

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 38**

**Senator Yuko**

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

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**A BILL**

To amend sections 119.14, 121.083, 1349.61, 1  
4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 2  
4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 3  
4141.01, and 5747.01 and to enact sections 4  
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 collection of any tax, debt, revenue, or receipt;

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

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

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

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

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

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

required to engage in a regulated activity, or otherwise comply 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" <del>and "employee" have</del> <u>has</u> the same <del>meanings</del> <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
<b>Sec. 4111.02.</b> <del>Every</del> <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  
Constitution, individuals employed in or about the property of  
an employer or an individual's residence on a casual basis are  
not included within the coverage of Section 34a of Article II,  
Ohio Constitution. As used in division (D) of this section:

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

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

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

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



(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) <del>"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</del> <u>has the same meaning as in section 4177.01 of the Revised Code.</u>	921 922 923 924 925
(5) "Frequenter" means every person, other than an employee, who may go in or be in a place of employment under circumstances which render the person other than a trespasser.	926 927 928
(6) "Deputy" means any person employed by the industrial commission or the bureau of workers' compensation, designated as a deputy by the commission or the administrator of workers' compensation, who possesses special, technical, scientific, managerial, professional, or personal abilities or qualities in matters within the jurisdiction of the commission or the bureau, and who may be engaged in the performance of duties under the direction of the commission or the bureau calling for the exercise of such abilities or qualities.	929 930 931 932 933 934 935 936 937
(7) "Order" means any decision, rule, regulation, direction, requirement, or standard, or any other determination or decision that the bureau is empowered to and does make.	938 939 940
(8) "General order" means an order that applies generally throughout the state to all persons, employments, or places of employment, or all persons, employments, or places of employment of a class under the jurisdiction of the bureau. All other orders shall be considered special orders.	941 942 943 944 945
(9) "Local order" means any ordinance, order, rule, or determination of the legislative authority of any municipal corporation, or any trustees, or board or officers of any	946 947 948

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~~

<del>regular functioning of the other contracting party;</del>	1036
<del>(iv) The person is required to perform the work personally;</del>	1037
<del>(v) The person is hired, supervised, or paid by the other contracting party;</del>	1039
<del>(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;</del>	1041
<del>(vii) The person's hours of work are established by the other contracting party;</del>	1044
<del>(viii) The person is required to devote full time to the business of the other contracting party;</del>	1046
<del>(ix) The person is required to perform the work on the premises of the other contracting party;</del>	1048
<del>(x) The person is required to follow the order of work set by the other contracting party;</del>	1050
<del>(xi) The person is required to make oral or written reports of progress to the other contracting party;</del>	1052
<del>(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;</del>	1054
<del>(xiii) The person's expenses are paid for by the other contracting party;</del>	1056
<del>(xiv) The person's tools and materials are furnished by the other contracting party;</del>	1058
<del>(xv) The person is provided with the facilities used to perform services;</del>	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

<del>into the regular functioning of the employer;</del>	1560
<del>(iv) The employer requires that services be provided by a particular individual;</del>	1561
	1562
<del>(v) The employer hires, supervises, or pays the wages of the individual performing services;</del>	1563
	1564
<del>(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;</del>	1565
	1566
	1567
<del>(vii) The employer requires the individual to perform services during established hours;</del>	1568
	1569
<del>(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;</del>	1570
	1571
	1572
<del>(ix) The employer requires the individual to perform services on the employer's premises;</del>	1573
	1574
<del>(x) The employer requires the individual performing services to follow the order of work established by the employer;</del>	1575
	1576
	1577
<del>(xi) The employer requires the individual performing services to make oral or written reports of progress;</del>	1578
	1579
<del>(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;</del>	1580
	1581
<del>(xiii) The employer pays expenses for the individual performing services;</del>	1582
	1583
<del>(xiv) The employer furnishes the tools and materials for use by the individual to perform services;</del>	1584
	1585
<del>(xv) The individual performing services has not invested</del>	1586

~~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  
1589  
1590

~~(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 Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c) (7) and is not excluded under division (B) (3) of this section. 1601  
1602  
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(3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services are not required to be included under division (B) (2) (j) of this section: 1610  
1611  
1612  
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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 2055  
Code is valid if the individual satisfies the criteria described 2056  
in division (R) (1) of this section, and if the reason for the 2057  
individual's separation from employment is not disqualifying 2058  
pursuant to division (D) (2) of section 4141.29 or section 2059  
4141.291 of the Revised Code. A disqualification imposed 2060  
pursuant to division (D) (2) of section 4141.29 or section 2061  
4141.291 of the Revised Code must be removed as provided in 2062  
those sections as a requirement of establishing a valid 2063  
application for benefit years beginning on and after December 2064  
26, 2004. 2065

(3) The statewide average weekly wage shall be calculated 2066  
by the director once a year based on the twelve-month period 2067  
ending the thirtieth day of June, as set forth in division (B) 2068  
(3) of section 4141.30 of the Revised Code, rounded down to the 2069  
nearest dollar. Increases or decreases in the amount of 2070  
remuneration required to have been earned or paid in order for 2071  
individuals to have filed valid applications shall become 2072  
effective on Sunday of the calendar week in which the first day 2073  
of January occurs that follows the twelve-month period ending 2074  
the thirtieth day of June upon which the calculation of the 2075  
statewide average weekly wage was based. 2076

(4) As used in this division, an individual is 2077  
"unemployed" if, with respect to the calendar week in which such 2078  
application is filed, the individual is "partially unemployed" 2079  
or "totally unemployed" as defined in this section or if, prior 2080  
to filing the application, the individual was separated from the 2081  
individual's most recent work for any reason which terminated 2082  
the individual's employee-employer relationship, or was laid off 2083  
indefinitely or for a definite period of seven or more days. 2084



(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 estate pursuant to section 642(b) of the Internal Revenue Code;	3372 3373
(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S) (1) (a) or (b) of this section;	3374 3375 3376 3377 3378 3379 3380 3381 3382
(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;	3383 3384 3385 3386 3387 3388 3389 3390 3391
(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;	3392 3393 3394 3395 3396 3397 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  
3459

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 3517
(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 3519 3520
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.	3521 3522 3523
(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 3525 3526 3527
(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 3529 3530 3531 3532 3533
(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 3535 3536 3537 3538
(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 3540 3541
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 3543 3544

(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