

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

H. B. No. 494

Representative Antani

A BILL

To amend sections 1349.61, 4111.03, 4111.14, 1
4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 2
4123.38, 4123.77, 4141.01, and 5747.01 of the 3
Revised Code to specify that a franchisor is not 4
the employer of a franchisee or employee of a 5
franchisee for purposes of the Minimum Fair Wage 6
Standards Law, the Bimonthly Pay Law, the 7
Workers' Compensation Law, the Unemployment 8
Compensation Law, and the Income Tax Law. 9

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

Section 1. That sections 1349.61, 4111.03, 4111.14, 10
4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 4123.77, 11
4141.01, and 5747.01 of the Revised Code be amended to read as 12
follows: 13

Sec. 1349.61. (A) (1) Subject to division (C) of this 14
section, no person or entity shall sell a gift card to a 15
purchaser containing an expiration date that is less than two 16
years after the date the gift card is issued. 17

(2) No person or entity, within two years after a gift 18
card is issued, shall charge service charges or fees relative to 19

that gift card, including dormancy fees, latency fees, or 20
administrative fees, that have the effect of reducing the total 21
amount for which the holder of the gift card may redeem the gift 22
card. 23

(B) A gift card sold without an expiration date is valid 24
until redeemed or replaced with a new gift card. 25

(C) Division (A) of this section does not apply to any of 26
the following gift cards: 27

(1) A gift card that is distributed by the issuer to a 28
consumer pursuant to an awards, loyalty, or promotional program 29
without any money or anything of value being given in exchange 30
for the gift card by the consumer; 31

(2) A gift card that is sold below face value at a volume 32
discount to employers or to nonprofit and charitable 33
organizations for fundraising purposes, if the expiration date 34
on that gift card is not more than thirty days after the date of 35
sale; 36

(3) A gift card that is sold by a nonprofit or charitable 37
organization for fundraising purposes; 38

(4) A gift card that an employer gives to an employee if 39
use of the gift card is limited to the employer's business 40
establishment, which may include a group of merchants that are 41
affiliated with that business establishment; 42

(5) A gift certificate issued in accordance with section 43
1533.131 of the Revised Code that may be used to obtain hunting 44
and fishing licenses, fur taker, special deer, and special wild 45
turkey permits, and wetlands habitat stamps; 46

(6) A gift card that is usable with multiple, unaffiliated 47

sellers of goods or services; 48

(7) A gift card that an employer issues to an employee in 49
recognition of services performed by the employee. 50

(D) Whoever violates division (A) (2) of this section is 51
liable to the holder for any amount that the redemption value of 52
the gift card was reduced, any court costs incurred, and 53
reasonable attorney's fees. 54

(E) As used in this section: 55

(1) "Gift card" means a certificate, electronic card, or 56
other medium issued by a merchant that evidences the giving of 57
consideration in exchange for the right to redeem the 58
certificate, electronic card, or other medium for goods, food, 59
services, credit, or money of at least an equal value, including 60
any electronic card issued by a merchant with a monetary value 61
where the issuer has received payment for the full monetary 62
value for the future purchase or delivery of goods or services 63
and any certificate issued by a merchant where the issuer has 64
received payment for the full monetary face value of the 65
certificate for the future purchase or delivery of goods and 66
services. "Gift card" does not include a prepaid calling card 67
used to make telephone calls. 68

(2) ~~"Employer" and "employee" have~~ "Employee" has the same 69
~~meanings meaning~~ as in section 4121.01 of the Revised Code. 70

(3) "Employer" means every person, firm, corporation, 71
agent, manager, representative, or other person having control 72
or custody of any employment, place of employment, or employee. 73

Sec. 4111.03. (A) An employer shall pay an employee for 74
overtime at a wage rate of one and one-half times the employee's 75
wage rate for hours worked in excess of forty hours in one 76

workweek, in the manner and methods provided in and subject to 77
the exemptions of section 7 and section 13 of the "Fair Labor 78
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 79
amended. 80

Any employee employed in agriculture shall not be covered 81
by the overtime provision of this section. 82

(B) If a county employee elects to take compensatory time 83
off in lieu of overtime pay, for any overtime worked, 84
compensatory time may be granted by the employee's 85
administrative superior, on a time and one-half basis, at a time 86
mutually convenient to the employee and the administrative 87
superior within one hundred eighty days after the overtime is 88
worked. 89

(C) A county appointing authority with the exception of 90
the county department of job and family services may, by rule or 91
resolution as is appropriate, indicate the authority's intention 92
not to be bound by division (B) of this section, and to adopt a 93
different policy for the calculation and payment of overtime 94
than that established by that division. Upon adoption, the 95
alternative overtime policy prevails. Prior to the adoption of 96
an alternative overtime policy, a county appointing authority 97
with the exception of the county department of job and family 98
services shall give a written notice of the alternative policy 99
to each employee at least ten days prior to its effective date. 100

(D) As used in this section: 101

(1) "Employ" means to suffer or to permit to work. 102

(2) "Employer" means the state of Ohio, its 103
instrumentalities, and its political subdivisions and their 104
instrumentalities, any individual, partnership, association, 105

corporation, business trust, or any person or group of persons, 106
acting in the interest of an employer in relation to an 107
employee, but does not include ~~an~~ either of the following: 108

(a) An employer whose annual gross volume of sales made 109
for business done is less than one hundred fifty thousand 110
dollars, exclusive of excise taxes at the retail level which are 111
separately stated; 112

(b) A franchisor with respect to the franchisor's 113
relationship with a franchisee or an employee of a franchisee, 114
unless the franchisor agrees to assume that role in writing. For 115
purposes of this division, "franchisor" and "franchisee" have 116
the same meanings as in 16 C.F.R. 436.1. 117

(3) "Employee" means any individual employed by an 118
employer but does not include: 119

(a) Any individual employed by the United States; 120

(b) Any individual employed as a baby-sitter in the 121
employer's home, or a live-in companion to a sick, convalescing, 122
or elderly person whose principal duties do not include 123
housekeeping; 124

(c) Any individual engaged in the delivery of newspapers 125
to the consumer; 126

(d) Any individual employed as an outside salesperson 127
compensated by commissions or employed in a bona fide executive, 128
administrative, or professional capacity as such terms are 129
defined by the "Fair Labor Standards Act of 1938," 52 Stat. 130
1060, 29 U.S.C.A. 201, as amended; 131

(e) Any individual who works or provides personal services 132
of a charitable nature in a hospital or health institution for 133

which compensation is not sought or contemplated;	134
(f) A member of a police or fire protection agency or	135
student employed on a part-time or seasonal basis by a political	136
subdivision of this state;	137
(g) Any individual in the employ of a camp or recreational	138
area for children under eighteen years of age and owned and	139
operated by a nonprofit organization or group of organizations	140
described in Section 501(c)(3) of the "Internal Revenue Code of	141
1954," and exempt from income tax under Section 501(a) of that	142
code;	143
(h) Any individual employed directly by the house of	144
representatives or directly by the senate.	145
Sec. 4111.14. (A) Pursuant to the general assembly's	146
authority to establish a minimum wage under Section 34 of	147
Article II, Ohio Constitution, this section is in implementation	148
of Section 34a of Article II, Ohio Constitution. In implementing	149
Section 34a of Article II, Ohio Constitution, the general	150
assembly hereby finds that the purpose of Section 34a of Article	151
II, Ohio Constitution, is to:	152
(1) Ensure that Ohio employees, as defined in division (B)	153
(1) of this section, are paid the wage rate required by Section	154
34a of Article II, Ohio Constitution;	155
(2) Ensure that covered Ohio employers maintain certain	156
records that are directly related to the enforcement of the wage	157
rate requirements in Section 34a of Article II, Ohio	158
Constitution;	159
(3) Ensure that Ohio employees who are paid the wage rate	160
required by Section 34a of Article II, Ohio Constitution, may	161
enforce their right to receive that wage rate in the manner set	162

forth in Section 34a of Article II, Ohio Constitution; and 163

(4) Protect the privacy of Ohio employees' pay and 164
personal information specified in Section 34a of Article II, 165
Ohio Constitution, by restricting an employee's access, and 166
access by a person acting on behalf of that employee, to the 167
employee's own pay and personal information. 168

(B) In accordance with Section 34a of Article II, Ohio 169
Constitution, the terms "employer," "employee," "employ," 170
"person," and "independent contractor" have the same meanings as 171
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 172
U.S.C. 203, as amended. In construing the meaning of these 173
terms, due consideration and great weight shall be given to the 174
United States department of labor's and federal courts' 175
interpretations of those terms under the Fair Labor Standards 176
Act and its regulations. As used in division (B) of this 177
section: 178

(1) "Employee" means individuals employed in Ohio, but 179
does not mean individuals who are excluded from the definition 180
of "employee" under 29 U.S.C. 203(e) or individuals who are 181
exempted from the minimum wage requirements in 29 U.S.C. 213 and 182
from the definition of "employee" in this chapter. 183

(2) "Employ" and "employee" do not include any person 184
acting as a volunteer. In construing who is a volunteer, 185
"volunteer" shall have the same meaning as in sections 553.101 186
to 553.106 of Title 29 of the Code of Federal Regulations, as 187
amended, and due consideration and great weight shall be given 188
to the United States department of labor's and federal courts' 189
interpretations of the term "volunteer" under the Fair Labor 190
Standards Act and its regulations. 191

(3) "Employer" does not include a franchisor with respect 192
to the franchisor's relationship with a franchisee or an 193
employee of a franchisee, unless the franchisor agrees to assume 194
that role in writing. For purposes of this division, 195
"franchisor" and "franchisee" have the same meanings as in 16 196
C.F.R. 436.1. 197

(C) In accordance with Section 34a of Article II, Ohio 198
Constitution, the state may issue licenses to employers 199
authorizing payment of a wage below that required by Section 34a 200
of Article II, Ohio Constitution, to individuals with mental or 201
physical disabilities that may otherwise adversely affect their 202
opportunity for employment. In issuing such licenses, the state 203
shall abide by the rules adopted pursuant to section 4111.06 of 204
the Revised Code. 205

(D) (1) In accordance with Section 34a of Article II, Ohio 206
Constitution, individuals employed in or about the property of 207
an employer or an individual's residence on a casual basis are 208
not included within the coverage of Section 34a of Article II, 209
Ohio Constitution. As used in division (D) of this section: 210

(a) "Casual basis" means employment that is irregular or 211
intermittent and that is not performed by an individual whose 212
vocation is to be employed in or about the property of the 213
employer or individual's residence. In construing who is 214
employed on a "casual basis," due consideration and great weight 215
shall be given to the United States department of labor's and 216
federal courts' interpretations of the term "casual basis" under 217
the Fair Labor Standards Act and its regulations. 218

(b) "An individual employed in or about the property of an 219
employer or individual's residence" means an individual employed 220
on a casual basis or an individual employed in or about a 221

residence on a casual basis, respectively. 222

(2) In accordance with Section 34a of Article II, Ohio 223
Constitution, employees of a solely family-owned and operated 224
business who are family members of an owner are not included 225
within the coverage of Section 34a of Article II, Ohio 226
Constitution. As used in division (D)(2) of this section, 227
"family member" means a parent, spouse, child, stepchild, 228
sibling, grandparent, grandchild, or other member of an owner's 229
immediate family. 230

(E) In accordance with Section 34a of Article II, Ohio 231
Constitution, an employer shall at the time of hire provide an 232
employee with the employer's name, address, telephone number, 233
and other contact information and update such information when 234
it changes. As used in division (E) of this section: 235

(1) "Other contact information" may include, where 236
applicable, the address of the employer's internet site on the 237
world wide web, the employer's electronic mail address, fax 238
number, or the name, address, and telephone number of the 239
employer's statutory agent. "Other contact information" does not 240
include the name, address, telephone number, fax number, 241
internet site address, or electronic mail address of any 242
employee, shareholder, officer, director, supervisor, manager, 243
or other individual employed by or associated with an employer. 244

(2) "When it changes" means that the employer shall 245
provide its employees with the change in its name, address, 246
telephone number, or other contact information within sixty 247
business days after the change occurs. The employer shall 248
provide the changed information by using any of its usual 249
methods of communicating with its employees, including, but not 250
limited to, listing the change on the employer's internet site 251

on the world wide web, internal computer network, or a bulletin 252
board where it commonly posts employee communications or by 253
insertion or inclusion with employees' paychecks or pay stubs. 254

(F) In accordance with Section 34a of Article II, Ohio 255
Constitution, an employer shall maintain a record of the name, 256
address, occupation, pay rate, hours worked for each day worked, 257
and each amount paid an employee for a period of not less than 258
three years following the last date the employee was employed by 259
that employer. As used in division (F) of this section: 260

(1) "Address" means an employee's home address as 261
maintained in the employer's personnel file or personnel 262
database for that employee. 263

(2) (a) With respect to employees who are not exempt from 264
the overtime pay requirements of the Fair Labor Standards Act or 265
this chapter, "pay rate" means an employee's base rate of pay. 266

(b) With respect to employees who are exempt from the 267
overtime pay requirements of the Fair Labor Standards Act or 268
this chapter, "pay rate" means an employee's annual base salary 269
or other rate of pay by which the particular employee qualifies 270
for that exemption under the Fair Labor Standards Act or this 271
chapter, but does not include bonuses, stock options, 272
incentives, deferred compensation, or any other similar form of 273
compensation. 274

(3) "Record" means the name, address, occupation, pay 275
rate, hours worked for each day worked, and each amount paid an 276
employee in one or more documents, databases, or other paper or 277
electronic forms of record-keeping maintained by an employer. No 278
one particular method or form of maintaining such a record or 279
records is required under this division. An employer is not 280

required to create or maintain a single record containing only 281
the employee's name, address, occupation, pay rate, hours worked 282
for each day worked, and each amount paid an employee. An 283
employer shall maintain a record or records from which the 284
employee or person acting on behalf of that employee could 285
reasonably review the information requested by the employee or 286
person. 287

An employer is not required to maintain the records 288
specified in division (F) (3) of this section for any period 289
before January 1, 2007. On and after January 1, 2007, the 290
employer shall maintain the records required by division (F) (3) 291
of this section for three years from the date the hours were 292
worked by the employee and for three years after the date the 293
employee's employment ends. 294

(4) (a) Except for individuals specified in division (F) (4) 295
(b) of this section, "hours worked for each day worked" means 296
the total amount of time worked by an employee in whatever 297
increments the employer uses for its payroll purposes during a 298
day worked by the employee. An employer is not required to keep 299
a record of the time of day an employee begins and ends work on 300
any given day. As used in division (F) (4) of this section, "day" 301
means a fixed period of twenty-four consecutive hours during 302
which an employee performs work for an employer. 303

(b) An employer is not required to keep records of "hours 304
worked for each day worked" for individuals for whom the 305
employer is not required to keep those records under the Fair 306
Labor Standards Act and its regulations or individuals who are 307
not subject to the overtime pay requirements specified in 308
section 4111.03 of the Revised Code. 309

(5) "Each amount paid an employee" means the total gross 310

wages paid to an employee for each pay period. As used in 311
division (F) (5) of this section, "pay period" means the period 312
of time designated by an employer to pay an employee the 313
employee's gross wages in accordance with the employer's payroll 314
practices under section 4113.15 of the Revised Code. 315

(G) In accordance with Section 34a of Article II, Ohio 316
Constitution, an employer must provide such information without 317
charge to an employee or person acting on behalf of an employee 318
upon request. As used in division (G) of this section: 319

(1) "Such information" means the name, address, 320
occupation, pay rate, hours worked for each day worked, and each 321
amount paid for the specific employee who has requested that 322
specific employee's own information and does not include the 323
name, address, occupation, pay rate, hours worked for each day 324
worked, or each amount paid of any other employee of the 325
employer. "Such information" does not include hours worked for 326
each day worked by individuals for whom an employer is not 327
required to keep that information under the Fair Labor Standards 328
Act and its regulations or individuals who are not subject to 329
the overtime pay requirements specified in section 4111.03 of 330
the Revised Code. 331

(2) "Acting on behalf of an employee" means a person 332
acting on behalf of an employee as any of the following: 333

(a) The certified or legally recognized collective 334
bargaining representative for that employee under the applicable 335
federal law or Chapter 4117. of the Revised Code; 336

(b) The employee's attorney; 337

(c) The employee's parent, guardian, or legal custodian. 338

A person "acting on behalf of an employee" must be 339

specifically authorized by an employee in order to make a 340
request for that employee's own name, address, occupation, pay 341
rate, hours worked for each day worked, and each amount paid to 342
that employee. 343

(3) "Provide" means that an employer shall provide the 344
requested information within thirty business days after the date 345
the employer receives the request, unless either of the 346
following occurs: 347

