

AN ACT

To amend sections 123.153, 1349.61, 4111.03, 4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 4123.77, 4141.01, and 5747.01 and to enact section 123.154 of the Revised Code to specify that a franchisor is not the employer of a franchisee or employee of a franchisee for purposes of the Minimum Fair Wage Standards Law, the Bimonthly Pay Law, the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law and to require the Director of Administrative Services to establish the women-owned business enterprise program.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 123.153, 1349.61, 4111.03, 4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 4123.77, 4141.01, and 5747.01 be amended and section 123.154 of the Revised Code be enacted to read as follows:

Sec. 123.153. (A) As used in this section:

(1) "Minority business enterprise" has the same meaning as in section 123.151 of the Revised Code.

(2) "EDGE business enterprise" has the same meaning as in section 123.152 of the Revised Code.

(3) "Women-owned business enterprise" has the same meaning as in section 123.154 of the Revised Code.

(B) ~~Beginning October 1, 2009, and on~~ Not later than the first day of October in each year ~~thereafter~~, the director of administrative services shall submit a written report to the governor and to each member of the general assembly describing the progress made by state agencies in advancing the minority business enterprise program ~~and~~ the encouraging diversity, growth, and equity program, and the women-owned business enterprise program. The report shall highlight the initiatives implemented to encourage participation of minority-owned, ~~as well as~~ socially and economically disadvantaged, and women-owned businesses in programs funded by state money or federal money received by the state for fiscal stabilization and recovery purposes. The report shall also include the total number of procurement contracts each agency has entered into with certified minority business enterprises ~~and~~ EDGE business enterprises, and women-owned business enterprises.

Sec. 123.154. (A) As used in this section:

"Women-owned business enterprise" means any individual, partnership, corporation, or joint venture of any kind that is owned and controlled by women who are United States citizens and residents of this state or of a reciprocal state.

"Owned and controlled" means that at least fifty-one per cent of the business, including corporate stock if it is a corporation, is owned by women and that such owners have control over the day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership. In order to qualify as a women-owned business, a business shall have been owned by such owners at least one year.

(B) The director of administrative services shall establish a business assistance program known as the women-owned business enterprise program and shall adopt rules in accordance with Chapter 119. of the Revised Code to administer the program that do all of the following:

(1) Establish procedures by which a business enterprise may apply for certification as a women-owned business enterprise;

(2) Establish standards to determine when a women-owned business enterprise no longer qualifies for women-owned business enterprise certification;

(3) Establish a system to make publicly available a list of women-owned business enterprises certified under this section;

(4) Establish a process to mediate complaints and to review women-owned business enterprise certification appeals;

(5) Implement an outreach program to educate potential participants about the women-owned business enterprise program;

(6) Establish a system to assist state agencies in identifying and utilizing women-owned business enterprises in their contracting processes;

(7) Implement a system of self-reporting by women-owned business enterprises as well as an on-site inspection process to validate the qualifications of women-owned business enterprises.

(C) Business and personal financial information and trade secrets submitted by women-owned business enterprise applicants to the director pursuant to this section are not public records for purposes of section 149.43 of the Revised Code, unless the director presents the financial information or trade secrets at a public hearing or public proceeding regarding the applicant's eligibility to participate in the program.

(D) The director of administrative services, upon approval of the attorney general, may enter into a reciprocal agreement with the appropriate officials of one or more states, when the other state has a business assistance program or programs substantially similar to the women-owned business enterprise program of this state. The agreement shall provide that a business certified by the other state as a women-owned business enterprise, which is owned and controlled by a resident or residents of that other state, shall be considered a women-owned business enterprise in this state under this section. The agreement shall provide that a women-owned business enterprise certified under this section, which is owned and controlled by a resident or residents of this state, shall be considered certified in the other state and eligible for programs of that state that provide an advantage or benefit to such businesses.

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

(2) No person or entity, within two years after a gift card is issued, shall charge service charges or fees relative to that gift card, including dormancy fees, latency fees, or administrative fees,

that have the effect of reducing the total amount for which the holder of the gift card may redeem the gift card.

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

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

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

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

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

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

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

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

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

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

(E) As used in this section:

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

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

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

Sec. 4111.03. (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended.

Any employee employed in agriculture shall not be covered by the overtime provision of this

section.

