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132nd General Assembly

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Representative Antani

**Cosponsors: Representatives Brenner, Green, Greenspan, Hambley, Henne, Lang,
Merrin, Patton, Pelanda, Reineke, Riedel, Roegner, Ryan, Schaffer, Scherer,
Schuring, Seitz, Thompson, Wiggam, Speaker Smith**

Senators LaRose, Coley, Eklund, Hackett, Terhar, Wilson

A BILL

To amend sections 123.153, 1349.61, 4111.03, 1
4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 2
4123.30, 4123.38, 4123.77, 4141.01, and 5747.01 3
and to enact section 123.154 of the Revised Code 4
to specify that a franchisor is not the employer 5
of a franchisee or employee of a franchisee for 6
purposes of the Minimum Fair Wage Standards Law, 7
the Bimonthly Pay Law, the Workers' Compensation 8
Law, the Unemployment Compensation Law, and the 9
Income Tax Law and to require the Director of 10
Administrative Services to establish the women- 11
owned business enterprise program. 12

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

Section 1. That sections 123.153, 1349.61, 4111.03, 13
4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 14
4123.77, 4141.01, and 5747.01 be amended and section 123.154 of 15
the Revised Code be enacted to read as follows: 16

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

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

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

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

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

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

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

"Owned and controlled" means that at least fifty-one per

cent of the business, including corporate stock if it is a 46
corporation, is owned by women and that such owners have control 47
over the day-to-day operations of the business and an interest 48
in the capital, assets, and profits and losses of the business 49
proportionate to their percentage of ownership. In order to 50
qualify as a women-owned business, a business shall have been 51
owned by such owners at least one year. 52

(B) The director of administrative services shall 53
establish a business assistance program known as the women-owned 54
business enterprise program and shall adopt rules in accordance 55
with Chapter 119. of the Revised Code to administer the program 56
that do all of the following: 57

(1) Establish procedures by which a business enterprise 58
may apply for certification as a women-owned business 59
enterprise; 60

(2) Establish standards to determine when a women-owned 61
business enterprise no longer qualifies for women-owned business 62
enterprise certification; 63

(3) Establish a system to make publicly available a list 64
of women-owned business enterprises certified under this 65
section; 66

(4) Establish a process to mediate complaints and to 67
review women-owned business enterprise certification appeals; 68

(5) Implement an outreach program to educate potential 69
participants about the women-owned business enterprise program; 70

(6) Establish a system to assist state agencies in 71
identifying and utilizing women-owned business enterprises in 72
their contracting processes; 73

(7) Implement a system of self-reporting by women-owned business enterprises as well as an on-site inspection process to validate the qualifications of women-owned business enterprises. 74
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(C) Business and personal financial information and trade secrets submitted by women-owned business enterprise applicants to the director pursuant to this section are not public records for purposes of section 149.43 of the Revised Code, unless the director presents the financial information or trade secrets at a public hearing or public proceeding regarding the applicant's eligibility to participate in the program. 77
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(D) The director of administrative services, upon approval of the attorney general, may enter into a reciprocal agreement with the appropriate officials of one or more states, when the other state has a business assistance program or programs substantially similar to the women-owned business enterprise program of this state. The agreement shall provide that a business certified by the other state as a women-owned business enterprise, which is owned and controlled by a resident or residents of that other state, shall be considered a women-owned business enterprise in this state under this section. The agreement shall provide that a women-owned business enterprise certified under this section, which is owned and controlled by a resident or residents of this state, shall be considered certified in the other state and eligible for programs of that state that provide an advantage or benefit to such businesses. 84
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Sec. 1349.61. (A) (1) Subject to division (C) of this section, no person or entity shall sell a gift card to a purchaser containing an expiration date that is less than two years after the date the gift card is issued. 99
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(2) No person or entity, within two years after a gift 103

card is issued, shall charge service charges or fees relative to 104
that gift card, including dormancy fees, latency fees, or 105
administrative fees, that have the effect of reducing the total 106
amount for which the holder of the gift card may redeem the gift 107
card. 108

(B) A gift card sold without an expiration date is valid 109
until redeemed or replaced with a new gift card. 110

(C) Division (A) of this section does not apply to any of 111
the following gift cards: 112

(1) A gift card that is distributed by the issuer to a 113
consumer pursuant to an awards, loyalty, or promotional program 114
without any money or anything of value being given in exchange 115
for the gift card by the consumer; 116

(2) A gift card that is sold below face value at a volume 117
discount to employers or to nonprofit and charitable 118
organizations for fundraising purposes, if the expiration date 119
on that gift card is not more than thirty days after the date of 120
sale; 121

(3) A gift card that is sold by a nonprofit or charitable 122
organization for fundraising purposes; 123

(4) A gift card that an employer gives to an employee if 124
use of the gift card is limited to the employer's business 125
establishment, which may include a group of merchants that are 126
affiliated with that business establishment; 127

(5) A gift certificate issued in accordance with section 128
1533.131 of the Revised Code that may be used to obtain hunting 129
and fishing licenses, fur taker, special deer, and special wild 130
turkey permits, and wetlands habitat stamps; 131

(6) A gift card that is usable with multiple, unaffiliated sellers of goods or services;	132 133
(7) A gift card that an employer issues to an employee in recognition of services performed by the employee.	134 135
(D) Whoever violates division (A) (2) of this section is liable to the holder for any amount that the redemption value of the gift card was reduced, any court costs incurred, and reasonable attorney's fees.	136 137 138 139
(E) As used in this section:	140
(1) "Gift card" means a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value, including any electronic card issued by a merchant with a monetary value where the issuer has received payment for the full monetary value for the future purchase or delivery of goods or services and any certificate issued by a merchant where the issuer has received payment for the full monetary face value of the certificate for the future purchase or delivery of goods and services. "Gift card" does not include a prepaid calling card used to make telephone calls.	141 142 143 144 145 146 147 148 149 150 151 152 153
(2) "Employer" and "employee" have <u>"Employee" has</u> the same meanings meaning as in section 4121.01 of the Revised Code.	154 155
(3) <u>"Employer" means every person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment, or employee.</u>	156 157 158
Sec. 4111.03. (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's	159 160

wage rate for hours worked in excess of forty hours in one 161
workweek, in the manner and methods provided in and subject to 162
the exemptions of section 7 and section 13 of the "Fair Labor 163
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 164
amended. 165