(a) The employer and the employee or person acting on 348
behalf of the employee agree to some alternative time period for 349
providing the information. 350

(b) The thirty-day period would cause a hardship on the 351
employer under the circumstances, in which case the employer 352
must provide the requested information as soon as practicable. 353

(4) A "request" made by an employee or a person acting on 354
behalf of an employee means a request by an employee or a person 355
acting on behalf of an employee for the employee's own 356
information. The employer may require that the employee provide 357
the employer with a written request that has been signed by the 358
employee and notarized and that reasonably specifies the 359
particular information being requested. The employer may require 360
that the person acting on behalf of an employee provide the 361
employer with a written request that has been signed by the 362
employee whose information is being requested and notarized and 363
that reasonably specifies the particular information being 364
requested. 365

(H) In accordance with Section 34a of Article II, Ohio 366
Constitution, an employee, person acting on behalf of one or 367
more employees, and any other interested party may file a 368

complaint with the state for a violation of any provision of 369
Section 34a of Article II, Ohio Constitution, or any law or 370
regulation implementing its provisions. Such complaint shall be 371
promptly investigated and resolved by the state. The employee's 372
name shall be kept confidential unless disclosure is necessary 373
to resolution of a complaint and the employee consents to 374
disclosure. As used in division (H) of this section: 375

(1) "Complaint" means a complaint of an alleged violation 376
pertaining to harm suffered by the employee filing the 377
complaint, by a person acting on behalf of one or more 378
employees, or by an interested party. 379

(2) "Acting on behalf of one or more employees" has the 380
same meaning as "acting on behalf of an employee" in division 381
(G) (2) of this section. Each employee must provide a separate 382
written and notarized authorization before the person acting on 383
that employee's or those employees' behalf may request the name, 384
address, occupation, pay rate, hours worked for each day worked, 385
and each amount paid for the particular employee. 386

(3) "Interested party" means a party who alleges to be 387
injured by the alleged violation and who has standing to file a 388
complaint under common law principles of standing. 389

(4) "Resolved by the state" means that the complaint has 390
been resolved to the satisfaction of the state. 391

(5) "Shall be kept confidential" means that the state 392
shall keep the name of the employee confidential as required by 393
division (H) of this section. 394

(I) In accordance with Section 34a of Article II, Ohio 395
Constitution, the state may on its own initiative investigate an 396
employer's compliance with Section 34a of Article II, Ohio 397

Constitution, and any law or regulation implementing Section 34a 398
of Article II, Ohio Constitution. The employer shall make 399
available to the state any records related to such investigation 400
and other information required for enforcement of Section 34a of 401
Article II, Ohio Constitution or any law or regulation 402
implementing Section 34a of Article II, Ohio Constitution. The 403
state shall investigate an employer's compliance with this 404
section in accordance with the procedures described in section 405
4111.04 of the Revised Code. All records and information related 406
to investigations by the state are confidential and are not a 407
public record subject to section 149.43 of the Revised Code. 408
This division does not prevent the state from releasing to or 409
exchanging with other state and federal wage and hour regulatory 410
authorities information related to investigations. 411

(J) In accordance with Section 34a of Article II, Ohio 412
Constitution, damages shall be calculated as an additional two 413
times the amount of the back wages and in the case of a 414
violation of an anti-retaliation provision an amount set by the 415
state or court sufficient to compensate the employee and deter 416
future violations, but not less than one hundred fifty dollars 417
for each day that the violation continued. The "not less than 418
one hundred fifty dollar" penalty specified in division (J) of 419
this section shall be imposed only for violations of the anti- 420
retaliation provision in Section 34a of Article II, Ohio 421
Constitution. 422

(K) In accordance with Section 34a of Article II, Ohio 423
Constitution, an action for equitable and monetary relief may be 424
brought against an employer by the attorney general and/or an 425
employee or person acting on behalf of an employee or all 426
similarly situated employees in any court of competent 427
jurisdiction, including the court of common pleas of an 428

employee's county of residence, for any violation of Section 34a 429
of Article II, Ohio Constitution, or any law or regulation 430
implementing its provisions within three years of the violation 431
or of when the violation ceased if it was of a continuing 432
nature, or within one year after notification to the employee of 433
final disposition by the state of a complaint for the same 434
violation, whichever is later. 435

(1) As used in division (K) of this section, 436
"notification" means the date on which the notice was sent to 437
the employee by the state. 438

(2) No employee shall join as a party plaintiff in any 439
civil action that is brought under division (K) of this section 440
by an employee, person acting on behalf of an employee, or 441
person acting on behalf of all similarly situated employees 442
unless that employee first gives written consent to become such 443
a party plaintiff and that consent is filed with the court in 444
which the action is brought. 445

(3) A civil action regarding an alleged violation of this 446
section shall be maintained only under division (K) of this 447
section. This division does not preclude the joinder in a single 448
civil action of an action under this division and an action 449
under section 4111.10 of the Revised Code. 450

(4) Any agreement between an employee and employer to work 451
for less than the wage rate specified in Section 34a of Article 452
II, Ohio Constitution, is no defense to an action under this 453
section. 454

(L) In accordance with Section 34a of Article II, Ohio 455
Constitution, there shall be no exhaustion requirement, no 456
procedural, pleading, or burden of proof requirements beyond 457

those that apply generally to civil suits in order to maintain 458
such action and no liability for costs or attorney's fees on an 459
employee except upon a finding that such action was frivolous in 460
accordance with the same standards that apply generally in civil 461
suits. Nothing in division (L) of this section affects the right 462
of an employer and employee to agree to submit a dispute under 463
this section to alternative dispute resolution, including, but 464
not limited to, arbitration, in lieu of maintaining the civil 465
suit specified in division (K) of this section. Nothing in this 466
division limits the state's ability to investigate or enforce 467
this section. 468

(M) An employer who provides such information specified in 469
Section 34a of Article II, Ohio Constitution, shall be immune 470
from any civil liability for injury, death, or loss to person or 471
property that otherwise might be incurred or imposed as a result 472
of providing that information to an employee or person acting on 473
behalf of an employee in response to a request by the employee 474
or person, and the employer shall not be subject to the 475
provisions of Chapters 1347. and 1349. of the Revised Code to 476
the extent that such provisions would otherwise apply. As used 477
in division (M) of this section, "such information," "acting on 478
behalf of an employee," and "request" have the same meanings as 479
in division (G) of this section. 480

(N) As used in this section, "the state" means the 481
director of commerce. 482

Sec. 4113.15. (A) Every ~~individual, firm, partnership,~~ 483
~~association, or corporation~~ employer doing business in this 484
state shall, on or before the first day of each month, pay all 485
its employees the wages earned by them during the first half of 486
the preceding month ending with the fifteenth day thereof, and 487

shall, on or before the fifteenth day of each month, pay such 488
employees the wages earned by them during the last half of the 489
preceding calendar month. If at any time of payment an employee 490
is absent from ~~his~~ the employee's regular place of labor and 491
does not receive ~~his~~ payment of wages through an authorized 492
representative, such person shall be entitled to said payment at 493
any time thereafter upon demand upon the proper paymaster at the 494
place where such wages are usually paid and where such pay is 495
due. This section does not prohibit the daily or weekly payment 496
of wages. The use of a longer time lapse that is customary to a 497
given trade, profession or occupation, or establishment of a 498
different time lapse by written contract or by operation of law. 499

(B) Where wages remain unpaid for thirty days beyond the 500
regularly scheduled payday or, in the case where no regularly 501
scheduled payday is applicable, for sixty days beyond the filing 502
by the employee of a claim or for sixty days beyond the date of 503
the agreement, award, or other act making wages payable and no 504
contest court order or dispute of any wage claim including the 505
assertion of a counterclaim exists accounting for nonpayment, 506
the employer, in addition, as liquidated damages, is liable to 507
the employee in an amount equal to six per cent of the amount of 508
the claim still unpaid and not in contest or disputed or two 509
hundred dollars, whichever is greater. 510

(C) In the absence of a contest, court order or dispute, 511
an employer who is party to an agreement to pay or provide 512
fringe benefits to an employee or to make any employee 513
authorized deduction becomes a trustee of any funds required by 514
such agreement to be paid to any person, organization, or 515
governmental agency from the time that the duty to make such 516
payment arises. No person shall, without reasonable 517
justification or excuse for such failure, knowingly fail or 518

refuse to pay to the appropriate person, organization, or 519
governmental agency the amount necessary to provide the benefits 520
or accomplish the purpose of any employee authorized deduction, 521
within thirty days after the close of the pay period during 522
which the employee earned or had deducted the amount of money 523
necessary to pay for the fringe benefit or make any employee 524
authorized deduction. A failure or refusal to pay, regardless of 525
the number of employee pay accounts involved, constitutes one 526
offense for the first delinquency of thirty days and a separate 527
offense for each successive delinquency of thirty days. 528

(D) As used in this section and section 4113.16 of the 529
Revised Code: 530

(1) "Wage" means the net amount of money payable to an 531
employee, including any guaranteed pay or reimbursement for 532
expenses, less any federal, state, or local taxes withheld; any 533
deductions made pursuant to a written agreement for the purpose 534
of providing the employee with any fringe benefits; and any 535
employee authorized deduction. 536

(2) "Fringe benefits" includes but is not limited to 537
health, welfare, or retirement benefits, whether paid for 538
entirely by the employer or on the basis of a joint employer- 539
employee contribution, or vacation, separation, or holiday pay. 540

(3) "Employee authorized deduction" includes but is not 541
limited to deductions for the purpose of any of the following: 542

(a) ~~purchase~~ Purchase of United States savings bonds or 543
corporate stocks or bonds ~~;~~ 544

(b) ~~a~~ A charitable contribution ~~;~~ 545

(c) ~~credit~~ Credit union savings or other regular savings 546
program ~~, or ;~~ 547

(d) repayment <u>Repayment</u> of a loan or other obligation.	548
(4) <u>"Employer" means an individual, firm, partnership,</u>	549
<u>association, or corporation, but does not include a franchisor</u>	550
<u>with respect to the franchisor's relationship with a franchisee</u>	551
<u>or an employee of a franchisee, unless the franchisor agrees to</u>	552
<u>assume that role in writing.</u>	553
(5) <u>"Franchisor" and "franchisee" have the same meanings</u>	554
<u>as in 16 C.F.R. 436.1.</u>	555
Sec. 4113.16. No corporation, contractor, person, or	556
partnership <u>employer</u> subject to section 4113.15 of the Revised	557
Code shall, by a special contract with an employee or by other	558
means, exempt itself <u>the employer</u> from this section and section	559
4113.15 of the Revised Code, and no assignments of future wages,	560
payable semimonthly under such sections are valid except as	561
provided in section 1321.32 of the Revised Code.	562
Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29	563
of the Revised Code:	564
(1) "Place of employment" means every place, whether	565
indoors or out, or underground, and the premises appurtenant	566
thereto, where either temporarily or permanently any industry,	567
trade, or business is carried on, or where any process or	568
operation, directly or indirectly related to any industry,	569
trade, or business, is carried on and where any person is	570
directly or indirectly employed by another for direct or	571
indirect gain or profit, but does not include any place where	572
persons are employed in private domestic service or agricultural	573
pursuits which do not involve the use of mechanical power.	574
(2) "Employment" means any trade, occupation, or process	575
of manufacture or any method of carrying on such trade,	576

occupation, or process of manufacture in which any person may be 577
engaged, except in such private domestic service or agricultural 578
pursuits as do not involve the use of mechanical power. 579

(3) "Employer" means every person, firm, corporation, 580
agent, manager, representative, or other person having control 581
or custody of any employment, place of employment, or employee. 582
"Employer" does not include a franchisor with respect to the 583
franchisor's relationship with a franchisee or an employee of a 584
franchisee, unless the franchisor agrees to assume that role in 585
writing. For purposes of this division, "franchisor" and 586
"franchisee" have the same meanings as in 16 C.F.R. 436.1. 587

(4) "Employee" means every person who may be required or 588
directed by any employer, in consideration of direct or indirect 589
gain or profit, to engage in any employment, or to go, or work, 590
or be at any time in any place of employment. 591

(5) "Frequenter" means every person, other than an 592
employee, who may go in or be in a place of employment under 593
circumstances which render the person other than a trespasser. 594

(6) "Deputy" means any person employed by the industrial 595
commission or the bureau of workers' compensation, designated as 596
a deputy by the commission or the administrator of workers' 597
compensation, who possesses special, technical, scientific, 598
managerial, professional, or personal abilities or qualities in 599
matters within the jurisdiction of the commission or the bureau, 600
and who may be engaged in the performance of duties under the 601
direction of the commission or the bureau calling for the 602
exercise of such abilities or qualities. 603

(7) "Order" means any decision, rule, regulation, 604
direction, requirement, or standard, or any other determination 605

or decision that the bureau is empowered to and does make. 606

(8) "General order" means an order that applies generally 607
throughout the state to all persons, employments, or places of 608
employment, or all persons, employments, or places of employment 609
of a class under the jurisdiction of the bureau. All other 610
orders shall be considered special orders. 611

(9) "Local order" means any ordinance, order, rule, or 612
determination of the legislative authority of any municipal 613
corporation, or any trustees, or board or officers of any 614
municipal corporation upon any matter over which the bureau has 615
jurisdiction. 616

(10) "Welfare" means comfort, decency, and moral well- 617
being. 618

(11) "Safe" or "safety," as applied to any employment or a 619
place of employment, means such freedom from danger to the life, 620
health, safety, or welfare of employees or frequenters as the 621
nature of the employment will reasonably permit, including 622
requirements as to the hours of labor with relation to the 623
health and welfare of employees. 624

(12) "Employee organization" means any labor or bona fide 625
organization in which employees participate and that exists for 626
the purpose, in whole or in part, of dealing with employers 627
concerning grievances, labor disputes, wages, hours, terms, and 628
other conditions of employment. 629

(B) As used in the Revised Code: 630

(1) "Industrial commission" means the chairperson of the 631
three-member industrial commission created pursuant to section 632
4121.02 of the Revised Code when the context refers to the 633
authority vested in the chairperson as the chief executive 634

officer of the three-member industrial commission pursuant to 635
divisions (A), (B), (C), and (D) of section 4121.03 of the 636
Revised Code. 637

(2) "Industrial commission" means the three-member 638
industrial commission created pursuant to section 4121.02 of the 639
Revised Code when the context refers to the authority vested in 640
the three-member industrial commission pursuant to division (E) 641
of section 4121.03 of the Revised Code. 642

(3) "Industrial commission" means the industrial 643
commission as a state agency when the context refers to the 644
authority vested in the industrial commission as a state agency. 645

Sec. 4123.01. As used in this chapter: 646

(A) (1) "Employee" means: 647

(a) Every person in the service of the state, or of any 648
county, municipal corporation, township, or school district 649
therein, including regular members of lawfully constituted 650
police and fire departments of municipal corporations and 651
townships, whether paid or volunteer, and wherever serving 652
within the state or on temporary assignment outside thereof, and 653
executive officers of boards of education, under any appointment 654
or contract of hire, express or implied, oral or written, 655
including any elected official of the state, or of any county, 656
municipal corporation, or township, or members of boards of 657
education. 658

As used in division (A) (1) (a) of this section, the term 659
"employee" includes the following persons when responding to an 660
inherently dangerous situation that calls for an immediate 661
response on the part of the person, regardless of whether the 662
person is within the limits of the jurisdiction of the person's 663

regular employment or voluntary service when responding, on the 664
condition that the person responds to the situation as the 665
person otherwise would if the person were on duty in the 666
person's jurisdiction: 667

(i) Off-duty peace officers. As used in division (A) (1) (a) 668
(i) of this section, "peace officer" has the same meaning as in 669
section 2935.01 of the Revised Code. 670

(ii) Off-duty firefighters, whether paid or volunteer, of 671
a lawfully constituted fire department. 672

(iii) Off-duty first responders, emergency medical 673
technicians-basic, emergency medical technicians-intermediate, 674
or emergency medical technicians-paramedic, whether paid or 675
volunteer, of an ambulance service organization or emergency 676
medical service organization pursuant to Chapter 4765. of the 677
Revised Code. 678

(b) Every person in the service of any person, firm, or 679
private corporation, including any public service corporation, 680
that (i) employs one or more persons regularly in the same 681
business or in or about the same establishment under any 682
contract of hire, express or implied, oral or written, including 683
aliens and minors, household workers who earn one hundred sixty 684
dollars or more in cash in any calendar quarter from a single 685
household and casual workers who earn one hundred sixty dollars 686
or more in cash in any calendar quarter from a single employer, 687
or (ii) is bound by any such contract of hire or by any other 688
written contract, to pay into the state insurance fund the 689
premiums provided by this chapter. 690

(c) Every person who performs labor or provides services 691
pursuant to a construction contract, as defined in section 692