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

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

(D) As used in this section:

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

(2) "Employer" means the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities, any individual, partnership, association, corporation, business trust, or any person or group of persons, acting in the interest of an employer in relation to an employee, but does not include ~~an~~ either of the following:

(a) An employer whose annual gross volume of sales made for business done is less than one hundred fifty thousand dollars, exclusive of excise taxes at the retail level which are separately stated;

(b) A franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

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

(a) Any individual employed by the United States;

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

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

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

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

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

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

Section 501(a) of that code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

regulations or individuals who are not subject to the overtime pay requirements specified in section 4111.03 of the Revised Code.

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

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

(b) The employee's attorney;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) In accordance with Section 34a of Article II, Ohio Constitution, there shall be no

exhaustion requirement, no procedural, pleading, or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits. Nothing in division (L) of this section affects the right of an employer and employee to agree to submit a dispute under this section to alternative dispute resolution, including, but not limited to, arbitration, in lieu of maintaining the civil suit specified in division (K) of this section. Nothing in this division limits the state's ability to investigate or enforce this section.

(M) An employer who provides such information specified in Section 34a of Article II, Ohio Constitution, shall be immune from any civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing that information to an employee or person acting on behalf of an employee in response to a request by the employee or person, and the employer shall not be subject to the provisions of Chapters 1347. and 1349. of the Revised Code to the extent that such provisions would otherwise apply. As used in division (M) of this section, "such information," "acting on behalf of an employee," and "request" have the same meanings as in division (G) of this section.

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

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

(B) Where wages remain unpaid for thirty days beyond the regularly scheduled payday or, in the case where no regularly scheduled payday is applicable, for sixty days beyond the filing by the employee of a claim or for sixty days beyond the date of the agreement, award, or other act making wages payable and no contest court order or dispute of any wage claim including the assertion of a counterclaim exists accounting for nonpayment, the employer, in addition, as liquidated damages, is liable to the employee in an amount equal to six per cent of the amount of the claim still unpaid and not in contest or disputed or two hundred dollars, whichever is greater.

(C) In the absence of a contest, court order or dispute, an employer who is party to an agreement to pay or provide fringe benefits to an employee or to make any employee authorized deduction becomes a trustee of any funds required by such agreement to be paid to any person, organization, or governmental agency from the time that the duty to make such payment arises. No person shall, without reasonable justification or excuse for such failure, knowingly fail or refuse to pay to the appropriate person, organization, or governmental agency the amount necessary to provide the benefits or accomplish the purpose of any employee authorized deduction, within thirty days after

the close of the pay period during which the employee earned or had deducted the amount of money necessary to pay for the fringe benefit or make any employee authorized deduction. A failure or refusal to pay, regardless of the number of employee pay accounts involved, constitutes one offense for the first delinquency of thirty days and a separate offense for each successive delinquency of thirty days.

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

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

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

(3) "Employee authorized deduction" includes but is not limited to deductions for the purpose of any of the following:

(a) ~~purchase~~ Purchase of United States savings bonds or corporate stocks or bonds;

(b) ~~a~~ A charitable contribution;

(c) ~~credit~~ Credit union savings or other regular savings program; ~~or;~~

(d) ~~repayment~~ Repayment of a loan or other obligation.

(4) "Employer" means an individual, firm, partnership, association, or corporation, but does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless either of the following applies:

(a) The franchisor agrees to assume that role in writing.

(b) A court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both.

(5) "Franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

Sec. 4113.16. No ~~corporation, contractor, person, or partnership~~ employer subject to section 4113.15 of the Revised Code shall, by a special contract with an employee or by other means, exempt ~~itself the employer~~ from this section and section 4113.15 of the Revised Code, and no assignments of future wages, payable semimonthly under such sections are valid except as provided in section 1321.32 of the Revised Code.

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

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

(2) "Employment" means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged,

except in such private domestic service or agricultural pursuits as do not involve the use of mechanical power.

(3) "Employer" means every person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment, or employee. "Employer" does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

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

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

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

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

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

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

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

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

(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 or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education.

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

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

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

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

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

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

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

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

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

- (iv) The person is required to perform the work personally;
- (v) The person is hired, supervised, or paid by the other contracting party;
- (vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;
- (vii) The person's hours of work are established by the other contracting party;
- (viii) The person is required to devote full time to the business of the other contracting party;
- (ix) The person is required to perform the work on the premises of the other contracting party;
- (x) The person is required to follow the order of work set by the other contracting party;
- (xi) The person is required to make oral or written reports of progress to the other contracting party;
- (xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;
- (xiii) The person's expenses are paid for by the other contracting party;
- (xiv) The person's tools and materials are furnished by the other contracting party;
- (xv) The person is provided with the facilities used to perform services;
- (xvi) The person does not realize a profit or suffer a loss as a result of the services provided;
- (xvii) The person is not performing services for a number of employers at the same time;
- (xviii) The person does not make the same services available to the general public;
- (xix) The other contracting party has a right to discharge the person;
- (xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.

