

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 568

Representatives Phillips, Rogers

**Cosponsors: Representatives Driehaus, Howse, Lepore-Hagan, Ramos, Smith, K.,
Strahorn**

A BILL

To amend sections 121.083, 1349.61, 4111.02, 1
4111.14, 4113.15, 4115.03, 4121.01, 4123.01, 2
4123.026, 4141.01, and 5747.01 and to enact 3
sections 4113.83, 4113.84, 4113.85, 4113.86, 4
4113.87, 4113.88, 4175.01, 4175.02, 4175.03, 5
4175.04, 4175.05, 4175.06, 4175.07, 4175.08, 6
4175.09, 4175.091, 4175.10, 4175.11, 4175.12, 7
4175.13, 4175.14, 4175.15, 4175.16, 4175.17, 8
4175.18, and 4175.99 of the Revised Code to 9
create a generally uniform definition of 10
employee for specified labor laws, to create a 11
uniform standard to determine whether an 12
individual performing services for an employer 13
is an employee of that employer, and to regulate 14
the payment of wages via payroll card. 15

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

Section 1. That sections 121.083, 1349.61, 4111.02, 16
4111.14, 4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 4141.01, 17
and 5747.01 be amended and sections 4113.83, 4113.84, 4113.85, 18

4113.86, 4113.87, 4113.88, 4175.01, 4175.02, 4175.03, 4175.04, 19
4175.05, 4175.06, 4175.07, 4175.08, 4175.09, 4175.091, 4175.10, 20
4175.11, 4175.12, 4175.13, 4175.14, 4175.15, 4175.16, 4175.17, 21
4175.18, and 4175.99 of the Revised Code be enacted to read as 22
follows: 23

Sec. 121.083. The superintendent of industrial compliance 24
in the department of commerce shall do all of the following: 25

(A) Administer and enforce the general laws of this state 26
pertaining to buildings, pressure piping, boilers, bedding, 27
upholstered furniture, and stuffed toys, steam engineering, 28
elevators, plumbing, licensed occupations regulated by the 29
department, and travel agents, as they apply to plans review, 30
inspection, code enforcement, testing, licensing, registration, 31
and certification. 32

(B) Exercise the powers and perform the duties delegated 33
to the superintendent by the director of commerce under Chapters 34
4109., 4111., ~~and 4115.~~, and 4175. of the Revised Code. 35

(C) Collect and collate statistics as are necessary. 36

(D) Examine and license persons who desire to act as steam 37
engineers, to operate steam boilers, and to act as inspectors of 38
steam boilers, provide for the scope, conduct, and time of such 39
examinations, provide for, regulate, and enforce the renewal and 40
revocation of such licenses, inspect and examine steam boilers 41
and make, publish, and enforce rules and orders for the 42
construction, installation, inspection, and operation of steam 43
boilers, and do, require, and enforce all things necessary to 44
make such examination, inspection, and requirement efficient. 45

(E) Rent and furnish offices as needed in cities in this 46
state for the conduct of its affairs. 47

(F) Oversee a chief of construction and compliance, a 48
chief of operations and maintenance, a chief of licensing and 49
certification, a chief of worker protection, and other designees 50
appointed by the director to perform the duties described in 51
this section. 52

(G) Enforce the rules the board of building standards 53
adopts pursuant to division (A) (2) of section 4104.43 of the 54
Revised Code under the circumstances described in division (D) 55
of that section. 56

(H) Accept submissions, establish a fee for submissions, 57
and review submissions of certified welding and brazing 58
procedure specifications, procedure qualification records, and 59
performance qualification records for building services piping 60
as required by section 4104.44 of the Revised Code. 61

Sec. 1349.61. (A) (1) Subject to division (C) of this 62
section, no person or entity shall sell a gift card to a 63
purchaser containing an expiration date that is less than two 64
years after the date the gift card is issued. 65

(2) No person or entity, within two years after a gift 66
card is issued, shall charge service charges or fees relative to 67
that gift card, including dormancy fees, latency fees, or 68
administrative fees, that have the effect of reducing the total 69
amount for which the holder of the gift card may redeem the gift 70
card. 71

(B) A gift card sold without an expiration date is valid 72
until redeemed or replaced with a new gift card. 73

(C) Division (A) of this section does not apply to any of 74
the following gift cards: 75

(1) A gift card that is distributed by the issuer to a 76

consumer pursuant to an awards, loyalty, or promotional program 77
without any money or anything of value being given in exchange 78
for the gift card by the consumer; 79

(2) A gift card that is sold below face value at a volume 80
discount to employers or to nonprofit and charitable 81
organizations for fundraising purposes, if the expiration date 82
on that gift card is not more than thirty days after the date of 83
sale; 84

(3) A gift card that is sold by a nonprofit or charitable 85
organization for fundraising purposes; 86

(4) A gift card that an employer gives to an employee if 87
use of the gift card is limited to the employer's business 88
establishment, which may include a group of merchants that are 89
affiliated with that business establishment; 90

(5) A gift certificate issued in accordance with section 91
1533.131 of the Revised Code that may be used to obtain hunting 92
and fishing licenses, fur taker, special deer, and special wild 93
turkey permits, and wetlands habitat stamps; 94

(6) A gift card that is usable with multiple, unaffiliated 95
sellers of goods or services; 96

(7) A gift card that an employer issues to an employee in 97
recognition of services performed by the employee. 98

(D) Whoever violates division (A) (2) of this section is 99
liable to the holder for any amount that the redemption value of 100
the gift card was reduced, any court costs incurred, and 101
reasonable attorney's fees. 102

(E) As used in this section: 103

(1) "Gift card" means a certificate, electronic card, or 104

other medium issued by a merchant that evidences the giving of 105
consideration in exchange for the right to redeem the 106
certificate, electronic card, or other medium for goods, food, 107
services, credit, or money of at least an equal value, including 108
any electronic card issued by a merchant with a monetary value 109
where the issuer has received payment for the full monetary 110
value for the future purchase or delivery of goods or services 111
and any certificate issued by a merchant where the issuer has 112
received payment for the full monetary face value of the 113
certificate for the future purchase or delivery of goods and 114
services. "Gift card" does not include a prepaid calling card 115
used to make telephone calls or a payroll card as defined in 116
section 4113.83 of the Revised Code. 117

(2) "Employer" ~~and "employee" have~~ has the same meanings— 118
meaning as in section 4121.01 of the Revised Code. 119

(3) "Employee" means every person who may be required or 120
directed by any employer, in consideration of direct or indirect 121
gain or profit, to engage in any employment, or to go, or work, 122
or be at any time in any place of employment. 123

Sec. 4111.02. Every employer, as defined in Section 34a of 124
Article II, Ohio Constitution, shall pay each of the employer's 125
employees at a wage rate of not less than the wage rate 126
specified in Section 34a of Article II, Ohio Constitution. 127

The director of commerce annually shall adjust the wage 128
rate as specified in Section 34a of Article II, Ohio 129
Constitution. 130

As used in this section, "employee" has the same meaning 131
as in section ~~4111.14~~ 4175.01 of the Revised Code. 132

Sec. 4111.14. (A) Pursuant to the general assembly's 133

authority to establish a minimum wage under Section 34 of 134
Article II, Ohio Constitution, this section is in implementation 135
of Section 34a of Article II, Ohio Constitution. In implementing 136
Section 34a of Article II, Ohio Constitution, the general 137
assembly hereby finds that the purpose of Section 34a of Article 138
II, Ohio Constitution, is to: 139

(1) Ensure that Ohio employees, as defined in division (B) 140
(1) of this section, are paid the wage rate required by Section 141
34a of Article II, Ohio Constitution; 142

(2) Ensure that covered Ohio employers maintain certain 143
records that are directly related to the enforcement of the wage 144
rate requirements in Section 34a of Article II, Ohio 145
Constitution; 146

(3) Ensure that Ohio employees who are paid the wage rate 147
required by Section 34a of Article II, Ohio Constitution, may 148
enforce their right to receive that wage rate in the manner set 149
forth in Section 34a of Article II, Ohio Constitution; and 150

(4) Protect the privacy of Ohio employees' pay and 151
personal information specified in Section 34a of Article II, 152
Ohio Constitution, by restricting an employee's access, and 153
access by a person acting on behalf of that employee, to the 154
employee's own pay and personal information. 155

(B) In accordance with Section 34a of Article II, Ohio 156
Constitution, the terms "employer," ~~"employee,"~~ "employ," and 157
~~"person,"~~ and ~~"independent contractor"~~ have the same meanings as 158
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 159
U.S.C. 203, as amended. In construing the meaning of these 160
terms, due consideration and great weight shall be given to the 161
United States department of labor's and federal courts' 162

interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section:

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

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

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

(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 193
intermittent and that is not performed by an individual whose 194
vocation is to be employed in or about the property of the 195
employer or individual's residence. In construing who is 196
employed on a "casual basis," due consideration and great weight 197
shall be given to the United States department of labor's and 198
federal courts' interpretations of the term "casual basis" under 199
the Fair Labor Standards Act and its regulations. 200

(b) "An individual employed in or about the property of an 201
employer or individual's residence" means an individual employed 202
on a casual basis or an individual employed in or about a 203
residence on a casual basis, respectively. 204

(2) In accordance with Section 34a of Article II, Ohio 205
Constitution, employees of a solely family-owned and operated 206
business who are family members of an owner are not included 207
within the coverage of Section 34a of Article II, Ohio 208
Constitution. As used in division (D) (2) of this section, 209
"family member" means a parent, spouse, child, stepchild, 210
sibling, grandparent, grandchild, or other member of an owner's 211
immediate family. 212

(E) In accordance with Section 34a of Article II, Ohio 213
Constitution, an employer shall at the time of hire provide an 214
employee with the employer's name, address, telephone number, 215
and other contact information and update such information when 216
it changes. As used in division (E) of this section: 217

(1) "Other contact information" may include, where 218
applicable, the address of the employer's internet site on the 219
world wide web, the employer's electronic mail address, fax 220
number, or the name, address, and telephone number of the 221
employer's statutory agent. "Other contact information" does not 222

include the name, address, telephone number, fax number, 223
internet site address, or electronic mail address of any 224
employee, shareholder, officer, director, supervisor, manager, 225
or other individual employed by or associated with an employer. 226

(2) "When it changes" means that the employer shall 227
provide its employees with the change in its name, address, 228
telephone number, or other contact information within sixty 229
business days after the change occurs. The employer shall 230
provide the changed information by using any of its usual 231
methods of communicating with its employees, including, but not 232
limited to, listing the change on the employer's internet site 233
on the world wide web, internal computer network, or a bulletin 234
board where it commonly posts employee communications or by 235
insertion or inclusion with employees' paychecks or pay stubs. 236

(F) In accordance with Section 34a of Article II, Ohio 237
Constitution, an employer shall maintain a record of the name, 238
address, occupation, pay rate, hours worked for each day worked, 239
and each amount paid an employee for a period of not less than 240
three years following the last date the employee was employed by 241
that employer. As used in division (F) of this section: 242

(1) "Address" means an employee's home address as 243
maintained in the employer's personnel file or personnel 244
database for that employee. 245

(2) (a) With respect to employees who are not exempt from 246
the overtime pay requirements of the Fair Labor Standards Act or 247
this chapter, "pay rate" means an employee's base rate of pay. 248

(b) With respect to employees who are exempt from the 249
overtime pay requirements of the Fair Labor Standards Act or 250
this chapter, "pay rate" means an employee's annual base salary 251

or other rate of pay by which the particular employee qualifies 252
for that exemption under the Fair Labor Standards Act or this 253
chapter, but does not include bonuses, stock options, 254
incentives, deferred compensation, or any other similar form of 255
compensation. 256

(3) "Record" means the name, address, occupation, pay 257
rate, hours worked for each day worked, and each amount paid an 258
employee in one or more documents, databases, or other paper or 259
electronic forms of record-keeping maintained by an employer. No 260
one particular method or form of maintaining such a record or 261
records is required under this division. An employer is not 262
required to create or maintain a single record containing only 263
the employee's name, address, occupation, pay rate, hours worked 264
for each day worked, and each amount paid an employee. An 265
employer shall maintain a record or records from which the 266
employee or person acting on behalf of that employee could 267
reasonably review the information requested by the employee or 268
person. 269

An employer is not required to maintain the records 270
specified in division (F) (3) of this section for any period 271
before January 1, 2007. On and after January 1, 2007, the 272
employer shall maintain the records required by division (F) (3) 273
of this section for three years from the date the hours were 274
worked by the employee and for three years after the date the 275
employee's employment ends. 276

(4) (a) Except for individuals specified in division (F) (4) 277
(b) of this section, "hours worked for each day worked" means 278
the total amount of time worked by an employee in whatever 279
increments the employer uses for its payroll purposes during a 280
day worked by the employee. An employer is not required to keep 281

a record of the time of day an employee begins and ends work on 282
any given day. As used in division (F) (4) of this section, "day" 283
means a fixed period of twenty-four consecutive hours during 284
which an employee performs work for an employer. 285

(b) An employer is not required to keep records of "hours 286
worked for each day worked" for individuals for whom the 287
employer is not required to keep those records under the Fair 288
Labor Standards Act and its regulations or individuals who are 289
not subject to the overtime pay requirements specified in 290
section 4111.03 of the Revised Code. 291

(5) "Each amount paid an employee" means the total gross 292
wages paid to an employee for each pay period. As used in 293
division (F) (5) of this section, "pay period" means the period 294
of time designated by an employer to pay an employee the 295
employee's gross wages in accordance with the employer's payroll 296
practices under section 4113.15 of the Revised Code. 297

(G) In accordance with Section 34a of Article II, Ohio 298
Constitution, an employer must provide such information without 299
charge to an employee or person acting on behalf of an employee 300
upon request. As used in division (G) of this section: 301

(1) "Such information" means the name, address, 302
occupation, pay rate, hours worked for each day worked, and each 303
amount paid for the specific employee who has requested that 304
specific employee's own information and does not include the 305
name, address, occupation, pay rate, hours worked for each day 306
worked, or each amount paid of any other employee of the 307
employer. "Such information" does not include hours worked for 308
each day worked by individuals for whom an employer is not 309
required to keep that information under the Fair Labor Standards 310
Act and its regulations or individuals who are not subject to 311

the overtime pay requirements specified in section 4111.03 of 312
the Revised Code. 313

(2) "Acting on behalf of an employee" means a person 314
acting on behalf of an employee as any of the following: 315

(a) The certified or legally recognized collective 316
bargaining representative for that employee under the applicable 317
federal law or Chapter 4117. of the Revised Code; 318

(b) The employee's attorney; 319

(c) The employee's parent, guardian, or legal custodian. 320

A person "acting on behalf of an employee" must be 321
specifically authorized by an employee in order to make a 322
request for that employee's own name, address, occupation, pay 323
rate, hours worked for each day worked, and each amount paid to 324
that employee. 325

(3) "Provide" means that an employer shall provide the 326
requested information within thirty business days after the date 327
the employer receives the request, unless either of the 328
following occurs: 329

(a) The employer and the employee or person acting on 330
behalf of the employee agree to some alternative time period for 331
providing the information. 332

(b) The thirty-day period would cause a hardship on the 333
employer under the circumstances, in which case the employer 334
must provide the requested information as soon as practicable. 335

(4) A "request" made by an employee or a person acting on 336
behalf of an employee means a request by an employee or a person 337
acting on behalf of an employee for the employee's own 338
information. The employer may require that the employee provide 339

the employer with a written request that has been signed by the 340
employee and notarized and that reasonably specifies the 341
particular information being requested. The employer may require 342
that the person acting on behalf of an employee provide the 343
employer with a written request that has been signed by the 344
employee whose information is being requested and notarized and 345
that reasonably specifies the particular information being 346
requested. 347

(H) In accordance with Section 34a of Article II, Ohio 348
Constitution, an employee, person acting on behalf of one or 349
more employees, and any other interested party may file a 350
complaint with the state for a violation of any provision of 351
Section 34a of Article II, Ohio Constitution, or any law or 352
regulation implementing its provisions. Such complaint shall be 353
promptly investigated and resolved by the state. The employee's 354
name shall be kept confidential unless disclosure is necessary 355
to resolution of a complaint and the employee consents to 356
disclosure. As used in division (H) of this section: 357

(1) "Complaint" means a complaint of an alleged violation 358
pertaining to harm suffered by the employee filing the 359
complaint, by a person acting on behalf of one or more 360
employees, or by an interested party. 361

(2) "Acting on behalf of one or more employees" has the 362
same meaning as "acting on behalf of an employee" in division 363
(G) (2) of this section. Each employee must provide a separate 364
written and notarized authorization before the person acting on 365
that employee's or those employees' behalf may request the name, 366
address, occupation, pay rate, hours worked for each day worked, 367
and each amount paid for the particular employee. 368

(3) "Interested party" means a party who alleges to be 369

injured by the alleged violation and who has standing to file a 370
complaint under common law principles of standing. 371

(4) "Resolved by the state" means that the complaint has 372
been resolved to the satisfaction of the state. 373

(5) "Shall be kept confidential" means that the state 374
shall keep the name of the employee confidential as required by 375
division (H) of this section. 376

(I) In accordance with Section 34a of Article II, Ohio 377
Constitution, the state may on its own initiative investigate an 378
employer's compliance with Section 34a of Article II, Ohio 379
Constitution, and any law or regulation implementing Section 34a 380
of Article II, Ohio Constitution. The employer shall make 381
available to the state any records related to such investigation 382
and other information required for enforcement of Section 34a of 383
Article II, Ohio Constitution or any law or regulation 384
implementing Section 34a of Article II, Ohio Constitution. The 385
state shall investigate an employer's compliance with this 386
section in accordance with the procedures described in section 387
4111.04 of the Revised Code. All records and information related 388
to investigations by the state are confidential and are not a 389
public record subject to section 149.43 of the Revised Code. 390
This division does not prevent the state from releasing to or 391
exchanging with other state and federal wage and hour regulatory 392
authorities information related to investigations. 393

(J) In accordance with Section 34a of Article II, Ohio 394
Constitution, damages shall be calculated as an additional two 395
times the amount of the back wages and in the case of a 396
violation of an anti-retaliation provision an amount set by the 397
state or court sufficient to compensate the employee and deter 398
future violations, but not less than one hundred fifty dollars 399

for each day that the violation continued. The "not less than 400
one hundred fifty dollar" penalty specified in division (J) of 401
this section shall be imposed only for violations of the anti- 402
retaliation provision in Section 34a of Article II, Ohio 403
Constitution. 404

(K) In accordance with Section 34a of Article II, Ohio 405
Constitution, an action for equitable and monetary relief may be 406
brought against an employer by the attorney general and/or an 407
employee or person acting on behalf of an employee or all 408
similarly situated employees in any court of competent 409
jurisdiction, including the court of common pleas of an 410
employee's county of residence, for any violation of Section 34a 411
of Article II, Ohio Constitution, or any law or regulation 412
implementing its provisions within three years of the violation 413
or of when the violation ceased if it was of a continuing 414
nature, or within one year after notification to the employee of 415
final disposition by the state of a complaint for the same 416
violation, whichever is later. 417

(1) As used in division (K) of this section, 418
"notification" means the date on which the notice was sent to 419
the employee by the state. 420

(2) No employee shall join as a party plaintiff in any 421
civil action that is brought under division (K) of this section 422
by an employee, person acting on behalf of an employee, or 423
person acting on behalf of all similarly situated employees 424
unless that employee first gives written consent to become such 425
a party plaintiff and that consent is filed with the court in 426
which the action is brought. 427

(3) A civil action regarding an alleged violation of this 428
section shall be maintained only under division (K) of this 429

section. This division does not preclude the joinder in a single 430
civil action of an action under this division and an action 431
under section 4111.10 of the Revised Code. 432

(4) Any agreement between an employee and employer to work 433
for less than the wage rate specified in Section 34a of Article 434
II, Ohio Constitution, is no defense to an action under this 435
section. 436

(L) In accordance with Section 34a of Article II, Ohio 437
Constitution, there shall be no exhaustion requirement, no 438
procedural, pleading, or burden of proof requirements beyond 439
those that apply generally to civil suits in order to maintain 440
such action and no liability for costs or attorney's fees on an 441
employee except upon a finding that such action was frivolous in 442
accordance with the same standards that apply generally in civil 443
suits. Nothing in division (L) of this section affects the right 444
of an employer and employee to agree to submit a dispute under 445
this section to alternative dispute resolution, including, but 446
not limited to, arbitration, in lieu of maintaining the civil 447
suit specified in division (K) of this section. Nothing in this 448
division limits the state's ability to investigate or enforce 449
this section. 450

(M) An employer who provides such information specified in 451
Section 34a of Article II, Ohio Constitution, shall be immune 452
from any civil liability for injury, death, or loss to person or 453
property that otherwise might be incurred or imposed as a result 454
of providing that information to an employee or person acting on 455
behalf of an employee in response to a request by the employee 456
or person, and the employer shall not be subject to the 457
provisions of Chapters 1347. and 1349. of the Revised Code to 458
the extent that such provisions would otherwise apply. As used 459

in division (M) of this section, "such information," "acting on 460
behalf of an employee," and "request" have the same meanings as 461
in division (G) of this section. 462