4123.79 of the Revised Code, if at least ten of the following	693
criteria apply:	694
(i) The person is required to comply with instructions	695
from the other contracting party regarding the manner or method	696
of performing services;	697
(ii) The person is required by the other contracting party	698
to have particular training;	699
(iii) The person's services are integrated into the	700
regular functioning of the other contracting party;	701
(iv) The person is required to perform the work	702
personally;	703
(v) The person is hired, supervised, or paid by the other	704
contracting party;	705
(vi) A continuing relationship exists between the person	706
and the other contracting party that contemplates continuing or	707
recurring work even if the work is not full time;	708
(vii) The person's hours of work are established by the	709
other contracting party;	710
(viii) The person is required to devote full time to the	711
business of the other contracting party;	712
(ix) The person is required to perform the work on the	713
premises of the other contracting party;	714
(x) The person is required to follow the order of work set	715
by the other contracting party;	716
(xi) The person is required to make oral or written	717
reports of progress to the other contracting party;	718
(xii) The person is paid for services on a regular basis	719

such as hourly, weekly, or monthly;	720
(xiii) The person's expenses are paid for by the other contracting party;	721 722
(xiv) The person's tools and materials are furnished by the other contracting party;	723 724
(xv) The person is provided with the facilities used to perform services;	725 726
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	727 728
(xvii) The person is not performing services for a number of employers at the same time;	729 730
(xviii) The person does not make the same services available to the general public;	731 732
(xix) The other contracting party has a right to discharge the person;	733 734
(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.	735 736 737
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or if a self-insuring employer has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such	738 739 740 741 742 743 744 745 746 747

independent contractor unless such employees or their legal 748
representatives or beneficiaries elect, after injury or death, 749
to regard such independent contractor as the employer. 750

(2) "Employee" does not mean any of the following: 751

(a) A duly ordained, commissioned, or licensed minister or 752
assistant or associate minister of a church in the exercise of 753
ministry; 754

(b) Any officer of a family farm corporation; 755

(c) An individual incorporated as a corporation; 756

(d) An officer of a nonprofit corporation, as defined in 757
section 1702.01 of the Revised Code, who volunteers the person's 758
services as a ~~an~~ officer; 759

(e) An individual who otherwise is an employee of an 760
employer but who signs the waiver and affidavit specified in 761
section 4123.15 of the Revised Code on the condition that the 762
administrator has granted a waiver and exception to the 763
individual's employer under section 4123.15 of the Revised Code. 764

Any employer may elect to include as an "employee" within 765
this chapter, any person excluded from the definition of 766
"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 767
this section in accordance with rules adopted by the 768
administrator, with the advice and consent of the bureau of 769
workers' compensation board of directors. If an employer is a 770
partnership, sole proprietorship, individual incorporated as a 771
corporation, or family farm corporation, such employer may elect 772
to include as an "employee" within this chapter, any member of 773
such partnership, the owner of the sole proprietorship, the 774
individual incorporated as a corporation, or the officers of the 775
family farm corporation. Nothing in this section shall prohibit 776

a partner, sole proprietor, or any person excluded from the 777
definition of "employee" pursuant to division (A)(2)(a), (b), 778
(c), or (e) of this section from electing to be included as an 779
"employee" under this chapter in accordance with rules adopted 780
by the administrator, with the advice and consent of the board. 781

In the event of an election, the employer or person 782
electing coverage shall serve upon the bureau of workers' 783
compensation written notice naming the person to be covered and 784
include the person's remuneration for premium purposes in all 785
future payroll reports. No partner, sole proprietor, or person 786
excluded from the definition of "employee" pursuant to division 787
(A)(2)(a), (b), (c), or (e) of this section, shall receive 788
benefits or compensation under this chapter until the bureau 789
receives written notice of the election permitted by this 790
section. 791

For informational purposes only, the bureau shall 792
prescribe such language as it considers appropriate, on such of 793
its forms as it considers appropriate, to advise employers of 794
their right to elect to include as an "employee" within this 795
chapter a sole proprietor, any member of a partnership, or a 796
person excluded from the definition of "employee" under division 797
(A)(2)(a), (b), (c), or (e) of this section, that they should 798
check any health and disability insurance policy, or other form 799
of health and disability plan or contract, presently covering 800
them, or the purchase of which they may be considering, to 801
determine whether such policy, plan, or contract excludes 802
benefits for illness or injury that they might have elected to 803
have covered by workers' compensation. 804

(B) (1) "Employer" means: 805

~~(1)~~ (a) The state, including state hospitals, each county, 806

municipal corporation, township, school district, and hospital 807
owned by a political subdivision or subdivisions other than the 808
state; 809

~~(2)(b)~~ Every person, firm, professional employer 810
organization, and private corporation, including any public 811
service corporation, that ~~(a)(i)~~ has in service one or more 812
employees or shared employees regularly in the same business or 813
in or about the same establishment under any contract of hire, 814
express or implied, oral or written, or ~~(b)(ii)~~ is bound by any 815
such contract of hire or by any other written contract, to pay 816
into the insurance fund the premiums provided by this chapter. 817

All such employers are subject to this chapter. Any member 818
of a firm or association, who regularly performs manual labor in 819
or about a mine, factory, or other establishment, including a 820
household establishment, shall be considered an employee in 821
determining whether such person, firm, or private corporation, 822
or public service corporation, has in its service, one or more 823
employees and the employer shall report the income derived from 824
such labor to the bureau as part of the payroll of such 825
employer, and such member shall thereupon be entitled to all the 826
benefits of an employee. 827

(2) "Employer" does not include a franchisor with respect 828
to the franchisor's relationship with a franchisee or an 829
employee of a franchisee, unless the franchisor agrees to assume 830
that role in writing. For purposes of this division, 831
"franchisor" and "franchisee" have the same meanings as in 16 832
C.F.R. 436.1. 833

(C) "Injury" includes any injury, whether caused by 834
external accidental means or accidental in character and result, 835
received in the course of, and arising out of, the injured 836

employee's employment. "Injury" does not include:	837
(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;	838 839 840 841 842 843
(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;	844 845
(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;	846 847 848 849 850
(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.	851 852 853 854 855 856 857 858 859
(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.	860 861
(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	862 863 864 865

each other within the fourth degree of kinship, according to the 866
rules of the civil law, and at least one of the related persons 867
is residing on or actively operating the farm, and none of whose 868
stockholders are a corporation. A family farm corporation does 869
not cease to qualify under this division where, by reason of any 870
devise, bequest, or the operation of the laws of descent or 871
distribution, the ownership of shares of voting stock is 872
transferred to another person, as long as that person is within 873
the degree of kinship stipulated in this division. 874

(F) "Occupational disease" means a disease contracted in 875
the course of employment, which by its causes and the 876
characteristics of its manifestation or the condition of the 877
employment results in a hazard which distinguishes the 878
employment in character from employment generally, and the 879
employment creates a risk of contracting the disease in greater 880
degree and in a different manner from the public in general. 881

(G) "Self-insuring employer" means an employer who is 882
granted the privilege of paying compensation and benefits 883
directly under section 4123.35 of the Revised Code, including a 884
board of county commissioners for the sole purpose of 885
constructing a sports facility as defined in section 307.696 of 886
the Revised Code, provided that the electors of the county in 887
which the sports facility is to be built have approved 888
construction of a sports facility by ballot election no later 889
than November 6, 1997. 890

(H) "Private employer" means an employer as defined in 891
division (B) ~~(2)~~ (1) (b) of this section. 892

(I) "Professional employer organization" has the same 893
meaning as in section 4125.01 of the Revised Code. 894

(J) "Public employer" means an employer as defined in	895
division (B) (1) <u>(a)</u> of this section.	896
(K) "Sexual conduct" means vaginal intercourse between a	897
male and female; anal intercourse, fellatio, and cunnilingus	898
between persons regardless of gender; and, without privilege to	899
do so, the insertion, however slight, of any part of the body or	900
any instrument, apparatus, or other object into the vaginal or	901
anal cavity of another. Penetration, however slight, is	902
sufficient to complete vaginal or anal intercourse.	903
(L) "Other-states' insurer" means an insurance company	904
that is authorized to provide workers' compensation insurance	905
coverage in any of the states that permit employers to obtain	906
insurance for workers' compensation claims through insurance	907
companies.	908
(M) "Other-states' coverage" means both of the following:	909
(1) Insurance coverage secured by an eligible employer for	910
workers' compensation claims of employees who are in employment	911
relationships localized in a state other than this state or	912
those employees' dependents;	913
(2) Insurance coverage secured by an eligible employer for	914
workers' compensation claims that arise in a state other than	915
this state where an employer elects to obtain coverage through	916
either the administrator or an other-states' insurer.	917
(N) "Limited other-states coverage" means insurance	918
coverage provided by the administrator to an eligible employer	919
for workers' compensation claims of employees who are in an	920
employment relationship localized in this state but are	921
temporarily working in a state other than this state, or those	922
employees' dependents.	923

Sec. 4123.30. Money contributed by ~~the public employers~~ 924
~~mentioned in division (B) (1) of section 4123.01 of the Revised~~ 925
~~Code~~ constitutes the "public fund" and the money contributed by 926
~~private employers mentioned in division (B) (2) of such section~~ 927
constitutes the "private fund." Each such fund shall be 928
collected, distributed, and its solvency maintained without 929
regard to or reliance upon the other. Whenever in this chapter 930
reference is made to the state insurance fund, the reference is 931
to such two separate funds but such two separate funds and the 932
net premiums contributed thereto by employers after adjustments 933
and dividends, except for the amount thereof which is set aside 934
for the investigation and prevention of industrial accidents and 935
diseases pursuant to Section 35 of Article II, Ohio 936
Constitution, any amounts set aside for actuarial services 937
authorized or required by sections 4123.44 and 4123.47 of the 938
Revised Code, and any amounts set aside to reinsure the 939
liability of the respective insurance funds for the following 940
payments, constitute a trust fund for the benefit of employers 941
and employees mentioned in sections 4123.01, 4123.03, and 942
4123.73 of the Revised Code for the payment of compensation, 943
medical services, examinations, recommendations and 944
determinations, nursing and hospital services, medicine, 945
rehabilitation, death benefits, funeral expenses, and like 946
benefits for loss sustained on account of injury, disease, or 947
death provided for by this chapter, and for no other purpose. 948
This section does not prevent the deposit or investment of all 949
such moneys intermingled for such purpose but such funds shall 950
be separate and distinct for all other purposes, and the rights 951
and duties created in this chapter shall be construed to have 952
been made with respect to two separate funds and so as to 953
maintain and continue such funds separately except for deposit 954
or investment. Disbursements shall not be made on account of 955

injury, disease, or death of employees of employers who 956
contribute to one of such funds unless the moneys to the credit 957
of such fund are sufficient therefor and no such disbursements 958
shall be made for moneys or credits paid or credited to the 959
other fund. 960

Sec. 4123.38. Every public employer ~~mentioned in division~~ 961
~~(B) (1) of section 4123.01 of the Revised Code~~, except for boards 962
of county hospital trustees that are self-insurers under section 963
4123.35 of the Revised Code, shall contribute to the public 964
insurance fund the amount of money determined by the 965
administrator of workers' compensation, and the manner of 966
determining contributions and the classifications of employers 967
is as provided in sections 4123.39 to 4123.41 and 4123.48 of the 968
Revised Code. 969

Sec. 4123.77. ~~Employers mentioned in division (B) (2) of~~ 970
~~section 4123.01 of the Revised Code~~, Private employers who fail 971
to comply with section 4123.35 of the Revised Code are not 972
entitled to the benefits of sections 4123.01 to 4123.94, 973
inclusive, of the Revised Code, during the period of such 974
noncompliance, but are liable to their employees for damages 975
suffered by reason of personal injuries sustained in the course 976
of employment caused by the wrongful act, neglect, or default of 977
the employer, or any of the employer's officers, agents, or 978
employees, and also to the personal representatives of such 979
employees where death results from such injuries, and in such 980
action the defendant shall not avail ~~himself or itself~~ self of 981
the following common law defenses: 982

(A) The defense of the fellow servant rule; 983

(B) The defense of the assumption of risk; 984

(C) The defense of contributory negligence.	985
Such employers are subject to sections 4123.37 and 4123.75	986
of the Revised Code.	987
Sec. 4141.01. As used in this chapter, unless the context	988
otherwise requires:	989
(A)(1) "Employer" means the state, its instrumentalities,	990
its political subdivisions and their instrumentalities, Indian	991
tribes, and any individual or type of organization including any	992
partnership, limited liability company, association, trust,	993
estate, joint-stock company, insurance company, or corporation,	994
whether domestic or foreign, or the receiver, trustee in	995
bankruptcy, trustee, or the successor thereof, or the legal	996
representative of a deceased person who subsequent to December	997
31, 1971, or in the case of political subdivisions or their	998
instrumentalities, subsequent to December 31, 1973:	999
(a) Had in employment at least one individual, or in the	1000
case of a nonprofit organization, subsequent to December 31,	1001
1973, had not less than four individuals in employment for some	1002
portion of a day in each of twenty different calendar weeks, in	1003
either the current or the preceding calendar year whether or not	1004
the same individual was in employment in each such day; or	1005
(b) Except for a nonprofit organization, had paid for	1006
service in employment wages of fifteen hundred dollars or more	1007
in any calendar quarter in either the current or preceding	1008
calendar year; or	1009
(c) Had paid, subsequent to December 31, 1977, for	1010
employment in domestic service in a local college club, or local	1011
chapter of a college fraternity or sorority, cash remuneration	1012
of one thousand dollars or more in any calendar quarter in the	1013

current calendar year or the preceding calendar year, or had 1014
paid subsequent to December 31, 1977, for employment in domestic 1015
service in a private home cash remuneration of one thousand 1016
dollars in any calendar quarter in the current calendar year or 1017
the preceding calendar year: 1018

(i) For the purposes of divisions (A) (1) (a) and (b) of 1019
this section, there shall not be taken into account any wages 1020
paid to, or employment of, an individual performing domestic 1021
service as described in this division. 1022

(ii) An employer under this division shall not be an 1023
employer with respect to wages paid for any services other than 1024
domestic service unless the employer is also found to be an 1025
employer under division (A) (1) (a), (b), or (d) of this section. 1026

(d) As a farm operator or a crew leader subsequent to 1027
December 31, 1977, had in employment individuals in agricultural 1028
labor; and 1029

(i) During any calendar quarter in the current calendar 1030
year or the preceding calendar year, paid cash remuneration of 1031
twenty thousand dollars or more for the agricultural labor; or 1032

(ii) Had at least ten individuals in employment in 1033
agricultural labor, not including agricultural workers who are 1034
aliens admitted to the United States to perform agricultural 1035
labor pursuant to sections 1184(c) and 1101(a) (15) (H) of the 1036
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1037
1101(a) (15) (H) (ii) (a), 1184(c), for some portion of a day in 1038
each of the twenty different calendar weeks, in either the 1039
current or preceding calendar year whether or not the same 1040
individual was in employment in each day; or 1041

(e) Is not otherwise an employer as defined under division 1042

(A) (1) (a) or (b) of this section; and 1043

(i) For which, within either the current or preceding 1044
calendar year, service, except for domestic service in a private 1045
home not covered under division (A) (1) (c) of this section, is or 1046
was performed with respect to which such employer is liable for 1047
any federal tax against which credit may be taken for 1048
contributions required to be paid into a state unemployment 1049
fund; 1050

(ii) Which, as a condition for approval of this chapter 1051
for full tax credit against the tax imposed by the "Federal 1052
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 1053
is required, pursuant to such act to be an employer under this 1054
chapter; or 1055

(iii) Who became an employer by election under division 1056
(A) (4) or (5) of this section and for the duration of such 1057
election; or 1058

(f) In the case of the state, its instrumentalities, its 1059
political subdivisions, and their instrumentalities, and Indian 1060
tribes, had in employment, as defined in divisions (B) (2) (a) and 1061
(B) (2) (1) of this section, at least one individual; 1062

(g) For the purposes of division (A) (1) (a) of this 1063
section, if any week includes both the thirty-first day of 1064
December and the first day of January, the days of that week 1065
before the first day of January shall be considered one calendar 1066
week and the days beginning the first day of January another 1067
week. 1068

(2) Each individual employed to perform or to assist in 1069
performing the work of any agent or employee of an employer is 1070
employed by such employer for all the purposes of this chapter, 1071

whether such individual was hired or paid directly by such 1072
employer or by such agent or employee, provided the employer had 1073
actual or constructive knowledge of the work. All individuals 1074
performing services for an employer of any person in this state 1075
who maintains two or more establishments within this state are 1076
employed by a single employer for the purposes of this chapter. 1077

(3) An employer subject to this chapter within any 1078
calendar year is subject to this chapter during the whole of 1079
such year and during the next succeeding calendar year. 1080