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 who is a self-insuring employer and who 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.

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

- (a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;
- (b) Any officer of a family farm corporation;
- (c) An individual incorporated as a corporation;
- (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;
- (e) 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 has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code;

(f)(i) A qualifying employee described in division (A)(14)(a) of section 5703.94 of the

Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(ii) A qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period on critical infrastructure owned or used by the employee's employer;

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

Any employer may elect to include as an "employee" within this chapter, any person excluded from the definition of "employee" pursuant to division (A)(2)(a), (b), (c), or (e) of this section in accordance with rules adopted by the administrator, with the advice and consent of the bureau of workers' compensation board of directors. If an employer is a partnership, sole proprietorship, individual incorporated as a corporation, or family farm corporation, such employer may elect to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship, the individual incorporated as a corporation, or the officers of the family farm corporation. Nothing in this section shall prohibit a partner, sole proprietor, or any person excluded from the definition of "employee" pursuant to division (A)(2)(a), (b), (c), or (e) of this section from electing to be included as an "employee" under this chapter in accordance with rules adopted by the administrator, with the advice and consent of the board.

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

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

(B)(1) "Employer" means:

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

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

All such employers are subject to this chapter. Any member of a firm or association, who

regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered an employee in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more employees and the employer shall report the income derived from such labor to the bureau as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

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

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

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

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

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

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

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

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

(F) "Occupational disease" means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the

employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.

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

(H) "Private employer" means an employer as defined in division (B)(2)-(1)(b) of this section.

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

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

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

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

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

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

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

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

Sec. 4123.30. Money contributed by ~~the public employers mentioned in division (B)(1) of section 4123.01 of the Revised Code~~ constitutes the "public fund" and the money contributed by ~~private employers mentioned in division (B)(2) of such section~~ constitutes the "private fund." Each such fund shall be collected, distributed, and its solvency maintained without regard to or reliance upon the other. Whenever in this chapter reference is made to the state insurance fund, the reference is to such two separate funds but such two separate funds and the net premiums contributed thereto by employers after adjustments and dividends, except for the amount thereof which is set aside for the investigation and prevention of industrial accidents and diseases pursuant to Section 35 of Article II, Ohio Constitution, any amounts set aside for actuarial services authorized or required by sections 4123.44 and 4123.47 of the Revised Code, and any amounts set aside to reinsure the liability of the

respective insurance funds for the following payments, constitute a trust fund for the benefit of employers and employees mentioned in sections 4123.01, 4123.03, and 4123.73 of the Revised Code for the payment of compensation, medical services, examinations, recommendations and determinations, nursing and hospital services, medicine, rehabilitation, death benefits, funeral expenses, and like benefits for loss sustained on account of injury, disease, or death provided for by this chapter, and for no other purpose. This section does not prevent the deposit or investment of all such moneys intermingled for such purpose but such funds shall be separate and distinct for all other purposes, and the rights and duties created in this chapter shall be construed to have been made with respect to two separate funds and so as to maintain and continue such funds separately except for deposit or investment. Disbursements shall not be made on account of injury, disease, or death of employees of employers who contribute to one of such funds unless the moneys to the credit of such fund are sufficient therefor and no such disbursements shall be made for moneys or credits paid or credited to the other fund.

Sec. 4123.38. Every public employer ~~mentioned in division (B)(1) of section 4123.01 of the Revised Code~~, except for boards of county hospital trustees that are self-insurers under section 4123.35 of the Revised Code, shall contribute to the public insurance fund the amount of money determined by the administrator of workers' compensation, and the manner of determining contributions and the classifications of employers is as provided in sections 4123.39 to 4123.41 and 4123.48 of the Revised Code.

Sec. 4123.77. ~~Employers mentioned in division (B)(2) of section 4123.01 of the Revised Code~~, Private employers who fail to comply with section 4123.35 of the Revised Code are not entitled to the benefits of sections 4123.01 to 4123.94, inclusive, of the Revised Code, during the period of such noncompliance, but are liable to their employees for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect, or default of the employer, or any of the employer's officers, agents, or employees, and also to the personal representatives of such employees where death results from such injuries, and in such action the defendant shall not avail ~~himself or itself~~ self of the following common law defenses:

- (A) The defense of the fellow servant rule;
- (B) The defense of the assumption of risk;
- (C) The defense of contributory negligence.