(N) As used in this section, "the state" means the 463
director of commerce. 464

Sec. 4113.15. (A) Every individual, firm, partnership, 465
association, or corporation doing business in this state shall, 466
on or before the first day of each month, pay all its employees 467
the wages earned by them during the first half of the preceding 468
month ending with the fifteenth day thereof, and shall, on or 469
before the fifteenth day of each month, pay such employees the 470
wages earned by them during the last half of the preceding 471
calendar month. If at any time of payment an employee is absent 472
from ~~his~~ the employee's regular place of labor and does not 473
receive ~~his payment of~~ wages through an authorized 474
representative, such person shall be entitled to said payment at 475
any time thereafter upon demand upon the proper paymaster at the 476
place where such wages are usually paid and where such pay is 477
due. This section does not prohibit the daily or weekly payment 478
of wages. ~~The~~ or the use of a longer time lapse that is 479
customary to a given trade, profession or occupation, or 480
establishment of a different time lapse by written contract or 481
by operation of law. 482

(B) Where wages remain unpaid for thirty days beyond the 483
regularly scheduled payday or, in the case where no regularly 484
scheduled payday is applicable, for sixty days beyond the filing 485
by the employee of a claim or for sixty days beyond the date of 486
the agreement, award, or other act making wages payable and no 487
contest court order or dispute of any wage claim including the 488
assertion of a counterclaim exists accounting for nonpayment, 489

the employer, in addition, as liquidated damages, is liable to 490
the employee in an amount equal to six per cent of the amount of 491
the claim still unpaid and not in contest or disputed or two 492
hundred dollars, whichever is greater. 493

(C) In the absence of a contest, court order or dispute, 494
an employer who is party to an agreement to pay or provide 495
fringe benefits to an employee or to make any employee 496
authorized deduction becomes a trustee of any funds required by 497
such agreement to be paid to any person, organization, or 498
governmental agency from the time that the duty to make such 499
payment arises. No person shall, without reasonable 500
justification or excuse for such failure, knowingly fail or 501
refuse to pay to the appropriate person, organization, or 502
governmental agency the amount necessary to provide the benefits 503
or accomplish the purpose of any employee authorized deduction, 504
within thirty days after the close of the pay period during 505
which the employee earned or had deducted the amount of money 506
necessary to pay for the fringe benefit or make any employee 507
authorized deduction. A failure or refusal to pay, regardless of 508
the number of employee pay accounts involved, constitutes one 509
offense for the first delinquency of thirty days and a separate 510
offense for each successive delinquency of thirty days. 511

(D) As used in this section and section 4113.16 of the 512
Revised Code: 513

(1) "Wage" means the net amount of money payable to an 514
employee, including any guaranteed pay or reimbursement for 515
expenses, less any federal, state, or local taxes withheld; any 516
deductions made pursuant to a written agreement for the purpose 517
of providing the employee with any fringe benefits; and any 518
employee authorized deduction. 519

(2) "Fringe benefits" includes but is not limited to 520
health, welfare, or retirement benefits, whether paid for 521
entirely by the employer or on the basis of a joint employer- 522
employee contribution, or vacation, separation, or holiday pay. 523

(3) "Employee authorized deduction" includes but is not 524
limited to deductions for the purpose of any of the following: 525
~~(a) purchase~~ 526

(a) Purchase of United States savings bonds or corporate 527
stocks or bonds, ~~(b) a~~; 528

(b) A charitable contribution, ~~(c) credit~~; 529

(c) Credit union savings or other regular savings program, 530
~~or (d) repayment~~; 531

(d) Repayment of a loan or other obligation. 532

(4) "Employee" has the same meaning as in section 4175.01 533
of the Revised Code. 534

Sec. 4113.83. As used in sections 4113.83 to 4113.88 of 535
the Revised Code: 536

(A) "Employee" means any person who performs a service for 537
wages or other remuneration for an employer. 538

(B) "Employer" means any person who has one or more 539
employees and includes any agent of an employer. "Employer" does 540
not include the state or any agency or instrumentality of the 541
state, and any municipal corporation, county, township, school 542
district, or other political subdivision or any agency or 543
instrumentality of a municipal corporation, county, township, 544
school district, or other political subdivision. 545

(C) "Financial institution" means a bank, trust company, 546

savings and loan association, savings bank, or credit union 547
authorized to do business in this state. 548

(D) "Issuer" means a financial institution that issues a 549
payroll card. 550

(E) "Payroll card" means an access mechanism issued to an 551
employee by an employer or by another entity through an 552
arrangement with the employee's employer, through which the 553
employer provides the employee access to the employee's wages on 554
a continuing basis. "Payroll card" includes a prepaid card, 555
debit card, code, or device used to provide that access. 556

(F) "Payroll card account" means an account that holds 557
funds drawn upon through a payroll card. 558

(G) "Wages" includes wages, salary, or any unrestricted 559
form of monetary compensation. 560

Sec. 4113.84. (A) No employer shall pay wages through a 561
payroll card unless all of the following occur: 562

(1) The employer obtains the written consent from an 563
employee for the employee to receive the employee's wages 564
through a payroll card. 565

(2) The employer offers the employee the option of 566
receiving the employee's wages through another method, including 567
by direct deposit into a depository account selected by the 568
employee, in lieu of being paid through a payroll card. 569

(3) The agreement the employer enters into with the issuer 570
of the payroll card includes both of the following: 571

(a) A requirement that the issuer provide at least one 572
method to withdraw the entire amount of wages for each pay 573
period without the employee incurring a fee; 574

(b) A requirement that the issuer prevent withdrawals in excess of the account balance and, to the extent possible, protects against the account being overdrawn. 575
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(4) An employee to whom a payroll card is issued is able to access balance or other account information through an automated telephonic system and at least one electronic method. 578
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(5) The payroll card program is designed to maintain funds placed in the program in an account insured through the federal deposit insurance corporation or the national credit union administration on a pass-through basis to the individual cardholder. 581
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(B) (1) An employer that offers a payroll card to the employees of the employer shall provide both of the following to each employee prior to seeking the employee's consent to receive wages through a payroll card: 586
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589

(a) A plain language description, in the language the employer normally communicates information to the employee, of the employee's options for the methods in which the employer will pay the employee the employee's wages; 590
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593

(b) The terms and conditions of the payroll card, including a clear, conspicuous, and complete itemized list of any fees that may be deducted from the employee's payroll card account, including the specific dollar amounts of the fees. 594
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(2) The information provided under division (B) (1) (b) of this section shall be provided on a separate form that the employee may keep. 598
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(C) No issuer shall charge a fee for accessing the information described in division (A) (4) of this section unless otherwise permitted under federal law. 601
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Sec. 4113.85. (A) The funds on a payroll card shall not 604
expire. Nothing in this division shall prevent a financial 605
organization, as defined in section 169.01 of the Revised Code, 606
or an issuer from complying with Chapter 169. of the Revised 607
Code. 608

(B) No payroll card account shall be linked to any abusive 609
form of credit or credit practice. 610

(C) If a payroll card has an expiration date, the issuer 611
shall provide to the employee to whom the card was issued a new 612
card prior to that date. No issuer shall fail to comply with 613
this division. 614

Sec. 4113.86. The director of commerce has the authority 615
to administer and enforce sections 4113.83 to 4113.88 of the 616
Revised Code with respect to employers. To exercise that 617
authority, the director has the same powers as enumerated in 618
section 4111.04 of the Revised Code. The director shall adopt 619
rules under Chapter 119. of the Revised Code defining what 620
constitutes an abusive form of credit and what constitutes an 621
abusive credit practice for purposes of division (B) of section 622
4113.85 of the Revised Code. 623

Sec. 4113.87. (A) No employer shall violate division (A) 624
of section 4113.84 of the Revised Code or otherwise fail to 625
comply with division (B) of that section or section 4113.85 of 626
the Revised Code. 627

(B) An employee or a person acting on behalf of an 628
employee, if that employee or person believes that an employer 629
has violated division (A) of this section, may file a complaint 630
with the director of commerce stating the alleged violation. The 631
employee or person shall file the complaint within the time 632

periods prescribed in division (C) of this section. The director 633
shall promptly investigate and resolve the complaint to the 634
satisfaction of the director. 635

(C) If the director, an employee of an employer, or a 636
person acting on behalf of an employee believes that an employer 637
has violated division (A) of this section, the director, 638
employee, or person may bring an action in a court of competent 639
jurisdiction within one of the following time periods, whichever 640
is later: 641

(1) Three years after the date of the violation; 642

(2) Three years after the date the violation ceased if the 643
violation was of a continuing nature; 644

(3) One year after notification to the employee of final 645
disposition by the director of a complaint for the same 646
violation. 647

(D) If an employer is found by the director or a court to 648
have violated division (A) of this section, the employer, within 649
thirty days after the date of that finding, shall pay the 650
employee three times the employee's back wages and the 651
employee's costs and reasonable attorney's fees. A court shall 652
not stay any payment required under this division pending any 653
appeal. 654

An employee shall not incur liability for costs or 655
attorney's fees except upon a finding that the action filed 656
under division (C) of this section by the employee was 657
frivolous. A court shall determine whether an action is 658
considered "frivolous" in accordance with the same standards 659
that apply generally in civil suits. 660

Neither an employee nor a person acting on behalf of an 661

employee is required to file a complaint with the director under 662
division (B) of this section to bring an action under division 663
(C) of this section. 664

Sec. 4113.88. (A) An issuer that violates division (C) of 665
section 4113.85 of the Revised Code is liable to the holder of 666
the payroll card for any amount that remains in the holder's 667
payroll card account after the payroll card expires, any court 668
costs incurred, and reasonable attorney's fees. 669

(B) An issuer that otherwise violates section 4113.84 or 670
4113.85 of the Revised Code may be subject to a civil penalty 671
under section 1121.35 of the Revised Code, to the extent that 672
section applies to the issuer. 673

Sec. 4115.03. As used in sections 4115.03 to 4115.16 of 674
the Revised Code: 675

(A) "Public authority" means any officer, board, or 676
commission of the state, or any political subdivision of the 677
state, authorized to enter into a contract for the construction 678
of a public improvement or to construct the same by the direct 679
employment of labor, or any institution supported in whole or in 680
part by public funds and said sections apply to expenditures of 681
such institutions made in whole or in part from public funds. 682

(B) "Construction" means any of the following: 683

(1) Except as provided in division (B)(3) of this section, 684
any new construction of a public improvement, the total overall 685
project cost of which is fairly estimated to be more than the 686
following amounts and performed by other than full-time 687
employees who have completed their probationary periods in the 688
classified service of a public authority: 689

(a) One hundred twenty-five thousand dollars, beginning on 690

September 29, 2011, and continuing for one year thereafter; 691

(b) Two hundred thousand dollars, beginning when the time 692
period described in division (B) (1) (a) of this section expires 693
and continuing for one year thereafter; 694

(c) Two hundred fifty thousand dollars, beginning when the 695
time period described in division (B) (1) (b) of this section 696
expires. 697

(2) Except as provided in division (B) (4) of this section, 698
any reconstruction, enlargement, alteration, repair, remodeling, 699
renovation, or painting of a public improvement, the total 700
overall project cost of which is fairly estimated to be more 701
than the following amounts and performed by other than full-time 702
employees who have completed their probationary period in the 703
classified civil service of a public authority: 704

(a) Thirty-eight thousand dollars, beginning on September 705
29, 2011, and continuing for one year thereafter; 706

(b) Sixty thousand dollars, beginning when the time period 707
described in division (B) (2) (a) of this section expires and 708
continuing for one year thereafter; 709

(c) Seventy-five thousand dollars, beginning when the time 710
period described in division (B) (2) (b) of this section expires. 711

(3) Any new construction of a public improvement that 712
involves roads, streets, alleys, sewers, ditches, and other 713
works connected to road or bridge construction, the total 714
overall project cost of which is fairly estimated to be more 715
than seventy-eight thousand two hundred fifty-eight dollars 716
adjusted biennially by the director of commerce pursuant to 717
section 4115.034 of the Revised Code and performed by other than 718
full-time employees who have completed their probationary 719

periods in the classified service of a public authority; 720

(4) Any reconstruction, enlargement, alteration, repair, 721
remodeling, renovation, or painting of a public improvement that 722
involves roads, streets, alleys, sewers, ditches, and other 723
works connected to road or bridge construction, the total 724
overall project cost of which is fairly estimated to be more 725
than twenty-three thousand four hundred forty-seven dollars 726
adjusted biennially by the director of commerce pursuant to 727
section 4115.034 of the Revised Code and performed by other than 728
full-time employees who have completed their probationary 729
periods in the classified service of a public authority. 730

(C) "Public improvement" includes all buildings, roads, 731
streets, alleys, sewers, ditches, sewage disposal plants, water 732
works, and all other structures or works constructed by a public 733
authority of the state or any political subdivision thereof or 734
by any person who, pursuant to a contract with a public 735
authority, constructs any structure for a public authority of 736
the state or a political subdivision thereof. When a public 737
authority rents or leases a newly constructed structure within 738
six months after completion of such construction, all work 739
performed on such structure to suit it for occupancy by a public 740
authority is a "public improvement." "Public improvement" does 741
not include an improvement authorized by section 940.06 of the 742
Revised Code that is constructed pursuant to a contract with a 743
soil and water conservation district, as defined in section 744
940.01 of the Revised Code, or performed as a result of a 745
petition filed pursuant to Chapter 6131., 6133., or 6135. of the 746
Revised Code, wherein no less than seventy-five per cent of the 747
project is located on private land and no less than seventy-five 748
per cent of the cost of the improvement is paid for by private 749
property owners pursuant to Chapter 940., 6131., 6133., or 6135. 750

of the Revised Code.	751
(D) "Locality" means the county wherein the physical work upon any public improvement is being performed.	752 753
(E) "Prevailing wages" means the sum of the following:	754
(1) The basic hourly rate of pay;	755
(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;	756 757 758
(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:	759 760 761 762 763 764
(a) Medical or hospital care or insurance to provide such;	765
(b) Pensions on retirement or death or insurance to provide such;	766 767
(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;	768 769 770
(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;	771 772
(e) Life insurance;	773
(f) Disability and sickness insurance;	774
(g) Accident insurance;	775
(h) Vacation and holiday pay;	776

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

(j) Other bona fide fringe benefits.

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.

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

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

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

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

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

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

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

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 805
of the Revised Code: 806

(1) "Place of employment" means every place, whether 807
indoors or out, or underground, and the premises appurtenant 808
thereto, where either temporarily or permanently any industry, 809
trade, or business is carried on, or where any process or 810
operation, directly or indirectly related to any industry, 811
trade, or business, is carried on and where any person is 812
directly or indirectly employed by another for direct or 813
indirect gain or profit, but does not include any place where 814
persons are employed in private domestic service or agricultural 815
pursuits which do not involve the use of mechanical power. 816

(2) "Employment" means any trade, occupation, or process 817
of manufacture or any method of carrying on such trade, 818
occupation, or process of manufacture in which any person may be 819
engaged, except in such private domestic service or agricultural 820
pursuits as do not involve the use of mechanical power. 821

(3) "Employer" means every person, firm, corporation, 822
agent, manager, representative, or other person having control 823
or custody of any employment, place of employment, or employee. 824

(4) ~~"Employee" means every person who may be required or~~ 825
~~directed by any employer, in consideration of direct or indirect~~ 826
~~gain or profit, to engage in any employment, or to go, or work,~~ 827
~~or be at any time in any place of employment has the same~~ 828
meaning as in section 4175.01 of the Revised Code. 829

(5) "Frequenter" means every person, other than an 830
employee, who may go in or be in a place of employment under 831
circumstances which render the person other than a trespasser. 832

(6) "Deputy" means any person employed by the industrial 833

commission or the bureau of workers' compensation, designated as 834
a deputy by the commission or the administrator of workers' 835
compensation, who possesses special, technical, scientific, 836
managerial, professional, or personal abilities or qualities in 837
matters within the jurisdiction of the commission or the bureau, 838
and who may be engaged in the performance of duties under the 839
direction of the commission or the bureau calling for the 840
exercise of such abilities or qualities. 841

(7) "Order" means any decision, rule, regulation, 842
direction, requirement, or standard, or any other determination 843
or decision that the bureau is empowered to and does make. 844

(8) "General order" means an order that applies generally 845
throughout the state to all persons, employments, or places of 846
employment, or all persons, employments, or places of employment 847
of a class under the jurisdiction of the bureau. All other 848
orders shall be considered special orders. 849

(9) "Local order" means any ordinance, order, rule, or 850
determination of the legislative authority of any municipal 851
corporation, or any trustees, or board or officers of any 852
municipal corporation upon any matter over which the bureau has 853
jurisdiction. 854

(10) "Welfare" means comfort, decency, and moral well- 855
being. 856

(11) "Safe" or "safety," as applied to any employment or a 857
place of employment, means such freedom from danger to the life, 858
health, safety, or welfare of employees or frequenters as the 859
nature of the employment will reasonably permit, including 860
requirements as to the hours of labor with relation to the 861
health and welfare of employees. 862

(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.

(B) As used in the Revised Code:

(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.

(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.

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

Sec. 4123.01. As used in this chapter:

(A) (1) "Employee" means:

~~(a) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and~~

~~executive officers of boards of education, under any appointment~~ 892
~~or contract of hire, express or implied, oral or written,~~ 893
~~including any elected official of the state, or of any county,~~ 894
~~municipal corporation, or township, or members of boards of~~ 895
~~education.~~ 896

~~As used in division (A) (1) (a) of this section, the term~~ 897
~~"employee" has the same meaning as in section 4175.01 of the~~ 898
~~Revised Code, except that "employee" also includes the following~~ 899
persons when responding to an inherently dangerous situation 900
that calls for an immediate response on the part of the person, 901
regardless of whether the person is within the limits of the 902
jurisdiction of the person's regular employment or voluntary 903
service when responding, on the condition that the person 904
responds to the situation as the person otherwise would if the 905
person were on duty in the person's jurisdiction: 906

~~(i) (a)~~ Off-duty peace officers. As used in division (A) 907
(1) (a) ~~(i)~~ of this section, "peace officer" has the same meaning 908
as in section 2935.01 of the Revised Code. 909

~~(ii) (b)~~ Off-duty firefighters, whether paid or volunteer, 910
of a lawfully constituted fire department. 911

~~(iii) (c)~~ Off-duty first responders, emergency medical 912
technicians-basic, emergency medical technicians-intermediate, 913
or emergency medical technicians-paramedic, whether paid or 914
volunteer, of an ambulance service organization or emergency 915
medical service organization pursuant to Chapter 4765. of the 916
Revised Code. 917

~~(b) Every person in the service of any person, firm, or~~ 918
~~private corporation, including any public service corporation,~~ 919
~~that (i) employs one or more persons regularly in the same~~ 920

~~business or in or about the same establishment under any~~ 921
~~contract of hire, express or implied, oral or written, including~~ 922
~~aliens and minors, household workers who earn one hundred sixty~~ 923
~~dollars or more in cash in any calendar quarter from a single~~ 924
~~household and casual workers who earn one hundred sixty dollars~~ 925
~~or more in cash in any calendar quarter from a single employer,~~ 926
~~or (ii) is bound by any such contract of hire or by any other~~ 927
~~written contract, to pay into the state insurance fund the~~ 928
~~premiums provided by this chapter.~~ 929

~~(c) Every person who performs labor or provides services~~ 930
~~pursuant to a construction contract, as defined in section~~ 931
~~4123.79 of the Revised Code, if at least ten of the following~~ 932
~~criteria apply:~~ 933

~~(i) The person is required to comply with instructions~~ 934
~~from the other contracting party regarding the manner or method~~ 935
~~of performing services;~~ 936

~~(ii) The person is required by the other contracting party~~ 937
~~to have particular training;~~ 938

~~(iii) The person's services are integrated into the~~ 939
~~regular functioning of the other contracting party;~~ 940

~~(iv) The person is required to perform the work~~ 941
~~personally;~~ 942

~~(v) The person is hired, supervised, or paid by the other~~ 943
~~contracting party;~~ 944

~~(vi) A continuing relationship exists between the person~~ 945
~~and the other contracting party that contemplates continuing or~~ 946
~~recurring work even if the work is not full time;~~ 947

~~(vii) The person's hours of work are established by the~~ 948

other contracting party;—	949
(viii) The person is required to devote full time to the business of the other contracting party;—	950
(ix) The person is required to perform the work on the premises of the other contracting party;—	952
(x) The person is required to follow the order of work set by the other contracting party;—	954
(xi) The person is required to make oral or written reports of progress to the other contracting party;—	956
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;—	958
(xiii) The person's expenses are paid for by the other contracting party;—	960
(xiv) The person's tools and materials are furnished by the other contracting party;—	962
(xv) The person is provided with the facilities used to perform services;—	964
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;—	966
(xvii) The person is not performing services for a number of employers at the same time;—	968
(xviii) The person does not make the same services available to the general public;—	970
(xix) The other contracting party has a right to discharge the person;—	972
(xx) The person has the right to end the relationship with—	974

~~the other contracting party without incurring liability pursuant to an employment contract or agreement.~~ 975
976

~~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.~~ 977
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(2) "Employee" does not mean any of the following: 990

(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry; 991
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(b) Any officer of a family farm corporation; 994

~~(c) An individual incorporated as a corporation;~~ 995

~~(d)~~ An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as a an officer; 996
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~~(e)~~ (d) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator of workers' compensation has granted a waiver and exception to the individual's employer under section 4123.15 of 999
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the Revised Code. 1004