Any employee employed in agriculture shall not be covered 166
by the overtime provision of this section. 167

(B) If a county employee elects to take compensatory time 168
off in lieu of overtime pay, for any overtime worked, 169
compensatory time may be granted by the employee's 170
administrative superior, on a time and one-half basis, at a time 171
mutually convenient to the employee and the administrative 172
superior within one hundred eighty days after the overtime is 173
worked. 174

(C) A county appointing authority with the exception of 175
the county department of job and family services may, by rule or 176
resolution as is appropriate, indicate the authority's intention 177
not to be bound by division (B) of this section, and to adopt a 178
different policy for the calculation and payment of overtime 179
than that established by that division. Upon adoption, the 180
alternative overtime policy prevails. Prior to the adoption of 181
an alternative overtime policy, a county appointing authority 182
with the exception of the county department of job and family 183
services shall give a written notice of the alternative policy 184
to each employee at least ten days prior to its effective date. 185

(D) As used in this section: 186

(1) "Employ" means to suffer or to permit to work. 187

(2) "Employer" means the state of Ohio, its 188
instrumentalities, and its political subdivisions and their 189

instrumentalities, any individual, partnership, association, 190
corporation, business trust, or any person or group of persons, 191
acting in the interest of an employer in relation to an 192
employee, but does not include ~~an~~ either of the following: 193

(a) An employer whose annual gross volume of sales made 194
for business done is less than one hundred fifty thousand 195
dollars, exclusive of excise taxes at the retail level which are 196
separately stated; 197

(b) A franchisor with respect to the franchisor's 198
relationship with a franchisee or an employee of a franchisee, 199
unless the franchisor agrees to assume that role in writing or a 200
court of competent jurisdiction determines that the franchisor 201
exercises a type or degree of control over the franchisee or the 202
franchisee's employees that is not customarily exercised by a 203
franchisor for the purpose of protecting the franchisor's 204
trademark, brand, or both. For purposes of this division, 205
"franchisor" and "franchisee" have the same meanings as in 16 206
C.F.R. 436.1. 207

(3) "Employee" means any individual employed by an 208
employer but does not include: 209

(a) Any individual employed by the United States; 210

(b) Any individual employed as a baby-sitter in the 211
employer's home, or a live-in companion to a sick, convalescing, 212
or elderly person whose principal duties do not include 213
housekeeping; 214

(c) Any individual engaged in the delivery of newspapers 215
to the consumer; 216

(d) Any individual employed as an outside salesperson 217
compensated by commissions or employed in a bona fide executive, 218

administrative, or professional capacity as such terms are 219
defined by the "Fair Labor Standards Act of 1938," 52 Stat. 220
1060, 29 U.S.C.A. 201, as amended; 221

(e) Any individual who works or provides personal services 222
of a charitable nature in a hospital or health institution for 223
which compensation is not sought or contemplated; 224

(f) A member of a police or fire protection agency or 225
student employed on a part-time or seasonal basis by a political 226
subdivision of this state; 227

(g) Any individual in the employ of a camp or recreational 228
area for children under eighteen years of age and owned and 229
operated by a nonprofit organization or group of organizations 230
described in Section 501(c)(3) of the "Internal Revenue Code of 231
1954," and exempt from income tax under Section 501(a) of that 232
code; 233

(h) Any individual employed directly by the house of 234
representatives or directly by the senate. 235

Sec. 4111.14. (A) Pursuant to the general assembly's 236
authority to establish a minimum wage under Section 34 of 237
Article II, Ohio Constitution, this section is in implementation 238
of Section 34a of Article II, Ohio Constitution. In implementing 239
Section 34a of Article II, Ohio Constitution, the general 240
assembly hereby finds that the purpose of Section 34a of Article 241
II, Ohio Constitution, is to: 242

(1) Ensure that Ohio employees, as defined in division (B) 243
(1) of this section, are paid the wage rate required by Section 244
34a of Article II, Ohio Constitution; 245

(2) Ensure that covered Ohio employers maintain certain 246
records that are directly related to the enforcement of the wage 247

rate requirements in Section 34a of Article II, Ohio	248
Constitution;	249
(3) Ensure that Ohio employees who are paid the wage rate	250
required by Section 34a of Article II, Ohio Constitution, may	251
enforce their right to receive that wage rate in the manner set	252
forth in Section 34a of Article II, Ohio Constitution; and	253
(4) Protect the privacy of Ohio employees' pay and	254
personal information specified in Section 34a of Article II,	255
Ohio Constitution, by restricting an employee's access, and	256
access by a person acting on behalf of that employee, to the	257
employee's own pay and personal information.	258
(B) In accordance with Section 34a of Article II, Ohio	259
Constitution, the terms "employer," "employee," "employ,"	260
"person," and "independent contractor" have the same meanings as	261
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29	262
U.S.C. 203, as amended. In construing the meaning of these	263
terms, due consideration and great weight shall be given to the	264
United States department of labor's and federal courts'	265
interpretations of those terms under the Fair Labor Standards	266
Act and its regulations. As used in division (B) of this	267
section:	268
(1) "Employee" means individuals employed in Ohio, but	269
does not mean individuals who are excluded from the definition	270
of "employee" under 29 U.S.C. 203(e) or individuals who are	271
exempted from the minimum wage requirements in 29 U.S.C. 213 and	272
from the definition of "employee" in this chapter.	273
(2) "Employ" and "employee" do not include any person	274
acting as a volunteer. In construing who is a volunteer,	275
"volunteer" shall have the same meaning as in sections 553.101	276

to 553.106 of Title 29 of the Code of Federal Regulations, as 277
amended, and due consideration and great weight shall be given 278
to the United States department of labor's and federal courts' 279
interpretations of the term "volunteer" under the Fair Labor 280
Standards Act and its regulations. 281

