3) (d)	3181
of this section, that the trust consists directly or indirectly,	3182
in whole or in part, of assets, net of any related liabilities,	3183
that were transferred, or caused to be transferred, directly or	3184
indirectly, to the trust by any of the following:	3185
(i) A person, a court, or a governmental entity or	3186
instrumentality on account of the death of a decedent, but only	3187
if the trust is described in division (I) (3) (e) (i) or (ii) of	3188
this section;	3189
(ii) A person who was domiciled in this state for the	3190
purposes of this chapter when the person directly or indirectly	3191
transferred assets to an irrevocable trust, but only if at least	3192
one of the trust's qualifying beneficiaries is domiciled in this	3193
state for the purposes of this chapter during all or some	3194
portion of the trust's current taxable year;	3195

(iii) A person who was domiciled in this state for the 3196
purposes of this chapter when the trust document or instrument 3197
or part of the trust document or instrument became irrevocable, 3198
but only if at least one of the trust's qualifying beneficiaries 3199
is a resident domiciled in this state for the purposes of this 3200
chapter during all or some portion of the trust's current 3201
taxable year. If a trust document or instrument became 3202
irrevocable upon the death of a person who at the time of death 3203
was domiciled in this state for purposes of this chapter, that 3204
person is a person described in division (I) (3) (a) (iii) of this 3205
section. 3206

(b) A trust is irrevocable to the extent that the 3207
transferor is not considered to be the owner of the net assets 3208
of the trust under sections 671 to 678 of the Internal Revenue 3209
Code. 3210

(c) With respect to a trust other than a charitable lead 3211
trust, "qualifying beneficiary" has the same meaning as 3212
"potential current beneficiary" as defined in section 1361(e) (2) 3213
of the Internal Revenue Code, and with respect to a charitable 3214
lead trust "qualifying beneficiary" is any current, future, or 3215
contingent beneficiary, but with respect to any trust 3216
"qualifying beneficiary" excludes a person or a governmental 3217
entity or instrumentality to any of which a contribution would 3218
qualify for the charitable deduction under section 170 of the 3219
Internal Revenue Code. 3220

(d) For the purposes of division (I) (3) (a) of this 3221
section, the extent to which a trust consists directly or 3222
indirectly, in whole or in part, of assets, net of any related 3223
liabilities, that were transferred directly or indirectly, in 3224
whole or part, to the trust by any of the sources enumerated in 3225

that division shall be ascertained by multiplying the fair 3226
market value of the trust's assets, net of related liabilities, 3227
by the qualifying ratio, which shall be computed as follows: 3228

(i) The first time the trust receives assets, the 3229
numerator of the qualifying ratio is the fair market value of 3230
those assets at that time, net of any related liabilities, from 3231
sources enumerated in division (I) (3) (a) of this section. The 3232
denominator of the qualifying ratio is the fair market value of 3233
all the trust's assets at that time, net of any related 3234
liabilities. 3235

(ii) Each subsequent time the trust receives assets, a 3236
revised qualifying ratio shall be computed. The numerator of the 3237
revised qualifying ratio is the sum of (1) the fair market value 3238
of the trust's assets immediately prior to the subsequent 3239
transfer, net of any related liabilities, multiplied by the 3240
qualifying ratio last computed without regard to the subsequent 3241
transfer, and (2) the fair market value of the subsequently 3242
transferred assets at the time transferred, net of any related 3243
liabilities, from sources enumerated in division (I) (3) (a) of 3244
this section. The denominator of the revised qualifying ratio is 3245
the fair market value of all the trust's assets immediately 3246
after the subsequent transfer, net of any related liabilities. 3247

(iii) Whether a transfer to the trust is by or from any of 3248
the sources enumerated in division (I) (3) (a) of this section 3249
shall be ascertained without regard to the domicile of the 3250
trust's beneficiaries. 3251

(e) For the purposes of division (I) (3) (a) (i) of this 3252
section: 3253

(i) A trust is described in division (I) (3) (e) (i) of this 3254

section if the trust is a testamentary trust and the testator of 3255
that testamentary trust was domiciled in this state at the time 3256
of the testator's death for purposes of the taxes levied under 3257
Chapter 5731. of the Revised Code. 3258