(4) An employer not otherwise subject to this chapter who 1081
files with the director of job and family services a written 1082
election to become an employer subject to this chapter for not 1083
less than two calendar years shall, with the written approval of 1084
such election by the director, become an employer subject to 1085
this chapter to the same extent as all other employers as of the 1086
date stated in such approval, and shall cease to be subject to 1087
this chapter as of the first day of January of any calendar year 1088
subsequent to such two calendar years only if at least thirty 1089
days prior to such first day of January the employer has filed 1090
with the director a written notice to that effect. 1091

(5) Any employer for whom services that do not constitute 1092
employment are performed may file with the director a written 1093
election that all such services performed by individuals in the 1094
employer's employ in one or more distinct establishments or 1095
places of business shall be deemed to constitute employment for 1096
all the purposes of this chapter, for not less than two calendar 1097
years. Upon written approval of the election by the director, 1098
such services shall be deemed to constitute employment subject 1099
to this chapter from and after the date stated in such approval. 1100
Such services shall cease to be employment subject to this 1101

chapter as of the first day of January of any calendar year 1102
subsequent to such two calendar years only if at least thirty 1103
days prior to such first day of January such employer has filed 1104
with the director a written notice to that effect. 1105

(6) "Employer" does not include a franchisor with respect 1106
to the franchisor's relationship with a franchisee or an 1107
employee of a franchisee, unless the franchisor agrees to assume 1108
that role in writing. For purposes of this division, 1109
"franchisor" and "franchisee" have the same meanings as in 16 1110
C.F.R. 436.1. 1111

(B) (1) "Employment" means service performed by an 1112
individual for remuneration under any contract of hire, written 1113
or oral, express or implied, including service performed in 1114
interstate commerce and service performed by an officer of a 1115
corporation, without regard to whether such service is 1116
executive, managerial, or manual in nature, and without regard 1117
to whether such officer is a stockholder or a member of the 1118
board of directors of the corporation, unless it is shown to the 1119
satisfaction of the director that such individual has been and 1120
will continue to be free from direction or control over the 1121
performance of such service, both under a contract of service 1122
and in fact. The director shall adopt rules to define "direction 1123
or control." 1124

(2) "Employment" includes: 1125

(a) Service performed after December 31, 1977, by an 1126
individual in the employ of the state or any of its 1127
instrumentalities, or any political subdivision thereof or any 1128
of its instrumentalities or any instrumentality of more than one 1129
of the foregoing or any instrumentality of any of the foregoing 1130
and one or more other states or political subdivisions and 1131

without regard to divisions (A) (1) (a) and (b) of this section, 1132
provided that such service is excluded from employment as 1133
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1134
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 1135
(3) of this section; or the services of employees covered by 1136
voluntary election, as provided under divisions (A) (4) and (5) 1137
of this section; 1138

(b) Service performed after December 31, 1971, by an 1139
individual in the employ of a religious, charitable, 1140
educational, or other organization which is excluded from the 1141
term "employment" as defined in the "Federal Unemployment Tax 1142
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1143
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 1144
excluded under division (B) (3) of this section; 1145

(c) Domestic service performed after December 31, 1977, 1146
for an employer, as provided in division (A) (1) (c) of this 1147
section; 1148

(d) Agricultural labor performed after December 31, 1977, 1149
for a farm operator or a crew leader, as provided in division 1150
(A) (1) (d) of this section; 1151

(e) Service not covered under division (B) (1) of this 1152
section which is performed after December 31, 1971: 1153

(i) As an agent-driver or commission-driver engaged in 1154
distributing meat products, vegetable products, fruit products, 1155
bakery products, beverages other than milk, laundry, or dry- 1156
cleaning services, for the individual's employer or principal; 1157

(ii) As a traveling or city salesperson, other than as an 1158
agent-driver or commission-driver, engaged on a full-time basis 1159
in the solicitation on behalf of and in the transmission to the 1160

salesperson's employer or principal except for sideline sales 1161
activities on behalf of some other person of orders from 1162
wholesalers, retailers, contractors, or operators of hotels, 1163
restaurants, or other similar establishments for merchandise for 1164
resale, or supplies for use in their business operations, 1165
provided that for the purposes of division (B) (2) (e) (ii) of this 1166
section, the services shall be deemed employment if the contract 1167
of service contemplates that substantially all of the services 1168
are to be performed personally by the individual and that the 1169
individual does not have a substantial investment in facilities 1170
used in connection with the performance of the services other 1171
than in facilities for transportation, and the services are not 1172
in the nature of a single transaction that is not a part of a 1173
continuing relationship with the person for whom the services 1174
are performed. 1175

(f) An individual's entire service performed within or 1176
both within and without the state if: 1177

(i) The service is localized in this state. 1178

(ii) The service is not localized in any state, but some 1179
of the service is performed in this state and either the base of 1180
operations, or if there is no base of operations then the place 1181
from which such service is directed or controlled, is in this 1182
state or the base of operations or place from which such service 1183
is directed or controlled is not in any state in which some part 1184
of the service is performed but the individual's residence is in 1185
this state. 1186

(g) Service not covered under division (B) (2) (f) (ii) of 1187
this section and performed entirely without this state, with 1188
respect to no part of which contributions are required and paid 1189
under an unemployment compensation law of any other state, the 1190

Virgin Islands, Canada, or of the United States, if the 1191
individual performing such service is a resident of this state 1192
and the director approves the election of the employer for whom 1193
such services are performed; or, if the individual is not a 1194
resident of this state but the place from which the service is 1195
directed or controlled is in this state, the entire services of 1196
such individual shall be deemed to be employment subject to this 1197
chapter, provided service is deemed to be localized within this 1198
state if the service is performed entirely within this state or 1199
if the service is performed both within and without this state 1200
but the service performed without this state is incidental to 1201
the individual's service within the state, for example, is 1202
temporary or transitory in nature or consists of isolated 1203
transactions; 1204

(h) Service of an individual who is a citizen of the 1205
United States, performed outside the United States except in 1206
Canada after December 31, 1971, or the Virgin Islands, after 1207
December 31, 1971, and before the first day of January of the 1208
year following that in which the United States secretary of 1209
labor approves the Virgin Islands law for the first time, in the 1210
employ of an American employer, other than service which is 1211
"employment" under divisions (B) (2) (f) and (g) of this section 1212
or similar provisions of another state's law, if: 1213

(i) The employer's principal place of business in the 1214
United States is located in this state; 1215

(ii) The employer has no place of business in the United 1216
States, but the employer is an individual who is a resident of 1217
this state; or the employer is a corporation which is organized 1218
under the laws of this state, or the employer is a partnership 1219
or a trust and the number of partners or trustees who are 1220

residents of this state is greater than the number who are 1221
residents of any other state; or 1222

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1223
(ii) of this section is met but the employer has elected 1224
coverage in this state or the employer having failed to elect 1225
coverage in any state, the individual has filed a claim for 1226
benefits, based on such service, under this chapter. 1227

(i) For the purposes of division (B) (2) (h) of this 1228
section, the term "American employer" means an employer who is 1229
an individual who is a resident of the United States; or a 1230
partnership, if two-thirds or more of the partners are residents 1231
of the United States; or a trust, if all of the trustees are 1232
residents of the United States; or a corporation organized under 1233
the laws of the United States or of any state, provided the term 1234
"United States" includes the states, the District of Columbia, 1235
the Commonwealth of Puerto Rico, and the Virgin Islands. 1236

(j) Notwithstanding any other provisions of divisions (B) 1237
(1) and (2) of this section, service, except for domestic 1238
service in a private home not covered under division (A) (1) (c) 1239
of this section, with respect to which a tax is required to be 1240
paid under any federal law imposing a tax against which credit 1241
may be taken for contributions required to be paid into a state 1242
unemployment fund, or service, except for domestic service in a 1243
private home not covered under division (A) (1) (c) of this 1244
section, which, as a condition for full tax credit against the 1245
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1246
26 U.S.C.A. 3301 to 3311, is required to be covered under this 1247
chapter. 1248

(k) Construction services performed by any individual 1249
under a construction contract, as defined in section 4141.39 of 1250

the Revised Code, if the director determines that the employer 1251
for whom services are performed has the right to direct or 1252
control the performance of the services and that the individuals 1253
who perform the services receive remuneration for the services 1254
performed. The director shall presume that the employer for whom 1255
services are performed has the right to direct or control the 1256
performance of the services if ten or more of the following 1257
criteria apply: 1258

(i) The employer directs or controls the manner or method 1259
by which instructions are given to the individual performing 1260
services; 1261

(ii) The employer requires particular training for the 1262
individual performing services; 1263

(iii) Services performed by the individual are integrated 1264
into the regular functioning of the employer; 1265

(iv) The employer requires that services be provided by a 1266
particular individual; 1267

(v) The employer hires, supervises, or pays the wages of 1268
the individual performing services; 1269

(vi) A continuing relationship between the employer and 1270
the individual performing services exists which contemplates 1271
continuing or recurring work, even if not full-time work; 1272

(vii) The employer requires the individual to perform 1273
services during established hours; 1274

(viii) The employer requires that the individual 1275
performing services be devoted on a full-time basis to the 1276
business of the employer; 1277

(ix) The employer requires the individual to perform 1278

services on the employer's premises;	1279
(x) The employer requires the individual performing	1280
services to follow the order of work established by the	1281
employer;	1282
(xi) The employer requires the individual performing	1283
services to make oral or written reports of progress;	1284
(xii) The employer makes payment to the individual for	1285
services on a regular basis, such as hourly, weekly, or monthly;	1286
(xiii) The employer pays expenses for the individual	1287
performing services;	1288
(xiv) The employer furnishes the tools and materials for	1289
use by the individual to perform services;	1290
(xv) The individual performing services has not invested	1291
in the facilities used to perform services;	1292
(xvi) The individual performing services does not realize	1293
a profit or suffer a loss as a result of the performance of the	1294
services;	1295
(xvii) The individual performing services is not	1296
performing services for more than two employers simultaneously;	1297
(xviii) The individual performing services does not make	1298
the services available to the general public;	1299
(xix) The employer has a right to discharge the individual	1300
performing services;	1301
(xx) The individual performing services has the right to	1302
end the individual's relationship with the employer without	1303
incurring liability pursuant to an employment contract or	1304
agreement.	1305

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

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

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

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

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

(i) As a publicly elected official;

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

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

(iv) As an employee, not in the classified service as 1334
defined in section 124.11 of the Revised Code, serving on a 1335
temporary basis in case of fire, storm, snow, earthquake, flood, 1336
or similar emergency; 1337

(v) In a position which, under or pursuant to law, is 1338
designated as a major nontenured policymaking or advisory 1339
position, not in the classified service of the state, or a 1340
policymaking or advisory position the performance of the duties 1341
of which ordinarily does not require more than eight hours per 1342
week. 1343

(d) In the employ of any governmental unit or 1344
instrumentality of the United States; 1345

(e) Service performed after December 31, 1971: 1346

(i) Service in the employ of an educational institution or 1347
institution of higher education, including those operated by the 1348
state or a political subdivision, if such service is performed 1349
by a student who is enrolled and is regularly attending classes 1350
at the educational institution or institution of higher 1351
education; or 1352

(ii) By an individual who is enrolled at a nonprofit or 1353
public educational institution which normally maintains a 1354
regular faculty and curriculum and normally has a regularly 1355
organized body of students in attendance at the place where its 1356
educational activities are carried on as a student in a full- 1357
time program, taken for credit at the institution, which 1358
combines academic instruction with work experience, if the 1359
service is an integral part of the program, and the institution 1360
has so certified to the employer, provided that this subdivision 1361
shall not apply to service performed in a program established 1362

for or on behalf of an employer or group of employers. 1363

(f) Service performed by an individual in the employ of 1364
the individual's son, daughter, or spouse and service performed 1365
by a child under the age of eighteen in the employ of the 1366
child's father or mother; 1367

(g) Service performed for one or more principals by an 1368
individual who is compensated on a commission basis, who in the 1369
performance of the work is master of the individual's own time 1370
and efforts, and whose remuneration is wholly dependent on the 1371
amount of effort the individual chooses to expend, and which 1372
service is not subject to the "Federal Unemployment Tax Act," 53 1373
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1374
after December 31, 1971: 1375

(i) By an individual for an employer as an insurance agent 1376
or as an insurance solicitor, if all this service is performed 1377
for remuneration solely by way of commission; 1378

(ii) As a home worker performing work, according to 1379
specifications furnished by the employer for whom the services 1380
are performed, on materials or goods furnished by such employer 1381
which are required to be returned to the employer or to a person 1382
designated for that purpose. 1383

(h) Service performed after December 31, 1971: 1384

(i) In the employ of a church or convention or association 1385
of churches, or in an organization which is operated primarily 1386
for religious purposes and which is operated, supervised, 1387
controlled, or principally supported by a church or convention 1388
or association of churches; 1389

(ii) By a duly ordained, commissioned, or licensed 1390
minister of a church in the exercise of the individual's 1391

ministry or by a member of a religious order in the exercise of 1392
duties required by such order; or 1393

(iii) In a facility conducted for the purpose of carrying 1394
out a program of rehabilitation for individuals whose earning 1395
capacity is impaired by age or physical or mental deficiency or 1396
injury, or providing remunerative work for individuals who 1397
because of their impaired physical or mental capacity cannot be 1398
readily absorbed in the competitive labor market, by an 1399
individual receiving such rehabilitation or remunerative work. 1400

(i) Service performed after June 30, 1939, with respect to 1401
which unemployment compensation is payable under the "Railroad 1402
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1403
351; 1404

(j) Service performed by an individual in the employ of 1405
any organization exempt from income tax under section 501 of the 1406
"Internal Revenue Code of 1954," if the remuneration for such 1407
service does not exceed fifty dollars in any calendar quarter, 1408
or if such service is in connection with the collection of dues 1409
or premiums for a fraternal beneficial society, order, or 1410
association and is performed away from the home office or is 1411
ritualistic service in connection with any such society, order, 1412
or association; 1413

(k) Casual labor not in the course of an employer's trade 1414
or business; incidental service performed by an officer, 1415
appraiser, or member of a finance committee of a bank, building 1416
and loan association, savings and loan association, or savings 1417
association when the remuneration for such incidental service 1418
exclusive of the amount paid or allotted for directors' fees 1419
does not exceed sixty dollars per calendar quarter is casual 1420
labor; 1421

(l) Service performed in the employ of a voluntary 1422
employees' beneficial association providing for the payment of 1423
life, sickness, accident, or other benefits to the members of 1424
such association or their dependents or their designated 1425
beneficiaries, if admission to a membership in such association 1426
is limited to individuals who are officers or employees of a 1427
municipal or public corporation, of a political subdivision of 1428
the state, or of the United States and no part of the net 1429
earnings of such association inures, other than through such 1430
payments, to the benefit of any private shareholder or 1431
individual; 1432

(m) Service performed by an individual in the employ of a 1433
foreign government, including service as a consular or other 1434
officer or employee or of a nondiplomatic representative; 1435

(n) Service performed in the employ of an instrumentality 1436
wholly owned by a foreign government if the service is of a 1437
character similar to that performed in foreign countries by 1438
employees of the United States or of an instrumentality thereof 1439
and if the director finds that the secretary of state of the 1440
United States has certified to the secretary of the treasury of 1441
the United States that the foreign government, with respect to 1442
whose instrumentality exemption is claimed, grants an equivalent 1443
exemption with respect to similar service performed in the 1444
foreign country by employees of the United States and of 1445
instrumentalities thereof; 1446

(o) Service with respect to which unemployment 1447
compensation is payable under an unemployment compensation 1448
system established by an act of congress; 1449

(p) Service performed as a student nurse in the employ of 1450
a hospital or a nurses' training school by an individual who is 1451

enrolled and is regularly attending classes in a nurses' 1452
training school chartered or approved pursuant to state law, and 1453
service performed as an intern in the employ of a hospital by an 1454
individual who has completed a four years' course in a medical 1455
school chartered or approved pursuant to state law; 1456

(q) Service performed by an individual under the age of 1457
eighteen in the delivery or distribution of newspapers or 1458
shopping news, not including delivery or distribution to any 1459
point for subsequent delivery or distribution; 1460

(r) Service performed in the employ of the United States 1461
or an instrumentality of the United States immune under the 1462
Constitution of the United States from the contributions imposed 1463
by this chapter, except that to the extent that congress permits 1464
states to require any instrumentalities of the United States to 1465
make payments into an unemployment fund under a state 1466
unemployment compensation act, this chapter shall be applicable 1467
to such instrumentalities and to services performed for such 1468
instrumentalities in the same manner, to the same extent, and on 1469
the same terms as to all other employers, individuals, and 1470
services, provided that if this state is not certified for any 1471
year by the proper agency of the United States under section 1472
3304 of the "Internal Revenue Code of 1954," the payments 1473
required of such instrumentalities with respect to such year 1474
shall be refunded by the director from the fund in the same 1475
manner and within the same period as is provided in division (E) 1476
of section 4141.09 of the Revised Code with respect to 1477
contributions erroneously collected; 1478