(3) "Employer" does not include a franchisor with respect 282
to the franchisor's relationship with a franchisee or an 283
employee of a franchisee, unless the franchisor agrees to assume 284
that role in writing or a court of competent jurisdiction 285
determines that the franchisor exercises a type or degree of 286
control over the franchisee or the franchisee's employees that 287
is not customarily exercised by a franchisor for the purpose of 288
protecting the franchisor's trademark, brand, or both. For 289
purposes of this division, "franchisor" and "franchisee" have 290
the same meanings as in 16 C.F.R. 436.1. 291

(C) In accordance with Section 34a of Article II, Ohio 292
Constitution, the state may issue licenses to employers 293
authorizing payment of a wage below that required by Section 34a 294
of Article II, Ohio Constitution, to individuals with mental or 295
physical disabilities that may otherwise adversely affect their 296
opportunity for employment. In issuing such licenses, the state 297
shall abide by the rules adopted pursuant to section 4111.06 of 298
the Revised Code. 299

(D) (1) In accordance with Section 34a of Article II, Ohio 300
Constitution, individuals employed in or about the property of 301
an employer or an individual's residence on a casual basis are 302
not included within the coverage of Section 34a of Article II, 303
Ohio Constitution. As used in division (D) of this section: 304

(a) "Casual basis" means employment that is irregular or 305
intermittent and that is not performed by an individual whose 306

vocation is to be employed in or about the property of the 307
employer or individual's residence. In construing who is 308
employed on a "casual basis," due consideration and great weight 309
shall be given to the United States department of labor's and 310
federal courts' interpretations of the term "casual basis" under 311
the Fair Labor Standards Act and its regulations. 312

(b) "An individual employed in or about the property of an 313
employer or individual's residence" means an individual employed 314
on a casual basis or an individual employed in or about a 315
residence on a casual basis, respectively. 316

(2) In accordance with Section 34a of Article II, Ohio 317
Constitution, employees of a solely family-owned and operated 318
business who are family members of an owner are not included 319
within the coverage of Section 34a of Article II, Ohio 320
Constitution. As used in division (D) (2) of this section, 321
"family member" means a parent, spouse, child, stepchild, 322
sibling, grandparent, grandchild, or other member of an owner's 323
immediate family. 324

(E) In accordance with Section 34a of Article II, Ohio 325
Constitution, an employer shall at the time of hire provide an 326
employee with the employer's name, address, telephone number, 327
and other contact information and update such information when 328
it changes. As used in division (E) of this section: 329

(1) "Other contact information" may include, where 330
applicable, the address of the employer's internet site on the 331
world wide web, the employer's electronic mail address, fax 332
number, or the name, address, and telephone number of the 333
employer's statutory agent. "Other contact information" does not 334
include the name, address, telephone number, fax number, 335
internet site address, or electronic mail address of any 336

employee, shareholder, officer, director, supervisor, manager, 337
or other individual employed by or associated with an employer. 338

(2) "When it changes" means that the employer shall 339
provide its employees with the change in its name, address, 340
telephone number, or other contact information within sixty 341
business days after the change occurs. The employer shall 342
provide the changed information by using any of its usual 343
methods of communicating with its employees, including, but not 344
limited to, listing the change on the employer's internet site 345
on the world wide web, internal computer network, or a bulletin 346
board where it commonly posts employee communications or by 347
insertion or inclusion with employees' paychecks or pay stubs. 348

(F) In accordance with Section 34a of Article II, Ohio 349
Constitution, an employer shall maintain a record of the name, 350
address, occupation, pay rate, hours worked for each day worked, 351
and each amount paid an employee for a period of not less than 352
three years following the last date the employee was employed by 353
that employer. As used in division (F) of this section: 354

(1) "Address" means an employee's home address as 355
maintained in the employer's personnel file or personnel 356
database for that employee. 357

(2) (a) With respect to employees who are not exempt from 358
the overtime pay requirements of the Fair Labor Standards Act or 359
this chapter, "pay rate" means an employee's base rate of pay. 360

(b) With respect to employees who are exempt from the 361
overtime pay requirements of the Fair Labor Standards Act or 362
this chapter, "pay rate" means an employee's annual base salary 363
or other rate of pay by which the particular employee qualifies 364
for that exemption under the Fair Labor Standards Act or this 365

chapter, but does not include bonuses, stock options, 366
incentives, deferred compensation, or any other similar form of 367
compensation. 368

(3) "Record" means the name, address, occupation, pay 369
rate, hours worked for each day worked, and each amount paid an 370
employee in one or more documents, databases, or other paper or 371
electronic forms of record-keeping maintained by an employer. No 372
one particular method or form of maintaining such a record or 373
records is required under this division. An employer is not 374
required to create or maintain a single record containing only 375
the employee's name, address, occupation, pay rate, hours worked 376
for each day worked, and each amount paid an employee. An 377
employer shall maintain a record or records from which the 378
employee or person acting on behalf of that employee could 379
reasonably review the information requested by the employee or 380
person. 381

An employer is not required to maintain the records 382
specified in division (F) (3) of this section for any period 383
before January 1, 2007. On and after January 1, 2007, the 384
employer shall maintain the records required by division (F) (3) 385
of this section for three years from the date the hours were 386
worked by the employee and for three years after the date the 387
employee's employment ends. 388