(ii) A trust is described in division (I)(3)(e)(ii) of 3259
this section if the transfer is a qualifying transfer described 3260
in any of divisions (I)(3)(f)(i) to (vi) of this section, the 3261
trust is an irrevocable inter vivos trust, and at least one of 3262
the trust's qualifying beneficiaries is domiciled in this state 3263
for purposes of this chapter during all or some portion of the 3264
trust's current taxable year. 3265

(f) For the purposes of division (I)(3)(e)(ii) of this 3266
section, a "qualifying transfer" is a transfer of assets, net of 3267
any related liabilities, directly or indirectly to a trust, if 3268
the transfer is described in any of the following: 3269

(i) The transfer is made to a trust, created by the 3270
decedent before the decedent's death and while the decedent was 3271
domiciled in this state for the purposes of this chapter, and, 3272
prior to the death of the decedent, the trust became irrevocable 3273
while the decedent was domiciled in this state for the purposes 3274
of this chapter. 3275

(ii) The transfer is made to a trust to which the 3276
decedent, prior to the decedent's death, had directly or 3277
indirectly transferred assets, net of any related liabilities, 3278
while the decedent was domiciled in this state for the purposes 3279
of this chapter, and prior to the death of the decedent the 3280
trust became irrevocable while the decedent was domiciled in 3281
this state for the purposes of this chapter. 3282

(iii) The transfer is made on account of a contractual 3283

relationship existing directly or indirectly between the 3284
transferor and either the decedent or the estate of the decedent 3285
at any time prior to the date of the decedent's death, and the 3286
decedent was domiciled in this state at the time of death for 3287
purposes of the taxes levied under Chapter 5731. of the Revised 3288
Code. 3289

(iv) The transfer is made to a trust on account of a 3290
contractual relationship existing directly or indirectly between 3291
the transferor and another person who at the time of the 3292
decedent's death was domiciled in this state for purposes of 3293
this chapter. 3294

(v) The transfer is made to a trust on account of the will 3295
of a testator who was domiciled in this state at the time of the 3296
testator's death for purposes of the taxes levied under Chapter 3297
5731. of the Revised Code. 3298

(vi) The transfer is made to a trust created by or caused 3299
to be created by a court, and the trust was directly or 3300
indirectly created in connection with or as a result of the 3301
death of an individual who, for purposes of the taxes levied 3302
under Chapter 5731. of the Revised Code, was domiciled in this 3303
state at the time of the individual's death. 3304

(g) The tax commissioner may adopt rules to ascertain the 3305
part of a trust residing in this state. 3306

(J) "Nonresident" means an individual or estate that is 3307
not a resident. An individual who is a resident for only part of 3308
a taxable year is a nonresident for the remainder of that 3309
taxable year. 3310

(K) "Pass-through entity" has the same meaning as in 3311
section 5733.04 of the Revised Code. 3312

(L) "Return" means the notifications and reports required 3313
to be filed pursuant to this chapter for the purpose of 3314
reporting the tax due and includes declarations of estimated tax 3315
when so required. 3316

(M) "Taxable year" means the calendar year or the 3317
taxpayer's fiscal year ending during the calendar year, or 3318
fractional part thereof, upon which the adjusted gross income is 3319
calculated pursuant to this chapter. 3320

(N) "Taxpayer" means any person subject to the tax imposed 3321
by section 5747.02 of the Revised Code or any pass-through 3322
entity that makes the election under division (D) of section 3323
5747.08 of the Revised Code. 3324

(O) "Dependents" means dependents as defined in the 3325
Internal Revenue Code and as claimed in the taxpayer's federal 3326
income tax return for the taxable year or which the taxpayer 3327
would have been permitted to claim had the taxpayer filed a 3328
federal income tax return. 3329

(P) "Principal county of employment" means, in the case of 3330
a nonresident, the county within the state in which a taxpayer 3331
performs services for an employer or, if those services are 3332
performed in more than one county, the county in which the major 3333
portion of the services are performed. 3334

(Q) As used in sections 5747.50 to 5747.55 of the Revised 3335
Code: 3336

(1) "Subdivision" means any county, municipal corporation, 3337
park district, or township. 3338

(2) "Essential local government purposes" includes all 3339
functions that any subdivision is required by general law to 3340
exercise, including like functions that are exercised under a 3341

charter adopted pursuant to the Ohio Constitution. 3342

(R) "Overpayment" means any amount already paid that 3343
exceeds the figure determined to be the correct amount of the 3344
tax. 3345