(s) Service performed by an individual as a member of a 1479
band or orchestra, provided such service does not represent the 1480
principal occupation of such individual, and which service is 1481

not subject to or required to be covered for full tax credit 1482
against the tax imposed by the "Federal Unemployment Tax Act," 1483
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1484

(t) Service performed in the employ of a day camp whose 1485
camping season does not exceed twelve weeks in any calendar 1486
year, and which service is not subject to the "Federal 1487
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1488
3311. Service performed after December 31, 1971: 1489

(i) In the employ of a hospital, if the service is 1490
performed by a patient of the hospital, as defined in division 1491
(W) of this section; 1492

(ii) For a prison or other correctional institution by an 1493
inmate of the prison or correctional institution; 1494

(iii) Service performed after December 31, 1977, by an 1495
inmate of a custodial institution operated by the state, a 1496
political subdivision, or a nonprofit organization. 1497

(u) Service that is performed by a nonresident alien 1498
individual for the period the individual temporarily is present 1499
in the United States as a nonimmigrant under division (F), (J), 1500
(M), or (Q) of section 101(a)(15) of the "Immigration and 1501
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1502
that is excluded under section 3306(c)(19) of the "Federal 1503
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1504
3311. 1505

(v) Notwithstanding any other provisions of division (B) 1506
(3) of this section, services that are excluded under divisions 1507
(B)(3)(g), (j), (k), and (l) of this section shall not be 1508
excluded from employment when performed for a nonprofit 1509
organization, as defined in division (X) of this section, or for 1510

this state or its instrumentalities, or for a political 1511
subdivision or its instrumentalities or for Indian tribes; 1512

(w) Service that is performed by an individual working as 1513
an election official or election worker if the amount of 1514
remuneration received by the individual during the calendar year 1515
for services as an election official or election worker is less 1516
than one thousand dollars; 1517

(x) Service performed for an elementary or secondary 1518
school that is operated primarily for religious purposes, that 1519
is described in subsection 501(c)(3) and exempt from federal 1520
income taxation under subsection 501(a) of the Internal Revenue 1521
Code, 26 U.S.C.A. 501; 1522

(y) Service performed by a person committed to a penal 1523
institution. 1524

(z) Service performed for an Indian tribe as described in 1525
division (B)(2)(1) of this section when performed in any of the 1526
following manners: 1527

(i) As a publicly elected official; 1528

(ii) As a member of an Indian tribal council; 1529

(iii) As a member of a legislative or judiciary body; 1530

(iv) In a position which, pursuant to Indian tribal law, 1531
is designated as a major nontenured policymaking or advisory 1532
position, or a policymaking or advisory position where the 1533
performance of the duties ordinarily does not require more than 1534
eight hours of time per week; 1535

(v) As an employee serving on a temporary basis in the 1536
case of a fire, storm, snow, earthquake, flood, or similar 1537
emergency. 1538

(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 1569
individual within the individual's benefit year as determined by 1570
the director. 1571

(E) "Claim for benefits" means a claim for waiting period 1572
or benefits for a designated week. 1573

(F) "Additional claim" means the first claim for benefits 1574
filed following any separation from employment during a benefit 1575
year; "continued claim" means any claim other than the first 1576
claim for benefits and other than an additional claim. 1577

(G) "Wages" means remuneration paid to an employee by each 1578
of the employee's employers with respect to employment; except 1579
that wages shall not include that part of remuneration paid 1580
during any calendar year to an individual by an employer or such 1581
employer's predecessor in interest in the same business or 1582
enterprise, which in any calendar year is in excess of nine 1583
thousand dollars on and after January 1, 1995; nine thousand 1584
five hundred dollars on and after January 1, 2018; and nine 1585
thousand dollars on and after January 1, 2020. Remuneration in 1586
excess of such amounts shall be deemed wages subject to 1587
contribution to the same extent that such remuneration is 1588
defined as wages under the "Federal Unemployment Tax Act," 84 1589
Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 1590
remuneration paid an employee by an employer with respect to 1591
employment in another state, upon which contributions were 1592
required and paid by such employer under the unemployment 1593
compensation act of such other state, shall be included as a 1594
part of remuneration in computing the amount specified in this 1595
division. 1596

(H) (1) "Remuneration" means all compensation for personal 1597
services, including commissions and bonuses and the cash value 1598

of all compensation in any medium other than cash, except that 1599
in the case of agricultural or domestic service, "remuneration" 1600
includes only cash remuneration. Gratuities customarily received 1601
by an individual in the course of the individual's employment 1602
from persons other than the individual's employer and which are 1603
accounted for by such individual to the individual's employer 1604
are taxable wages. 1605

The reasonable cash value of compensation paid in any 1606
medium other than cash shall be estimated and determined in 1607
accordance with rules prescribed by the director, provided that 1608
"remuneration" does not include: 1609

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1610
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1611
713, 26 U.S.C.A. 3301 to 3311, as amended; 1612

(b) The payment by an employer, without deduction from the 1613
remuneration of the individual in the employer's employ, of the 1614
tax imposed upon an individual in the employer's employ under 1615
section 3101 of the "Internal Revenue Code of 1954," with 1616
respect to services performed after October 1, 1941. 1617

(2) "Cash remuneration" means all remuneration paid in 1618
cash, including commissions and bonuses, but not including the 1619
cash value of all compensation in any medium other than cash. 1620

(I) "Interested party" means the director and any party to 1621
whom notice of a determination of an application for benefit 1622
rights or a claim for benefits is required to be given under 1623
section 4141.28 of the Revised Code. 1624

(J) "Annual payroll" means the total amount of wages 1625
subject to contributions during a twelve-month period ending 1626
with the last day of the second calendar quarter of any calendar 1627

year. 1628

(K) "Average annual payroll" means the average of the last 1629
three annual payrolls of an employer, provided that if, as of 1630
any computation date, the employer has had less than three 1631
annual payrolls in such three-year period, such average shall be 1632
based on the annual payrolls which the employer has had as of 1633
such date. 1634

(L) (1) "Contributions" means the money payments to the 1635
state unemployment compensation fund required of employers by 1636
section 4141.25 of the Revised Code and of the state and any of 1637
its political subdivisions electing to pay contributions under 1638
section 4141.242 of the Revised Code. Employers paying 1639
contributions shall be described as "contributory employers." 1640

(2) "Payments in lieu of contributions" means the money 1641
payments to the state unemployment compensation fund required of 1642
reimbursing employers under sections 4141.241 and 4141.242 of 1643
the Revised Code. 1644

(M) An individual is "totally unemployed" in any week 1645
during which the individual performs no services and with 1646
respect to such week no remuneration is payable to the 1647
individual. 1648

(N) An individual is "partially unemployed" in any week 1649
if, due to involuntary loss of work, the total remuneration 1650
payable to the individual for such week is less than the 1651
individual's weekly benefit amount. 1652

(O) "Week" means the calendar week ending at midnight 1653
Saturday unless an equivalent week of seven consecutive calendar 1654
days is prescribed by the director. 1655

(1) "Qualifying week" means any calendar week in an 1656

individual's base period with respect to which the individual 1657
earns or is paid remuneration in employment subject to this 1658
chapter. A calendar week with respect to which an individual 1659
earns remuneration but for which payment was not made within the 1660
base period, when necessary to qualify for benefit rights, may 1661
be considered to be a qualifying week. The number of qualifying 1662
weeks which may be established in a calendar quarter shall not 1663
exceed the number of calendar weeks in the quarter. 1664

(2) "Average weekly wage" means the amount obtained by 1665
dividing an individual's total remuneration for all qualifying 1666
weeks during the base period by the number of such qualifying 1667
weeks, provided that if the computation results in an amount 1668
that is not a multiple of one dollar, such amount shall be 1669
rounded to the next lower multiple of one dollar. 1670

(P) "Weekly benefit amount" means the amount of benefits 1671
an individual would be entitled to receive for one week of total 1672
unemployment. 1673

(Q) (1) "Base period" means the first four of the last five 1674
completed calendar quarters immediately preceding the first day 1675
of an individual's benefit year, except as provided in division 1676
(Q) (2) of this section. 1677

(2) If an individual does not have sufficient qualifying 1678
weeks and wages in the base period to qualify for benefit 1679
rights, the individual's base period shall be the four most 1680
recently completed calendar quarters preceding the first day of 1681
the individual's benefit year. Such base period shall be known 1682
as the "alternate base period." If information as to weeks and 1683
wages for the most recent quarter of the alternate base period 1684
is not available to the director from the regular quarterly 1685
reports of wage information, which are systematically 1686

accessible, the director may, consistent with the provisions of 1687
section 4141.28 of the Revised Code, base the determination of 1688
eligibility for benefits on the affidavit of the claimant with 1689
respect to weeks and wages for that calendar quarter. The 1690
claimant shall furnish payroll documentation, where available, 1691
in support of the affidavit. The determination based upon the 1692
alternate base period as it relates to the claimant's benefit 1693
rights, shall be amended when the quarterly report of wage 1694
information from the employer is timely received and that 1695
information causes a change in the determination. As provided in 1696
division (B) of section 4141.28 of the Revised Code, any 1697
benefits paid and charged to an employer's account, based upon a 1698
claimant's affidavit, shall be adjusted effective as of the 1699
beginning of the claimant's benefit year. No calendar quarter in 1700
a base period or alternate base period shall be used to 1701
establish a subsequent benefit year. 1702

(3) The "base period" of a combined wage claim, as 1703
described in division (H) of section 4141.43 of the Revised 1704
Code, shall be the base period prescribed by the law of the 1705
state in which the claim is allowed. 1706

(4) For purposes of determining the weeks that comprise a 1707
completed calendar quarter under this division, only those weeks 1708
ending at midnight Saturday within the calendar quarter shall be 1709
utilized. 1710

(R) (1) "Benefit year" with respect to an individual means 1711
the fifty-two week period beginning with the first day of that 1712
week with respect to which the individual first files a valid 1713
application for determination of benefit rights, and thereafter 1714
the fifty-two week period beginning with the first day of that 1715
week with respect to which the individual next files a valid 1716

application for determination of benefit rights after the 1717
termination of the individual's last preceding benefit year, 1718
except that the application shall not be considered valid unless 1719
the individual has had employment in six weeks that is subject 1720
to this chapter or the unemployment compensation act of another 1721
state, or the United States, and has, since the beginning of the 1722
individual's previous benefit year, in the employment earned 1723
three times the average weekly wage determined for the previous 1724
benefit year. The "benefit year" of a combined wage claim, as 1725
described in division (H) of section 4141.43 of the Revised 1726
Code, shall be the benefit year prescribed by the law of the 1727
state in which the claim is allowed. Any application for 1728
determination of benefit rights made in accordance with section 1729
4141.28 of the Revised Code is valid if the individual filing 1730
such application is unemployed, has been employed by an employer 1731
or employers subject to this chapter in at least twenty 1732
qualifying weeks within the individual's base period, and has 1733
earned or been paid remuneration at an average weekly wage of 1734
not less than twenty-seven and one-half per cent of the 1735
statewide average weekly wage for such weeks. For purposes of 1736
determining whether an individual has had sufficient employment 1737
since the beginning of the individual's previous benefit year to 1738
file a valid application, "employment" means the performance of 1739
services for which remuneration is payable. 1740

(2) Effective for benefit years beginning on and after 1741
December 26, 2004, any application for determination of benefit 1742
rights made in accordance with section 4141.28 of the Revised 1743
Code is valid if the individual satisfies the criteria described 1744
in division (R) (1) of this section, and if the reason for the 1745
individual's separation from employment is not disqualifying 1746
pursuant to division (D) (2) of section 4141.29 or section 1747

4141.291 of the Revised Code. A disqualification imposed 1748
pursuant to division (D) (2) of section 4141.29 or section 1749
4141.291 of the Revised Code must be removed as provided in 1750
those sections as a requirement of establishing a valid 1751
application for benefit years beginning on and after December 1752
26, 2004. 1753

(3) The statewide average weekly wage shall be calculated 1754
by the director once a year based on the twelve-month period 1755
ending the thirtieth day of June, as set forth in division (B) 1756
(3) of section 4141.30 of the Revised Code, rounded down to the 1757
nearest dollar. Increases or decreases in the amount of 1758
remuneration required to have been earned or paid in order for 1759
individuals to have filed valid applications shall become 1760
effective on Sunday of the calendar week in which the first day 1761
of January occurs that follows the twelve-month period ending 1762
the thirtieth day of June upon which the calculation of the 1763
statewide average weekly wage was based. 1764

(4) As used in this division, an individual is 1765
"unemployed" if, with respect to the calendar week in which such 1766
application is filed, the individual is "partially unemployed" 1767
or "totally unemployed" as defined in this section or if, prior 1768
to filing the application, the individual was separated from the 1769
individual's most recent work for any reason which terminated 1770
the individual's employee-employer relationship, or was laid off 1771
indefinitely or for a definite period of seven or more days. 1772

(S) "Calendar quarter" means the period of three 1773
consecutive calendar months ending on the thirty-first day of 1774
March, the thirtieth day of June, the thirtieth day of 1775
September, and the thirty-first day of December, or the 1776
equivalent thereof as the director prescribes by rule. 1777

- (T) "Computation date" means the first day of the third 1778
calendar quarter of any calendar year. 1779
- (U) "Contribution period" means the calendar year 1780
beginning on the first day of January of any year. 1781
- (V) "Agricultural labor," for the purpose of this 1782
division, means any service performed prior to January 1, 1972, 1783
which was agricultural labor as defined in this division prior 1784
to that date, and service performed after December 31, 1971: 1785
- (1) On a farm, in the employ of any person, in connection 1786
with cultivating the soil, or in connection with raising or 1787
harvesting any agricultural or horticultural commodity, 1788
including the raising, shearing, feeding, caring for, training, 1789
and management of livestock, bees, poultry, and fur-bearing 1790
animals and wildlife; 1791
- (2) In the employ of the owner or tenant or other operator 1792
of a farm in connection with the operation, management, 1793
conservation, improvement, or maintenance of such farm and its 1794
tools and equipment, or in salvaging timber or clearing land of 1795
brush and other debris left by hurricane, if the major part of 1796
such service is performed on a farm; 1797
- (3) In connection with the production or harvesting of any 1798
commodity defined as an agricultural commodity in section 15 (g) 1799
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1800
U.S.C. 1141j, as amended, or in connection with the ginning of 1801
cotton, or in connection with the operation or maintenance of 1802
ditches, canals, reservoirs, or waterways, not owned or operated 1803
for profit, used exclusively for supplying and storing water for 1804
farming purposes; 1805
- (4) In the employ of the operator of a farm in handling, 1806

planting, drying, packing, packaging, processing, freezing, 1807
grading, storing, or delivering to storage or to market or to a 1808
carrier for transportation to market, in its unmanufactured 1809
state, any agricultural or horticultural commodity, but only if 1810
the operator produced more than one half of the commodity with 1811
respect to which such service is performed; 1812

(5) In the employ of a group of operators of farms, or a 1813
cooperative organization of which the operators are members, in 1814
the performance of service described in division (V) (4) of this 1815
section, but only if the operators produced more than one-half 1816
of the commodity with respect to which the service is performed; 1817

(6) Divisions (V) (4) and (5) of this section shall not be 1818
deemed to be applicable with respect to service performed: 1819

(a) In connection with commercial canning or commercial 1820
freezing or in connection with any agricultural or horticultural 1821
commodity after its delivery to a terminal market for 1822
distribution for consumption; or 1823

(b) On a farm operated for profit if the service is not in 1824
the course of the employer's trade or business. 1825

As used in division (V) of this section, "farm" includes 1826
stock, dairy, poultry, fruit, fur-bearing animal, and truck 1827
farms, plantations, ranches, nurseries, ranges, greenhouses, or 1828
other similar structures used primarily for the raising of 1829
agricultural or horticultural commodities and orchards. 1830

(W) "Hospital" means an institution which has been 1831
registered or licensed by the Ohio department of health as a 1832
hospital. 1833

(X) "Nonprofit organization" means an organization, or 1834
group of organizations, described in section 501(c) (3) of the 1835

"Internal Revenue Code of 1954," and exempt from income tax 1836
under section 501(a) of that code. 1837

(Y) "Institution of higher education" means a public or 1838
nonprofit educational institution, including an educational 1839
institution operated by an Indian tribe, which: 1840

(1) Admits as regular students only individuals having a 1841
certificate of graduation from a high school, or the recognized 1842
equivalent; 1843