(4) (a) Except for individuals specified in division (F) (4) 389
(b) of this section, "hours worked for each day worked" means 390
the total amount of time worked by an employee in whatever 391
increments the employer uses for its payroll purposes during a 392
day worked by the employee. An employer is not required to keep 393
a record of the time of day an employee begins and ends work on 394
any given day. As used in division (F) (4) of this section, "day" 395

means a fixed period of twenty-four consecutive hours during 396
which an employee performs work for an employer. 397

(b) An employer is not required to keep records of "hours 398
worked for each day worked" for individuals for whom the 399
employer is not required to keep those records under the Fair 400
Labor Standards Act and its regulations or individuals who are 401
not subject to the overtime pay requirements specified in 402
section 4111.03 of the Revised Code. 403

(5) "Each amount paid an employee" means the total gross 404
wages paid to an employee for each pay period. As used in 405
division (F) (5) of this section, "pay period" means the period 406
of time designated by an employer to pay an employee the 407
employee's gross wages in accordance with the employer's payroll 408
practices under section 4113.15 of the Revised Code. 409

(G) In accordance with Section 34a of Article II, Ohio 410
Constitution, an employer must provide such information without 411
charge to an employee or person acting on behalf of an employee 412
upon request. As used in division (G) of this section: 413

(1) "Such information" means the name, address, 414
occupation, pay rate, hours worked for each day worked, and each 415
amount paid for the specific employee who has requested that 416
specific employee's own information and does not include the 417
name, address, occupation, pay rate, hours worked for each day 418
worked, or each amount paid of any other employee of the 419
employer. "Such information" does not include hours worked for 420
each day worked by individuals for whom an employer is not 421
required to keep that information under the Fair Labor Standards 422
Act and its regulations or individuals who are not subject to 423
the overtime pay requirements specified in section 4111.03 of 424
the Revised Code. 425

(2) "Acting on behalf of an employee" means a person	426
acting on behalf of an employee as any of the following:	427
(a) The certified or legally recognized collective	428
bargaining representative for that employee under the applicable	429
federal law or Chapter 4117. of the Revised Code;	430
(b) The employee's attorney;	431
(c) The employee's parent, guardian, or legal custodian.	432
A person "acting on behalf of an employee" must be	433
specifically authorized by an employee in order to make a	434
request for that employee's own name, address, occupation, pay	435
rate, hours worked for each day worked, and each amount paid to	436
that employee.	437
(3) "Provide" means that an employer shall provide the	438
requested information within thirty business days after the date	439
the employer receives the request, unless either of the	440
following occurs:	441
(a) The employer and the employee or person acting on	442
behalf of the employee agree to some alternative time period for	443
providing the information.	444
(b) The thirty-day period would cause a hardship on the	445
employer under the circumstances, in which case the employer	446
must provide the requested information as soon as practicable.	447
(4) A "request" made by an employee or a person acting on	448
behalf of an employee means a request by an employee or a person	449
acting on behalf of an employee for the employee's own	450
information. The employer may require that the employee provide	451
the employer with a written request that has been signed by the	452
employee and notarized and that reasonably specifies the	453

particular information being requested. The employer may require 454
that the person acting on behalf of an employee provide the 455
employer with a written request that has been signed by the 456
employee whose information is being requested and notarized and 457
that reasonably specifies the particular information being 458
requested. 459

(H) In accordance with Section 34a of Article II, Ohio 460
Constitution, an employee, person acting on behalf of one or 461
more employees, and any other interested party may file a 462
complaint with the state for a violation of any provision of 463
Section 34a of Article II, Ohio Constitution, or any law or 464
regulation implementing its provisions. Such complaint shall be 465
promptly investigated and resolved by the state. The employee's 466
name shall be kept confidential unless disclosure is necessary 467
to resolution of a complaint and the employee consents to 468
disclosure. As used in division (H) of this section: 469

(1) "Complaint" means a complaint of an alleged violation 470
pertaining to harm suffered by the employee filing the 471
complaint, by a person acting on behalf of one or more 472
employees, or by an interested party. 473

(2) "Acting on behalf of one or more employees" has the 474
same meaning as "acting on behalf of an employee" in division 475
(G) (2) of this section. Each employee must provide a separate 476
written and notarized authorization before the person acting on 477
that employee's or those employees' behalf may request the name, 478
address, occupation, pay rate, hours worked for each day worked, 479
and each amount paid for the particular employee. 480

(3) "Interested party" means a party who alleges to be 481
injured by the alleged violation and who has standing to file a 482
complaint under common law principles of standing. 483

(4) "Resolved by the state" means that the complaint has 484
been resolved to the satisfaction of the state. 485

(5) "Shall be kept confidential" means that the state 486
shall keep the name of the employee confidential as required by 487
division (H) of this section. 488

(I) In accordance with Section 34a of Article II, Ohio 489
Constitution, the state may on its own initiative investigate an 490
employer's compliance with Section 34a of Article II, Ohio 491
Constitution, and any law or regulation implementing Section 34a 492
of Article II, Ohio Constitution. The employer shall make 493
available to the state any records related to such investigation 494
and other information required for enforcement of Section 34a of 495
Article II, Ohio Constitution or any law or regulation 496
implementing Section 34a of Article II, Ohio Constitution. The 497
state shall investigate an employer's compliance with this 498
section in accordance with the procedures described in section 499
4111.04 of the Revised Code. All records and information related 500
to investigations by the state are confidential and are not a 501
public record subject to section 149.43 of the Revised Code. 502
This division does not prevent the state from releasing to or 503
exchanging with other state and federal wage and hour regulatory 504
authorities information related to investigations. 505

(J) In accordance with Section 34a of Article II, Ohio 506
Constitution, damages shall be calculated as an additional two 507
times the amount of the back wages and in the case of a 508
violation of an anti-retaliation provision an amount set by the 509
state or court sufficient to compensate the employee and deter 510
future violations, but not less than one hundred fifty dollars 511
for each day that the violation continued. The "not less than 512
one hundred fifty dollar" penalty specified in division (J) of 513

this section shall be imposed only for violations of the anti- 514
retaliation provision in Section 34a of Article II, Ohio 515
Constitution. 516