Any employer may elect to include as an "employee" within 1005
this chapter, any person excluded from the definition of 1006
"employee" pursuant to division (A) (2) (a), (b), ~~(e)~~, or ~~(e)~~-(d) 1007
of this section in accordance with rules adopted by the 1008
administrator, with the advice and consent of the bureau of 1009
workers' compensation board of directors. If an employer is a 1010
partnership, sole proprietorship, ~~individual incorporated as a~~ 1011
~~corporation~~, or family farm corporation, such employer may elect 1012
to include as an "employee" within this chapter, any member of 1013
such partnership, the owner of the sole proprietorship, ~~the~~ 1014
~~individual incorporated as a corporation~~, or the officers of the 1015
family farm corporation. Nothing in this section shall prohibit 1016
a partner, sole proprietor, or any person excluded from the 1017
definition of "employee" pursuant to division (A) (2) (a), (b), 1018
~~(e)~~, or ~~(e)~~-(d) of this section from electing to be included as 1019
an "employee" under this chapter in accordance with rules 1020
adopted by the administrator, with the advice and consent of the 1021
board. 1022

In the event of an election, the employer or person 1023
electing coverage shall serve upon the bureau of workers' 1024
compensation written notice naming the person to be covered and 1025
include the person's remuneration for premium purposes in all 1026
future payroll reports. No partner, sole proprietor, or person 1027
excluded from the definition of "employee" pursuant to division 1028
(A) (2) (a), (b), ~~(e)~~, or ~~(e)~~-(d) of this section, shall receive 1029
benefits or compensation under this chapter until the bureau 1030
receives written notice of the election permitted by this 1031
section. 1032

For informational purposes only, the bureau shall 1033

prescribe such language as it considers appropriate, on such of 1034
its forms as it considers appropriate, to advise employers of 1035
their right to elect to include as an "employee" within this 1036
chapter a sole proprietor, any member of a partnership, or a 1037
person excluded from the definition of "employee" under division 1038
(A) (2) (a), (b), ~~(c)~~, or ~~(c)~~ (d) of this section, that they 1039
should check any health and disability insurance policy, or 1040
other form of health and disability plan or contract, presently 1041
covering them, or the purchase of which they may be considering, 1042
to determine whether such policy, plan, or contract excludes 1043
benefits for illness or injury that they might have elected to 1044
have covered by workers' compensation. 1045

(B) "Employer" means: 1046

(1) The state, including state hospitals, each county, 1047
municipal corporation, township, school district, and hospital 1048
owned by a political subdivision or subdivisions other than the 1049
state; 1050

(2) Every person, firm, professional employer 1051
organization, and private corporation, including any public 1052
service corporation, that (a) has in service one or more 1053
employees or shared employees regularly in the same business or 1054
in or about the same establishment under any contract of hire, 1055
express or implied, oral or written, or (b) is bound by any such 1056
contract of hire or by any other written contract, to pay into 1057
the insurance fund the premiums provided by this chapter. 1058

All such employers are subject to this chapter. Any member 1059
of a firm or association, who regularly performs manual labor in 1060
or about a mine, factory, or other establishment, including a 1061
household establishment, shall be considered an employee in 1062
determining whether such person, firm, or private corporation, 1063

or public service corporation, has in its service, one or more 1064
employees and the employer shall report the income derived from 1065
such labor to the bureau as part of the payroll of such 1066
employer, and such member shall thereupon be entitled to all the 1067
benefits of an employee. 1068

(C) "Injury" includes any injury, whether caused by 1069
external accidental means or accidental in character and result, 1070
received in the course of, and arising out of, the injured 1071
employee's employment. "Injury" does not include: 1072

(1) Psychiatric conditions except where the claimant's 1073
psychiatric conditions have arisen from an injury or 1074
occupational disease sustained by that claimant or where the 1075
claimant's psychiatric conditions have arisen from sexual 1076
conduct in which the claimant was forced by threat of physical 1077
harm to engage or participate; 1078

(2) Injury or disability caused primarily by the natural 1079
deterioration of tissue, an organ, or part of the body; 1080

(3) Injury or disability incurred in voluntary 1081
participation in an employer-sponsored recreation or fitness 1082
activity if the employee signs a waiver of the employee's right 1083
to compensation or benefits under this chapter prior to engaging 1084
in the recreation or fitness activity; 1085

(4) A condition that pre-existed an injury unless that 1086
pre-existing condition is substantially aggravated by the 1087
injury. Such a substantial aggravation must be documented by 1088
objective diagnostic findings, objective clinical findings, or 1089
objective test results. Subjective complaints may be evidence of 1090
such a substantial aggravation. However, subjective complaints 1091
without objective diagnostic findings, objective clinical 1092

findings, or objective test results are insufficient to 1093
substantiate a substantial aggravation. 1094

(D) "Child" includes a posthumous child and a child 1095
legally adopted prior to the injury. 1096

(E) "Family farm corporation" means a corporation founded 1097
for the purpose of farming agricultural land in which the 1098
majority of the voting stock is held by and the majority of the 1099
stockholders are persons or the spouse of persons related to 1100
each other within the fourth degree of kinship, according to the 1101
rules of the civil law, and at least one of the related persons 1102
is residing on or actively operating the farm, and none of whose 1103
stockholders are a corporation. A family farm corporation does 1104
not cease to qualify under this division where, by reason of any 1105
devise, bequest, or the operation of the laws of descent or 1106
distribution, the ownership of shares of voting stock is 1107
transferred to another person, as long as that person is within 1108
the degree of kinship stipulated in this division. 1109

(F) "Occupational disease" means a disease contracted in 1110
the course of employment, which by its causes and the 1111
characteristics of its manifestation or the condition of the 1112
employment results in a hazard which distinguishes the 1113
employment in character from employment generally, and the 1114
employment creates a risk of contracting the disease in greater 1115
degree and in a different manner from the public in general. 1116

(G) "Self-insuring employer" means an employer who is 1117
granted the privilege of paying compensation and benefits 1118
directly under section 4123.35 of the Revised Code, including a 1119
board of county commissioners for the sole purpose of 1120
constructing a sports facility as defined in section 307.696 of 1121
the Revised Code, provided that the electors of the county in 1122

which the sports facility is to be built have approved 1123
construction of a sports facility by ballot election no later 1124
than November 6, 1997. 1125

(H) "Private employer" means an employer as defined in 1126
division (B) (2) of this section. 1127

(I) "Professional employer organization" has the same 1128
meaning as in section 4125.01 of the Revised Code. 1129

(J) "Public employer" means an employer as defined in 1130
division (B) (1) of this section. 1131

(K) "Sexual conduct" means vaginal intercourse between a 1132
male and female; anal intercourse, fellatio, and cunnilingus 1133
between persons regardless of gender; and, without privilege to 1134
do so, the insertion, however slight, of any part of the body or 1135
any instrument, apparatus, or other object into the vaginal or 1136
anal cavity of another. Penetration, however slight, is 1137
sufficient to complete vaginal or anal intercourse. 1138

(L) "Other-states' insurer" means an insurance company 1139
that is authorized to provide workers' compensation insurance 1140
coverage in any of the states that permit employers to obtain 1141
insurance for workers' compensation claims through insurance 1142
companies. 1143

(M) "Other-states' coverage" means both of the following: 1144

(1) Insurance coverage secured by an eligible employer for 1145
workers' compensation claims of employees who are in employment 1146
relationships localized in a state other than this state or 1147
those employees' dependents; 1148

(2) Insurance coverage secured by an eligible employer for 1149
workers' compensation claims that arise in a state other than 1150

this state where an employer elects to obtain coverage through 1151
either the administrator or an other-states' insurer. 1152

(N) "Limited other-states coverage" means insurance 1153
coverage provided by the administrator to an eligible employer 1154
for workers' compensation claims of employees who are in an 1155
employment relationship localized in this state but are 1156
temporarily working in a state other than this state, or those 1157
employees' dependents. 1158

Sec. 4123.026. (A) The administrator of workers' 1159
compensation, or a self-insuring public employer for the peace 1160
officers, firefighters, and emergency medical workers employed 1161
by or volunteering for that self-insuring public employer, shall 1162
pay the costs of conducting post-exposure medical diagnostic 1163
services, consistent with the standards of medical care existing 1164
at the time of the exposure, to investigate whether an injury or 1165
occupational disease was sustained by a peace officer, 1166
firefighter, or emergency medical worker when coming into 1167
contact with the blood or other body fluid of another person in 1168
the course of and arising out of the peace officer's, 1169
firefighter's, or emergency medical worker's employment, or when 1170
responding to an inherently dangerous situation in the manner 1171
described in, and in accordance with the conditions specified 1172
under, division (A) (1) ~~(a)~~ of section 4123.01 of the Revised 1173
Code, through any of the following means: 1174

(1) Splash or spatter in the eye or mouth, including when 1175
received in the course of conducting mouth-to-mouth 1176
resuscitation; 1177

(2) A puncture in the skin; 1178

(3) A cut in the skin or another opening in the skin such 1179

as an open sore, wound, lesion, abrasion, or ulcer.	1180
(B) As used in this section:	1181
(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	1182 1183
(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.	1184 1185
(3) "Emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.	1186 1187 1188 1189 1190
Sec. 4141.01. As used in this chapter, unless the context otherwise requires:	1191 1192
(A) (1) "Employer" means the state, its instrumentalities, its political subdivisions and their instrumentalities, Indian tribes, and any individual or type of organization including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1971, or in the case of political subdivisions or their instrumentalities, subsequent to December 31, 1973:	1193 1194 1195 1196 1197 1198 1199 1200 1201 1202
(a) Had in employment at least one individual, or in the case of a nonprofit organization, subsequent to December 31, 1973, had not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day; or	1203 1204 1205 1206 1207 1208

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

(c) Had paid, subsequent to December 31, 1977, for 1213
employment in domestic service in a local college club, or local 1214
chapter of a college fraternity or sorority, cash remuneration 1215
of one thousand dollars or more in any calendar quarter in the 1216
current calendar year or the preceding calendar year, or had 1217
paid subsequent to December 31, 1977, for employment in domestic 1218
service in a private home cash remuneration of one thousand 1219
dollars in any calendar quarter in the current calendar year or 1220
the preceding calendar year: 1221

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

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

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

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

(ii) Had at least ten individuals in employment in 1236
agricultural labor, not including agricultural workers who are 1237

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

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

(i) For which, within either the current or preceding 1247
calendar year, service, except for domestic service in a private 1248
home not covered under division (A)(1)(c) of this section, is or 1249
was performed with respect to which such employer is liable for 1250
any federal tax against which credit may be taken for 1251
contributions required to be paid into a state unemployment 1252
fund; 1253

(ii) Which, as a condition for approval of this chapter 1254
for full tax credit against the tax imposed by the "Federal 1255
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 1256
is required, pursuant to such act to be an employer under this 1257
chapter; or 1258

(iii) Who became an employer by election under division 1259
(A)(4) or (5) of this section and for the duration of such 1260
election; or 1261

(f) In the case of the state, its instrumentalities, its 1262
political subdivisions, and their instrumentalities, and Indian 1263
tribes, had in employment, as defined in divisions (B)(2)(a) and 1264
(B)(2)(1) of this section, at least one individual; 1265

(g) For the purposes of division (A)(1)(a) of this 1266

section, if any week includes both the thirty-first day of 1267
December and the first day of January, the days of that week 1268
before the first day of January shall be considered one calendar 1269
week and the days beginning the first day of January another 1270
week. 1271

(2) Each individual employed to perform or to assist in 1272
performing the work of any agent or employee of an employer is 1273
employed by such employer for all the purposes of this chapter, 1274
whether such individual was hired or paid directly by such 1275
employer or by such agent or employee, provided the employer had 1276
actual or constructive knowledge of the work. All individuals 1277
performing services for an employer of any person in this state 1278
who maintains two or more establishments within this state are 1279
employed by a single employer for the purposes of this chapter. 1280

(3) An employer subject to this chapter within any 1281
calendar year is subject to this chapter during the whole of 1282
such year and during the next succeeding calendar year. 1283

(4) An employer not otherwise subject to this chapter who 1284
files with the director of job and family services a written 1285
election to become an employer subject to this chapter for not 1286
less than two calendar years shall, with the written approval of 1287
such election by the director, become an employer subject to 1288
this chapter to the same extent as all other employers as of the 1289
date stated in such approval, and shall cease to be subject to 1290
this chapter as of the first day of January of any calendar year 1291
subsequent to such two calendar years only if at least thirty 1292
days prior to such first day of January the employer has filed 1293
with the director a written notice to that effect. 1294

(5) Any employer for whom services that do not constitute 1295
employment are performed may file with the director a written 1296

election that all such services performed by individuals in the 1297
employer's employ in one or more distinct establishments or 1298
places of business shall be deemed to constitute employment for 1299
all the purposes of this chapter, for not less than two calendar 1300
years. Upon written approval of the election by the director, 1301
such services shall be deemed to constitute employment subject 1302
to this chapter from and after the date stated in such approval. 1303
Such services shall cease to be employment subject to this 1304
chapter as of the first day of January of any calendar year 1305
subsequent to such two calendar years only if at least thirty 1306
days prior to such first day of January such employer has filed 1307
with the director a written notice to that effect. 1308

(B) (1) "Employment" means service performed by an 1309
individual for remuneration under any contract of hire, written 1310
or oral, express or implied, including service performed in 1311
interstate commerce and service performed by an officer of a 1312
corporation, without regard to whether such service is 1313
executive, managerial, or manual in nature, and without regard 1314
to whether such officer is a stockholder or a member of the 1315
board of directors of the corporation, unless it is shown to the 1316
satisfaction of the director, based upon a determination made by 1317
the director of commerce under Chapter 4175. of the Revised 1318
Code, that such individual has been and will continue to be free 1319
from direction or control over the performance of such service, 1320
both under a contract of service and in fact. ~~The director shall~~ 1321
~~adopt rules to define "direction or control."~~ 1322

(2) "Employment" includes: 1323

(a) Service performed after December 31, 1977, by an 1324
individual in the employ of the state or any of its 1325
instrumentalities, or any political subdivision thereof or any 1326

of its instrumentalities or any instrumentality of more than one 1327
of the foregoing or any instrumentality of any of the foregoing 1328
and one or more other states or political subdivisions and 1329
without regard to divisions (A) (1) (a) and (b) of this section, 1330
provided that such service is excluded from employment as 1331
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1332
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 1333
(3) of this section; or the services of employees covered by 1334
voluntary election, as provided under divisions (A) (4) and (5) 1335
of this section; 1336

(b) Service performed after December 31, 1971, by an 1337
individual in the employ of a religious, charitable, 1338
educational, or other organization which is excluded from the 1339
term "employment" as defined in the "Federal Unemployment Tax 1340
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1341
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 1342
excluded under division (B) (3) of this section; 1343

(c) Domestic service performed after December 31, 1977, 1344
for an employer, as provided in division (A) (1) (c) of this 1345
section; 1346

(d) Agricultural labor performed after December 31, 1977, 1347
for a farm operator or a crew leader, as provided in division 1348
(A) (1) (d) of this section; 1349

(e) Service not covered under division (B) (1) of this 1350
section which is performed after December 31, 1971: 1351

(i) ~~As an agent driver or commission driver a delivery~~ 1352
driver engaged in distributing meat products, vegetable 1353
products, fruit products, bakery products, beverages ~~other than~~ 1354
~~milk~~, laundry, ~~or~~ parcels, freight, dry-cleaning services, ~~for~~ 1355

~~the individual's employer or principal similar products;~~ 1356

(ii) As a traveling or city salesperson, other than as ~~an~~ 1357
~~agent driver or commission driver~~ a delivery driver, engaged on a 1358
full-time basis in the solicitation on behalf of and in the 1359
transmission to the salesperson's employer or principal except 1360
for sideline sales activities on behalf of some other person of 1361
orders from wholesalers, retailers, contractors, or operators of 1362
hotels, restaurants, or other similar establishments for 1363
merchandise for resale, or supplies for use in their business 1364
operations, ~~provided that for the purposes of division (B) (2) (e)~~ 1365
~~(ii) of this section, the services shall be deemed employment if~~ 1366
~~the contract of service contemplates that substantially all of~~ 1367
~~the services are to be performed personally by the individual~~ 1368
~~and that the individual does not have a substantial investment~~ 1369
~~in facilities used in connection with the performance of the~~ 1370
~~services other than in facilities for transportation, and the~~ 1371
~~services are not in the nature of a single transaction that is~~ 1372
~~not a part of a continuing relationship with the person for whom~~ 1373
~~the services are performed.~~ 1374

(f) An individual's entire service performed within or 1375
both within and without the state if: 1376

(i) The service is localized in this state. 1377

(ii) The service is not localized in any state, but some 1378
of the service is performed in this state and either the base of 1379
operations, or if there is no base of operations then the place 1380
from which such service is directed or controlled, is in this 1381
state or the base of operations or place from which such service 1382
is directed or controlled is not in any state in which some part 1383
of the service is performed but the individual's residence is in 1384
this state. 1385

(g) Service not covered under division (B) (2) (f) (ii) of 1386
this section and performed entirely without this state, with 1387
respect to no part of which contributions are required and paid 1388
under an unemployment compensation law of any other state, the 1389
Virgin Islands, Canada, or of the United States, if the 1390
individual performing such service is a resident of this state 1391
and the director approves the election of the employer for whom 1392
such services are performed; or, if the individual is not a 1393
resident of this state but the place from which the service is 1394
directed or controlled is in this state, the entire services of 1395
such individual shall be deemed to be employment subject to this 1396
chapter, provided service is deemed to be localized within this 1397
state if the service is performed entirely within this state or 1398
if the service is performed both within and without this state 1399
but the service performed without this state is incidental to 1400
the individual's service within the state, for example, is 1401
temporary or transitory in nature or consists of isolated 1402
transactions; 1403

(h) Service of an individual who is a citizen of the 1404
United States, performed outside the United States except in 1405
Canada after December 31, 1971, or the Virgin Islands, after 1406
December 31, 1971, and before the first day of January of the 1407
year following that in which the United States secretary of 1408
labor approves the Virgin Islands law for the first time, in the 1409
employ of an American employer, other than service which is 1410
"employment" under divisions (B) (2) (f) and (g) of this section 1411
or similar provisions of another state's law, if: 1412

(i) The employer's principal place of business in the 1413
United States is located in this state; 1414

(ii) The employer has no place of business in the United 1415

States, but the employer is an individual who is a resident of 1416
this state; or the employer is a corporation which is organized 1417
under the laws of this state, or the employer is a partnership 1418
or a trust and the number of partners or trustees who are 1419
residents of this state is greater than the number who are 1420
residents of any other state; or 1421

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1422
(ii) of this section is met but the employer has elected 1423
coverage in this state or the employer having failed to elect 1424
coverage in any state, the individual has filed a claim for 1425
benefits, based on such service, under this chapter. 1426

(i) For the purposes of division (B) (2) (h) of this 1427
section, the term "American employer" means an employer who is 1428
an individual who is a resident of the United States; or a 1429
partnership, if two-thirds or more of the partners are residents 1430
of the United States; or a trust, if all of the trustees are 1431
residents of the United States; or a corporation organized under 1432
the laws of the United States or of any state, provided the term 1433
"United States" includes the states, the District of Columbia, 1434
the Commonwealth of Puerto Rico, and the Virgin Islands. 1435

(j) Notwithstanding any other provisions of divisions (B) 1436
(1) and (2) of this section, service, except for domestic 1437
service in a private home not covered under division (A) (1) (c) 1438
of this section, with respect to which a tax is required to be 1439
paid under any federal law imposing a tax against which credit 1440
may be taken for contributions required to be paid into a state 1441
unemployment fund, or service, except for domestic service in a 1442
private home not covered under division (A) (1) (c) of this 1443
section, which, as a condition for full tax credit against the 1444
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1445

26 U.S.C.A. 3301 to 3311, is required to be covered under this 1446
chapter. 1447

(k) Construction services performed by any individual 1448
under a construction contract, as defined in section 4141.39 of 1449
the Revised Code, ~~if the director determines that the employer-~~ 1450
~~for whom services are performed has the right to direct or-~~ 1451
~~control the performance of the services and that the individuals-~~ 1452
~~who perform the services receive remuneration for the services-~~ 1453
~~performed. The director shall presume that the employer for whom-~~ 1454
~~services are performed has the right to direct or control the-~~ 1455
~~performance of the services if ten or more of the following-~~ 1456
~~criteria apply:~~ 1457

~~(i) The employer directs or controls the manner or method-~~ 1458
~~by which instructions are given to the individual performing-~~ 1459
~~services;~~ 1460

~~(ii) The employer requires particular training for the-~~ 1461
~~individual performing services;~~ 1462

~~(iii) Services performed by the individual are integrated-~~ 1463
~~into the regular functioning of the employer;~~ 1464

~~(iv) The employer requires that services be provided by a-~~ 1465
~~particular individual;~~ 1466

~~(v) The employer hires, supervises, or pays the wages of-~~ 1467
~~the individual performing services;~~ 1468

~~(vi) A continuing relationship between the employer and-~~ 1469
~~the individual performing services exists which contemplates-~~ 1470
~~continuing or recurring work, even if not full time work;~~ 1471