Such employers are subject to sections 4123.37 and 4123.75 of the Revised Code.

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

(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:

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Employment" includes:

(a) Service performed after December 31, 1977, by an individual in the employ of the state or any of its instrumentalities, or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and

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

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

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

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

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

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, laundry, or dry-cleaning services, for the individual's employer or principal;

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

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

(i) The service is localized in this state.

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

(g) Service not covered under division (B)(2)(f)(ii) of this section and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, the Virgin Islands, Canada, or of the United States, if the individual performing such service is a resident of this state and the director approves the election of the employer for whom such services are performed; or, if the individual is not a

resident of this state but the place from which the service is directed or controlled is in this state, the entire services of such individual shall be deemed to be employment subject to this chapter, provided service is deemed to be localized within this state if the service is performed entirely within this state or if the service is performed both within and without this state but the service performed without this state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

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

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

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

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

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

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

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

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

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

- (iii) Services performed by the individual are integrated into the regular functioning of the employer;
 - (iv) The employer requires that services be provided by a particular individual;
 - (v) The employer hires, supervises, or pays the wages of the individual performing services;
 - (vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full-time work;
 - (vii) The employer requires the individual to perform services during established hours;
 - (viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;
 - (ix) The employer requires the individual to perform services on the employer's premises;
 - (x) The employer requires the individual performing services to follow the order of work established by the employer;
 - (xi) The employer requires the individual performing services to make oral or written reports of progress;
 - (xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;
 - (xiii) The employer pays expenses for the individual performing services;
 - (xiv) The employer furnishes the tools and materials for use by the individual to perform services;
 - (xv) The individual performing services has not invested in the facilities used to perform services;
 - (xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;
 - (xvii) The individual performing services is not performing services for more than two employers simultaneously;
 - (xviii) The individual performing services does not make the services available to the general public;
 - (xix) The employer has a right to discharge the individual performing services;
 - (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.
- (l) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division (B)(3) of this section.
- (3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services are not required to be included under division (B)(2)(j) of this section:
- (a) Service performed after December 31, 1977, in agricultural labor, except as provided in division (A)(1)(d) of this section;
 - (b) Domestic service performed after December 31, 1977, in a private home, local college

club, or local chapter of a college fraternity or sorority except as provided in division (A)(1)(c) of this section;

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

(i) As a publicly elected official;

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

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

(iv) As an employee, not in the classified service as 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;

(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.

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

(e) Service performed after December 31, 1971:

(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

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

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

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

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

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

(h) Service performed after December 31, 1971:

(i) In the employ of a church or convention or association of churches, or in an organization

which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Indian tribes;

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

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

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

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

(i) As a publicly elected official;

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

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

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

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

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

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

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

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

(D) "Benefit rights" means the weekly benefit amount and the maximum benefit amount that may become payable to an 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) "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 nine thousand dollars on and after January 1, 1995; nine thousand five hundred dollars on and after January 1, 2018; and nine thousand dollars on and after January 1, 2020. 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 compensation act of such other state, shall be included as a part of remuneration in computing the amount specified in this division.

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

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

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

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

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

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

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

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

(L)(1) "Contributions" means the money payments to the state unemployment compensation fund required of employers by section 4141.25 of the Revised Code and of the state and any of its

political subdivisions electing to pay contributions under section 4141.242 of the Revised Code. Employers paying contributions shall be described as "contributory employers."

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

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

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

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

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

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

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

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

(2) If an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period shall be the four most recently completed calendar quarters preceding the first day of the individual's benefit year. Such base period shall be known as the "alternate base period." If information as to weeks and wages for the most recent quarter of the alternate base period is not available to the director from the regular quarterly reports of wage information, which are systematically accessible, the director may, consistent with the provisions of section 4141.28 of the Revised Code, base the determination of eligibility for benefits on the affidavit of the claimant with respect to weeks and wages for that calendar quarter. The claimant shall furnish payroll documentation, where available, in support of the affidavit. The determination based upon the alternate base period as it relates to the claimant's benefit rights, shall be amended when the quarterly report of wage information from the employer is timely received and that information causes a change in the determination. As provided in division (B) of section 4141.28 of the Revised Code, any benefits paid and charged to an employer's account, based upon a claimant's affidavit, shall be adjusted effective as of the beginning of the claimant's benefit year. No calendar quarter in a base period or alternate base period shall be used to establish a subsequent

benefit year.