(S) "Taxable income" or "Ohio taxable income" applies only 3346
to estates and trusts, and means federal taxable income, as 3347
defined and used in the Internal Revenue Code, adjusted as 3348
follows: 3349

(1) Add interest or dividends, net of ordinary, necessary, 3350
and reasonable expenses not deducted in computing federal 3351
taxable income, on obligations or securities of any state or of 3352
any political subdivision or authority of any state, other than 3353
this state and its subdivisions and authorities, but only to the 3354
extent that such net amount is not otherwise includible in Ohio 3355
taxable income and is described in either division (S) (1) (a) or 3356
(b) of this section: 3357

(a) The net amount is not attributable to the S portion of 3358
an electing small business trust and has not been distributed to 3359
beneficiaries for the taxable year; 3360

(b) The net amount is attributable to the S portion of an 3361
electing small business trust for the taxable year. 3362

(2) Add interest or dividends, net of ordinary, necessary, 3363
and reasonable expenses not deducted in computing federal 3364
taxable income, on obligations of any authority, commission, 3365
instrumentality, territory, or possession of the United States 3366
to the extent that the interest or dividends are exempt from 3367
federal income taxes but not from state income taxes, but only 3368
to the extent that such net amount is not otherwise includible 3369
in Ohio taxable income and is described in either division (S) 3370

- (1) (a) or (b) of this section; 3371
- (3) Add the amount of personal exemption allowed to the 3372
estate pursuant to section 642(b) of the Internal Revenue Code; 3373
- (4) Deduct interest or dividends, net of related expenses 3374
deducted in computing federal taxable income, on obligations of 3375
the United States and its territories and possessions or of any 3376
authority, commission, or instrumentality of the United States 3377
to the extent that the interest or dividends are exempt from 3378
state taxes under the laws of the United States, but only to the 3379
extent that such amount is included in federal taxable income 3380
and is described in either division (S) (1) (a) or (b) of this 3381
section; 3382
- (5) Deduct the amount of wages and salaries, if any, not 3383
otherwise allowable as a deduction but that would have been 3384
allowable as a deduction in computing federal taxable income for 3385
the taxable year, had the targeted jobs credit allowed under 3386
sections 38, 51, and 52 of the Internal Revenue Code not been in 3387
effect, but only to the extent such amount relates either to 3388
income included in federal taxable income for the taxable year 3389
or to income of the S portion of an electing small business 3390
trust for the taxable year; 3391
- (6) Deduct any interest or interest equivalent, net of 3392
related expenses deducted in computing federal taxable income, 3393
on public obligations and purchase obligations, but only to the 3394
extent that such net amount relates either to income included in 3395
federal taxable income for the taxable year or to income of the 3396
S portion of an electing small business trust for the taxable 3397
year; 3398
- (7) Add any loss or deduct any gain resulting from sale, 3399

exchange, or other disposition of public obligations to the 3400
extent that such loss has been deducted or such gain has been 3401
included in computing either federal taxable income or income of 3402
the S portion of an electing small business trust for the 3403
taxable year; 3404

(8) Except in the case of the final return of an estate, 3405
add any amount deducted by the taxpayer on both its Ohio estate 3406
tax return pursuant to section 5731.14 of the Revised Code, and 3407
on its federal income tax return in determining federal taxable 3408
income; 3409

(9) (a) Deduct any amount included in federal taxable 3410
income solely because the amount represents a reimbursement or 3411
refund of expenses that in a previous year the decedent had 3412
deducted as an itemized deduction pursuant to section 63 of the 3413
Internal Revenue Code and applicable treasury regulations. The 3414
deduction otherwise allowed under division (S) (9) (a) of this 3415
section shall be reduced to the extent the reimbursement is 3416
attributable to an amount the taxpayer or decedent deducted 3417
under this section in any taxable year. 3418

(b) Add any amount not otherwise included in Ohio taxable 3419
income for any taxable year to the extent that the amount is 3420
attributable to the recovery during the taxable year of any 3421
amount deducted or excluded in computing federal or Ohio taxable 3422
income in any taxable year, but only to the extent such amount 3423
has not been distributed to beneficiaries for the taxable year. 3424

(10) Deduct any portion of the deduction described in 3425
section 1341(a) (2) of the Internal Revenue Code, for repaying 3426
previously reported income received under a claim of right, that 3427
meets both of the following requirements: 3428