~~(vii) The employer requires the individual to perform-~~ 1472
~~services during established hours;~~ 1473

(viii) The employer requires that the individual	1474
performing services be devoted on a full-time basis to the	1475
business of the employer;	1476
(ix) The employer requires the individual to perform	1477
services on the employer's premises;	1478
(x) The employer requires the individual performing	1479
services to follow the order of work established by the	1480
employer;	1481
(xi) The employer requires the individual performing	1482
services to make oral or written reports of progress;	1483
(xii) The employer makes payment to the individual for	1484
services on a regular basis, such as hourly, weekly, or monthly;	1485
(xiii) The employer pays expenses for the individual	1486
performing services;	1487
(xiv) The employer furnishes the tools and materials for	1488
use by the individual to perform services;	1489
(xv) The individual performing services has not invested	1490
in the facilities used to perform services;	1491
(xvi) The individual performing services does not realize	1492
a profit or suffer a loss as a result of the performance of the	1493
services;	1494
(xvii) The individual performing services is not	1495
performing services for more than two employers simultaneously;	1496
(xviii) The individual performing services does not make	1497
the services available to the general public;	1498
(xix) The employer has a right to discharge the individual	1499
performing services;	1500

~~(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.~~

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

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

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

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

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

(i) As a publicly elected official;

(ii) As a member of a legislative body, or a member of the judiciary;	1530 1531
(iii) As a military member of the Ohio national guard;	1532
(iv) As an employee, not in the classified service as defined in section 124.11 of the Revised Code, serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;	1533 1534 1535 1536
(v) In a position which, under or pursuant to law, is designated as a major nontenured policymaking or advisory position, not in the classified service of the state, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.	1537 1538 1539 1540 1541 1542
(d) In the employ of any governmental unit or instrumentality of the United States;	1543 1544
(e) Service performed after December 31, 1971:	1545
(i) Service in the employ of an educational institution or institution of higher education, including those operated by the state or a political subdivision, if such service is performed by a student who is enrolled and is regularly attending classes at the educational institution or institution of higher education; or	1546 1547 1548 1549 1550 1551
(ii) By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the	1552 1553 1554 1555 1556 1557 1558

service is an integral part of the program, and the institution 1559
has so certified to the employer, provided that this subdivision 1560
shall not apply to service performed in a program established 1561
for or on behalf of an employer or group of employers. 1562

(f) Service performed by an individual in the employ of 1563
the individual's son, daughter, or spouse and service performed 1564
by a child under the age of eighteen in the employ of the 1565
child's father or mother; 1566

~~(g) Service performed for one or more principals by an 1567
individual who is compensated on a commission basis, who in the 1568
performance of the work is master of the individual's own time 1569
and efforts, and whose remuneration is wholly dependent on the 1570
amount of effort the individual chooses to expend, and which 1571
service is not subject to the "Federal Unemployment Tax Act," 53- 1572
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1573
after December 31, 1971: 1574~~

(i) By an individual for an employer as an insurance agent 1575
or as an insurance solicitor, if all this service is performed 1576
for remuneration solely by way of commission; 1577

(ii) As a home worker performing work, according to 1578
specifications furnished by the employer for whom the services 1579
are performed, on materials or goods furnished by such employer 1580
which are required to be returned to the employer or to a person 1581
designated for that purpose. 1582

(h) Service performed after December 31, 1971: 1583

(i) In the employ of a church or convention or association 1584
of churches, or in an organization which is operated primarily 1585
for religious purposes and which is operated, supervised, 1586
controlled, or principally supported by a church or convention 1587

or association of churches; 1588

(ii) By a duly ordained, commissioned, or licensed 1589
minister of a church in the exercise of the individual's 1590
ministry or by a member of a religious order in the exercise of 1591
duties required by such order; or 1592

(iii) In a facility conducted for the purpose of carrying 1593
out a program of rehabilitation for individuals whose earning 1594
capacity is impaired by age or physical or mental deficiency or 1595
injury, or providing remunerative work for individuals who 1596
because of their impaired physical or mental capacity cannot be 1597
readily absorbed in the competitive labor market, by an 1598
individual receiving such rehabilitation or remunerative work. 1599

(i) Service performed after June 30, 1939, with respect to 1600
which unemployment compensation is payable under the "Railroad 1601
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1602
351; 1603

(j) Service performed by an individual in the employ of 1604
any organization exempt from income tax under section 501 of the 1605
"Internal Revenue Code of 1954," if the remuneration for such 1606
service does not exceed fifty dollars in any calendar quarter, 1607
or if such service is in connection with the collection of dues 1608
or premiums for a fraternal beneficial society, order, or 1609
association and is performed away from the home office or is 1610
ritualistic service in connection with any such society, order, 1611
or association; 1612

(k) Casual labor not in the course of an employer's trade 1613
or business; incidental service performed by an officer, 1614
appraiser, or member of a finance committee of a bank, building 1615
and loan association, savings and loan association, or savings 1616

association when the remuneration for such incidental service 1617
exclusive of the amount paid or allotted for directors' fees 1618
does not exceed sixty dollars per calendar quarter is casual 1619
labor; 1620

(l) Service performed in the employ of a voluntary 1621
employees' beneficial association providing for the payment of 1622
life, sickness, accident, or other benefits to the members of 1623
such association or their dependents or their designated 1624
beneficiaries, if admission to a membership in such association 1625
is limited to individuals who are officers or employees of a 1626
municipal or public corporation, of a political subdivision of 1627
the state, or of the United States and no part of the net 1628
earnings of such association inures, other than through such 1629
payments, to the benefit of any private shareholder or 1630
individual; 1631

(m) Service performed by an individual in the employ of a 1632
foreign government, including service as a consular or other 1633
officer or employee or of a nondiplomatic representative; 1634

(n) Service performed in the employ of an instrumentality 1635
wholly owned by a foreign government if the service is of a 1636
character similar to that performed in foreign countries by 1637
employees of the United States or of an instrumentality thereof 1638
and if the director finds that the secretary of state of the 1639
United States has certified to the secretary of the treasury of 1640
the United States that the foreign government, with respect to 1641
whose instrumentality exemption is claimed, grants an equivalent 1642
exemption with respect to similar service performed in the 1643
foreign country by employees of the United States and of 1644
instrumentalities thereof; 1645

(o) Service with respect to which unemployment 1646

compensation is payable under an unemployment compensation 1647
system established by an act of congress; 1648

(p) Service performed as a student nurse in the employ of 1649
a hospital or a nurses' training school by an individual who is 1650
enrolled and is regularly attending classes in a nurses' 1651
training school chartered or approved pursuant to state law, and 1652
service performed as an intern in the employ of a hospital by an 1653
individual who has completed a four years' course in a medical 1654
school chartered or approved pursuant to state law; 1655

(q) Service performed by an individual under the age of 1656
eighteen in the delivery or distribution of newspapers or 1657
shopping news, not including delivery or distribution to any 1658
point for subsequent delivery or distribution; 1659

(r) Service performed in the employ of the United States 1660
or an instrumentality of the United States immune under the 1661
Constitution of the United States from the contributions imposed 1662
by this chapter, except that to the extent that congress permits 1663
states to require any instrumentalities of the United States to 1664
make payments into an unemployment fund under a state 1665
unemployment compensation act, this chapter shall be applicable 1666
to such instrumentalities and to services performed for such 1667
instrumentalities in the same manner, to the same extent, and on 1668
the same terms as to all other employers, individuals, and 1669
services, provided that if this state is not certified for any 1670
year by the proper agency of the United States under section 1671
3304 of the "Internal Revenue Code of 1954," the payments 1672
required of such instrumentalities with respect to such year 1673
shall be refunded by the director from the fund in the same 1674
manner and within the same period as is provided in division (E) 1675
of section 4141.09 of the Revised Code with respect to 1676

contributions erroneously collected; 1677

(s) Service performed by an individual as a member of a 1678
band or orchestra, provided such service does not represent the 1679
principal occupation of such individual, and which service is 1680
not subject to or required to be covered for full tax credit 1681
against the tax imposed by the "Federal Unemployment Tax Act," 1682
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1683

(t) Service performed in the employ of a day camp whose 1684
camping season does not exceed twelve weeks in any calendar 1685
year, and which service is not subject to the "Federal 1686
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1687
3311. Service performed after December 31, 1971: 1688

(i) In the employ of a hospital, if the service is 1689
performed by a patient of the hospital, as defined in division 1690
(W) of this section; 1691

(ii) For a prison or other correctional institution by an 1692
inmate of the prison or correctional institution; 1693

(iii) Service performed after December 31, 1977, by an 1694
inmate of a custodial institution operated by the state, a 1695
political subdivision, or a nonprofit organization. 1696

(u) Service that is performed by a nonresident alien 1697
individual for the period the individual temporarily is present 1698
in the United States as a nonimmigrant under division (F), (J), 1699
(M), or (Q) of section 101(a)(15) of the "Immigration and 1700
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1701
that is excluded under section 3306(c)(19) of the "Federal 1702
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1703
3311. 1704

(v) Notwithstanding any other provisions of division (B) 1705

(3) of this section, services that are excluded under divisions 1706
(B) (3) (g), (j), (k), and (l) of this section shall not be 1707
excluded from employment when performed for a nonprofit 1708
organization, as defined in division (X) of this section, or for 1709
this state or its instrumentalities, or for a political 1710
subdivision or its instrumentalities or for Indian tribes; 1711

(w) Service that is performed by an individual working as 1712
an election official or election worker if the amount of 1713
remuneration received by the individual during the calendar year 1714
for services as an election official or election worker is less 1715
than one thousand dollars; 1716

(x) Service performed for an elementary or secondary 1717
school that is operated primarily for religious purposes, that 1718
is described in subsection 501(c) (3) and exempt from federal 1719
income taxation under subsection 501(a) of the Internal Revenue 1720
Code, 26 U.S.C.A. 501; 1721

(y) Service performed by a person committed to a penal 1722
institution. 1723

(z) Service performed for an Indian tribe as described in 1724
division (B) (2) (1) of this section when performed in any of the 1725
following manners: 1726

(i) As a publicly elected official; 1727

(ii) As a member of an Indian tribal council; 1728

(iii) As a member of a legislative or judiciary body; 1729

(iv) In a position which, pursuant to Indian tribal law, 1730
is designated as a major nontenured policymaking or advisory 1731
position, or a policymaking or advisory position where the 1732
performance of the duties ordinarily does not require more than 1733

eight hours of time per week; 1734

(v) As an employee serving on a temporary basis in the 1735
case of a fire, storm, snow, earthquake, flood, or similar 1736
emergency. 1737

(aa) Service performed after December 31, 1971, for a 1738
nonprofit organization, this state or its instrumentalities, a 1739
political subdivision or its instrumentalities, or an Indian 1740
tribe as part of an unemployment work-relief or work-training 1741
program assisted or financed in whole or in part by any federal 1742
agency or an agency of a state or political subdivision, 1743
thereof, by an individual receiving the work-relief or work- 1744
training. 1745

(bb) Participation in a learn to earn program as defined 1746
in section 4141.293 of the Revised Code. 1747

(4) If the services performed during one half or more of 1748
any pay period by an employee for the person employing that 1749
employee constitute employment, all the services of such 1750
employee for such period shall be deemed to be employment; but 1751
if the services performed during more than one half of any such 1752
pay period by an employee for the person employing that employee 1753
do not constitute employment, then none of the services of such 1754
employee for such period shall be deemed to be employment. As 1755
used in division (B) (4) of this section, "pay period" means a 1756
period, of not more than thirty-one consecutive days, for which 1757
payment of remuneration is ordinarily made to the employee by 1758
the person employing that employee. Division (B) (4) of this 1759
section does not apply to services performed in a pay period by 1760
an employee for the person employing that employee, if any of 1761
such service is excepted by division (B) (3) (o) of this section. 1762

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

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

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

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

(G) (1) "Wages" means remuneration paid to an employee by each of the employee's employers with respect to employment; except that wages shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise, which in any calendar year is in excess of eight thousand two hundred fifty dollars on and after January 1, 1992; eight thousand five hundred dollars on and after January 1, 1993; eight thousand seven hundred fifty dollars on and after January 1, 1994; and nine thousand dollars on and after January 1, 1995. Remuneration in excess of such amounts shall be deemed wages subject to contribution to the same extent that such remuneration is defined as wages under the "Federal Unemployment Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The remuneration paid an employee by an employer with respect to employment in another state, upon which contributions

were required and paid by such employer under the unemployment 1793
compensation act of such other state, shall be included as a 1794
part of remuneration in computing the amount specified in this 1795
division. 1796

(2) Notwithstanding division (G)(1) of this section, if, 1797
as of the computation date for any calendar year, the director 1798
determines that the level of the unemployment compensation fund 1799
is sixty per cent or more below the minimum safe level as 1800
defined in section 4141.25 of the Revised Code, then, effective 1801
the first day of January of the following calendar year, wages 1802
subject to this chapter shall not include that part of 1803
remuneration paid during any calendar year to an individual by 1804
an employer or such employer's predecessor in interest in the 1805
same business or enterprise which is in excess of nine thousand 1806
dollars. The increase in the dollar amount of wages subject to 1807
this chapter under this division shall remain in effect from the 1808
date of the director's determination pursuant to division (G)(2) 1809
of this section and thereafter notwithstanding the fact that the 1810
level in the fund may subsequently become less than sixty per 1811
cent below the minimum safe level. 1812

(H)(1) "Remuneration" means all compensation for personal 1813
services, including commissions and bonuses and the cash value 1814
of all compensation in any medium other than cash, except that 1815
in the case of agricultural or domestic service, "remuneration" 1816
includes only cash remuneration. Gratuities customarily received 1817
by an individual in the course of the individual's employment 1818
from persons other than the individual's employer and which are 1819
accounted for by such individual to the individual's employer 1820
are taxable wages. 1821

The reasonable cash value of compensation paid in any 1822

medium other than cash shall be estimated and determined in 1823
accordance with rules prescribed by the director, provided that 1824
"remuneration" does not include: 1825

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1826
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1827
713, 26 U.S.C.A. 3301 to 3311, as amended; 1828

(b) The payment by an employer, without deduction from the 1829
remuneration of the individual in the employer's employ, of the 1830
tax imposed upon an individual in the employer's employ under 1831
section 3101 of the "Internal Revenue Code of 1954," with 1832
respect to services performed after October 1, 1941. 1833

(2) "Cash remuneration" means all remuneration paid in 1834
cash, including commissions and bonuses, but not including the 1835
cash value of all compensation in any medium other than cash. 1836

(I) "Interested party" means the director and any party to 1837
whom notice of a determination of an application for benefit 1838
rights or a claim for benefits is required to be given under 1839
section 4141.28 of the Revised Code. 1840

(J) "Annual payroll" means the total amount of wages 1841
subject to contributions during a twelve-month period ending 1842
with the last day of the second calendar quarter of any calendar 1843
year. 1844

(K) "Average annual payroll" means the average of the last 1845
three annual payrolls of an employer, provided that if, as of 1846
any computation date, the employer has had less than three 1847
annual payrolls in such three-year period, such average shall be 1848
based on the annual payrolls which the employer has had as of 1849
such date. 1850

(L) (1) "Contributions" means the money payments to the 1851

state unemployment compensation fund required of employers by 1852
section 4141.25 of the Revised Code and of the state and any of 1853
its political subdivisions electing to pay contributions under 1854
section 4141.242 of the Revised Code. Employers paying 1855
contributions shall be described as "contributory employers." 1856

(2) "Payments in lieu of contributions" means the money 1857
payments to the state unemployment compensation fund required of 1858
reimbursing employers under sections 4141.241 and 4141.242 of 1859
the Revised Code. 1860

(M) An individual is "totally unemployed" in any week 1861
during which the individual performs no services and with 1862
respect to such week no remuneration is payable to the 1863
individual. 1864

(N) An individual is "partially unemployed" in any week 1865
if, due to involuntary loss of work, the total remuneration 1866
payable to the individual for such week is less than the 1867
individual's weekly benefit amount. 1868

(O) "Week" means the calendar week ending at midnight 1869
Saturday unless an equivalent week of seven consecutive calendar 1870
days is prescribed by the director. 1871

(1) "Qualifying week" means any calendar week in an 1872
individual's base period with respect to which the individual 1873
earns or is paid remuneration in employment subject to this 1874
chapter. A calendar week with respect to which an individual 1875
earns remuneration but for which payment was not made within the 1876
base period, when necessary to qualify for benefit rights, may 1877
be considered to be a qualifying week. The number of qualifying 1878
weeks which may be established in a calendar quarter shall not 1879
exceed the number of calendar weeks in the quarter. 1880

(2) "Average weekly wage" means the amount obtained by 1881
dividing an individual's total remuneration for all qualifying 1882
weeks during the base period by the number of such qualifying 1883
weeks, provided that if the computation results in an amount 1884
that is not a multiple of one dollar, such amount shall be 1885
rounded to the next lower multiple of one dollar. 1886

(P) "Weekly benefit amount" means the amount of benefits 1887
an individual would be entitled to receive for one week of total 1888
unemployment. 1889

(Q) (1) "Base period" means the first four of the last five 1890
completed calendar quarters immediately preceding the first day 1891
of an individual's benefit year, except as provided in division 1892
(Q) (2) of this section. 1893

(2) If an individual does not have sufficient qualifying 1894
weeks and wages in the base period to qualify for benefit 1895
rights, the individual's base period shall be the four most 1896
recently completed calendar quarters preceding the first day of 1897
the individual's benefit year. Such base period shall be known 1898
as the "alternate base period." If information as to weeks and 1899
wages for the most recent quarter of the alternate base period 1900
is not available to the director from the regular quarterly 1901
reports of wage information, which are systematically 1902
accessible, the director may, consistent with the provisions of 1903
section 4141.28 of the Revised Code, base the determination of 1904
eligibility for benefits on the affidavit of the claimant with 1905
respect to weeks and wages for that calendar quarter. The 1906
claimant shall furnish payroll documentation, where available, 1907
in support of the affidavit. The determination based upon the 1908
alternate base period as it relates to the claimant's benefit 1909
rights, shall be amended when the quarterly report of wage 1910

information from the employer is timely received and that 1911
information causes a change in the determination. As provided in 1912
division (B) of section 4141.28 of the Revised Code, any 1913
benefits paid and charged to an employer's account, based upon a 1914
claimant's affidavit, shall be adjusted effective as of the 1915
beginning of the claimant's benefit year. No calendar quarter in 1916
a base period or alternate base period shall be used to 1917
establish a subsequent benefit year. 1918

(3) The "base period" of a combined wage claim, as 1919
described in division (H) of section 4141.43 of the Revised 1920
Code, shall be the base period prescribed by the law of the 1921
state in which the claim is allowed. 1922

(4) For purposes of determining the weeks that comprise a 1923
completed calendar quarter under this division, only those weeks 1924
ending at midnight Saturday within the calendar quarter shall be 1925
utilized. 1926

(R) (1) "Benefit year" with respect to an individual means 1927
the fifty-two week period beginning with the first day of that 1928
week with respect to which the individual first files a valid 1929
application for determination of benefit rights, and thereafter 1930
the fifty-two week period beginning with the first day of that 1931
week with respect to which the individual next files a valid 1932
application for determination of benefit rights after the 1933
termination of the individual's last preceding benefit year, 1934
except that the application shall not be considered valid unless 1935
the individual has had employment in six weeks that is subject 1936
to this chapter or the unemployment compensation act of another 1937
state, or the United States, and has, since the beginning of the 1938
individual's previous benefit year, in the employment earned 1939
three times the average weekly wage determined for the previous 1940

benefit year. The "benefit year" of a combined wage claim, as 1941
described in division (H) of section 4141.43 of the Revised 1942
Code, shall be the benefit year prescribed by the law of the 1943
state in which the claim is allowed. Any application for 1944
determination of benefit rights made in accordance with section 1945
4141.28 of the Revised Code is valid if the individual filing 1946
such application is unemployed, has been employed by an employer 1947
or employers subject to this chapter in at least twenty 1948
qualifying weeks within the individual's base period, and has 1949
earned or been paid remuneration at an average weekly wage of 1950
not less than twenty-seven and one-half per cent of the 1951
statewide average weekly wage for such weeks. For purposes of 1952
determining whether an individual has had sufficient employment 1953
since the beginning of the individual's previous benefit year to 1954
file a valid application, "employment" means the performance of 1955
services for which remuneration is payable. 1956

(2) Effective for benefit years beginning on and after 1957
December 26, 2004, any application for determination of benefit 1958
rights made in accordance with section 4141.28 of the Revised 1959
Code is valid if the individual satisfies the criteria described 1960
in division (R) (1) of this section, and if the reason for the 1961
individual's separation from employment is not disqualifying 1962
pursuant to division (D) (2) of section 4141.29 or section 1963
4141.291 of the Revised Code. A disqualification imposed 1964
pursuant to division (D) (2) of section 4141.29 or section 1965
4141.291 of the Revised Code must be removed as provided in 1966
those sections as a requirement of establishing a valid 1967
application for benefit years beginning on and after December 1968
26, 2004. 1969