(2) Is legally authorized in this state or by the Indian 1844
tribe to provide a program of education beyond high school; and 1845

(3) Provides an educational program for which it awards a 1846
bachelor's or higher degree, or provides a program which is 1847
acceptable for full credit toward such a degree, a program of 1848
post-graduate or post-doctoral studies, or a program of training 1849
to prepare students for gainful employment in a recognized 1850
occupation. 1851

For the purposes of this division, all colleges and 1852
universities in this state are institutions of higher education. 1853

(Z) For the purposes of this chapter, "states" includes 1854
the District of Columbia, the Commonwealth of Puerto Rico, and 1855
the Virgin Islands. 1856

(AA) "Alien" means, for the purposes of division (A) (1) (d) 1857
of this section, an individual who is an alien admitted to the 1858
United States to perform service in agricultural labor pursuant 1859
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 1860
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 1861

(BB) (1) "Crew leader" means an individual who furnishes 1862
individuals to perform agricultural labor for any other employer 1863

or farm operator, and: 1864

(a) Pays, either on the individual's own behalf or on 1865
behalf of the other employer or farm operator, the individuals 1866
so furnished by the individual for the service in agricultural 1867
labor performed by them; 1868

(b) Has not entered into a written agreement with the 1869
other employer or farm operator under which the agricultural 1870
worker is designated as in the employ of the other employer or 1871
farm operator. 1872

(2) For the purposes of this chapter, any individual who 1873
is a member of a crew furnished by a crew leader to perform 1874
service in agricultural labor for any other employer or farm 1875
operator shall be treated as an employee of the crew leader if: 1876

(a) The crew leader holds a valid certificate of 1877
registration under the "Farm Labor Contractor Registration Act 1878
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 1879

(b) Substantially all the members of the crew operate or 1880
maintain tractors, mechanized harvesting or crop-dusting 1881
equipment, or any other mechanized equipment, which is provided 1882
by the crew leader; and 1883

(c) If the individual is not in the employment of the 1884
other employer or farm operator within the meaning of division 1885
(B)(1) of this section. 1886

(3) For the purposes of this division, any individual who 1887
is furnished by a crew leader to perform service in agricultural 1888
labor for any other employer or farm operator and who is not 1889
treated as in the employment of the crew leader under division 1890
(BB)(2) of this section shall be treated as the employee of the 1891
other employer or farm operator and not of the crew leader. The 1892

other employer or farm operator shall be treated as having paid 1893
cash remuneration to the individual in an amount equal to the 1894
amount of cash remuneration paid to the individual by the crew 1895
leader, either on the crew leader's own behalf or on behalf of 1896
the other employer or farm operator, for the service in 1897
agricultural labor performed for the other employer or farm 1898
operator. 1899

(CC) "Educational institution" means an institution other 1900
than an institution of higher education as defined in division 1901
(Y) of this section, including an educational institution 1902
operated by an Indian tribe, which: 1903

(1) Offers participants, trainees, or students an 1904
organized course of study or training designed to transfer to 1905
them knowledge, skills, information, doctrines, attitudes, or 1906
abilities from, by, or under the guidance of an instructor or 1907
teacher; and 1908

(2) Is approved, chartered, or issued a permit to operate 1909
as a school by the state board of education, other government 1910
agency, or Indian tribe that is authorized within the state to 1911
approve, charter, or issue a permit for the operation of a 1912
school. 1913

For the purposes of this division, the courses of study or 1914
training which the institution offers may be academic, 1915
technical, trade, or preparation for gainful employment in a 1916
recognized occupation. 1917

(DD) "Cost savings day" means any unpaid day off from work 1918
in which employees continue to accrue employee benefits which 1919
have a determinable value including, but not limited to, 1920
vacation, pension contribution, sick time, and life and health 1921

insurance. 1922

Sec. 5747.01. Except as otherwise expressly provided or 1923
clearly appearing from the context, any term used in this 1924
chapter that is not otherwise defined in this section has the 1925
same meaning as when used in a comparable context in the laws of 1926
the United States relating to federal income taxes or if not 1927
used in a comparable context in those laws, has the same meaning 1928
as in section 5733.40 of the Revised Code. Any reference in this 1929
chapter to the Internal Revenue Code includes other laws of the 1930
United States relating to federal income taxes. 1931

As used in this chapter: 1932

(A) "Adjusted gross income" or "Ohio adjusted gross 1933
income" means federal adjusted gross income, as defined and used 1934
in the Internal Revenue Code, adjusted as provided in this 1935
section: 1936

(1) Add interest or dividends on obligations or securities 1937
of any state or of any political subdivision or authority of any 1938
state, other than this state and its subdivisions and 1939
authorities. 1940

(2) Add interest or dividends on obligations of any 1941
authority, commission, instrumentality, territory, or possession 1942
of the United States to the extent that the interest or 1943
dividends are exempt from federal income taxes but not from 1944
state income taxes. 1945

(3) Deduct interest or dividends on obligations of the 1946
United States and its territories and possessions or of any 1947
authority, commission, or instrumentality of the United States 1948
to the extent that the interest or dividends are included in 1949
federal adjusted gross income but exempt from state income taxes 1950

under the laws of the United States. 1951

(4) Deduct disability and survivor's benefits to the 1952
extent included in federal adjusted gross income. 1953

(5) Deduct benefits under Title II of the Social Security 1954
Act and tier 1 railroad retirement benefits to the extent 1955
included in federal adjusted gross income under section 86 of 1956
the Internal Revenue Code. 1957

(6) In the case of a taxpayer who is a beneficiary of a 1958
trust that makes an accumulation distribution as defined in 1959
section 665 of the Internal Revenue Code, add, for the 1960
beneficiary's taxable years beginning before 2002, the portion, 1961
if any, of such distribution that does not exceed the 1962
undistributed net income of the trust for the three taxable 1963
years preceding the taxable year in which the distribution is 1964
made to the extent that the portion was not included in the 1965
trust's taxable income for any of the trust's taxable years 1966
beginning in 2002 or thereafter. "Undistributed net income of a 1967
trust" means the taxable income of the trust increased by (a) (i) 1968
the additions to adjusted gross income required under division 1969
(A) of this section and (ii) the personal exemptions allowed to 1970
the trust pursuant to section 642(b) of the Internal Revenue 1971
Code, and decreased by (b) (i) the deductions to adjusted gross 1972
income required under division (A) of this section, (ii) the 1973
amount of federal income taxes attributable to such income, and 1974
(iii) the amount of taxable income that has been included in the 1975
adjusted gross income of a beneficiary by reason of a prior 1976
accumulation distribution. Any undistributed net income included 1977
in the adjusted gross income of a beneficiary shall reduce the 1978
undistributed net income of the trust commencing with the 1979
earliest years of the accumulation period. 1980

(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.

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(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.

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(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.

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(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.

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(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

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U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 2011
of this section, "subsidized health plan" means a health plan 2012
for which the employer pays any portion of the plan's cost. The 2013
deduction allowed under division (A) (11) (a) of this section 2014
shall be the net of any related premium refunds, related premium 2015
reimbursements, or related insurance premium dividends received 2016
during the taxable year. 2017

(b) Deduct, to the extent not otherwise deducted or 2018
excluded in computing federal or Ohio adjusted gross income 2019
during the taxable year, the amount the taxpayer paid during the 2020
taxable year, not compensated for by any insurance or otherwise, 2021
for medical care of the taxpayer, the taxpayer's spouse, and 2022
dependents, to the extent the expenses exceed seven and one-half 2023
per cent of the taxpayer's federal adjusted gross income. 2024

(c) Deduct, to the extent not otherwise deducted or 2025
excluded in computing federal or Ohio adjusted gross income, any 2026
amount included in federal adjusted gross income under section 2027
105 or not excluded under section 106 of the Internal Revenue 2028
Code solely because it relates to an accident and health plan 2029
for a person who otherwise would be a "qualifying relative" and 2030
thus a "dependent" under section 152 of the Internal Revenue 2031
Code but for the fact that the person fails to meet the income 2032
and support limitations under section 152(d) (1) (B) and (C) of 2033
the Internal Revenue Code. 2034

(d) For purposes of division (A) (11) of this section, 2035
"medical care" has the meaning given in section 213 of the 2036
Internal Revenue Code, subject to the special rules, 2037
limitations, and exclusions set forth therein, and "qualified 2038
long-term care" has the same meaning given in section 7702B(c) 2039
of the Internal Revenue Code. Solely for purposes of divisions 2040

(A) (11) (a) and (c) of this section, "dependent" includes a 2041
person who otherwise would be a "qualifying relative" and thus a 2042
"dependent" under section 152 of the Internal Revenue Code but 2043
for the fact that the person fails to meet the income and 2044
support limitations under section 152(d) (1) (B) and (C) of the 2045
Internal Revenue Code. 2046

(12) (a) Deduct any amount included in federal adjusted 2047
gross income solely because the amount represents a 2048
reimbursement or refund of expenses that in any year the 2049
taxpayer had deducted as an itemized deduction pursuant to 2050
section 63 of the Internal Revenue Code and applicable United 2051
States department of the treasury regulations. The deduction 2052
otherwise allowed under division (A) (12) (a) of this section 2053
shall be reduced to the extent the reimbursement is attributable 2054
to an amount the taxpayer deducted under this section in any 2055
taxable year. 2056

(b) Add any amount not otherwise included in Ohio adjusted 2057
gross income for any taxable year to the extent that the amount 2058
is attributable to the recovery during the taxable year of any 2059
amount deducted or excluded in computing federal or Ohio 2060
adjusted gross income in any taxable year. 2061

(13) Deduct any portion of the deduction described in 2062
section 1341(a) (2) of the Internal Revenue Code, for repaying 2063
previously reported income received under a claim of right, that 2064
meets both of the following requirements: 2065

(a) It is allowable for repayment of an item that was 2066
included in the taxpayer's adjusted gross income for a prior 2067
taxable year and did not qualify for a credit under division (A) 2068
or (B) of section 5747.05 of the Revised Code for that year; 2069

(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year. 2070
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(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. 2072
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(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; 2079
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(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. 2085
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(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: 2088
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(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; 2091
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(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. 2095
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(17) Deduct the amount contributed by the taxpayer to an 2098

individual development account program established by a county 2099
department of job and family services pursuant to sections 2100
329.11 to 329.14 of the Revised Code for the purpose of matching 2101
funds deposited by program participants. On request of the tax 2102
commissioner, the taxpayer shall provide any information that, 2103
in the tax commissioner's opinion, is necessary to establish the 2104
amount deducted under division (A)(17) of this section. 2105

(18) Beginning in taxable year 2001 but not for any 2106
taxable year beginning after December 31, 2005, if the taxpayer 2107
is married and files a joint return and the combined federal 2108
adjusted gross income of the taxpayer and the taxpayer's spouse 2109
for the taxable year does not exceed one hundred thousand 2110
dollars, or if the taxpayer is single and has a federal adjusted 2111
gross income for the taxable year not exceeding fifty thousand 2112
dollars, deduct amounts paid during the taxable year for 2113
qualified tuition and fees paid to an eligible institution for 2114
the taxpayer, the taxpayer's spouse, or any dependent of the 2115
taxpayer, who is a resident of this state and is enrolled in or 2116
attending a program that culminates in a degree or diploma at an 2117
eligible institution. The deduction may be claimed only to the 2118
extent that qualified tuition and fees are not otherwise 2119
deducted or excluded for any taxable year from federal or Ohio 2120
adjusted gross income. The deduction may not be claimed for 2121
educational expenses for which the taxpayer claims a credit 2122
under section 5747.27 of the Revised Code. 2123

(19) Add any reimbursement received during the taxable 2124
year of any amount the taxpayer deducted under division (A)(18) 2125
of this section in any previous taxable year to the extent the 2126
amount is not otherwise included in Ohio adjusted gross income. 2127

(20) (a) (i) Subject to divisions (A)(20)(a)(iii), (iv), and 2128

(v) of this section, add five-sixths of the amount of 2129
depreciation expense allowed by subsection (k) of section 168 of 2130
the Internal Revenue Code, including the taxpayer's 2131
proportionate or distributive share of the amount of 2132
depreciation expense allowed by that subsection to a pass- 2133
through entity in which the taxpayer has a direct or indirect 2134
ownership interest. 2135

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2136
of this section, add five-sixths of the amount of qualifying 2137
section 179 depreciation expense, including the taxpayer's 2138
proportionate or distributive share of the amount of qualifying 2139
section 179 depreciation expense allowed to any pass-through 2140
entity in which the taxpayer has a direct or indirect ownership 2141
interest. 2142

(iii) Subject to division (A) (20) (a) (v) of this section, 2143
for taxable years beginning in 2012 or thereafter, if the 2144
increase in income taxes withheld by the taxpayer is equal to or 2145
greater than ten per cent of income taxes withheld by the 2146
taxpayer during the taxpayer's immediately preceding taxable 2147
year, "two-thirds" shall be substituted for "five-sixths" for 2148
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2149

(iv) Subject to division (A) (20) (a) (v) of this section, 2150
for taxable years beginning in 2012 or thereafter, a taxpayer is 2151
not required to add an amount under division (A) (20) of this 2152
section if the increase in income taxes withheld by the taxpayer 2153
and by any pass-through entity in which the taxpayer has a 2154
direct or indirect ownership interest is equal to or greater 2155
than the sum of (I) the amount of qualifying section 179 2156
depreciation expense and (II) the amount of depreciation expense 2157
allowed to the taxpayer by subsection (k) of section 168 of the 2158

Internal Revenue Code, and including the taxpayer's 2159
proportionate or distributive shares of such amounts allowed to 2160
any such pass-through entities. 2161

(v) If a taxpayer directly or indirectly incurs a net 2162
operating loss for the taxable year for federal income tax 2163
purposes, to the extent such loss resulted from depreciation 2164
expense allowed by subsection (k) of section 168 of the Internal 2165
Revenue Code and by qualifying section 179 depreciation expense, 2166
"the entire" shall be substituted for "five-sixths of the" for 2167
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2168

The tax commissioner, under procedures established by the 2169
commissioner, may waive the add-backs related to a pass-through 2170
entity if the taxpayer owns, directly or indirectly, less than 2171
five per cent of the pass-through entity. 2172

(b) Nothing in division (A) (20) of this section shall be 2173
construed to adjust or modify the adjusted basis of any asset. 2174

(c) To the extent the add-back required under division (A) 2175
(20) (a) of this section is attributable to property generating 2176
nonbusiness income or loss allocated under section 5747.20 of 2177
the Revised Code, the add-back shall be situated to the same 2178
location as the nonbusiness income or loss generated by the 2179
property for the purpose of determining the credit under 2180
division (A) of section 5747.05 of the Revised Code. Otherwise, 2181
the add-back shall be apportioned, subject to one or more of the 2182
four alternative methods of apportionment enumerated in section 2183
5747.21 of the Revised Code. 2184

(d) For the purposes of division (A) (20) (a) (v) of this 2185
section, net operating loss carryback and carryforward shall not 2186
include the allowance of any net operating loss deduction 2187

carryback or carryforward to the taxable year to the extent such 2188
loss resulted from depreciation allowed by section 168(k) of the 2189
Internal Revenue Code and by the qualifying section 179 2190
depreciation expense amount. 2191

(e) For the purposes of divisions (A) (20) and (21) of this 2192
section: 2193

(i) "Income taxes withheld" means the total amount 2194
withheld and remitted under sections 5747.06 and 5747.07 of the 2195
Revised Code by an employer during the employer's taxable year. 2196

(ii) "Increase in income taxes withheld" means the amount 2197
by which the amount of income taxes withheld by an employer 2198
during the employer's current taxable year exceeds the amount of 2199
income taxes withheld by that employer during the employer's 2200
immediately preceding taxable year. 2201

(iii) "Qualifying section 179 depreciation expense" means 2202
the difference between (I) the amount of depreciation expense 2203
directly or indirectly allowed to a taxpayer under section 179 2204
of the Internal Revised Code, and (II) the amount of 2205
depreciation expense directly or indirectly allowed to the 2206
taxpayer under section 179 of the Internal Revenue Code as that 2207
section existed on December 31, 2002. 2208

(21) (a) If the taxpayer was required to add an amount 2209
under division (A) (20) (a) of this section for a taxable year, 2210
deduct one of the following: 2211

(i) One-fifth of the amount so added for each of the five 2212
succeeding taxable years if the amount so added was five-sixths 2213
of qualifying section 179 depreciation expense or depreciation 2214
expense allowed by subsection (k) of section 168 of the Internal 2215
Revenue Code; 2216

(ii) One-half of the amount so added for each of the two 2217
succeeding taxable years if the amount so added was two-thirds 2218
of such depreciation expense; 2219