(K) In accordance with Section 34a of Article II, Ohio 517
Constitution, an action for equitable and monetary relief may be 518
brought against an employer by the attorney general and/or an 519
employee or person acting on behalf of an employee or all 520
similarly situated employees in any court of competent 521
jurisdiction, including the court of common pleas of an 522
employee's county of residence, for any violation of Section 34a 523
of Article II, Ohio Constitution, or any law or regulation 524
implementing its provisions within three years of the violation 525
or of when the violation ceased if it was of a continuing 526
nature, or within one year after notification to the employee of 527
final disposition by the state of a complaint for the same 528
violation, whichever is later. 529

(1) As used in division (K) of this section, 530
"notification" means the date on which the notice was sent to 531
the employee by the state. 532

(2) No employee shall join as a party plaintiff in any 533
civil action that is brought under division (K) of this section 534
by an employee, person acting on behalf of an employee, or 535
person acting on behalf of all similarly situated employees 536
unless that employee first gives written consent to become such 537
a party plaintiff and that consent is filed with the court in 538
which the action is brought. 539

(3) A civil action regarding an alleged violation of this 540
section shall be maintained only under division (K) of this 541
section. This division does not preclude the joinder in a single 542
civil action of an action under this division and an action 543

under section 4111.10 of the Revised Code. 544

(4) Any agreement between an employee and employer to work 545
for less than the wage rate specified in Section 34a of Article 546
II, Ohio Constitution, is no defense to an action under this 547
section. 548

(L) In accordance with Section 34a of Article II, Ohio 549
Constitution, there shall be no exhaustion requirement, no 550
procedural, pleading, or burden of proof requirements beyond 551
those that apply generally to civil suits in order to maintain 552
such action and no liability for costs or attorney's fees on an 553
employee except upon a finding that such action was frivolous in 554
accordance with the same standards that apply generally in civil 555
suits. Nothing in division (L) of this section affects the right 556
of an employer and employee to agree to submit a dispute under 557
this section to alternative dispute resolution, including, but 558
not limited to, arbitration, in lieu of maintaining the civil 559
suit specified in division (K) of this section. Nothing in this 560
division limits the state's ability to investigate or enforce 561
this section. 562

(M) An employer who provides such information specified in 563
Section 34a of Article II, Ohio Constitution, shall be immune 564
from any civil liability for injury, death, or loss to person or 565
property that otherwise might be incurred or imposed as a result 566
of providing that information to an employee or person acting on 567
behalf of an employee in response to a request by the employee 568
or person, and the employer shall not be subject to the 569
provisions of Chapters 1347. and 1349. of the Revised Code to 570
the extent that such provisions would otherwise apply. As used 571
in division (M) of this section, "such information," "acting on 572
behalf of an employee," and "request" have the same meanings as 573

in division (G) of this section. 574

(N) As used in this section, "the state" means the 575
director of commerce. 576

Sec. 4113.15. (A) Every ~~individual, firm, partnership,~~ 577
~~association, or corporation~~ employer doing business in this 578
state shall, on or before the first day of each month, pay all 579
its employees the wages earned by them during the first half of 580
the preceding month ending with the fifteenth day thereof, and 581
shall, on or before the fifteenth day of each month, pay such 582
employees the wages earned by them during the last half of the 583
preceding calendar month. If at any time of payment an employee 584
is absent from ~~his~~ the employee's regular place of labor and 585
does not receive ~~his~~ payment of wages through an authorized 586
representative, such person shall be entitled to said payment at 587
any time thereafter upon demand upon the proper paymaster at the 588
place where such wages are usually paid and where such pay is 589
due. This section does not prohibit the daily or weekly payment 590
of wages. The use of a longer time lapse that is customary to a 591
given trade, profession or occupation, or establishment of a 592
different time lapse by written contract or by operation of law. 593

(B) Where wages remain unpaid for thirty days beyond the 594
regularly scheduled payday or, in the case where no regularly 595
scheduled payday is applicable, for sixty days beyond the filing 596
by the employee of a claim or for sixty days beyond the date of 597
the agreement, award, or other act making wages payable and no 598
contest court order or dispute of any wage claim including the 599
assertion of a counterclaim exists accounting for nonpayment, 600
the employer, in addition, as liquidated damages, is liable to 601
the employee in an amount equal to six per cent of the amount of 602
the claim still unpaid and not in contest or disputed or two 603

hundred dollars, whichever is greater. 604

(C) In the absence of a contest, court order or dispute, 605
an employer who is party to an agreement to pay or provide 606
fringe benefits to an employee or to make any employee 607
authorized deduction becomes a trustee of any funds required by 608
such agreement to be paid to any person, organization, or 609
governmental agency from the time that the duty to make such 610
payment arises. No person shall, without reasonable 611
justification or excuse for such failure, knowingly fail or 612
refuse to pay to the appropriate person, organization, or 613
governmental agency the amount necessary to provide the benefits 614
or accomplish the purpose of any employee authorized deduction, 615
within thirty days after the close of the pay period during 616
which the employee earned or had deducted the amount of money 617
necessary to pay for the fringe benefit or make any employee 618
authorized deduction. A failure or refusal to pay, regardless of 619
the number of employee pay accounts involved, constitutes one 620
offense for the first delinquency of thirty days and a separate 621
offense for each successive delinquency of thirty days. 622

(D) As used in this section and section 4113.16 of the 623
Revised Code: 624

(1) "Wage" means the net amount of money payable to an 625
employee, including any guaranteed pay or reimbursement for 626
expenses, less any federal, state, or local taxes withheld; any 627
deductions made pursuant to a written agreement for the purpose 628
of providing the employee with any fringe benefits; and any 629
employee authorized deduction. 630