(3) The statewide average weekly wage shall be calculated 1970
by the director once a year based on the twelve-month period 1971

ending the thirtieth day of June, as set forth in division (B) 1972
(3) of section 4141.30 of the Revised Code, rounded down to the 1973
nearest dollar. Increases or decreases in the amount of 1974
remuneration required to have been earned or paid in order for 1975
individuals to have filed valid applications shall become 1976
effective on Sunday of the calendar week in which the first day 1977
of January occurs that follows the twelve-month period ending 1978
the thirtieth day of June upon which the calculation of the 1979
statewide average weekly wage was based. 1980

(4) As used in this division, an individual is 1981
"unemployed" if, with respect to the calendar week in which such 1982
application is filed, the individual is "partially unemployed" 1983
or "totally unemployed" as defined in this section or if, prior 1984
to filing the application, the individual was separated from the 1985
individual's most recent work for any reason which terminated 1986
the individual's employee-employer relationship, or was laid off 1987
indefinitely or for a definite period of seven or more days. 1988

(S) "Calendar quarter" means the period of three 1989
consecutive calendar months ending on the thirty-first day of 1990
March, the thirtieth day of June, the thirtieth day of 1991
September, and the thirty-first day of December, or the 1992
equivalent thereof as the director prescribes by rule. 1993

(T) "Computation date" means the first day of the third 1994
calendar quarter of any calendar year. 1995

(U) "Contribution period" means the calendar year 1996
beginning on the first day of January of any year. 1997

(V) "Agricultural labor," for the purpose of this 1998
division, means any service performed prior to January 1, 1972, 1999
which was agricultural labor as defined in this division prior 2000

to that date, and service performed after December 31, 1971:	2001
(1) On a farm, in the employ of any person, in connection	2002
with cultivating the soil, or in connection with raising or	2003
harvesting any agricultural or horticultural commodity,	2004
including the raising, shearing, feeding, caring for, training,	2005
and management of livestock, bees, poultry, and fur-bearing	2006
animals and wildlife;	2007
(2) In the employ of the owner or tenant or other operator	2008
of a farm in connection with the operation, management,	2009
conservation, improvement, or maintenance of such farm and its	2010
tools and equipment, or in salvaging timber or clearing land of	2011
brush and other debris left by hurricane, if the major part of	2012
such service is performed on a farm;	2013
(3) In connection with the production or harvesting of any	2014
commodity defined as an agricultural commodity in section 15 (g)	2015
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12	2016
U.S.C. 1141j, as amended, or in connection with the ginning of	2017
cotton, or in connection with the operation or maintenance of	2018
ditches, canals, reservoirs, or waterways, not owned or operated	2019
for profit, used exclusively for supplying and storing water for	2020
farming purposes;	2021
(4) In the employ of the operator of a farm in handling,	2022
planting, drying, packing, packaging, processing, freezing,	2023
grading, storing, or delivering to storage or to market or to a	2024
carrier for transportation to market, in its unmanufactured	2025
state, any agricultural or horticultural commodity, but only if	2026
the operator produced more than one half of the commodity with	2027
respect to which such service is performed;	2028
(5) In the employ of a group of operators of farms, or a	2029

cooperative organization of which the operators are members, in 2030
the performance of service described in division (V) (4) of this 2031
section, but only if the operators produced more than one-half 2032
of the commodity with respect to which the service is performed; 2033

(6) Divisions (V) (4) and (5) of this section shall not be 2034
deemed to be applicable with respect to service performed: 2035

(a) In connection with commercial canning or commercial 2036
freezing or in connection with any agricultural or horticultural 2037
commodity after its delivery to a terminal market for 2038
distribution for consumption; or 2039

(b) On a farm operated for profit if the service is not in 2040
the course of the employer's trade or business. 2041

As used in division (V) of this section, "farm" includes 2042
stock, dairy, poultry, fruit, fur-bearing animal, and truck 2043
farms, plantations, ranches, nurseries, ranges, greenhouses, or 2044
other similar structures used primarily for the raising of 2045
agricultural or horticultural commodities and orchards. 2046

(W) "Hospital" means an institution which has been 2047
registered or licensed by the Ohio department of health as a 2048
hospital. 2049

(X) "Nonprofit organization" means an organization, or 2050
group of organizations, described in section 501(c) (3) of the 2051
"Internal Revenue Code of 1954," and exempt from income tax 2052
under section 501(a) of that code. 2053

(Y) "Institution of higher education" means a public or 2054
nonprofit educational institution, including an educational 2055
institution operated by an Indian tribe, which: 2056

(1) Admits as regular students only individuals having a 2057

certificate of graduation from a high school, or the recognized 2058
equivalent; 2059

(2) Is legally authorized in this state or by the Indian 2060
tribe to provide a program of education beyond high school; and 2061

(3) Provides an educational program for which it awards a 2062
bachelor's or higher degree, or provides a program which is 2063
acceptable for full credit toward such a degree, a program of 2064
post-graduate or post-doctoral studies, or a program of training 2065
to prepare students for gainful employment in a recognized 2066
occupation. 2067

For the purposes of this division, all colleges and 2068
universities in this state are institutions of higher education. 2069

(Z) For the purposes of this chapter, "states" includes 2070
the District of Columbia, the Commonwealth of Puerto Rico, and 2071
the Virgin Islands. 2072

(AA) "Alien" means, for the purposes of division (A) (1) (d) 2073
of this section, an individual who is an alien admitted to the 2074
United States to perform service in agricultural labor pursuant 2075
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 2076
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 2077

(BB) (1) "Crew leader" means an individual who furnishes 2078
individuals to perform agricultural labor for any other employer 2079
or farm operator, and: 2080

(a) Pays, either on the individual's own behalf or on 2081
behalf of the other employer or farm operator, the individuals 2082
so furnished by the individual for the service in agricultural 2083
labor performed by them; 2084

(b) Has not entered into a written agreement with the 2085

other employer or farm operator under which the agricultural 2086
worker is designated as in the employ of the other employer or 2087
farm operator. 2088

(2) For the purposes of this chapter, any individual who 2089
is a member of a crew furnished by a crew leader to perform 2090
service in agricultural labor for any other employer or farm 2091
operator shall be treated as an employee of the crew leader if: 2092

(a) The crew leader holds a valid certificate of 2093
registration under the "Farm Labor Contractor Registration Act 2094
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 2095

(b) Substantially all the members of the crew operate or 2096
maintain tractors, mechanized harvesting or crop-dusting 2097
equipment, or any other mechanized equipment, which is provided 2098
by the crew leader; and 2099

(c) If the individual is not in the employment of the 2100
other employer or farm operator within the meaning of division 2101
(B) (1) of this section. 2102

(3) For the purposes of this division, any individual who 2103
is furnished by a crew leader to perform service in agricultural 2104
labor for any other employer or farm operator and who is not 2105
treated as in the employment of the crew leader under division 2106
(BB) (2) of this section shall be treated as the employee of the 2107
other employer or farm operator and not of the crew leader. The 2108
other employer or farm operator shall be treated as having paid 2109
cash remuneration to the individual in an amount equal to the 2110
amount of cash remuneration paid to the individual by the crew 2111
leader, either on the crew leader's own behalf or on behalf of 2112
the other employer or farm operator, for the service in 2113
agricultural labor performed for the other employer or farm 2114

operator. 2115

(CC) "Educational institution" means an institution other 2116
than an institution of higher education as defined in division 2117
(Y) of this section, including an educational institution 2118
operated by an Indian tribe, which: 2119

(1) Offers participants, trainees, or students an 2120
organized course of study or training designed to transfer to 2121
them knowledge, skills, information, doctrines, attitudes, or 2122
abilities from, by, or under the guidance of an instructor or 2123
teacher; and 2124

(2) Is approved, chartered, or issued a permit to operate 2125
as a school by the state board of education, other government 2126
agency, or Indian tribe that is authorized within the state to 2127
approve, charter, or issue a permit for the operation of a 2128
school. 2129

For the purposes of this division, the courses of study or 2130
training which the institution offers may be academic, 2131
technical, trade, or preparation for gainful employment in a 2132
recognized occupation. 2133

(DD) "Cost savings day" means any unpaid day off from work 2134
in which employees continue to accrue employee benefits which 2135
have a determinable value including, but not limited to, 2136
vacation, pension contribution, sick time, and life and health 2137
insurance. 2138

(EE) "Employee" has the same meaning as in section 4175.01 2139
of the Revised Code, unless the services performed by the 2140
individual do not constitute "employment" as defined in division 2141
(B) of this section. 2142

Sec. 4175.01. As used in this chapter: 2143

(A) "Aggrieved party" means any of the following entities 2144
that believes that the entity has been injured by an employer's 2145
alleged violation of section 4175.02 of the Revised Code: 2146

(1) An employee; 2147

(2) An employer association; 2148

(3) An interested party; 2149

(4) A labor organization. 2150

(B) "Construction" means any constructing, altering, 2151
reconstructing, repairing, rehabilitating, refinishing, 2152
refurbishing, remodeling, remediating, renovating, custom 2153
fabricating, maintenance, landscaping, improving, wrecking, 2154
painting, decorating, demolishing, and adding to or subtracting 2155
from any building, structure, highway, roadway, street, bridge, 2156
alley, sewer, ditch, sewage disposal plant, water works, parking 2157
facility, railroad, excavation, or other structure, project, 2158
development, real property or improvement, or to do any part 2159
thereof, regardless of whether the performance of the work 2160
involves the addition to or fabrication of any material or 2161
article of merchandise into any structure, project, development, 2162
real property, or improvement. "Construction" includes moving 2163
construction-related materials to the job site and removing 2164
construction-related materials from the job site. 2165

(C) "Contractor" means any sole proprietorship, 2166
partnership, firm, corporation, limited liability company, 2167
association, or other entity permitted by law to do business 2168
within this state that engages in construction. "Contractor" 2169
does not include either of the following: 2170

(1) The state or its officers, agencies, or political 2171
subdivisions; 2172

<u>(2) The federal government.</u>	2173
<u>(D) (1) "Employee" means an individual who performs services for compensation for an employer.</u>	2174 2175
<u>(2) "Employee" does not mean an individual who performs services for an employer and to whom all of the following conditions apply:</u>	2176 2177 2178
<u>(a) The individual has been and continues to be free from control and direction in connection with the performance of the service.</u>	2179 2180 2181
<u>(b) The individual customarily is engaged in an independently established trade, occupation, profession, or business of the same nature of the trade, occupation, profession, or business involved in the service performed.</u>	2182 2183 2184 2185
<u>(c) The individual is a separate and distinct business entity from the entity for which the service is being performed or if the individual is providing construction services and is a sole proprietorship or a partner in a partnership, the individual is a legitimate sole proprietorship or a partner in a legitimate partnership to which section 4175.04 of the Revised Code applies, as applicable.</u>	2186 2187 2188 2189 2190 2191 2192
<u>(d) The individual incurs the main expenses and has continuing or recurring business liabilities related to the service performed.</u>	2193 2194 2195
<u>(e) The individual is liable for breach of contract for failure to complete the service.</u>	2196 2197
<u>(f) An agreement, written or oral, express or implied, exists describing the service to be performed, the payment the individual will receive for performance of the service, and the</u>	2198 2199 2200

time frame for completion of the service. 2201

(g) The service performed by the individual is outside of 2202
the usual course of business of the employer. 2203

(E) "Employer" means any person, the state, any agency or 2204
instrumentality of the state, and any municipal corporation, 2205
county, township, school district, or other political 2206
subdivision or any agency or instrumentality thereof that 2207
engages an individual to perform services. 2208

(F) "Interested party" means any of the following 2209
entities: 2210

(1) Any contractor who submits a bid for the purpose of 2211
securing the award of a contract for construction of a public 2212
improvement as that term is defined in section 4115.03 of the 2213
Revised Code; 2214

(2) Any person acting as a subcontractor of a contractor 2215
described in division (F) (1) of this section; 2216

(3) Any bona fide labor organization that has as members 2217
or is authorized to represent employees of a person described in 2218
division (F) (1) or (2) of this section; 2219

(4) Any association having as members any of the persons 2220
described in division (F) (1) or (2) of this section. 2221

(G) "Labor organization" has the same meaning as in 2222
section 3517.01 of the Revised Code. 2223

(H) "State agency" has the same meaning as in section 1.60 2224
of the Revised Code. 2225

(I) "Subcontractor" means any person who undertakes to 2226
perform construction services under a contract with any 2227

individual other than the owner, part owner, or lessee. 2228

Sec. 4175.02. (A) No employer shall fail to designate an 2229
individual who performs services for the employer as an employee 2230
unless the conditions described in division (D)(2) of section 2231
4175.01 of the Revised Code apply to that individual. The 2232
director of commerce shall not use an employer's failure to 2233
withhold federal or state income taxes with respect to an 2234
individual or to include remuneration paid to an individual for 2235
purposes of section 4123.26, 4123.41, or 4141.20 of the Revised 2236
Code when making a determination as to whether the employer 2237
violated this division. The director shall not use an 2238
individual's election to obtain workers' compensation coverage 2239
as a sole proprietor or a partnership in making a determination 2240
as to whether the individual has violated this division. The 2241
burden of proof is on the party asserting that an individual is 2242
not an employee. 2243

(B) No employer shall retaliate through discharge, or in 2244
any other manner, against any individual for exercising any 2245
rights granted under this chapter. 2246

(C) No employer shall retaliate against an individual if 2247
the individual does any of the following: 2248

(1) Makes a complaint to an employer, coworker, community 2249
organization, or to a federal or state agency or at a public 2250
hearing, stating that provisions of this chapter allegedly have 2251
been violated; 2252

(2) Causes to be instituted any proceeding under or 2253
related to this chapter; 2254

(3) Testifies or prepares to testify in an investigation 2255
or proceeding under this chapter; 2256

<u>(4) Opposes misclassification.</u>	2257
<u>(D) No employer shall attempt to cause or cause an individual to waive the provisions of this chapter or to enter into a predispute waiver.</u>	2258 2259 2260
<u>(E) No employer shall violate a rule adopted by the director pursuant to section 4175.06 of the Revised Code.</u>	2261 2262
<u>(F) No person shall require or request an individual to enter into an agreement or sign a document that results in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the individual's relationship with an employer.</u>	2263 2264 2265 2266 2267
<u>Sec. 4175.03. This chapter shall apply only to determinations as to whether an individual is an employee for purposes of section 4111.02, 4111.14, 4113.15, or 4115.03 of the Revised Code or Chapter 4121., 4123., 4141., or 5747. of the Revised Code. Nothing in this chapter shall be construed as to limit the application of any other remedies available at law or in equity.</u>	2268 2269 2270 2271 2272 2273 2274
<u>Sec. 4175.04. An employer and the director of commerce shall consider a sole proprietorship or partnership that performs construction services for the employer to be a legitimate sole proprietorship or a legitimate partnership if the employer demonstrates all of the following:</u>	2275 2276 2277 2278 2279
<u>(A) The sole proprietorship or partnership performs the construction service free from the direction or control of the employer over the means and manner of providing the service, subject only to the right of the employer for whom the service is provided to specify the desired result.</u>	2280 2281 2282 2283 2284
<u>(B) The sole proprietorship or partnership is not subject</u>	2285

<u>to cancellation or destruction upon severance of the</u>	2286
<u>relationship with the employer.</u>	2287
<u>(C) The owner of the sole proprietorship or the partners</u>	2288
<u>in the partnership have a substantial investment of capital in</u>	2289
<u>the sole proprietorship or partnership beyond ordinary tools and</u>	2290
<u>equipment and a personal vehicle.</u>	2291
<u>(D) The sole proprietorship or partnership owns the</u>	2292
<u>capital goods, gains the profits, and bears the losses of the</u>	2293
<u>sole proprietorship or partnership.</u>	2294
<u>(E) The sole proprietorship or partnership makes its</u>	2295
<u>construction services available to the general public or the</u>	2296
<u>business community on a continuing basis.</u>	2297
<u>(F) The sole proprietorship or partnership reported a</u>	2298
<u>profit or loss or earnings from self-employment on the sole</u>	2299
<u>proprietorship or partnership's federal income tax schedule.</u>	2300
<u>(G) The sole proprietorship or partnership performs</u>	2301
<u>construction services for the employer under the name of the</u>	2302
<u>sole proprietorship or partnership.</u>	2303
<u>(H) If the construction services the sole proprietorship</u>	2304
<u>or partnership provides to the employer require a license or</u>	2305
<u>permit in order to provide those services, the sole</u>	2306
<u>proprietorship or partnership obtains the appropriate license or</u>	2307
<u>permit in the name of the sole proprietorship or partnership</u>	2308
<u>name and directly pays for the appropriate license or permit.</u>	2309
<u>(I) The sole proprietorship or partnership furnishes the</u>	2310
<u>tools and equipment necessary for the sole proprietorship or</u>	2311
<u>partnership to provide the construction service for the</u>	2312
<u>employer.</u>	2313

(J) If necessary, the sole proprietorship or partnership hires its own employees without obtaining approval from the employer, pays those employees without direct reimbursement from the employer, and reports the employees' income to the internal revenue service. 2314
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(K) The employer does not represent the sole proprietorship or the partners of the partnership as employees of the employer to the employer's customers. 2319
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(L) The sole proprietorship or partnership performs similar construction services for others on whatever basis and whenever the sole proprietorship or partnership chooses. 2322
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If the director of commerce, using the factors listed in this section, determines that a sole proprietorship or partnership performing construction services for an employer is not a legitimate sole proprietorship or a legitimate partnership, the director shall consider the owner of the sole proprietorship, each partner of the partnership, and each of the employees of the sole proprietorship or partnership, as applicable, as an employee of the employer for the purposes of this chapter. 2325
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Sec. 4175.05. The provisions of this chapter apply to all subcontractors or lower tier subcontractors. 2334
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A contractor is liable under this chapter for the failure of any subcontractor or lower tier subcontractor to properly classify individuals performing services related to construction as employees. A subcontractor is liable under this chapter for the failure of any lower tier subcontractor to properly classify individuals performing services related to construction as employees. 2336
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Sec. 4175.06. The director of commerce shall enforce this 2343
chapter. The director shall hire as many investigators and other 2344
personnel as the director determines are necessary to administer 2345
and enforce this chapter. The director may adopt reasonable 2346
rules in accordance with Chapter 119. of the Revised Code to 2347
implement and administer this chapter. 2348

Sec. 4175.07. Any aggrieved party may file a complaint 2349
with the director of commerce against an employer if the 2350
aggrieved party reasonably believes that the employer is in 2351
violation of section 4175.02 of the Revised Code. The director 2352
shall conduct investigations in connection with the 2353
administration and enforcement of this chapter. Any investigator 2354
employed by the division of industrial compliance within the 2355
department of commerce is authorized to visit and inspect, at 2356
all reasonable times, all of the offices and job sites 2357
maintained by the employer who is the subject of the complaint, 2358
and is authorized to inspect and audit, at all reasonable times, 2359
all documents necessary to determine whether an individual 2360
performing services for the employer is an employee. The 2361
director may compel, by subpoena, the attendance and testimony 2362
of witnesses and the production of books, payrolls, records, 2363
papers, and other evidence in any investigation, and may 2364
administer oaths to witnesses. Upon completion of an 2365
investigation under this section, the investigator shall submit 2366
the results of the investigator's investigation to the 2367
superintendent of industrial compliance. 2368

Sec. 4175.08. (A) If, after receiving the results of an 2369
investigation conducted pursuant to section 4175.07 of the 2370
Revised Code, the superintendent of industrial compliance 2371
determines that reasonable evidence exists that an employer has 2372
violated section 4175.02 of the Revised Code, the superintendent 2373

shall send a written notice to the director of commerce 2374
informing the director of the superintendent's determination. 2375

(B) The director shall do both of the following after the 2376
director receives a written report from the superintendent that 2377
states that reasonable evidence exists that the employer 2378
violated division (A) of section 4175.02 of the Revised Code: 2379

(1) Within seventy-two hours after receiving that report, 2380
issue a stop work order against the employer pursuant to section 2381
4175.091 of the Revised Code. 2382

(2) Within seven days after receiving that report, send a 2383
written notice to the employer who is the subject of the 2384
investigation in the same manner as prescribed in section 119.07 2385
of the Revised Code for licensees, except that the notice shall 2386
specify that a hearing will be held and shall specify the date, 2387
time, and place of the hearing. 2388

(C) The director shall hold a hearing regarding the 2389
alleged violation in the same manner prescribed for an 2390
adjudication hearing under section 119.09 of the Revised Code. 2391
If the director, after the hearing, determines a violation has 2392
occurred, the director may discipline the employer in accordance 2393
with section 4175.09 of the Revised Code. The director's 2394
determination is an order that the person may appeal in 2395
accordance with section 119.12 of the Revised Code. The stop 2396
work order issued pursuant to section 4175.091 of the Revised 2397
Code shall not be subject to suspension by the court during the 2398
pendency of any appeal filed under section 119.12 of the Revised 2399
Code. If an employer who allegedly committed a violation of 2400
section 4175.02 of the Revised Code fails to appear for a 2401
hearing, the director may request the court of common pleas of 2402
the county where the alleged violation occurred to compel the 2403

person to appear before the director for a hearing. 2404

Sec. 4175.09. (A) (1) If, after a hearing held in 2405
accordance with section 4175.08 of the Revised Code, the 2406
director of commerce determines that an employer violated 2407
section 4175.02 of the Revised Code, the director may do any of 2408
the following: 2409

(a) Issue and cause to be served on any party an order to 2410
cease and desist from further violation of that section; 2411