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

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

(R)(1) "Benefit year" with respect to an individual means the fifty-two week period beginning with the first day of that week with respect to which the individual first files a valid application for determination of benefit rights, and thereafter the fifty-two week period beginning with the first day of that week with respect to which the individual next files a valid application for determination of benefit rights after the termination of the individual's last preceding benefit year, except that the application shall not be considered valid unless the individual has had employment in six weeks that is subject to this chapter or the unemployment compensation act of another state, or the United States, and has, since the beginning of the individual's previous benefit year, in the employment earned three times the average weekly wage determined for the previous benefit year. The "benefit year" of a combined wage claim, as described in division (H) of section 4141.43 of the Revised Code, shall be the benefit year prescribed by the law of the state in which the claim is allowed. Any application for determination of benefit rights made in accordance with section 4141.28 of the Revised Code is valid if the individual filing such application is unemployed, has been employed by an employer or employers subject to this chapter in at least twenty qualifying weeks within the individual's base period, and has earned or been paid remuneration at an average weekly wage of not less than twenty-seven and one-half per cent of the statewide average weekly wage for such weeks. For purposes of determining whether an individual has had sufficient employment since the beginning of the individual's previous benefit year to file a valid application, "employment" means the performance of services for which remuneration is payable.

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

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

(4) As used in this division, an individual is "unemployed" if, with respect to the calendar

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

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

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

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

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

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

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

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

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

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

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

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

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

business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the individual is not in the employment of the other employer or farm operator within

the meaning of division (B)(1) of this section.

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

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

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

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

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

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

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

As used in this chapter:

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

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

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

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

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

income.

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

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

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

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

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

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

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

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

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

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

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

(b) Add any amount not otherwise included in Ohio adjusted gross 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 adjusted gross income in any taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

(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.

(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.

(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.

(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:

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

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

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

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

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

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

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

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

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

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

expenses only once for all taxable years beginning with taxable years beginning in 2007.

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

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

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

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

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

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

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

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

(31)(a) For taxable years beginning in 2015, deduct from the portion of an individual's

adjusted gross income that is business income, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the lesser of the following amounts:

- (i) Seventy-five per cent of the individual's business income;
- (ii) Ninety-three thousand seven hundred fifty dollars for each spouse if spouses file separate returns under section 5747.08 of the Revised Code or one hundred eighty-seven thousand five hundred dollars for all other individuals.

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

(32) Deduct, as provided under section 5747.78 of the Revised Code, contributions to ABLE savings accounts made in accordance with sections 113.50 to 113.56 of the Revised Code.

(33)(a) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, all of the following:

(i) Compensation paid to a qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code to the extent such compensation is for disaster work conducted in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(ii) Compensation paid to a qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code to the extent such compensation is for disaster work conducted in this state by the employee during the disaster response period on critical infrastructure owned or used by the employee's employer;

(iii) Income received by an out-of-state disaster business for disaster work conducted in this state during a disaster response period, or, if the out-of-state disaster business is a pass-through entity, a taxpayer's distributive share of the pass-through entity's income from the business conducting disaster work in this state during a disaster response period, if, in either case, the disaster work is conducted pursuant to a qualifying solicitation received by the business.

(b) All terms used in division (A)(33) of this section have the same meanings as in section 5703.94 of the Revised Code.

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

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

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

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

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

(G) "Individual" means any natural person.

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(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:

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

(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.

(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.

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

(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:

(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;

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

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

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

(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a

person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time

prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and

authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

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

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

(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public

obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(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 a total of five thousand dollars. "Qualified tuition and fees" does not include:

(a) Expenses for any course or activity involving sports, games, or hobbies unless the course or activity is part of the individual's degree or diploma program;

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

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

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

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

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

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

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

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

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

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

(i) The trust's modified business income;

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

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount, and the denominator of which is the sum of the book value of the qualifying investee's total physical assets everywhere on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount. If, for a taxable year, the trust recognizes a qualifying trust amount with respect to more than one qualifying investee, the amount described in division (BB)(4)(b) of this section shall equal the sum of the products so computed for each such qualifying investee.

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

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

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

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

section, all of the following apply:

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

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

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

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

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

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

(ii) Such gain or loss constitutes nonbusiness income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) "Employer" does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a

franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

SECTION 2. That existing sections 123.153, 1349.61, 4111.03, 4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 4123.77, 4141.01, and 5747.01 of the Revised Code are hereby repealed.

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____