(2) "Fringe benefits" includes but is not limited to 631
health, welfare, or retirement benefits, whether paid for 632
entirely by the employer or on the basis of a joint employer- 633

employee contribution, or vacation, separation, or holiday pay. 634

(3) "Employee authorized deduction" includes but is not 635
limited to deductions for the purpose of any of the following: 636

(a) ~~purchase~~ Purchase of United States savings bonds or 637
corporate stocks or bonds. ~~i~~ 638

(b) ~~a~~ A charitable contribution. ~~i~~ 639

(c) ~~credit~~ Credit union savings or other regular savings 640
program. ~~or i~~ 641

(d) ~~repayment~~ Repayment of a loan or other obligation. 642

(4) "Employer" means an individual, firm, partnership, 643
association, or corporation, but does not include a franchisor 644
with respect to the franchisor's relationship with a franchisee 645
or an employee of a franchisee, unless either of the following 646
applies: 647

(a) The franchisor agrees to assume that role in writing. 648

(b) A court of competent jurisdiction determines that the 649
franchisor exercises a type or degree of control over the 650
franchisee or the franchisee's employees that is not customarily 651
exercised by a franchisor for the purpose of protecting the 652
franchisor's trademark, brand, or both. 653

(5) "Franchisor" and "franchisee" have the same meanings 654
as in 16 C.F.R. 436.1. 655

Sec. 4113.16. No ~~corporation, contractor, person, or~~ 656
~~partnership~~ employer subject to section 4113.15 of the Revised 657
Code shall, by a special contract with an employee or by other 658
means, exempt itself the employer from this section and section 659
4113.15 of the Revised Code, and no assignments of future wages, 660

payable semimonthly under such sections are valid except as 661
provided in section 1321.32 of the Revised Code. 662

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 663
of the Revised Code: 664

(1) "Place of employment" means every place, whether 665
indoors or out, or underground, and the premises appurtenant 666
thereto, where either temporarily or permanently any industry, 667
trade, or business is carried on, or where any process or 668
operation, directly or indirectly related to any industry, 669
trade, or business, is carried on and where any person is 670
directly or indirectly employed by another for direct or 671
indirect gain or profit, but does not include any place where 672
persons are employed in private domestic service or agricultural 673
pursuits which do not involve the use of mechanical power. 674

(2) "Employment" means any trade, occupation, or process 675
of manufacture or any method of carrying on such trade, 676
occupation, or process of manufacture in which any person may be 677
engaged, except in such private domestic service or agricultural 678
pursuits as do not involve the use of mechanical power. 679

(3) "Employer" means every person, firm, corporation, 680
agent, manager, representative, or other person having control 681
or custody of any employment, place of employment, or employee. 682
"Employer" does not include a franchisor with respect to the 683
franchisor's relationship with a franchisee or an employee of a 684
franchisee, unless the franchisor agrees to assume that role in 685
writing or a court of competent jurisdiction determines that the 686
franchisor exercises a type or degree of control over the 687
franchisee or the franchisee's employees that is not customarily 688
exercised by a franchisor for the purpose of protecting the 689
franchisor's trademark, brand, or both. For purposes of this 690

division, "franchisor" and "franchisee" have the same meanings 691
as in 16 C.F.R. 436.1. 692

(4) "Employee" means every person who may be required or 693
directed by any employer, in consideration of direct or indirect 694
gain or profit, to engage in any employment, or to go, or work, 695
or be at any time in any place of employment. 696

(5) "Frequenter" means every person, other than an 697
employee, who may go in or be in a place of employment under 698
circumstances which render the person other than a trespasser. 699

(6) "Deputy" means any person employed by the industrial 700
commission or the bureau of workers' compensation, designated as 701
a deputy by the commission or the administrator of workers' 702
compensation, who possesses special, technical, scientific, 703
managerial, professional, or personal abilities or qualities in 704
matters within the jurisdiction of the commission or the bureau, 705
and who may be engaged in the performance of duties under the 706
direction of the commission or the bureau calling for the 707
exercise of such abilities or qualities. 708

(7) "Order" means any decision, rule, regulation, 709
direction, requirement, or standard, or any other determination 710
or decision that the bureau is empowered to and does make. 711

(8) "General order" means an order that applies generally 712
throughout the state to all persons, employments, or places of 713
employment, or all persons, employments, or places of employment 714
of a class under the jurisdiction of the bureau. All other 715
orders shall be considered special orders. 716

(9) "Local order" means any ordinance, order, rule, or 717
determination of the legislative authority of any municipal 718
corporation, or any trustees, or board or officers of any 719

municipal corporation upon any matter over which the bureau has 720
jurisdiction. 721

(10) "Welfare" means comfort, decency, and moral well- 722
being. 723

(11) "Safe" or "safety," as applied to any employment or a 724
place of employment, means such freedom from danger to the life, 725
health, safety, or welfare of employees or frequenters as the 726
nature of the employment will reasonably permit, including 727
requirements as to the hours of labor with relation to the 728
health and welfare of employees. 729

(12) "Employee organization" means any labor or bona fide 730
organization in which employees participate and that exists for 731
the purpose, in whole or in part, of dealing with employers 732
concerning grievances, labor disputes, wages, hours, terms, and 733
other conditions of employment. 734

(B) As used in the Revised Code: 735

(1) "Industrial commission" means the chairperson of the 736
three-member industrial commission created pursuant to section 737
4121.02 of the Revised Code when the context refers to the 738
authority vested in the chairperson as the chief executive 739
officer of the three-member industrial commission pursuant to 740
divisions (A), (B), (C), and (D) of section 4121.03 of the 741
Revised Code. 742

(2) "Industrial commission" means the three-member 743
industrial commission created pursuant to section 4121.02 of the 744
Revised Code when the context refers to the authority vested in 745
the three-member industrial commission pursuant to division (E) 746
of section 4121.03 of the Revised Code. 747

(3) "Industrial commission" means the industrial 748

commission as a state agency when the context refers to the 749
authority vested in the industrial commission as a state agency. 750