(b) Take affirmative or other action the director 2412
considers reasonable to eliminate the effect of the violation; 2413

(c) Collect the amount of any wages, salary, employment 2414
benefits, or other compensation denied or lost to an individual 2415
because the employer misclassified the individual. 2416

(2) If, after a hearing held in accordance with section 2417
4175.08 of the Revised Code, the director determines that an 2418
employer violated section 4175.02 of the Revised Code, the 2419
director shall assess any civil penalty allowed under section 2420
4175.10 or 4175.11 of the Revised Code. 2421

(B) If the director assesses an employer a civil penalty 2422
for a violation of section 4175.02 of the Revised Code and the 2423
employer fails to pay that civil penalty within the time period 2424
prescribed by the director, the director shall forward to the 2425
attorney general the name of the employer and the amount of the 2426
civil penalty for the purpose of collecting that civil penalty. 2427
In addition to the civil penalty assessed pursuant to this 2428
section, the employer also shall pay any fee assessed by the 2429
attorney general for collection of the civil penalty. 2430

(C) The attorney general shall bring any action for relief 2431
requested by the director in the name of the people of the state 2432

of Ohio. 2433

Sec. 4175.091. (A) The director of commerce shall issue a 2434
stop work order, requiring the cessation of all business 2435
operations, against an employer if, after an investigation 2436
pursuant to section 4175.07 of the Revised Code, the director 2437
determines that reasonable evidence exists that the employer 2438
violated division (A) of section 4175.02 of the Revised Code. 2439

(B) (1) A stop work order issued under this section shall 2440
take effect for all worksites in the state for which the 2441
director determined that reasonable evidence exists that the 2442
employer is in violation of division (A) of section 4175.02 of 2443
the Revised Code when the stop work order is served upon the 2444
employer. 2445

(2) If the director determined that reasonable evidence 2446
exists that the employer is in violation of division (A) of 2447
section 4175.02 of the Revised Code at only one worksite of the 2448
employer, the director may serve a stop work order on the 2449
particular worksite by posting a copy of the stop work order in 2450
a conspicuous location at the worksite. The stop work order 2451
shall take effect for the particular worksite upon service at 2452
the worksite. 2453

(C) A stop work order issued under this section shall 2454
remain in effect until the director issues an order releasing 2455
the stop work order. The director shall issue the order of 2456
release upon either of the following events: 2457

(1) The director determines that the employer did not 2458
violate division (A) of section 4175.02 of the Revised Code 2459
after a hearing held in accordance with section 4175.08 of the 2460
Revised Code; 2461

(2) If the director determined that the employer did 2462
violate division (A) of section 4175.02 of the Revised Code 2463
after a hearing held in accordance with section 4175.08 of the 2464
Revised Code, the director determines that the employer is no 2465
longer in violation of that division and has paid any penalty 2466
assessed under this chapter. 2467

(D) (1) The director may issue an order of conditional 2468
release from a stop work order to an employer upon a finding 2469
that the employer is no longer in violation of division (A) of 2470
section 4175.02 of the Revised Code and has agreed to remit 2471
periodic payments of any penalty assessed under this chapter 2472
pursuant to a payment agreement schedule with the director. A 2473
payment agreement schedule entered into under this division 2474
shall require an initial payment of at least one thousand 2475
dollars. 2476

(2) If the director issues an order of conditional 2477
release, and if the employer fails to meet any term or condition 2478
of the penalty payment agreement, the director shall immediately 2479
reinstate the stop work order and the entire unpaid balance of 2480
the penalty shall immediately become due. 2481

(E) The director may require an employer, as a condition 2482
of release from a stop work order, to file periodic reports with 2483
the director to demonstrate the employer's continued compliance 2484
with division (A) of section 4175.02 of the Revised Code for a 2485
probationary period that shall not exceed two years from the 2486
date the director issues the order of release. 2487

(F) The director shall assess a penalty of five thousand 2488
dollars against an employer for each day that the employer 2489
conducts business operations in violation of a stop work order 2490
issued under this section. 2491

(G) A stop work order or penalty issued under this section 2492
against an employer shall be in effect against any successor 2493
corporation or business entity that has one or more of the same 2494
principals or officers as the employer against whom the stop 2495
work order was issued and is engaged in the same or similar 2496
trade or activity as the employer against whom the stop work 2497
order was issued. 2498

(H) A stop work order issued under this section shall be 2499
limited to the work of the employer for whom the director 2500
determined reasonable evidence exists that the employer is in 2501
violation of division (A) of section 4175.02 of the Revised Code 2502
and shall not be construed to require any work performed by a 2503
person other than the employer or employees of the employer to 2504
cease. 2505

Sec. 4175.10. (A) Except as otherwise provided in division 2506
(B) of this section and section 4175.11 of the Revised Code, if, 2507
after a hearing conducted pursuant to section 4175.08 of the 2508
Revised Code, the director of commerce determines that an 2509
employer has violated division (B), (C), (D), (E), or (F) of 2510
section 4175.02 of the Revised Code, the employer shall be 2511
subject to a civil penalty of one thousand five hundred dollars 2512
for each violation. 2513

(B) Except as otherwise provided in section 4175.11 of the 2514
Revised Code if, after a hearing held in accordance with section 2515
4175.08 of the Revised Code, the director determines that the 2516
employer has committed a violation of division (B), (C), (D), 2517
(E), or (F) of section 4175.02 of the Revised Code and that 2518
violation occurred within five years after the date the director 2519
made a determination that resulted in the director assessing the 2520
employer a civil penalty under division (A) or (B) of this 2521

section, the employer is subject to a civil penalty not less 2522
than one thousand five hundred dollars or more than two thousand 2523
five hundred dollars for each violation found by the director 2524
that occurred during that five-year period. 2525

(C) If, after a hearing held in accordance with section 2526
4175.08 of the Revised Code, the director determines that the 2527
employer has committed a violation of division (A) of section 2528
4175.02 of the Revised Code, the employer shall be subject to a 2529
civil penalty of five thousand dollars for each violation. The 2530
civil penalties collected under this division shall be deposited 2531
in the industrial compliance operating fund created in section 2532
121.084 of the Revised Code for use by the bureau of wage and 2533
hour administration in the division of industrial compliance. 2534

(D) For purposes of this section, each violation of 2535
section 4175.02 of the Revised Code constitutes a separate 2536
violation for each individual or rule involved and for each day 2537
the violation continues. 2538

(E) The director shall base the amount of any civil 2539
penalty assessed under this section upon the director's 2540
determination of the gravity of the violations committed by the 2541
employer. 2542

Sec. 4175.11. (A) Whoever knowingly violates division (B), 2543
(C), (D), (E), or (F) of section 4175.02 of the Revised Code, or 2544
whoever obstructs the director of commerce or any other person 2545
authorized to inspect places of employment pursuant to section 2546
4175.07 of the Revised Code is liable for penalties up to double 2547
the amount specified in division (A) or (B) of section 4175.10 2548
of the Revised Code. 2549

(B) An employer who is liable under division (A) of this 2550

section because the employer knowingly violated division (B), 2551
(C), (D), (E), or (F) of section 4175.02 of the Revised Code 2552
also is liable to the employee who was injured by the employer's 2553
violation for punitive damages in an amount equal to the amount 2554
of the penalties assessed against the employer pursuant to 2555
division (A) of this section. 2556

(C) The director shall impose the penalties described in 2557
divisions (A) and (B) of this section if a preponderance of the 2558
evidence demonstrates that the employer acted knowingly when 2559
committing the violation. 2560

Sec. 4175.12. If the director of commerce determines that 2561
an alleged violation of this chapter has occurred that may 2562
result in a penalty assessed pursuant to section 4175.99 of the 2563
Revised Code, the director shall refer the matter to the 2564
appropriate prosecutorial authority. 2565

Sec. 4175.13. If the director of commerce believes that 2566
any employer allegedly has violated a valid order issued by the 2567
director pursuant to section 4175.09 of the Revised Code, the 2568
director may commence an action in the court of common pleas in 2569
the county where the alleged violation has occurred and obtain 2570
from the court an order compelling the employer to obey the 2571
order of the director or be found guilty of contempt of court 2572
and punished in accordance with Chapter 2705. of the Revised 2573
Code. 2574

Sec. 4175.14. (A) An aggrieved party may bring a civil 2575
action in the court of common pleas in the county where the 2576
alleged violation occurred or where any individual who is party 2577
to the action resides, without regard to exhaustion of any 2578
alternative administrative remedies provided in this chapter. An 2579
aggrieved party may bring an action on behalf of the aggrieved 2580

party or on behalf of any other individual who is similarly 2581
situated to the aggrieved party. If a court or a jury in a civil 2582
action brought pursuant to this division determines that a 2583
violation of section 4175.02 of the Revised Code has occurred, 2584
the court shall award to the plaintiff all of the following: 2585

(1) The amount of any wages, salary, employment benefits, 2586
or other compensation denied or lost to an individual by reason 2587
of the violation, plus an equal amount in liquidated damages; 2588

(2) Compensatory damages and an amount up to five hundred 2589
dollars for each violation of section 4175.02 of the Revised 2590
Code; 2591

(3) In the case of a violation of division (B) or (C) of 2592
section 4175.02 of the Revised Code, all legal or equitable 2593
relief that the court determines appropriate; 2594

(4) Attorney's fees and costs. 2595

(B) An aggrieved party shall bring an action under 2596
division (A) of this section not later than three years after 2597
the last day the aggrieved individual or individual for whom the 2598
aggrieved party is bringing the action performed services for an 2599
employer who has allegedly violated section 4175.02 of the 2600
Revised Code. The three-year period specified in this division 2601
is tolled if the employer has deterred the ability of an 2602
individual to bring an action under this section or to file a 2603
complaint under section 4175.07 of the Revised Code. 2604

(C) If the director of commerce has determined under 2605
section 4175.09 of the Revised Code that an employer is subject 2606
to a civil penalty under section 4175.10 or 4175.11 of the 2607
Revised Code for a violation of section 4175.02 of the Revised 2608
Code, an aggrieved party, within ninety days after the director 2609

issues that determination, may bring a civil action in the court 2610
of common pleas in the county where the violation occurred to 2611
enforce that penalty. If an aggrieved party elects to bring such 2612
an action, the aggrieved party shall notify the director of that 2613
election in writing. During that ninety-day period, the attorney 2614
general shall not bring an action to enforce that penalty. After 2615
the ninety-day period expires, only the attorney general, on 2616
behalf of the director and in accordance with this chapter, may 2617
bring an action to collect the civil penalty. In any civil 2618
action brought by an aggrieved party pursuant to this division, 2619
the court shall award the aggrieved party ten per cent of the 2620
amount of the penalty owed by the employer, and the remaining 2621
amount recovered shall be awarded to the director. 2622

Sec. 4175.15. (A) The director of commerce shall create a 2623
summary of the requirements of this chapter in English and 2624
Spanish and shall post that summary on the official web site 2625
maintained by the department of commerce and on the bulletin 2626
boards located in each of the offices of the department. 2627

(B) If an employer engages an individual to perform 2628
services and that individual is not considered an employee, that 2629
employer shall post and keep posted, in a conspicuous place on 2630
each job site where that individual performs services and in 2631
each of the employer's offices, the notice prepared by the 2632
director pursuant to division (A) of this section. The director 2633
shall furnish copies of the notice without charge to an employer 2634
upon request. 2635

Sec. 4175.16. The director of commerce shall create a list 2636
of employers who have committed multiple violations of section 2637
4175.02 of the Revised Code. The director shall add an 2638
employer's name to the list if the director assesses against the 2639

employer the civil penalty described in division (B) or (C) of 2640
section 4175.10 of the Revised Code. The list shall include the 2641
name of the employer and the date that the employer committed 2642
the employer's most recent violation. The director shall notify 2643
an employer that the employer will be added to this list within 2644
five days after the director determines that the employer will 2645
be added to the list. The director shall publish the list on the 2646
web site maintained by the department of commerce. No state 2647
agency shall enter into a contract with an employer included in 2648
that list for a period of four years after the date of the 2649
employer's most recent violation. The director shall remove an 2650
employer's name and information from the list upon expiration of 2651
the time period of the employer's debarment. 2652

Sec. 4175.17. The director of commerce, the director of 2653
job and family services, the tax commissioner, and the 2654
administrator of workers' compensation shall share information 2655
concerning any suspected misclassification by an employer or 2656
entity of one or more of the employer's employees as independent 2657
contractors in violation of section 4175.02 of the Revised Code. 2658
Upon determining that an employer has misclassified an employee 2659
as an independent contractor in violation of division (A) of 2660
that section, the director of commerce shall notify the director 2661
of job and family services, the tax commissioner, and the 2662
administrator, each of whom shall determine whether the 2663
employer's violation of section 4175.02 of the Revised Code 2664
results in the employer not complying with the requirements of 2665
Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the 2666
Revised Code, as applicable. The director of commerce shall 2667
determine whether the employer's violation of section 4175.02 of 2668
the Revised Code results in the employer not complying with the 2669
requirements of sections 4111.02, 4111.14, 4113.15, or 4115.03 2670

to 4115.21 of the Revised Code. The determination made by the 2671
director of commerce that an employer has misclassified an 2672
employee as an independent contractor is binding on the director 2673
of job and family services, the tax commissioner, and the 2674
administrator unless the individual is otherwise not considered 2675
an employee under the applicable law. Notwithstanding any 2676
provision of this section to the contrary, nothing in this 2677
chapter shall be construed to limit or otherwise constrain the 2678
duties and powers of the administrator under Chapters 4121., 2679
4123., 4127., and 4131. of the Revised Code, the director of job 2680
and family services under Chapter 4141. of the Revised Code, or 2681
the tax commissioner under Chapter 5747. of the Revised Code. 2682

Sec. 4175.18. There is hereby created in the state 2683
treasury the employee classification fund. Except as provided in 2684
division (C) of section 4175.10 of the Revised Code, the 2685
director of commerce shall deposit all moneys the director 2686
receives under this chapter into the fund. The director shall 2687
use the fund for the administration, investigation, and other 2688
expenses incurred in carrying out the director's powers and 2689
duties under this chapter. If, at the end of a fiscal year, the 2690
director determines that excess moneys exist in the fund, the 2691
director shall coordinate with the director of budget and 2692
management to transfer the excess funds to the division of 2693
administration fund created under section 121.08 of the Revised 2694
Code. 2695

Sec. 4175.99. (A) An employer or person who negligently 2696
violates division (A), (B), (C), (E), or (F) of section 4175.02 2697
of the Revised Code, for the first offense, is guilty of a 2698
misdemeanor of the fourth degree, and for any subsequent 2699
violation of division (A), (B), (C), (E), or (F) of section 2700
4175.02 of the Revised Code committed within a five-year period 2701

beginning on the date the employer or person previously was 2702
convicted of or pleaded guilty to the first violation, the 2703
employer or entity is guilty of a felony of the fifth degree. 2704

(B) Whoever negligently violates division (D) of section 2705
4175.02 of the Revised Code is guilty of a misdemeanor of the 2706
fourth degree. 2707

Sec. 5747.01. Except as otherwise expressly provided or 2708
clearly appearing from the context, any term used in this 2709
chapter that is not otherwise defined in this section has the 2710
same meaning as when used in a comparable context in the laws of 2711
the United States relating to federal income taxes or if not 2712
used in a comparable context in those laws, has the same meaning 2713
as in section 5733.40 of the Revised Code. Any reference in this 2714
chapter to the Internal Revenue Code includes other laws of the 2715
United States relating to federal income taxes. 2716

As used in this chapter: 2717

(A) "Adjusted gross income" or "Ohio adjusted gross 2718
income" means federal adjusted gross income, as defined and used 2719
in the Internal Revenue Code, adjusted as provided in this 2720
section: 2721

(1) Add interest or dividends on obligations or securities 2722
of any state or of any political subdivision or authority of any 2723
state, other than this state and its subdivisions and 2724
authorities. 2725

(2) Add interest or dividends on obligations of any 2726
authority, commission, instrumentality, territory, or possession 2727
of the United States to the extent that the interest or 2728
dividends are exempt from federal income taxes but not from 2729
state income taxes. 2730

(3) Deduct interest or dividends on obligations of the 2731
United States and its territories and possessions or of any 2732
authority, commission, or instrumentality of the United States 2733
to the extent that the interest or dividends are included in 2734
federal adjusted gross income but exempt from state income taxes 2735
under the laws of the United States. 2736

(4) Deduct disability and survivor's benefits to the 2737
extent included in federal adjusted gross income. 2738

(5) Deduct benefits under Title II of the Social Security 2739
Act and tier 1 railroad retirement benefits to the extent 2740
included in federal adjusted gross income under section 86 of 2741
the Internal Revenue Code. 2742

(6) In the case of a taxpayer who is a beneficiary of a 2743
trust that makes an accumulation distribution as defined in 2744
section 665 of the Internal Revenue Code, add, for the 2745
beneficiary's taxable years beginning before 2002, the portion, 2746
if any, of such distribution that does not exceed the 2747
undistributed net income of the trust for the three taxable 2748
years preceding the taxable year in which the distribution is 2749
made to the extent that the portion was not included in the 2750
trust's taxable income for any of the trust's taxable years 2751
beginning in 2002 or thereafter. "Undistributed net income of a 2752
trust" means the taxable income of the trust increased by (a) (i) 2753
the additions to adjusted gross income required under division 2754
(A) of this section and (ii) the personal exemptions allowed to 2755
the trust pursuant to section 642(b) of the Internal Revenue 2756
Code, and decreased by (b) (i) the deductions to adjusted gross 2757
income required under division (A) of this section, (ii) the 2758
amount of federal income taxes attributable to such income, and 2759
(iii) the amount of taxable income that has been included in the 2760

adjusted gross income of a beneficiary by reason of a prior 2761
accumulation distribution. Any undistributed net income included 2762
in the adjusted gross income of a beneficiary shall reduce the 2763
undistributed net income of the trust commencing with the 2764
earliest years of the accumulation period. 2765

(7) Deduct the amount of wages and salaries, if any, not 2766
otherwise allowable as a deduction but that would have been 2767
allowable as a deduction in computing federal adjusted gross 2768
income for the taxable year, had the targeted jobs credit 2769
allowed and determined under sections 38, 51, and 52 of the 2770
Internal Revenue Code not been in effect. 2771

(8) Deduct any interest or interest equivalent on public 2772
obligations and purchase obligations to the extent that the 2773
interest or interest equivalent is included in federal adjusted 2774
gross income. 2775

(9) Add any loss or deduct any gain resulting from the 2776
sale, exchange, or other disposition of public obligations to 2777
the extent that the loss has been deducted or the gain has been 2778
included in computing federal adjusted gross income. 2779

(10) Deduct or add amounts, as provided under section 2780
5747.70 of the Revised Code, related to contributions to 2781
variable college savings program accounts made or tuition units 2782
purchased pursuant to Chapter 3334. of the Revised Code. 2783

(11) (a) Deduct, to the extent not otherwise allowable as a 2784
deduction or exclusion in computing federal or Ohio adjusted 2785
gross income for the taxable year, the amount the taxpayer paid 2786
during the taxable year for medical care insurance and qualified 2787
long-term care insurance for the taxpayer, the taxpayer's 2788
spouse, and dependents. No deduction for medical care insurance 2789

under division (A) (11) of this section shall be allowed either 2790
to any taxpayer who is eligible to participate in any subsidized 2791
health plan maintained by any employer of the taxpayer or of the 2792
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2793
application would be entitled to, benefits under part A of Title 2794
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 2795
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 2796
of this section, "subsidized health plan" means a health plan 2797
for which the employer pays any portion of the plan's cost. The 2798
deduction allowed under division (A) (11) (a) of this section 2799
shall be the net of any related premium refunds, related premium 2800
reimbursements, or related insurance premium dividends received 2801
during the taxable year. 2802

(b) Deduct, to the extent not otherwise deducted or 2803
excluded in computing federal or Ohio adjusted gross income 2804
during the taxable year, the amount the taxpayer paid during the 2805
taxable year, not compensated for by any insurance or otherwise, 2806
for medical care of the taxpayer, the taxpayer's spouse, and 2807
dependents, to the extent the expenses exceed seven and one-half 2808
per cent of the taxpayer's federal adjusted gross income. 2809

(c) Deduct, to the extent not otherwise deducted or 2810
excluded in computing federal or Ohio adjusted gross income, any 2811
amount included in federal adjusted gross income under section 2812
105 or not excluded under section 106 of the Internal Revenue 2813
Code solely because it relates to an accident and health plan 2814
for a person who otherwise would be a "qualifying relative" and 2815
thus a "dependent" under section 152 of the Internal Revenue 2816
Code but for the fact that the person fails to meet the income 2817
and support limitations under section 152(d) (1) (B) and (C) of 2818
the Internal Revenue Code. 2819

(d) For purposes of division (A)(11) of this section, 2820
"medical care" has the meaning given in section 213 of the 2821
Internal Revenue Code, subject to the special rules, 2822
limitations, and exclusions set forth therein, and "qualified 2823
long-term care" has the same meaning given in section 7702B(c) 2824
of the Internal Revenue Code. Solely for purposes of divisions 2825
(A)(11)(a) and (c) of this section, "dependent" includes a 2826
person who otherwise would be a "qualifying relative" and thus a 2827
"dependent" under section 152 of the Internal Revenue Code but 2828
for the fact that the person fails to meet the income and 2829
support limitations under section 152(d)(1)(B) and (C) of the 2830
Internal Revenue Code. 2831