(a) It is allowable for repayment of an item that was 3429
included in the taxpayer's taxable income or the decedent's 3430
adjusted gross income for a prior taxable year and did not 3431
qualify for a credit under division (A) or (B) of section 3432
5747.05 of the Revised Code for that year. 3433

(b) It does not otherwise reduce the taxpayer's taxable 3434
income or the decedent's adjusted gross income for the current 3435
or any other taxable year. 3436

(11) Add any amount claimed as a credit under section 3437
5747.059 or 5747.65 of the Revised Code to the extent that the 3438
amount satisfies either of the following: 3439

(a) The amount was deducted or excluded from the 3440
computation of the taxpayer's federal taxable income as required 3441
to be reported for the taxpayer's taxable year under the 3442
Internal Revenue Code; 3443

(b) The amount resulted in a reduction in the taxpayer's 3444
federal taxable income as required to be reported for any of the 3445
taxpayer's taxable years under the Internal Revenue Code. 3446

(12) Deduct any amount, net of related expenses deducted 3447
in computing federal taxable income, that a trust is required to 3448
report as farm income on its federal income tax return, but only 3449
if the assets of the trust include at least ten acres of land 3450
satisfying the definition of "land devoted exclusively to 3451
agricultural use" under section 5713.30 of the Revised Code, 3452
regardless of whether the land is valued for tax purposes as 3453
such land under sections 5713.30 to 5713.38 of the Revised Code. 3454
If the trust is a pass-through entity investor, section 5747.231 3455
of the Revised Code applies in ascertaining if the trust is 3456
eligible to claim the deduction provided by division (S) (12) of 3457

this section in connection with the pass-through entity's farm income. 3458
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Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S) (12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S) (12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter. 3460
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(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income. 3466
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(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A) (20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S) (14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter. 3469
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(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code. 3476
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(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) (7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code. 3479
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(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state. 3483
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(W) "Pass-through entity investor" means any person who, 3486

during any portion of a taxable year of a pass-through entity, 3487
is a partner, member, shareholder, or equity investor in that 3488
pass-through entity. 3489

(X) "Banking day" has the same meaning as in section 3490
1304.01 of the Revised Code. 3491

(Y) "Month" means a calendar month. 3492

(Z) "Quarter" means the first three months, the second 3493
three months, the third three months, or the last three months 3494
of the taxpayer's taxable year. 3495

(AA) (1) "Eligible institution" means a state university or 3496
state institution of higher education as defined in section 3497
3345.011 of the Revised Code, or a private, nonprofit college, 3498
university, or other post-secondary institution located in this 3499
state that possesses a certificate of authorization issued by 3500
the chancellor of higher education pursuant to Chapter 1713. of 3501
the Revised Code or a certificate of registration issued by the 3502
state board of career colleges and schools under Chapter 3332. 3503
of the Revised Code. 3504

(2) "Qualified tuition and fees" means tuition and fees 3505
imposed by an eligible institution as a condition of enrollment 3506
or attendance, not exceeding two thousand five hundred dollars 3507
in each of the individual's first two years of post-secondary 3508
education. If the individual is a part-time student, "qualified 3509
tuition and fees" includes tuition and fees paid for the 3510
academic equivalent of the first two years of post-secondary 3511
education during a maximum of five taxable years, not exceeding 3512
a total of five thousand dollars. "Qualified tuition and fees" 3513
does not include: 3514

(a) Expenses for any course or activity involving sports, 3515

games, or hobbies unless the course or activity is part of the individual's degree or diploma program; 3516
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(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction; 3518
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(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program. 3521
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(BB) (1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any. 3524
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(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied: 3528
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(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust. 3534
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(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss. 3539
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Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be. 3542
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(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.