Sec. 4123.01. As used in this chapter: 751

(A) (1) "Employee" means: 752

(a) Every person in the service of the state, or of any 753
county, municipal corporation, township, or school district 754
therein, including regular members of lawfully constituted 755
police and fire departments of municipal corporations and 756
townships, whether paid or volunteer, and wherever serving 757
within the state or on temporary assignment outside thereof, and 758
executive officers of boards of education, under any appointment 759
or contract of hire, express or implied, oral or written, 760
including any elected official of the state, or of any county, 761
municipal corporation, or township, or members of boards of 762
education. 763

As used in division (A) (1) (a) of this section, the term 764
"employee" includes the following persons when responding to an 765
inherently dangerous situation that calls for an immediate 766
response on the part of the person, regardless of whether the 767
person is within the limits of the jurisdiction of the person's 768
regular employment or voluntary service when responding, on the 769
condition that the person responds to the situation as the 770
person otherwise would if the person were on duty in the 771
person's jurisdiction: 772

(i) Off-duty peace officers. As used in division (A) (1) (a) 773
(i) of this section, "peace officer" has the same meaning as in 774
section 2935.01 of the Revised Code. 775

(ii) Off-duty firefighters, whether paid or volunteer, of 776
a lawfully constituted fire department. 777

(iii) Off-duty first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or emergency medical technicians-paramedic, whether paid or volunteer, of an ambulance service organization or emergency medical service organization pursuant to Chapter 4765. of the Revised Code.	778 779 780 781 782 783
(b) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (i) employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, or (ii) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by this chapter.	784 785 786 787 788 789 790 791 792 793 794 795
(c) Every person who performs labor or provides services pursuant to a construction contract, as defined in section 4123.79 of the Revised Code, if at least ten of the following criteria apply:	796 797 798 799
(i) The person is required to comply with instructions from the other contracting party regarding the manner or method of performing services;	800 801 802
(ii) The person is required by the other contracting party to have particular training;	803 804
(iii) The person's services are integrated into the regular functioning of the other contracting party;	805 806

(iv) The person is required to perform the work personally;	807 808
(v) The person is hired, supervised, or paid by the other contracting party;	809 810
(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;	811 812 813
(vii) The person's hours of work are established by the other contracting party;	814 815
(viii) The person is required to devote full time to the business of the other contracting party;	816 817
(ix) The person is required to perform the work on the premises of the other contracting party;	818 819
(x) The person is required to follow the order of work set by the other contracting party;	820 821
(xi) The person is required to make oral or written reports of progress to the other contracting party;	822 823
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	824 825
(xiii) The person's expenses are paid for by the other contracting party;	826 827
(xiv) The person's tools and materials are furnished by the other contracting party;	828 829
(xv) The person is provided with the facilities used to perform services;	830 831
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	832 833

(xvii) The person is not performing services for a number	834
of employers at the same time;	835
(xviii) The person does not make the same services	836
available to the general public;	837
(xix) The other contracting party has a right to discharge	838
the person;	839
(xx) The person has the right to end the relationship with	840
the other contracting party without incurring liability pursuant	841
to an employment contract or agreement.	842
Every person in the service of any independent contractor	843
or subcontractor who has failed to pay into the state insurance	844
fund the amount of premium determined and fixed by the	845
administrator of workers' compensation for the person's	846
employment or occupation or who is a self-insuring employer and	847
who has failed to pay compensation and benefits directly to the	848
employer's injured and to the dependents of the employer's	849
killed employees as required by section 4123.35 of the Revised	850
Code, shall be considered as the employee of the person who has	851
entered into a contract, whether written or verbal, with such	852
independent contractor unless such employees or their legal	853
representatives or beneficiaries elect, after injury or death,	854
to regard such independent contractor as the employer.	855
(2) "Employee" does not mean any of the following:	856
(a) A duly ordained, commissioned, or licensed minister or	857
assistant or associate minister of a church in the exercise of	858
ministry;	859
(b) Any officer of a family farm corporation;	860
(c) An individual incorporated as a corporation;	861

(d) An officer of a nonprofit corporation, as defined in 862
section 1702.01 of the Revised Code, who volunteers the person's 863
services as ~~a~~an officer; 864

(e) An individual who otherwise is an employee of an 865
employer but who signs the waiver and affidavit specified in 866
section 4123.15 of the Revised Code on the condition that the 867
administrator has granted a waiver and exception to the 868
individual's employer under section 4123.15 of the Revised Code; 869

(f) (i) A qualifying employee described in division (A) (14) 870
(a) of section 5703.94 of the Revised Code when the qualifying 871
employee is performing disaster work in this state during a 872
disaster response period pursuant to a qualifying solicitation 873
received by the employee's employer; 874

(ii) A qualifying employee described in division (A) (14) 875
(b) of section 5703.94 of the Revised Code when the qualifying 876
employee is performing disaster work in this state during a 877
disaster response period on critical infrastructure owned or 878
used by the employee's employer; 879

(iii) As used in division (A) (2) (f) of this section, 880
"critical infrastructure," "disaster response period," "disaster 881
work," and "qualifying employee" have the same meanings as in 882
section 5703.94 of the Revised Code. 883

Any employer may elect to include as an "employee" within 884
this chapter, any person excluded from the definition of 885
"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 886
this section in accordance with rules adopted by the 887
administrator, with the advice and consent of the bureau of 888
workers' compensation board of directors. If an employer is a 889
partnership, sole proprietorship, individual incorporated as a 890

corporation, or family farm corporation, such employer may elect 891
to include as an "employee" within this chapter, any member of 892
such partnership, the owner of the sole proprietorship, the 893
individual incorporated as a corporation, or the officers of the 894
family farm corporation. Nothing in this section shall prohibit 895
a partner, sole proprietor, or any person excluded from the 896
definition of "employee" pursuant to division (A) (2) (a), (b), 897
(c), or (e) of this section from electing to be included as an 898
"employee" under this chapter in accordance with rules adopted 899
by the administrator, with the advice and consent of the board. 900