(iii) One-sixth of the amount so added for each of the six 2220
succeeding taxable years if the entire amount of such 2221
depreciation expense was so added. 2222

(b) If the amount deducted under division (A) (21) (a) of 2223
this section is attributable to an add-back allocated under 2224
division (A) (20) (c) of this section, the amount deducted shall 2225
be situated to the same location. Otherwise, the add-back shall 2226
be apportioned using the apportionment factors for the taxable 2227
year in which the deduction is taken, subject to one or more of 2228
the four alternative methods of apportionment enumerated in 2229
section 5747.21 of the Revised Code. 2230

(c) No deduction is available under division (A) (21) (a) of 2231
this section with regard to any depreciation allowed by section 2232
168(k) of the Internal Revenue Code and by the qualifying 2233
section 179 depreciation expense amount to the extent that such 2234
depreciation results in or increases a federal net operating 2235
loss carryback or carryforward. If no such deduction is 2236
available for a taxable year, the taxpayer may carry forward the 2237
amount not deducted in such taxable year to the next taxable 2238
year and add that amount to any deduction otherwise available 2239
under division (A) (21) (a) of this section for that next taxable 2240
year. The carryforward of amounts not so deducted shall continue 2241
until the entire addition required by division (A) (20) (a) of 2242
this section has been deducted. 2243

(d) No refund shall be allowed as a result of adjustments 2244
made by division (A) (21) of this section. 2245

(22) Deduct, to the extent not otherwise deducted or 2246
excluded in computing federal or Ohio adjusted gross income for 2247
the taxable year, the amount the taxpayer received during the 2248
taxable year as reimbursement for life insurance premiums under 2249
section 5919.31 of the Revised Code. 2250

(23) Deduct, to the extent not otherwise deducted or 2251
excluded in computing federal or Ohio adjusted gross income for 2252
the taxable year, the amount the taxpayer received during the 2253
taxable year as a death benefit paid by the adjutant general 2254
under section 5919.33 of the Revised Code. 2255

(24) Deduct, to the extent included in federal adjusted 2256
gross income and not otherwise allowable as a deduction or 2257
exclusion in computing federal or Ohio adjusted gross income for 2258
the taxable year, military pay and allowances received by the 2259
taxpayer during the taxable year for active duty service in the 2260
United States army, air force, navy, marine corps, or coast 2261
guard or reserve components thereof or the national guard. The 2262
deduction may not be claimed for military pay and allowances 2263
received by the taxpayer while the taxpayer is stationed in this 2264
state. 2265

(25) Deduct, to the extent not otherwise allowable as a 2266
deduction or exclusion in computing federal or Ohio adjusted 2267
gross income for the taxable year and not otherwise compensated 2268
for by any other source, the amount of qualified organ donation 2269
expenses incurred by the taxpayer during the taxable year, not 2270
to exceed ten thousand dollars. A taxpayer may deduct qualified 2271
organ donation expenses only once for all taxable years 2272
beginning with taxable years beginning in 2007. 2273

For the purposes of division (A) (25) of this section: 2274

(a) "Human organ" means all or any portion of a human 2275
liver, pancreas, kidney, intestine, or lung, and any portion of 2276
human bone marrow. 2277

(b) "Qualified organ donation expenses" means travel 2278
expenses, lodging expenses, and wages and salary forgone by a 2279
taxpayer in connection with the taxpayer's donation, while 2280
living, of one or more of the taxpayer's human organs to another 2281
human being. 2282

(26) Deduct, to the extent not otherwise deducted or 2283
excluded in computing federal or Ohio adjusted gross income for 2284
the taxable year, amounts received by the taxpayer as retired 2285
personnel pay for service in the uniformed services or reserve 2286
components thereof, or the national guard, or received by the 2287
surviving spouse or former spouse of such a taxpayer under the 2288
survivor benefit plan on account of such a taxpayer's death. If 2289
the taxpayer receives income on account of retirement paid under 2290
the federal civil service retirement system or federal employees 2291
retirement system, or under any successor retirement program 2292
enacted by the congress of the United States that is established 2293
and maintained for retired employees of the United States 2294
government, and such retirement income is based, in whole or in 2295
part, on credit for the taxpayer's uniformed service, the 2296
deduction allowed under this division shall include only that 2297
portion of such retirement income that is attributable to the 2298
taxpayer's uniformed service, to the extent that portion of such 2299
retirement income is otherwise included in federal adjusted 2300
gross income and is not otherwise deducted under this section. 2301
Any amount deducted under division (A) (26) of this section is 2302
not included in a taxpayer's adjusted gross income for the 2303
purposes of section 5747.055 of the Revised Code. No amount may 2304
be deducted under division (A) (26) of this section on the basis 2305

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 2336
the portion of an individual's adjusted gross income that is 2337
business income, to the extent not otherwise deducted or 2338
excluded in computing federal or Ohio adjusted gross income for 2339
the taxable year, the lesser of the following amounts: 2340

(i) Seventy-five per cent of the individual's business 2341
income; 2342

(ii) Ninety-three thousand seven hundred fifty dollars for 2343
each spouse if spouses file separate returns under section 2344
5747.08 of the Revised Code or one hundred eighty-seven thousand 2345
five hundred dollars for all other individuals. 2346

(b) For taxable years beginning in 2016 or thereafter, 2347
deduct from the portion of an individual's adjusted gross income 2348
that is business income, to the extent not otherwise deducted or 2349
excluded in computing federal adjusted gross income for the 2350
taxable year, one hundred twenty-five thousand dollars for each 2351
spouse if spouses file separate returns under section 5747.08 of 2352
the Revised Code or two hundred fifty thousand dollars for all 2353
other individuals. 2354

(32) Deduct, as provided under section 5747.78 of the 2355
Revised Code, contributions to ABLE savings accounts made in 2356
accordance with sections 113.50 to 113.56 of the Revised Code. 2357

(B) "Business income" means income, including gain or 2358
loss, arising from transactions, activities, and sources in the 2359
regular course of a trade or business and includes income, gain, 2360
or loss from real property, tangible property, and intangible 2361
property if the acquisition, rental, management, and disposition 2362
of the property constitute integral parts of the regular course 2363
of a trade or business operation. "Business income" includes 2364

income, including gain or loss, from a partial or complete 2365
liquidation of a business, including, but not limited to, gain 2366
or loss from the sale or other disposition of goodwill. 2367

(C) "Nonbusiness income" means all income other than 2368
business income and may include, but is not limited to, 2369
compensation, rents and royalties from real or tangible personal 2370
property, capital gains, interest, dividends and distributions, 2371
patent or copyright royalties, or lottery winnings, prizes, and 2372
awards. 2373

(D) "Compensation" means any form of remuneration paid to 2374
an employee for personal services. 2375

(E) "Fiduciary" means a guardian, trustee, executor, 2376
administrator, receiver, conservator, or any other person acting 2377
in any fiduciary capacity for any individual, trust, or estate. 2378

(F) "Fiscal year" means an accounting period of twelve 2379
months ending on the last day of any month other than December. 2380

(G) "Individual" means any natural person. 2381

(H) "Internal Revenue Code" means the "Internal Revenue 2382
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2383

(I) "Resident" means any of the following, provided that 2384
division (I) (3) of this section applies only to taxable years of 2385
a trust beginning in 2002 or thereafter: 2386

(1) An individual who is domiciled in this state, subject 2387
to section 5747.24 of the Revised Code; 2388

(2) The estate of a decedent who at the time of death was 2389
domiciled in this state. The domicile tests of section 5747.24 2390
of the Revised Code are not controlling for purposes of division 2391
(I) (2) of this section. 2392

(3) A trust that, in whole or part, resides in this state. 2393
If only part of a trust resides in this state, the trust is a 2394
resident only with respect to that part. 2395

For the purposes of division (I) (3) of this section: 2396

(a) A trust resides in this state for the trust's current 2397
taxable year to the extent, as described in division (I) (3) (d) 2398
of this section, that the trust consists directly or indirectly, 2399
in whole or in part, of assets, net of any related liabilities, 2400
that were transferred, or caused to be transferred, directly or 2401
indirectly, to the trust by any of the following: 2402

(i) A person, a court, or a governmental entity or 2403
instrumentality on account of the death of a decedent, but only 2404
if the trust is described in division (I) (3) (e) (i) or (ii) of 2405
this section; 2406

(ii) A person who was domiciled in this state for the 2407
purposes of this chapter when the person directly or indirectly 2408
transferred assets to an irrevocable trust, but only if at least 2409
one of the trust's qualifying beneficiaries is domiciled in this 2410
state for the purposes of this chapter during all or some 2411
portion of the trust's current taxable year; 2412

(iii) A person who was domiciled in this state for the 2413
purposes of this chapter when the trust document or instrument 2414
or part of the trust document or instrument became irrevocable, 2415
but only if at least one of the trust's qualifying beneficiaries 2416
is a resident domiciled in this state for the purposes of this 2417
chapter during all or some portion of the trust's current 2418
taxable year. If a trust document or instrument became 2419
irrevocable upon the death of a person who at the time of death 2420
was domiciled in this state for purposes of this chapter, that 2421

person is a person described in division (I) (3) (a) (iii) of this section. 2422
2423

(b) A trust is irrevocable to the extent that the 2424
transferor is not considered to be the owner of the net assets 2425
of the trust under sections 671 to 678 of the Internal Revenue 2426
Code. 2427

(c) With respect to a trust other than a charitable lead 2428
trust, "qualifying beneficiary" has the same meaning as 2429
"potential current beneficiary" as defined in section 1361(e) (2) 2430
of the Internal Revenue Code, and with respect to a charitable 2431
lead trust "qualifying beneficiary" is any current, future, or 2432
contingent beneficiary, but with respect to any trust 2433
"qualifying beneficiary" excludes a person or a governmental 2434
entity or instrumentality to any of which a contribution would 2435
qualify for the charitable deduction under section 170 of the 2436
Internal Revenue Code. 2437

(d) For the purposes of division (I) (3) (a) of this 2438
section, the extent to which a trust consists directly or 2439
indirectly, in whole or in part, of assets, net of any related 2440
liabilities, that were transferred directly or indirectly, in 2441
whole or part, to the trust by any of the sources enumerated in 2442
that division shall be ascertained by multiplying the fair 2443
market value of the trust's assets, net of related liabilities, 2444
by the qualifying ratio, which shall be computed as follows: 2445

(i) The first time the trust receives assets, the 2446
numerator of the qualifying ratio is the fair market value of 2447
those assets at that time, net of any related liabilities, from 2448
sources enumerated in division (I) (3) (a) of this section. The 2449
denominator of the qualifying ratio is the fair market value of 2450
all the trust's assets at that time, net of any related 2451

liabilities. 2452

(ii) Each subsequent time the trust receives assets, a 2453
revised qualifying ratio shall be computed. The numerator of the 2454
revised qualifying ratio is the sum of (1) the fair market value 2455
of the trust's assets immediately prior to the subsequent 2456
transfer, net of any related liabilities, multiplied by the 2457
qualifying ratio last computed without regard to the subsequent 2458
transfer, and (2) the fair market value of the subsequently 2459
transferred assets at the time transferred, net of any related 2460
liabilities, from sources enumerated in division (I) (3) (a) of 2461
this section. The denominator of the revised qualifying ratio is 2462
the fair market value of all the trust's assets immediately 2463
after the subsequent transfer, net of any related liabilities. 2464

(iii) Whether a transfer to the trust is by or from any of 2465
the sources enumerated in division (I) (3) (a) of this section 2466
shall be ascertained without regard to the domicile of the 2467
trust's beneficiaries. 2468

(e) For the purposes of division (I) (3) (a) (i) of this 2469
section: 2470

(i) A trust is described in division (I) (3) (e) (i) of this 2471
section if the trust is a testamentary trust and the testator of 2472
that testamentary trust was domiciled in this state at the time 2473
of the testator's death for purposes of the taxes levied under 2474
Chapter 5731. of the Revised Code. 2475

(ii) A trust is described in division (I) (3) (e) (ii) of 2476
this section if the transfer is a qualifying transfer described 2477
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 2478
trust is an irrevocable inter vivos trust, and at least one of 2479
the trust's qualifying beneficiaries is domiciled in this state 2480

for purposes of this chapter during all or some portion of the 2481
trust's current taxable year. 2482

(f) For the purposes of division (I) (3) (e) (ii) of this 2483
section, a "qualifying transfer" is a transfer of assets, net of 2484
any related liabilities, directly or indirectly to a trust, if 2485
the transfer is described in any of the following: 2486

(i) The transfer is made to a trust, created by the 2487
decedent before the decedent's death and while the decedent was 2488
domiciled in this state for the purposes of this chapter, and, 2489
prior to the death of the decedent, the trust became irrevocable 2490
while the decedent was domiciled in this state for the purposes 2491
of this chapter. 2492

(ii) The transfer is made to a trust to which the 2493
decedent, prior to the decedent's death, had directly or 2494
indirectly transferred assets, net of any related liabilities, 2495
while the decedent was domiciled in this state for the purposes 2496
of this chapter, and prior to the death of the decedent the 2497
trust became irrevocable while the decedent was domiciled in 2498
this state for the purposes of this chapter. 2499

(iii) The transfer is made on account of a contractual 2500
relationship existing directly or indirectly between the 2501
transferor and either the decedent or the estate of the decedent 2502
at any time prior to the date of the decedent's death, and the 2503
decedent was domiciled in this state at the time of death for 2504
purposes of the taxes levied under Chapter 5731. of the Revised 2505
Code. 2506

(iv) The transfer is made to a trust on account of a 2507
contractual relationship existing directly or indirectly between 2508
the transferor and another person who at the time of the 2509

decedent's death was domiciled in this state for purposes of 2510
this chapter. 2511

(v) The transfer is made to a trust on account of the will 2512
of a testator who was domiciled in this state at the time of the 2513
testator's death for purposes of the taxes levied under Chapter 2514
5731. of the Revised Code. 2515

(vi) The transfer is made to a trust created by or caused 2516
to be created by a court, and the trust was directly or 2517
indirectly created in connection with or as a result of the 2518
death of an individual who, for purposes of the taxes levied 2519
under Chapter 5731. of the Revised Code, was domiciled in this 2520
state at the time of the individual's death. 2521

(g) The tax commissioner may adopt rules to ascertain the 2522
part of a trust residing in this state. 2523

(J) "Nonresident" means an individual or estate that is 2524
not a resident. An individual who is a resident for only part of 2525
a taxable year is a nonresident for the remainder of that 2526
taxable year. 2527

(K) "Pass-through entity" has the same meaning as in 2528
section 5733.04 of the Revised Code. 2529

(L) "Return" means the notifications and reports required 2530
to be filed pursuant to this chapter for the purpose of 2531
reporting the tax due and includes declarations of estimated tax 2532
when so required. 2533

(M) "Taxable year" means the calendar year or the 2534
taxpayer's fiscal year ending during the calendar year, or 2535
fractional part thereof, upon which the adjusted gross income is 2536
calculated pursuant to this chapter. 2537

(N) "Taxpayer" means any person subject to the tax imposed 2538
by section 5747.02 of the Revised Code or any pass-through 2539
entity that makes the election under division (D) of section 2540
5747.08 of the Revised Code. 2541

(O) "Dependents" means dependents as defined in the 2542
Internal Revenue Code and as claimed in the taxpayer's federal 2543
income tax return for the taxable year or which the taxpayer 2544
would have been permitted to claim had the taxpayer filed a 2545
federal income tax return. 2546

(P) "Principal county of employment" means, in the case of 2547
a nonresident, the county within the state in which a taxpayer 2548
performs services for an employer or, if those services are 2549
performed in more than one county, the county in which the major 2550
portion of the services are performed. 2551

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2552
Code: 2553

(1) "Subdivision" means any county, municipal corporation, 2554
park district, or township. 2555

(2) "Essential local government purposes" includes all 2556
functions that any subdivision is required by general law to 2557
exercise, including like functions that are exercised under a 2558
charter adopted pursuant to the Ohio Constitution. 2559

(R) "Overpayment" means any amount already paid that 2560
exceeds the figure determined to be the correct amount of the 2561
tax. 2562

(S) "Taxable income" or "Ohio taxable income" applies only 2563
to estates and trusts, and means federal taxable income, as 2564
defined and used in the Internal Revenue Code, adjusted as 2565
follows: 2566

(1) Add interest or dividends, net of ordinary, necessary, 2567
and reasonable expenses not deducted in computing federal 2568
taxable income, on obligations or securities of any state or of 2569
any political subdivision or authority of any state, other than 2570
this state and its subdivisions and authorities, but only to the 2571
extent that such net amount is not otherwise includible in Ohio 2572
taxable income and is described in either division (S) (1) (a) or 2573
(b) of this section: 2574

(a) The net amount is not attributable to the S portion of 2575
an electing small business trust and has not been distributed to 2576
beneficiaries for the taxable year; 2577