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

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

(i) The trust's modified business income;

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

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

with respect to more than one qualifying investee, the amount 3574
described in division (BB) (4) (b) of this section shall equal the 3575
sum of the products so computed for each such qualifying 3576
investee. 3577

(c) (i) With respect to a trust or portion of a trust that 3578
is a resident as ascertained in accordance with division (I) (3) 3579
(d) of this section, its modified nonbusiness income. 3580

(ii) With respect to a trust or portion of a trust that is 3581
not a resident as ascertained in accordance with division (I) (3) 3582
(d) of this section, the amount of its modified nonbusiness 3583
income satisfying the descriptions in divisions (B) (2) to (5) of 3584
section 5747.20 of the Revised Code, except as otherwise 3585
provided in division (BB) (4) (c) (ii) of this section. With 3586
respect to a trust or portion of a trust that is not a resident 3587
as ascertained in accordance with division (I) (3) (d) of this 3588
section, the trust's portion of modified nonbusiness income 3589
recognized from the sale, exchange, or other disposition of a 3590
debt interest in or equity interest in a section 5747.212 3591
entity, as defined in section 5747.212 of the Revised Code, 3592
without regard to division (A) of that section, shall not be 3593
allocated to this state in accordance with section 5747.20 of 3594
the Revised Code but shall be apportioned to this state in 3595
accordance with division (B) of section 5747.212 of the Revised 3596
Code without regard to division (A) of that section. 3597

If the allocation and apportionment of a trust's income 3598
under divisions (BB) (4) (a) and (c) of this section do not fairly 3599
represent the modified Ohio taxable income of the trust in this 3600
state, the alternative methods described in division (C) of 3601
section 5747.21 of the Revised Code may be applied in the manner 3602
and to the same extent provided in that section. 3603

(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 taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:

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

(ii) Such gain or loss constitutes nonbusiness income.

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

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

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

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

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

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

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

(ii) A subsidiary that is wholly owned by any corporation 3693
that has made an election under subchapter S, chapter one, 3694
subtitle A of the Internal Revenue Code for its taxable year 3695
ending within, or on the last day of, the investor's taxable 3696
year. 3697

(2) For the purposes of this chapter, unless expressly 3698
stated otherwise, no qualifying person indirectly owns any asset 3699
directly or indirectly owned by any qualifying corporation. 3700

(FF) For purposes of this chapter and Chapter 5751. of the 3701
Revised Code: 3702

(1) "Trust" does not include a qualified pre-income tax 3703
trust. 3704

(2) A "qualified pre-income tax trust" is any pre-income 3705
tax trust that makes a qualifying pre-income tax trust election 3706
as described in division (FF)(3) of this section. 3707

(3) A "qualifying pre-income tax trust election" is an 3708
election by a pre-income tax trust to subject to the tax imposed 3709
by section 5751.02 of the Revised Code the pre-income tax trust 3710
and all pass-through entities of which the trust owns or 3711
controls, directly, indirectly, or constructively through 3712
related interests, five per cent or more of the ownership or 3713
equity interests. The trustee shall notify the tax commissioner 3714
in writing of the election on or before April 15, 2006. The 3715
election, if timely made, shall be effective on and after 3716
January 1, 2006, and shall apply for all tax periods and tax 3717
years until revoked by the trustee of the trust. 3718

(4) A "pre-income tax trust" is a trust that satisfies all 3719
of the following requirements: 3720

(a) The document or instrument creating the trust was 3721

executed by the grantor before January 1, 1972; 3722

(b) The trust became irrevocable upon the creation of the 3723
trust; and 3724

(c) The grantor was domiciled in this state at the time 3725
the trust was created. 3726

(GG) "Uniformed services" has the same meaning as in 10 3727
U.S.C. 101. 3728

(HH) "Taxable business income" means the amount by which 3729
an individual's business income that is included in federal 3730
adjusted gross income exceeds the amount of business income the 3731
individual is authorized to deduct under division (A) (31) of 3732
this section for the taxable year. 3733

(II) "Employee" has the same meaning as in section 4177.01 3734
of the Revised Code, unless the internal revenue service has 3735
accepted the classification of an individual as an independent 3736
contractor made by the individual and the individual's payer. 3737

3738

Section 2. That existing sections 119.14, 121.083, 3739
1349.61, 4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 4113.15, 3740
4115.03, 4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 of the 3741
Revised Code are hereby repealed. 3742

Section 3. Section 4111.03 of the Revised Code is 3743
presented in this act as a composite of the section as amended 3744
by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General 3745
Assembly. The General Assembly, applying the principle stated in 3746
division (B) of section 1.52 of the Revised Code that amendments 3747
are to be harmonized if reasonably capable of simultaneous 3748
operation, finds that the composite is the resulting version of 3749

the section in effect prior to the effective date of the section	3750
as presented in this act.	3751