(12)(a) Deduct any amount included in federal adjusted 2832
gross income solely because the amount represents a 2833
reimbursement or refund of expenses that in any year the 2834
taxpayer had deducted as an itemized deduction pursuant to 2835
section 63 of the Internal Revenue Code and applicable United 2836
States department of the treasury regulations. The deduction 2837
otherwise allowed under division (A)(12)(a) of this section 2838
shall be reduced to the extent the reimbursement is attributable 2839
to an amount the taxpayer deducted under this section in any 2840
taxable year. 2841

(b) Add any amount not otherwise included in Ohio adjusted 2842
gross income for any taxable year to the extent that the amount 2843
is attributable to the recovery during the taxable year of any 2844
amount deducted or excluded in computing federal or Ohio 2845
adjusted gross income in any taxable year. 2846

(13) Deduct any portion of the deduction described in 2847
section 1341(a)(2) of the Internal Revenue Code, for repaying 2848
previously reported income received under a claim of right, that 2849

meets both of the following requirements:	2850
(a) It is allowable for repayment of an item that was	2851
included in the taxpayer's adjusted gross income for a prior	2852
taxable year and did not qualify for a credit under division (A)	2853
or (B) of section 5747.05 of the Revised Code for that year;	2854
(b) It does not otherwise reduce the taxpayer's adjusted	2855
gross income for the current or any other taxable year.	2856
(14) Deduct an amount equal to the deposits made to, and	2857
net investment earnings of, a medical savings account during the	2858
taxable year, in accordance with section 3924.66 of the Revised	2859
Code. The deduction allowed by division (A) (14) of this section	2860
does not apply to medical savings account deposits and earnings	2861
otherwise deducted or excluded for the current or any other	2862
taxable year from the taxpayer's federal adjusted gross income.	2863
(15) (a) Add an amount equal to the funds withdrawn from a	2864
medical savings account during the taxable year, and the net	2865
investment earnings on those funds, when the funds withdrawn	2866
were used for any purpose other than to reimburse an account	2867
holder for, or to pay, eligible medical expenses, in accordance	2868
with section 3924.66 of the Revised Code;	2869
(b) Add the amounts distributed from a medical savings	2870
account under division (A) (2) of section 3924.68 of the Revised	2871
Code during the taxable year.	2872
(16) Add any amount claimed as a credit under section	2873
5747.059 or 5747.65 of the Revised Code to the extent that such	2874
amount satisfies either of the following:	2875
(a) The amount was deducted or excluded from the	2876
computation of the taxpayer's federal adjusted gross income as	2877
required to be reported for the taxpayer's taxable year under	2878

the Internal Revenue Code; 2879

(b) The amount resulted in a reduction of the taxpayer's 2880
federal adjusted gross income as required to be reported for any 2881
of the taxpayer's taxable years under the Internal Revenue Code. 2882

(17) Deduct the amount contributed by the taxpayer to an 2883
individual development account program established by a county 2884
department of job and family services pursuant to sections 2885
329.11 to 329.14 of the Revised Code for the purpose of matching 2886
funds deposited by program participants. On request of the tax 2887
commissioner, the taxpayer shall provide any information that, 2888
in the tax commissioner's opinion, is necessary to establish the 2889
amount deducted under division (A) (17) of this section. 2890

(18) Beginning in taxable year 2001 but not for any 2891
taxable year beginning after December 31, 2005, if the taxpayer 2892
is married and files a joint return and the combined federal 2893
adjusted gross income of the taxpayer and the taxpayer's spouse 2894
for the taxable year does not exceed one hundred thousand 2895
dollars, or if the taxpayer is single and has a federal adjusted 2896
gross income for the taxable year not exceeding fifty thousand 2897
dollars, deduct amounts paid during the taxable year for 2898
qualified tuition and fees paid to an eligible institution for 2899
the taxpayer, the taxpayer's spouse, or any dependent of the 2900
taxpayer, who is a resident of this state and is enrolled in or 2901
attending a program that culminates in a degree or diploma at an 2902
eligible institution. The deduction may be claimed only to the 2903
extent that qualified tuition and fees are not otherwise 2904
deducted or excluded for any taxable year from federal or Ohio 2905
adjusted gross income. The deduction may not be claimed for 2906
educational expenses for which the taxpayer claims a credit 2907
under section 5747.27 of the Revised Code. 2908

(19) Add any reimbursement received during the taxable 2909
year of any amount the taxpayer deducted under division (A) (18) 2910
of this section in any previous taxable year to the extent the 2911
amount is not otherwise included in Ohio adjusted gross income. 2912

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 2913
(v) of this section, add five-sixths of the amount of 2914
depreciation expense allowed by subsection (k) of section 168 of 2915
the Internal Revenue Code, including the taxpayer's 2916
proportionate or distributive share of the amount of 2917
depreciation expense allowed by that subsection to a pass- 2918
through entity in which the taxpayer has a direct or indirect 2919
ownership interest. 2920

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2921
of this section, add five-sixths of the amount of qualifying 2922
section 179 depreciation expense, including the taxpayer's 2923
proportionate or distributive share of the amount of qualifying 2924
section 179 depreciation expense allowed to any pass-through 2925
entity in which the taxpayer has a direct or indirect ownership 2926
interest. 2927

(iii) Subject to division (A) (20) (a) (v) of this section, 2928
for taxable years beginning in 2012 or thereafter, if the 2929
increase in income taxes withheld by the taxpayer is equal to or 2930
greater than ten per cent of income taxes withheld by the 2931
taxpayer during the taxpayer's immediately preceding taxable 2932
year, "two-thirds" shall be substituted for "five-sixths" for 2933
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2934

(iv) Subject to division (A) (20) (a) (v) of this section, 2935
for taxable years beginning in 2012 or thereafter, a taxpayer is 2936
not required to add an amount under division (A) (20) of this 2937
section if the increase in income taxes withheld by the taxpayer 2938

and by any pass-through entity in which the taxpayer has a 2939
direct or indirect ownership interest is equal to or greater 2940
than the sum of (I) the amount of qualifying section 179 2941
depreciation expense and (II) the amount of depreciation expense 2942
allowed to the taxpayer by subsection (k) of section 168 of the 2943
Internal Revenue Code, and including the taxpayer's 2944
proportionate or distributive shares of such amounts allowed to 2945
any such pass-through entities. 2946

(v) If a taxpayer directly or indirectly incurs a net 2947
operating loss for the taxable year for federal income tax 2948
purposes, to the extent such loss resulted from depreciation 2949
expense allowed by subsection (k) of section 168 of the Internal 2950
Revenue Code and by qualifying section 179 depreciation expense, 2951
"the entire" shall be substituted for "five-sixths of the" for 2952
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2953

The tax commissioner, under procedures established by the 2954
commissioner, may waive the add-backs related to a pass-through 2955
entity if the taxpayer owns, directly or indirectly, less than 2956
five per cent of the pass-through entity. 2957

(b) Nothing in division (A) (20) of this section shall be 2958
construed to adjust or modify the adjusted basis of any asset. 2959

(c) To the extent the add-back required under division (A) 2960
(20) (a) of this section is attributable to property generating 2961
nonbusiness income or loss allocated under section 5747.20 of 2962
the Revised Code, the add-back shall be situated to the same 2963
location as the nonbusiness income or loss generated by the 2964
property for the purpose of determining the credit under 2965
division (A) of section 5747.05 of the Revised Code. Otherwise, 2966
the add-back shall be apportioned, subject to one or more of the 2967
four alternative methods of apportionment enumerated in section 2968

5747.21 of the Revised Code.	2969
(d) For the purposes of division (A) (20) (a) (v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.	2970 2971 2972 2973 2974 2975 2976
(e) For the purposes of divisions (A) (20) and (21) of this section:	2977 2978
(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.	2979 2980 2981
(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.	2982 2983 2984 2985 2986
(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.	2987 2988 2989 2990 2991 2992 2993
(21) (a) If the taxpayer was required to add an amount under division (A) (20) (a) of this section for a taxable year, deduct one of the following:	2994 2995 2996
(i) One-fifth of the amount so added for each of the five	2997

succeeding taxable years if the amount so added was five-sixths 2998
of qualifying section 179 depreciation expense or depreciation 2999
expense allowed by subsection (k) of section 168 of the Internal 3000
Revenue Code; 3001

(ii) One-half of the amount so added for each of the two 3002
succeeding taxable years if the amount so added was two-thirds 3003
of such depreciation expense; 3004

(iii) One-sixth of the amount so added for each of the six 3005
succeeding taxable years if the entire amount of such 3006
depreciation expense was so added. 3007

(b) If the amount deducted under division (A) (21) (a) of 3008
this section is attributable to an add-back allocated under 3009
division (A) (20) (c) of this section, the amount deducted shall 3010
be situated to the same location. Otherwise, the add-back shall 3011
be apportioned using the apportionment factors for the taxable 3012
year in which the deduction is taken, subject to one or more of 3013
the four alternative methods of apportionment enumerated in 3014
section 5747.21 of the Revised Code. 3015

(c) No deduction is available under division (A) (21) (a) of 3016
this section with regard to any depreciation allowed by section 3017
168(k) of the Internal Revenue Code and by the qualifying 3018
section 179 depreciation expense amount to the extent that such 3019
depreciation results in or increases a federal net operating 3020
loss carryback or carryforward. If no such deduction is 3021
available for a taxable year, the taxpayer may carry forward the 3022
amount not deducted in such taxable year to the next taxable 3023
year and add that amount to any deduction otherwise available 3024
under division (A) (21) (a) of this section for that next taxable 3025
year. The carryforward of amounts not so deducted shall continue 3026
until the entire addition required by division (A) (20) (a) of 3027

this section has been deducted. 3028

(d) No refund shall be allowed as a result of adjustments 3029
made by division (A) (21) of this section. 3030

(22) Deduct, to the extent not otherwise deducted or 3031
excluded in computing federal or Ohio adjusted gross income for 3032
the taxable year, the amount the taxpayer received during the 3033
taxable year as reimbursement for life insurance premiums under 3034
section 5919.31 of the Revised Code. 3035

(23) Deduct, to the extent not otherwise deducted or 3036
excluded in computing federal or Ohio adjusted gross income for 3037
the taxable year, the amount the taxpayer received during the 3038
taxable year as a death benefit paid by the adjutant general 3039
under section 5919.33 of the Revised Code. 3040

(24) Deduct, to the extent included in federal adjusted 3041
gross income and not otherwise allowable as a deduction or 3042
exclusion in computing federal or Ohio adjusted gross income for 3043
the taxable year, military pay and allowances received by the 3044
taxpayer during the taxable year for active duty service in the 3045
United States army, air force, navy, marine corps, or coast 3046
guard or reserve components thereof or the national guard. The 3047
deduction may not be claimed for military pay and allowances 3048
received by the taxpayer while the taxpayer is stationed in this 3049
state. 3050

(25) Deduct, to the extent not otherwise allowable as a 3051
deduction or exclusion in computing federal or Ohio adjusted 3052
gross income for the taxable year and not otherwise compensated 3053
for by any other source, the amount of qualified organ donation 3054
expenses incurred by the taxpayer during the taxable year, not 3055
to exceed ten thousand dollars. A taxpayer may deduct qualified 3056

organ donation expenses only once for all taxable years 3057
beginning with taxable years beginning in 2007. 3058

For the purposes of division (A) (25) of this section: 3059

(a) "Human organ" means all or any portion of a human 3060
liver, pancreas, kidney, intestine, or lung, and any portion of 3061
human bone marrow. 3062

(b) "Qualified organ donation expenses" means travel 3063
expenses, lodging expenses, and wages and salary forgone by a 3064
taxpayer in connection with the taxpayer's donation, while 3065
living, of one or more of the taxpayer's human organs to another 3066
human being. 3067

(26) Deduct, to the extent not otherwise deducted or 3068
excluded in computing federal or Ohio adjusted gross income for 3069
the taxable year, amounts received by the taxpayer as retired 3070
personnel pay for service in the uniformed services or reserve 3071
components thereof, or the national guard, or received by the 3072
surviving spouse or former spouse of such a taxpayer under the 3073
survivor benefit plan on account of such a taxpayer's death. If 3074
the taxpayer receives income on account of retirement paid under 3075
the federal civil service retirement system or federal employees 3076
retirement system, or under any successor retirement program 3077
enacted by the congress of the United States that is established 3078
and maintained for retired employees of the United States 3079
government, and such retirement income is based, in whole or in 3080
part, on credit for the taxpayer's uniformed service, the 3081
deduction allowed under this division shall include only that 3082
portion of such retirement income that is attributable to the 3083
taxpayer's uniformed service, to the extent that portion of such 3084
retirement income is otherwise included in federal adjusted 3085
gross income and is not otherwise deducted under this section. 3086

Any amount deducted under division (A) (26) of this section is 3087
not included in a taxpayer's adjusted gross income for the 3088
purposes of section 5747.055 of the Revised Code. No amount may 3089
be deducted under division (A) (26) of this section on the basis 3090
of which a credit was claimed under section 5747.055 of the 3091
Revised Code. 3092

(27) Deduct, to the extent not otherwise deducted or 3093
excluded in computing federal or Ohio adjusted gross income for 3094
the taxable year, the amount the taxpayer received during the 3095
taxable year from the military injury relief fund created in 3096
section 5902.05 of the Revised Code. 3097

(28) Deduct, to the extent not otherwise deducted or 3098
excluded in computing federal or Ohio adjusted gross income for 3099
the taxable year, the amount the taxpayer received as a veterans 3100
bonus during the taxable year from the Ohio department of 3101
veterans services as authorized by Section 2r of Article VIII, 3102
Ohio Constitution. 3103

(29) Deduct, to the extent not otherwise deducted or 3104
excluded in computing federal or Ohio adjusted gross income for 3105
the taxable year, any income derived from a transfer agreement 3106
or from the enterprise transferred under that agreement under 3107
section 4313.02 of the Revised Code. 3108

(30) Deduct, to the extent not otherwise deducted or 3109
excluded in computing federal or Ohio adjusted gross income for 3110
the taxable year, Ohio college opportunity or federal Pell grant 3111
amounts received by the taxpayer or the taxpayer's spouse or 3112
dependent pursuant to section 3333.122 of the Revised Code or 20 3113
U.S.C. 1070a, et seq., and used to pay room or board furnished 3114
by the educational institution for which the grant was awarded 3115
at the institution's facilities, including meal plans 3116

administered by the institution. For the purposes of this 3117
division, receipt of a grant includes the distribution of a 3118
grant directly to an educational institution and the crediting 3119
of the grant to the enrollee's account with the institution. 3120

(31) Deduct all business income to the extent not 3121
otherwise deducted or excluded in computing federal or Ohio 3122
adjusted gross income for the taxable year. 3123

(B) "Business income" means income, including gain or 3124
loss, arising from transactions, activities, and sources in the 3125
regular course of a trade or business and includes income, gain, 3126
or loss from real property, tangible property, and intangible 3127
property if the acquisition, rental, management, and disposition 3128
of the property constitute integral parts of the regular course 3129
of a trade or business operation. "Business income" includes 3130
income, including gain or loss, from a partial or complete 3131
liquidation of a business, including, but not limited to, gain 3132
or loss from the sale or other disposition of goodwill. 3133

(C) "Nonbusiness income" means all income other than 3134
business income and may include, but is not limited to, 3135
compensation, rents and royalties from real or tangible personal 3136
property, capital gains, interest, dividends and distributions, 3137
patent or copyright royalties, or lottery winnings, prizes, and 3138
awards. 3139

(D) "Compensation" means any form of remuneration paid to 3140
an employee for personal services. 3141

(E) "Fiduciary" means a guardian, trustee, executor, 3142
administrator, receiver, conservator, or any other person acting 3143
in any fiduciary capacity for any individual, trust, or estate. 3144

(F) "Fiscal year" means an accounting period of twelve 3145

months ending on the last day of any month other than December.	3146
(G) "Individual" means any natural person.	3147
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	3148 3149
(I) "Resident" means any of the following, provided that division (I) (3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:	3150 3151 3152
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	3153 3154
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I) (2) of this section.	3155 3156 3157 3158
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	3159 3160 3161
For the purposes of division (I) (3) of this section:	3162
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I) (3) (d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	3163 3164 3165 3166 3167 3168
(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I) (3) (e) (i) or (ii) of this section;	3169 3170 3171 3172

(ii) A person who was domiciled in this state for the 3173
purposes of this chapter when the person directly or indirectly 3174
transferred assets to an irrevocable trust, but only if at least 3175
one of the trust's qualifying beneficiaries is domiciled in this 3176
state for the purposes of this chapter during all or some 3177
portion of the trust's current taxable year; 3178

(iii) A person who was domiciled in this state for the 3179
purposes of this chapter when the trust document or instrument 3180
or part of the trust document or instrument became irrevocable, 3181
but only if at least one of the trust's qualifying beneficiaries 3182
is a resident domiciled in this state for the purposes of this 3183
chapter during all or some portion of the trust's current 3184
taxable year. If a trust document or instrument became 3185
irrevocable upon the death of a person who at the time of death 3186
was domiciled in this state for purposes of this chapter, that 3187
person is a person described in division (I) (3) (a) (iii) of this 3188
section. 3189

(b) A trust is irrevocable to the extent that the 3190
transferor is not considered to be the owner of the net assets 3191
of the trust under sections 671 to 678 of the Internal Revenue 3192
Code. 3193

(c) With respect to a trust other than a charitable lead 3194
trust, "qualifying beneficiary" has the same meaning as 3195
"potential current beneficiary" as defined in section 1361(e) (2) 3196
of the Internal Revenue Code, and with respect to a charitable 3197
lead trust "qualifying beneficiary" is any current, future, or 3198
contingent beneficiary, but with respect to any trust 3199
"qualifying beneficiary" excludes a person or a governmental 3200
entity or instrumentality to any of which a contribution would 3201
qualify for the charitable deduction under section 170 of the 3202

Internal Revenue Code. 3203

(d) For the purposes of division (I)(3)(a) of this 3204
section, the extent to which a trust consists directly or 3205
indirectly, in whole or in part, of assets, net of any related 3206
liabilities, that were transferred directly or indirectly, in 3207
whole or part, to the trust by any of the sources enumerated in 3208
that division shall be ascertained by multiplying the fair 3209
market value of the trust's assets, net of related liabilities, 3210
by the qualifying ratio, which shall be computed as follows: 3211

(i) The first time the trust receives assets, the 3212
numerator of the qualifying ratio is the fair market value of 3213
those assets at that time, net of any related liabilities, from 3214
sources enumerated in division (I)(3)(a) of this section. The 3215
denominator of the qualifying ratio is the fair market value of 3216
all the trust's assets at that time, net of any related 3217
liabilities. 3218

(ii) Each subsequent time the trust receives assets, a 3219
revised qualifying ratio shall be computed. The numerator of the 3220
revised qualifying ratio is the sum of (1) the fair market value 3221
of the trust's assets immediately prior to the subsequent 3222
transfer, net of any related liabilities, multiplied by the 3223
qualifying ratio last computed without regard to the subsequent 3224
transfer, and (2) the fair market value of the subsequently 3225
transferred assets at the time transferred, net of any related 3226
liabilities, from sources enumerated in division (I)(3)(a) of 3227
this section. The denominator of the revised qualifying ratio is 3228
the fair market value of all the trust's assets immediately 3229
after the subsequent transfer, net of any related liabilities. 3230

(iii) Whether a transfer to the trust is by or from any of 3231
the sources enumerated in division (I)(3)(a) of this section 3232

shall be ascertained without regard to the domicile of the 3233
trust's beneficiaries. 3234

(e) For the purposes of division (I) (3) (a) (i) of this 3235
section: 3236

(i) A trust is described in division (I) (3) (e) (i) of this 3237
section if the trust is a testamentary trust and the testator of 3238
that testamentary trust was domiciled in this state at the time 3239
of the testator's death for purposes of the taxes levied under 3240
Chapter 5731. of the Revised Code. 3241

(ii) A trust is described in division (I) (3) (e) (ii) of 3242
this section if the transfer is a qualifying transfer described 3243
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 3244
trust is an irrevocable inter vivos trust, and at least one of 3245
the trust's qualifying beneficiaries is domiciled in this state 3246
for purposes of this chapter during all or some portion of the 3247
trust's current taxable year. 3248

(f) For the purposes of division (I) (3) (e) (ii) of this 3249
section, a "qualifying transfer" is a transfer of assets, net of 3250
any related liabilities, directly or indirectly to a trust, if 3251
the transfer is described in any of the following: 3252

(i) The transfer is made to a trust, created by the 3253
decedent before the decedent's death and while the decedent was 3254
domiciled in this state for the purposes of this chapter, and, 3255
prior to the death of the decedent, the trust became irrevocable 3256
while the decedent was domiciled in this state for the purposes 3257
of this chapter. 3258

(ii) The transfer is made to a trust to which the 3259
decedent, prior to the decedent's death, had directly or 3260
indirectly transferred assets, net of any related liabilities, 3261

while the decedent was domiciled in this state for the purposes 3262
of this chapter, and prior to the death of the decedent the 3263
trust became irrevocable while the decedent was domiciled in 3264
this state for the purposes of this chapter. 3265