(b) The net amount is attributable to the S portion of an 2578
electing small business trust for the taxable year. 2579

(2) Add interest or dividends, net of ordinary, necessary, 2580
and reasonable expenses not deducted in computing federal 2581
taxable income, on obligations of any authority, commission, 2582
instrumentality, territory, or possession of the United States 2583
to the extent that the interest or dividends are exempt from 2584
federal income taxes but not from state income taxes, but only 2585
to the extent that such net amount is not otherwise includible 2586
in Ohio taxable income and is described in either division (S) 2587
(1) (a) or (b) of this section; 2588

(3) Add the amount of personal exemption allowed to the 2589
estate pursuant to section 642(b) of the Internal Revenue Code; 2590

(4) Deduct interest or dividends, net of related expenses 2591
deducted in computing federal taxable income, on obligations of 2592
the United States and its territories and possessions or of any 2593
authority, commission, or instrumentality of the United States 2594
to the extent that the interest or dividends are exempt from 2595

state taxes under the laws of the United States, but only to the 2596
extent that such amount is included in federal taxable income 2597
and is described in either division (S) (1) (a) or (b) of this 2598
section; 2599

(5) Deduct the amount of wages and salaries, if any, not 2600
otherwise allowable as a deduction but that would have been 2601
allowable as a deduction in computing federal taxable income for 2602
the taxable year, had the targeted jobs credit allowed under 2603
sections 38, 51, and 52 of the Internal Revenue Code not been in 2604
effect, but only to the extent such amount relates either to 2605
income included in federal taxable income for the taxable year 2606
or to income of the S portion of an electing small business 2607
trust for the taxable year; 2608

(6) Deduct any interest or interest equivalent, net of 2609
related expenses deducted in computing federal taxable income, 2610
on public obligations and purchase obligations, but only to the 2611
extent that such net amount relates either to income included in 2612
federal taxable income for the taxable year or to income of the 2613
S portion of an electing small business trust for the taxable 2614
year; 2615

(7) Add any loss or deduct any gain resulting from sale, 2616
exchange, or other disposition of public obligations to the 2617
extent that such loss has been deducted or such gain has been 2618
included in computing either federal taxable income or income of 2619
the S portion of an electing small business trust for the 2620
taxable year; 2621

(8) Except in the case of the final return of an estate, 2622
add any amount deducted by the taxpayer on both its Ohio estate 2623
tax return pursuant to section 5731.14 of the Revised Code, and 2624
on its federal income tax return in determining federal taxable 2625

income;	2626
(9) (a) Deduct any amount included in federal taxable	2627
income solely because the amount represents a reimbursement or	2628
refund of expenses that in a previous year the decedent had	2629
deducted as an itemized deduction pursuant to section 63 of the	2630
Internal Revenue Code and applicable treasury regulations. The	2631
deduction otherwise allowed under division (S) (9) (a) of this	2632
section shall be reduced to the extent the reimbursement is	2633
attributable to an amount the taxpayer or decedent deducted	2634
under this section in any taxable year.	2635
(b) Add any amount not otherwise included in Ohio taxable	2636
income for any taxable year to the extent that the amount is	2637
attributable to the recovery during the taxable year of any	2638
amount deducted or excluded in computing federal or Ohio taxable	2639
income in any taxable year, but only to the extent such amount	2640
has not been distributed to beneficiaries for the taxable year.	2641
(10) Deduct any portion of the deduction described in	2642
section 1341(a) (2) of the Internal Revenue Code, for repaying	2643
previously reported income received under a claim of right, that	2644
meets both of the following requirements:	2645
(a) It is allowable for repayment of an item that was	2646
included in the taxpayer's taxable income or the decedent's	2647
adjusted gross income for a prior taxable year and did not	2648
qualify for a credit under division (A) or (B) of section	2649
5747.05 of the Revised Code for that year.	2650
(b) It does not otherwise reduce the taxpayer's taxable	2651
income or the decedent's adjusted gross income for the current	2652
or any other taxable year.	2653
(11) Add any amount claimed as a credit under section	2654

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.	2684 2685
(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.	2686 2687 2688 2689 2690 2691 2692
(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.	2693 2694 2695
(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.	2696 2697 2698 2699
(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.	2700 2701 2702
(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.	2703 2704 2705 2706
(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.	2707 2708
(Y) "Month" means a calendar month.	2709
(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months	2710 2711

of the taxpayer's taxable year. 2712

(AA) (1) "Eligible institution" means a state university or 2713
state institution of higher education as defined in section 2714
3345.011 of the Revised Code, or a private, nonprofit college, 2715
university, or other post-secondary institution located in this 2716
state that possesses a certificate of authorization issued by 2717
the chancellor of higher education pursuant to Chapter 1713. of 2718
the Revised Code or a certificate of registration issued by the 2719
state board of career colleges and schools under Chapter 3332. 2720
of the Revised Code. 2721

(2) "Qualified tuition and fees" means tuition and fees 2722
imposed by an eligible institution as a condition of enrollment 2723
or attendance, not exceeding two thousand five hundred dollars 2724
in each of the individual's first two years of post-secondary 2725
education. If the individual is a part-time student, "qualified 2726
tuition and fees" includes tuition and fees paid for the 2727
academic equivalent of the first two years of post-secondary 2728
education during a maximum of five taxable years, not exceeding 2729
a total of five thousand dollars. "Qualified tuition and fees" 2730
does not include: 2731

(a) Expenses for any course or activity involving sports, 2732
games, or hobbies unless the course or activity is part of the 2733
individual's degree or diploma program; 2734

(b) The cost of books, room and board, student activity 2735
fees, athletic fees, insurance expenses, or other expenses 2736
unrelated to the individual's academic course of instruction; 2737

(c) Tuition, fees, or other expenses paid or reimbursed 2738
through an employer, scholarship, grant in aid, or other 2739
educational benefit program. 2740

(BB) (1) "Modified business income" means the business 2741
income included in a trust's Ohio taxable income after such 2742
taxable income is first reduced by the qualifying trust amount, 2743
if any. 2744

(2) "Qualifying trust amount" of a trust means capital 2745
gains and losses from the sale, exchange, or other disposition 2746
of equity or ownership interests in, or debt obligations of, a 2747
qualifying investee to the extent included in the trust's Ohio 2748
taxable income, but only if the following requirements are 2749
satisfied: 2750

(a) The book value of the qualifying investee's physical 2751
assets in this state and everywhere, as of the last day of the 2752
qualifying investee's fiscal or calendar year ending immediately 2753
prior to the date on which the trust recognizes the gain or 2754
loss, is available to the trust. 2755

(b) The requirements of section 5747.011 of the Revised 2756
Code are satisfied for the trust's taxable year in which the 2757
trust recognizes the gain or loss. 2758

Any gain or loss that is not a qualifying trust amount is 2759
modified business income, qualifying investment income, or 2760
modified nonbusiness income, as the case may be. 2761

(3) "Modified nonbusiness income" means a trust's Ohio 2762
taxable income other than modified business income, other than 2763
the qualifying trust amount, and other than qualifying 2764
investment income, as defined in section 5747.012 of the Revised 2765
Code, to the extent such qualifying investment income is not 2766
otherwise part of modified business income. 2767

(4) "Modified Ohio taxable income" applies only to trusts, 2768
and means the sum of the amounts described in divisions (BB) (4) 2769

- (a) to (c) of this section: 2770
- (a) The fraction, calculated under section 5747.013, and 2771
applying section 5747.231 of the Revised Code, multiplied by the 2772
sum of the following amounts: 2773
- (i) The trust's modified business income; 2774
- (ii) The trust's qualifying investment income, as defined 2775
in section 5747.012 of the Revised Code, but only to the extent 2776
the qualifying investment income does not otherwise constitute 2777
modified business income and does not otherwise constitute a 2778
qualifying trust amount. 2779
- (b) The qualifying trust amount multiplied by a fraction, 2780
the numerator of which is the sum of the book value of the 2781
qualifying investee's physical assets in this state on the last 2782
day of the qualifying investee's fiscal or calendar year ending 2783
immediately prior to the day on which the trust recognizes the 2784
qualifying trust amount, and the denominator of which is the sum 2785
of the book value of the qualifying investee's total physical 2786
assets everywhere on the last day of the qualifying investee's 2787
fiscal or calendar year ending immediately prior to the day on 2788
which the trust recognizes the qualifying trust amount. If, for 2789
a taxable year, the trust recognizes a qualifying trust amount 2790
with respect to more than one qualifying investee, the amount 2791
described in division (BB) (4) (b) of this section shall equal the 2792
sum of the products so computed for each such qualifying 2793
investee. 2794
- (c) (i) With respect to a trust or portion of a trust that 2795
is a resident as ascertained in accordance with division (I) (3) 2796
- (d) of this section, its modified nonbusiness income. 2797
- (ii) With respect to a trust or portion of a trust that is 2798

not a resident as ascertained in accordance with division (I) (3) 2799
(d) of this section, the amount of its modified nonbusiness 2800
income satisfying the descriptions in divisions (B) (2) to (5) of 2801
section 5747.20 of the Revised Code, except as otherwise 2802
provided in division (BB) (4) (c) (ii) of this section. With 2803
respect to a trust or portion of a trust that is not a resident 2804
as ascertained in accordance with division (I) (3) (d) of this 2805
section, the trust's portion of modified nonbusiness income 2806
recognized from the sale, exchange, or other disposition of a 2807
debt interest in or equity interest in a section 5747.212 2808
entity, as defined in section 5747.212 of the Revised Code, 2809
without regard to division (A) of that section, shall not be 2810
allocated to this state in accordance with section 5747.20 of 2811
the Revised Code but shall be apportioned to this state in 2812
accordance with division (B) of section 5747.212 of the Revised 2813
Code without regard to division (A) of that section. 2814

If the allocation and apportionment of a trust's income 2815
under divisions (BB) (4) (a) and (c) of this section do not fairly 2816
represent the modified Ohio taxable income of the trust in this 2817
state, the alternative methods described in division (C) of 2818
section 5747.21 of the Revised Code may be applied in the manner 2819
and to the same extent provided in that section. 2820

(5) (a) Except as set forth in division (BB) (5) (b) of this 2821
section, "qualifying investee" means a person in which a trust 2822
has an equity or ownership interest, or a person or unit of 2823
government the debt obligations of either of which are owned by 2824
a trust. For the purposes of division (BB) (2) (a) of this section 2825
and for the purpose of computing the fraction described in 2826
division (BB) (4) (b) of this section, all of the following apply: 2827

(i) If the qualifying investee is a member of a qualifying 2828

controlled group on the last day of the qualifying investee's 2829
fiscal or calendar year ending immediately prior to the date on 2830
which the trust recognizes the gain or loss, then "qualifying 2831
investee" includes all persons in the qualifying controlled 2832
group on such last day. 2833

(ii) If the qualifying investee, or if the qualifying 2834
investee and any members of the qualifying controlled group of 2835
which the qualifying investee is a member on the last day of the 2836
qualifying investee's fiscal or calendar year ending immediately 2837
prior to the date on which the trust recognizes the gain or 2838
loss, separately or cumulatively own, directly or indirectly, on 2839
the last day of the qualifying investee's fiscal or calendar 2840
year ending immediately prior to the date on which the trust 2841
recognizes the qualifying trust amount, more than fifty per cent 2842
of the equity of a pass-through entity, then the qualifying 2843
investee and the other members are deemed to own the 2844
proportionate share of the pass-through entity's physical assets 2845
which the pass-through entity directly or indirectly owns on the 2846
last day of the pass-through entity's calendar or fiscal year 2847
ending within or with the last day of the qualifying investee's 2848
fiscal or calendar year ending immediately prior to the date on 2849
which the trust recognizes the qualifying trust amount. 2850

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2851
section, "upper level pass-through entity" means a pass-through 2852
entity directly or indirectly owning any equity of another pass- 2853
through entity, and "lower level pass-through entity" means that 2854
other pass-through entity. 2855

An upper level pass-through entity, whether or not it is 2856
also a qualifying investee, is deemed to own, on the last day of 2857
the upper level pass-through entity's calendar or fiscal year, 2858

the proportionate share of the lower level pass-through entity's 2859
physical assets that the lower level pass-through entity 2860
directly or indirectly owns on the last day of the lower level 2861
pass-through entity's calendar or fiscal year ending within or 2862
with the last day of the upper level pass-through entity's 2863
fiscal or calendar year. If the upper level pass-through entity 2864
directly and indirectly owns less than fifty per cent of the 2865
equity of the lower level pass-through entity on each day of the 2866
upper level pass-through entity's calendar or fiscal year in 2867
which or with which ends the calendar or fiscal year of the 2868
lower level pass-through entity and if, based upon clear and 2869
convincing evidence, complete information about the location and 2870
cost of the physical assets of the lower pass-through entity is 2871
not available to the upper level pass-through entity, then 2872
solely for purposes of ascertaining if a gain or loss 2873
constitutes a qualifying trust amount, the upper level pass- 2874
through entity shall be deemed as owning no equity of the lower 2875
level pass-through entity for each day during the upper level 2876
pass-through entity's calendar or fiscal year in which or with 2877
which ends the lower level pass-through entity's calendar or 2878
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 2879
shall be construed to provide for any deduction or exclusion in 2880
computing any trust's Ohio taxable income. 2881

(b) With respect to a trust that is not a resident for the 2882
taxable year and with respect to a part of a trust that is not a 2883
resident for the taxable year, "qualifying investee" for that 2884
taxable year does not include a C corporation if both of the 2885
following apply: 2886

(i) During the taxable year the trust or part of the trust 2887
recognizes a gain or loss from the sale, exchange, or other 2888
disposition of equity or ownership interests in, or debt 2889

obligations of, the C corporation.	2890
(ii) Such gain or loss constitutes nonbusiness income.	2891
(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.	2892 2893 2894 2895
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	2896 2897
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	2898 2899
(EE) (1) For the purposes of division (EE) of this section:	2900
(a) "Qualifying person" means any person other than a qualifying corporation.	2901 2902
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	2903 2904 2905
(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;	2906 2907 2908 2909
(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.	2910 2911 2912 2913 2914
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset	2915 2916

directly or indirectly owned by any qualifying corporation. 2917

(FF) For purposes of this chapter and Chapter 5751. of the 2918
Revised Code: 2919

(1) "Trust" does not include a qualified pre-income tax 2920
trust. 2921

(2) A "qualified pre-income tax trust" is any pre-income 2922
tax trust that makes a qualifying pre-income tax trust election 2923
as described in division (FF)(3) of this section. 2924

(3) A "qualifying pre-income tax trust election" is an 2925
election by a pre-income tax trust to subject to the tax imposed 2926
by section 5751.02 of the Revised Code the pre-income tax trust 2927
and all pass-through entities of which the trust owns or 2928
controls, directly, indirectly, or constructively through 2929
related interests, five per cent or more of the ownership or 2930
equity interests. The trustee shall notify the tax commissioner 2931
in writing of the election on or before April 15, 2006. The 2932
election, if timely made, shall be effective on and after 2933
January 1, 2006, and shall apply for all tax periods and tax 2934
years until revoked by the trustee of the trust. 2935

(4) A "pre-income tax trust" is a trust that satisfies all 2936
of the following requirements: 2937

(a) The document or instrument creating the trust was 2938
executed by the grantor before January 1, 1972; 2939

(b) The trust became irrevocable upon the creation of the 2940
trust; and 2941

(c) The grantor was domiciled in this state at the time 2942
the trust was created. 2943

(GG) "Uniformed services" has the same meaning as in 10 2944

U.S.C. 101. 2945

(HH) "Taxable business income" means the amount by which 2946
an individual's business income that is included in federal 2947
adjusted gross income exceeds the amount of business income the 2948
individual is authorized to deduct under division (A) (31) of 2949
this section for the taxable year. 2950

(II) "Employer" does not include a franchisor with respect 2951
to the franchisor's relationship with a franchisee or an 2952
employee of a franchisee, unless the franchisor agrees to assume 2953
that role in writing. For purposes of this division, 2954
"franchisor" and "franchisee" have the same meanings as in 16 2955
C.F.R. 436.1. 2956

Section 2. That existing sections 1349.61, 4111.03, 2957
4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 2958
4123.77, 4141.01, and 5747.01 of the Revised Code are hereby 2959
repealed. 2960

Section 3. Section 4111.03 of the Revised Code is 2961
presented in this act as a composite of the section as amended 2962
by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General 2963
Assembly. The General Assembly, applying the principle stated in 2964
division (B) of section 1.52 of the Revised Code that amendments 2965
are to be harmonized if reasonably capable of simultaneous 2966
operation, finds that the composite is the resulting version of 2967
the section in effect prior to the effective date of the section 2968
as presented in this act. 2969