(iii) The transfer is made on account of a contractual 3266
relationship existing directly or indirectly between the 3267
transferor and either the decedent or the estate of the decedent 3268
at any time prior to the date of the decedent's death, and the 3269
decedent was domiciled in this state at the time of death for 3270
purposes of the taxes levied under Chapter 5731. of the Revised 3271
Code. 3272

(iv) The transfer is made to a trust on account of a 3273
contractual relationship existing directly or indirectly between 3274
the transferor and another person who at the time of the 3275
decedent's death was domiciled in this state for purposes of 3276
this chapter. 3277

(v) The transfer is made to a trust on account of the will 3278
of a testator who was domiciled in this state at the time of the 3279
testator's death for purposes of the taxes levied under Chapter 3280
5731. of the Revised Code. 3281

(vi) The transfer is made to a trust created by or caused 3282
to be created by a court, and the trust was directly or 3283
indirectly created in connection with or as a result of the 3284
death of an individual who, for purposes of the taxes levied 3285
under Chapter 5731. of the Revised Code, was domiciled in this 3286
state at the time of the individual's death. 3287

(g) The tax commissioner may adopt rules to ascertain the 3288
part of a trust residing in this state. 3289

(J) "Nonresident" means an individual or estate that is 3290

not a resident. An individual who is a resident for only part of 3291
a taxable year is a nonresident for the remainder of that 3292
taxable year. 3293

(K) "Pass-through entity" has the same meaning as in 3294
section 5733.04 of the Revised Code. 3295

(L) "Return" means the notifications and reports required 3296
to be filed pursuant to this chapter for the purpose of 3297
reporting the tax due and includes declarations of estimated tax 3298
when so required. 3299

(M) "Taxable year" means the calendar year or the 3300
taxpayer's fiscal year ending during the calendar year, or 3301
fractional part thereof, upon which the adjusted gross income is 3302
calculated pursuant to this chapter. 3303

(N) "Taxpayer" means any person subject to the tax imposed 3304
by section 5747.02 of the Revised Code or any pass-through 3305
entity that makes the election under division (D) of section 3306
5747.08 of the Revised Code. 3307

(O) "Dependents" means dependents as defined in the 3308
Internal Revenue Code and as claimed in the taxpayer's federal 3309
income tax return for the taxable year or which the taxpayer 3310
would have been permitted to claim had the taxpayer filed a 3311
federal income tax return. 3312

(P) "Principal county of employment" means, in the case of 3313
a nonresident, the county within the state in which a taxpayer 3314
performs services for an employer or, if those services are 3315
performed in more than one county, the county in which the major 3316
portion of the services are performed. 3317

(Q) As used in sections 5747.50 to 5747.55 of the Revised 3318
Code: 3319

(1) "Subdivision" means any county, municipal corporation, 3320
park district, or township. 3321

(2) "Essential local government purposes" includes all 3322
functions that any subdivision is required by general law to 3323
exercise, including like functions that are exercised under a 3324
charter adopted pursuant to the Ohio Constitution. 3325

(R) "Overpayment" means any amount already paid that 3326
exceeds the figure determined to be the correct amount of the 3327
tax. 3328

(S) "Taxable income" or "Ohio taxable income" applies only 3329
to estates and trusts, and means federal taxable income, as 3330
defined and used in the Internal Revenue Code, adjusted as 3331
follows: 3332

(1) Add interest or dividends, net of ordinary, necessary, 3333
and reasonable expenses not deducted in computing federal 3334
taxable income, on obligations or securities of any state or of 3335
any political subdivision or authority of any state, other than 3336
this state and its subdivisions and authorities, but only to the 3337
extent that such net amount is not otherwise includible in Ohio 3338
taxable income and is described in either division (S) (1) (a) or 3339
(b) of this section: 3340

(a) The net amount is not attributable to the S portion of 3341
an electing small business trust and has not been distributed to 3342
beneficiaries for the taxable year; 3343

(b) The net amount is attributable to the S portion of an 3344
electing small business trust for the taxable year. 3345

(2) Add interest or dividends, net of ordinary, necessary, 3346
and reasonable expenses not deducted in computing federal 3347
taxable income, on obligations of any authority, commission, 3348

instrumentality, territory, or possession of the United States 3349
to the extent that the interest or dividends are exempt from 3350
federal income taxes but not from state income taxes, but only 3351
to the extent that such net amount is not otherwise includible 3352
in Ohio taxable income and is described in either division (S) 3353
(1) (a) or (b) of this section; 3354

(3) Add the amount of personal exemption allowed to the 3355
estate pursuant to section 642(b) of the Internal Revenue Code; 3356

(4) Deduct interest or dividends, net of related expenses 3357
deducted in computing federal taxable income, on obligations of 3358
the United States and its territories and possessions or of any 3359
authority, commission, or instrumentality of the United States 3360
to the extent that the interest or dividends are exempt from 3361
state taxes under the laws of the United States, but only to the 3362
extent that such amount is included in federal taxable income 3363
and is described in either division (S) (1) (a) or (b) of this 3364
section; 3365

(5) Deduct the amount of wages and salaries, if any, not 3366
otherwise allowable as a deduction but that would have been 3367
allowable as a deduction in computing federal taxable income for 3368
the taxable year, had the targeted jobs credit allowed under 3369
sections 38, 51, and 52 of the Internal Revenue Code not been in 3370
effect, but only to the extent such amount relates either to 3371
income included in federal taxable income for the taxable year 3372
or to income of the S portion of an electing small business 3373
trust for the taxable year; 3374

(6) Deduct any interest or interest equivalent, net of 3375
related expenses deducted in computing federal taxable income, 3376
on public obligations and purchase obligations, but only to the 3377
extent that such net amount relates either to income included in 3378

federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

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

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

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

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

(10) Deduct any portion of the deduction described in 3408
section 1341(a) (2) of the Internal Revenue Code, for repaying 3409
previously reported income received under a claim of right, that 3410
meets both of the following requirements: 3411

(a) It is allowable for repayment of an item that was 3412
included in the taxpayer's taxable income or the decedent's 3413
adjusted gross income for a prior taxable year and did not 3414
qualify for a credit under division (A) or (B) of section 3415
5747.05 of the Revised Code for that year. 3416

(b) It does not otherwise reduce the taxpayer's taxable 3417
income or the decedent's adjusted gross income for the current 3418
or any other taxable year. 3419

(11) Add any amount claimed as a credit under section 3420
5747.059 or 5747.65 of the Revised Code to the extent that the 3421
amount satisfies either of the following: 3422

(a) The amount was deducted or excluded from the 3423
computation of the taxpayer's federal taxable income as required 3424
to be reported for the taxpayer's taxable year under the 3425
Internal Revenue Code; 3426

(b) The amount resulted in a reduction in the taxpayer's 3427
federal taxable income as required to be reported for any of the 3428
taxpayer's taxable years under the Internal Revenue Code. 3429

(12) Deduct any amount, net of related expenses deducted 3430
in computing federal taxable income, that a trust is required to 3431
report as farm income on its federal income tax return, but only 3432
if the assets of the trust include at least ten acres of land 3433
satisfying the definition of "land devoted exclusively to 3434
agricultural use" under section 5713.30 of the Revised Code, 3435
regardless of whether the land is valued for tax purposes as 3436

such land under sections 5713.30 to 5713.38 of the Revised Code. 3437
If the trust is a pass-through entity investor, section 5747.231 3438
of the Revised Code applies in ascertaining if the trust is 3439
eligible to claim the deduction provided by division (S)(12) of 3440
this section in connection with the pass-through entity's farm 3441
income. 3442

Except for farm income attributable to the S portion of an 3443
electing small business trust, the deduction provided by 3444
division (S)(12) of this section is allowed only to the extent 3445
that the trust has not distributed such farm income. Division 3446
(S)(12) of this section applies only to taxable years of a trust 3447
beginning in 2002 or thereafter. 3448

(13) Add the net amount of income described in section 3449
641(c) of the Internal Revenue Code to the extent that amount is 3450
not included in federal taxable income. 3451

(14) Add or deduct the amount the taxpayer would be 3452
required to add or deduct under division (A)(20) or (21) of this 3453
section if the taxpayer's Ohio taxable income were computed in 3454
the same manner as an individual's Ohio adjusted gross income is 3455
computed under this section. In the case of a trust, division 3456
(S)(14) of this section applies only to any of the trust's 3457
taxable years beginning in 2002 or thereafter. 3458

(T) "School district income" and "school district income 3459
tax" have the same meanings as in section 5748.01 of the Revised 3460
Code. 3461

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S) 3462
(7) of this section, "public obligations," "purchase 3463
obligations," and "interest or interest equivalent" have the 3464
same meanings as in section 5709.76 of the Revised Code. 3465

(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.

(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.

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

(Y) "Month" means a calendar month.

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

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

(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary education. If the individual is a part-time student, "qualified tuition and fees" includes tuition and fees paid for the academic equivalent of the first two years of post-secondary

education during a maximum of five taxable years, not exceeding	3495
a total of five thousand dollars. "Qualified tuition and fees"	3496
does not include:	3497
(a) Expenses for any course or activity involving sports,	3498
games, or hobbies unless the course or activity is part of the	3499
individual's degree or diploma program;	3500
(b) The cost of books, room and board, student activity	3501
fees, athletic fees, insurance expenses, or other expenses	3502
unrelated to the individual's academic course of instruction;	3503
(c) Tuition, fees, or other expenses paid or reimbursed	3504
through an employer, scholarship, grant in aid, or other	3505
educational benefit program.	3506
(BB) (1) "Modified business income" means the business	3507
income included in a trust's Ohio taxable income after such	3508
taxable income is first reduced by the qualifying trust amount,	3509
if any.	3510
(2) "Qualifying trust amount" of a trust means capital	3511
gains and losses from the sale, exchange, or other disposition	3512
of equity or ownership interests in, or debt obligations of, a	3513
qualifying investee to the extent included in the trust's Ohio	3514
taxable income, but only if the following requirements are	3515
satisfied:	3516
(a) The book value of the qualifying investee's physical	3517
assets in this state and everywhere, as of the last day of the	3518
qualifying investee's fiscal or calendar year ending immediately	3519
prior to the date on which the trust recognizes the gain or	3520
loss, is available to the trust.	3521
(b) The requirements of section 5747.011 of the Revised	3522
Code are satisfied for the trust's taxable year in which the	3523

trust recognizes the gain or loss. 3524

Any gain or loss that is not a qualifying trust amount is 3525
modified business income, qualifying investment income, or 3526
modified nonbusiness income, as the case may be. 3527

(3) "Modified nonbusiness income" means a trust's Ohio 3528
taxable income other than modified business income, other than 3529
the qualifying trust amount, and other than qualifying 3530
investment income, as defined in section 5747.012 of the Revised 3531
Code, to the extent such qualifying investment income is not 3532
otherwise part of modified business income. 3533

(4) "Modified Ohio taxable income" applies only to trusts, 3534
and means the sum of the amounts described in divisions (BB) (4) 3535
(a) to (c) of this section: 3536

(a) The fraction, calculated under section 5747.013, and 3537
applying section 5747.231 of the Revised Code, multiplied by the 3538
sum of the following amounts: 3539

(i) The trust's modified business income; 3540

(ii) The trust's qualifying investment income, as defined 3541
in section 5747.012 of the Revised Code, but only to the extent 3542
the qualifying investment income does not otherwise constitute 3543
modified business income and does not otherwise constitute a 3544
qualifying trust amount. 3545

(b) The qualifying trust amount multiplied by a fraction, 3546
the numerator of which is the sum of the book value of the 3547
qualifying investee's physical assets in this state on the last 3548
day of the qualifying investee's fiscal or calendar year ending 3549
immediately prior to the day on which the trust recognizes the 3550
qualifying trust amount, and the denominator of which is the sum 3551
of the book value of the qualifying investee's total physical 3552

assets everywhere on the last day of the qualifying investee's 3553
fiscal or calendar year ending immediately prior to the day on 3554
which the trust recognizes the qualifying trust amount. If, for 3555
a taxable year, the trust recognizes a qualifying trust amount 3556
with respect to more than one qualifying investee, the amount 3557
described in division (BB) (4) (b) of this section shall equal the 3558
sum of the products so computed for each such qualifying 3559
investee. 3560

(c) (i) With respect to a trust or portion of a trust that 3561
is a resident as ascertained in accordance with division (I) (3) 3562
(d) of this section, its modified nonbusiness income. 3563

(ii) With respect to a trust or portion of a trust that is 3564
not a resident as ascertained in accordance with division (I) (3) 3565
(d) of this section, the amount of its modified nonbusiness 3566
income satisfying the descriptions in divisions (B) (2) to (5) of 3567
section 5747.20 of the Revised Code, except as otherwise 3568
provided in division (BB) (4) (c) (ii) of this section. With 3569
respect to a trust or portion of a trust that is not a resident 3570
as ascertained in accordance with division (I) (3) (d) of this 3571
section, the trust's portion of modified nonbusiness income 3572
recognized from the sale, exchange, or other disposition of a 3573
debt interest in or equity interest in a section 5747.212 3574
entity, as defined in section 5747.212 of the Revised Code, 3575
without regard to division (A) of that section, shall not be 3576
allocated to this state in accordance with section 5747.20 of 3577
the Revised Code but shall be apportioned to this state in 3578
accordance with division (B) of section 5747.212 of the Revised 3579
Code without regard to division (A) of that section. 3580

If the allocation and apportionment of a trust's income 3581
under divisions (BB) (4) (a) and (c) of this section do not fairly 3582

represent the modified Ohio taxable income of the trust in this 3583
state, the alternative methods described in division (C) of 3584
section 5747.21 of the Revised Code may be applied in the manner 3585
and to the same extent provided in that section. 3586

(5) (a) Except as set forth in division (BB) (5) (b) of this 3587
section, "qualifying investee" means a person in which a trust 3588
has an equity or ownership interest, or a person or unit of 3589
government the debt obligations of either of which are owned by 3590
a trust. For the purposes of division (BB) (2) (a) of this section 3591
and for the purpose of computing the fraction described in 3592
division (BB) (4) (b) of this section, all of the following apply: 3593

(i) If the qualifying investee is a member of a qualifying 3594
controlled group on the last day of the qualifying investee's 3595
fiscal or calendar year ending immediately prior to the date on 3596
which the trust recognizes the gain or loss, then "qualifying 3597
investee" includes all persons in the qualifying controlled 3598
group on such last day. 3599

(ii) If the qualifying investee, or if the qualifying 3600
investee and any members of the qualifying controlled group of 3601
which the qualifying investee is a member on the last day of the 3602
qualifying investee's fiscal or calendar year ending immediately 3603
prior to the date on which the trust recognizes the gain or 3604
loss, separately or cumulatively own, directly or indirectly, on 3605
the last day of the qualifying investee's fiscal or calendar 3606
year ending immediately prior to the date on which the trust 3607
recognizes the qualifying trust amount, more than fifty per cent 3608
of the equity of a pass-through entity, then the qualifying 3609
investee and the other members are deemed to own the 3610
proportionate share of the pass-through entity's physical assets 3611
which the pass-through entity directly or indirectly owns on the 3612

last day of the pass-through entity's calendar or fiscal year 3613
ending within or with the last day of the qualifying investee's 3614
fiscal or calendar year ending immediately prior to the date on 3615
which the trust recognizes the qualifying trust amount. 3616

(iii) For the purposes of division (BB) (5) (a) (iii) of this 3617
section, "upper level pass-through entity" means a pass-through 3618
entity directly or indirectly owning any equity of another pass- 3619
through entity, and "lower level pass-through entity" means that 3620
other pass-through entity. 3621

An upper level pass-through entity, whether or not it is 3622
also a qualifying investee, is deemed to own, on the last day of 3623
the upper level pass-through entity's calendar or fiscal year, 3624
the proportionate share of the lower level pass-through entity's 3625
physical assets that the lower level pass-through entity 3626
directly or indirectly owns on the last day of the lower level 3627
pass-through entity's calendar or fiscal year ending within or 3628
with the last day of the upper level pass-through entity's 3629
fiscal or calendar year. If the upper level pass-through entity 3630
directly and indirectly owns less than fifty per cent of the 3631
equity of the lower level pass-through entity on each day of the 3632
upper level pass-through entity's calendar or fiscal year in 3633
which or with which ends the calendar or fiscal year of the 3634
lower level pass-through entity and if, based upon clear and 3635
convincing evidence, complete information about the location and 3636
cost of the physical assets of the lower pass-through entity is 3637
not available to the upper level pass-through entity, then 3638
solely for purposes of ascertaining if a gain or loss 3639
constitutes a qualifying trust amount, the upper level pass- 3640
through entity shall be deemed as owning no equity of the lower 3641
level pass-through entity for each day during the upper level 3642
pass-through entity's calendar or fiscal year in which or with 3643

which ends the lower level pass-through entity's calendar or 3644
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 3645
shall be construed to provide for any deduction or exclusion in 3646
computing any trust's Ohio taxable income. 3647

(b) With respect to a trust that is not a resident for the 3648
taxable year and with respect to a part of a trust that is not a 3649
resident for the taxable year, "qualifying investee" for that 3650
taxable year does not include a C corporation if both of the 3651
following apply: 3652

(i) During the taxable year the trust or part of the trust 3653
recognizes a gain or loss from the sale, exchange, or other 3654
disposition of equity or ownership interests in, or debt 3655
obligations of, the C corporation. 3656

(ii) Such gain or loss constitutes nonbusiness income. 3657

(6) "Available" means information is such that a person is 3658
able to learn of the information by the due date plus 3659
extensions, if any, for filing the return for the taxable year 3660
in which the trust recognizes the gain or loss. 3661

(CC) "Qualifying controlled group" has the same meaning as 3662
in section 5733.04 of the Revised Code. 3663

(DD) "Related member" has the same meaning as in section 3664
5733.042 of the Revised Code. 3665

(EE) (1) For the purposes of division (EE) of this section: 3666

(a) "Qualifying person" means any person other than a 3667
qualifying corporation. 3668

(b) "Qualifying corporation" means any person classified 3669
for federal income tax purposes as an association taxable as a 3670
corporation, except either of the following: 3671

(i) A corporation that has made an election under 3672
subchapter S, chapter one, subtitle A, of the Internal Revenue 3673
Code for its taxable year ending within, or on the last day of, 3674
the investor's taxable year; 3675

(ii) A subsidiary that is wholly owned by any corporation 3676
that has made an election under subchapter S, chapter one, 3677
subtitle A of the Internal Revenue Code for its taxable year 3678
ending within, or on the last day of, the investor's taxable 3679
year. 3680

(2) For the purposes of this chapter, unless expressly 3681
stated otherwise, no qualifying person indirectly owns any asset 3682
directly or indirectly owned by any qualifying corporation. 3683

(FF) For purposes of this chapter and Chapter 5751. of the 3684
Revised Code: 3685

(1) "Trust" does not include a qualified pre-income tax 3686
trust. 3687

(2) A "qualified pre-income tax trust" is any pre-income 3688
tax trust that makes a qualifying pre-income tax trust election 3689
as described in division (FF)(3) of this section. 3690

(3) A "qualifying pre-income tax trust election" is an 3691
election by a pre-income tax trust to subject to the tax imposed 3692
by section 5751.02 of the Revised Code the pre-income tax trust 3693
and all pass-through entities of which the trust owns or 3694
controls, directly, indirectly, or constructively through 3695
related interests, five per cent or more of the ownership or 3696
equity interests. The trustee shall notify the tax commissioner 3697
in writing of the election on or before April 15, 2006. The 3698
election, if timely made, shall be effective on and after 3699
January 1, 2006, and shall apply for all tax periods and tax 3700

years until revoked by the trustee of the trust. 3701

(4) A "pre-income tax trust" is a trust that satisfies all 3702
of the following requirements: 3703

(a) The document or instrument creating the trust was 3704
executed by the grantor before January 1, 1972; 3705

(b) The trust became irrevocable upon the creation of the 3706
trust; and 3707

(c) The grantor was domiciled in this state at the time 3708
the trust was created. 3709

(GG) "Uniformed services" has the same meaning as in 10 3710
U.S.C. 101. 3711

(HH) "Taxable business income" means business income 3712
reduced by deductions from business income and by one of the 3713
following amounts, provided that "taxable business income" shall 3714
not be less than zero: 3715

(1) For taxable years beginning in 2015, the lesser of 3716
seventy-five per cent of Ohio business income or (a) ninety- 3717
three thousand seven hundred fifty dollars for each spouse if 3718
spouses file separate returns under section 5747.08 of the 3719
Revised Code or (b) one hundred eighty-seven thousand five 3720
hundred dollars for all other taxpayers; 3721

(2) For taxable years beginning in 2016 and thereafter, 3722
one hundred twenty-five thousand dollars for each spouse if 3723
spouses file separate returns under section 5747.08 of the 3724
Revised Code or two hundred fifty thousand dollars for all other 3725
individuals. 3726

(II) "Employee" has the same meaning as in section 4175.01 3727
of the Revised Code, unless the internal revenue service has 3728

accepted the classification of an individual as an independent 3729
contractor made by the individual and the individual's payer. 3730

Section 2. That existing sections 121.083, 1349.61, 3731
4111.02, 4111.14, 4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 3732
4141.01, and 5747.01 of the Revised Code are hereby repealed. 3733