In the event of an election, the employer or person 901
electing coverage shall serve upon the bureau of workers' 902
compensation written notice naming the person to be covered and 903
include the person's remuneration for premium purposes in all 904
future payroll reports. No partner, sole proprietor, or person 905
excluded from the definition of "employee" pursuant to division 906
(A) (2) (a), (b), (c), or (e) of this section, shall receive 907
benefits or compensation under this chapter until the bureau 908
receives written notice of the election permitted by this 909
section. 910

For informational purposes only, the bureau shall 911
prescribe such language as it considers appropriate, on such of 912
its forms as it considers appropriate, to advise employers of 913
their right to elect to include as an "employee" within this 914
chapter a sole proprietor, any member of a partnership, or a 915
person excluded from the definition of "employee" under division 916
(A) (2) (a), (b), (c), or (e) of this section, that they should 917
check any health and disability insurance policy, or other form 918
of health and disability plan or contract, presently covering 919
them, or the purchase of which they may be considering, to 920
determine whether such policy, plan, or contract excludes 921

benefits for illness or injury that they might have elected to 922
have covered by workers' compensation. 923

(B) (1) "Employer" means: 924

~~(1)~~ (a) The state, including state hospitals, each county, 925
municipal corporation, township, school district, and hospital 926
owned by a political subdivision or subdivisions other than the 927
state; 928

~~(2)~~ (b) Every person, firm, professional employer 929
organization, and private corporation, including any public 930
service corporation, that ~~(a)~~ (i) has in service one or more 931
employees or shared employees regularly in the same business or 932
in or about the same establishment under any contract of hire, 933
express or implied, oral or written, or ~~(b)~~ (ii) is bound by any 934
such contract of hire or by any other written contract, to pay 935
into the insurance fund the premiums provided by this chapter. 936

All such employers are subject to this chapter. Any member 937
of a firm or association, who regularly performs manual labor in 938
or about a mine, factory, or other establishment, including a 939
household establishment, shall be considered an employee in 940
determining whether such person, firm, or private corporation, 941
or public service corporation, has in its service, one or more 942
employees and the employer shall report the income derived from 943
such labor to the bureau as part of the payroll of such 944
employer, and such member shall thereupon be entitled to all the 945
benefits of an employee. 946

(2) "Employer" does not include a franchisor with respect 947
to the franchisor's relationship with a franchisee or an 948
employee of a franchisee, unless the franchisor agrees to assume 949
that role in writing or a court of competent jurisdiction 950

determines that the franchisor exercises a type or degree of 951
control over the franchisee or the franchisee's employees that 952
is not customarily exercised by a franchisor for the purpose of 953
protecting the franchisor's trademark, brand, or both. For 954
purposes of this division, "franchisor" and "franchisee" have 955
the same meanings as in 16 C.F.R. 436.1. 956

(C) "Injury" includes any injury, whether caused by 957
external accidental means or accidental in character and result, 958
received in the course of, and arising out of, the injured 959
employee's employment. "Injury" does not include: 960

(1) Psychiatric conditions except where the claimant's 961
psychiatric conditions have arisen from an injury or 962
occupational disease sustained by that claimant or where the 963
claimant's psychiatric conditions have arisen from sexual 964
conduct in which the claimant was forced by threat of physical 965
harm to engage or participate; 966

(2) Injury or disability caused primarily by the natural 967
deterioration of tissue, an organ, or part of the body; 968

(3) Injury or disability incurred in voluntary 969
participation in an employer-sponsored recreation or fitness 970
activity if the employee signs a waiver of the employee's right 971
to compensation or benefits under this chapter prior to engaging 972
in the recreation or fitness activity; 973

(4) A condition that pre-existed an injury unless that 974
pre-existing condition is substantially aggravated by the 975
injury. Such a substantial aggravation must be documented by 976
objective diagnostic findings, objective clinical findings, or 977
objective test results. Subjective complaints may be evidence of 978
such a substantial aggravation. However, subjective complaints 979

without objective diagnostic findings, objective clinical 980
findings, or objective test results are insufficient to 981
substantiate a substantial aggravation. 982

(D) "Child" includes a posthumous child and a child 983
legally adopted prior to the injury. 984

(E) "Family farm corporation" means a corporation founded 985
for the purpose of farming agricultural land in which the 986
majority of the voting stock is held by and the majority of the 987
stockholders are persons or the spouse of persons related to 988
each other within the fourth degree of kinship, according to the 989
rules of the civil law, and at least one of the related persons 990
is residing on or actively operating the farm, and none of whose 991
stockholders are a corporation. A family farm corporation does 992
not cease to qualify under this division where, by reason of any 993
devise, bequest, or the operation of the laws of descent or 994
distribution, the ownership of shares of voting stock is 995
transferred to another person, as long as that person is within 996
the degree of kinship stipulated in this division. 997

(F) "Occupational disease" means a disease contracted in 998
the course of employment, which by its causes and the 999
characteristics of its manifestation or the condition of the 1000
employment results in a hazard which distinguishes the 1001
employment in character from employment generally, and the 1002
employment creates a risk of contracting the disease in greater 1003
degree and in a different manner from the public in general. 1004

(G) "Self-insuring employer" means an employer who is 1005
granted the privilege of paying compensation and benefits 1006
directly under section 4123.35 of the Revised Code, including a 1007
board of county commissioners for the sole purpose of 1008
constructing a sports facility as defined in section 307.696 of 1009

the Revised Code, provided that the electors of the county in 1010
which the sports facility is to be built have approved 1011
construction of a sports facility by ballot election no later 1012
than November 6, 1997. 1013

(H) "Private employer" means an employer as defined in 1014
division (B) ~~(2)~~ (1) (b) of this section. 1015

(I) "Professional employer organization" has the same 1016
meaning as in section 4125.01 of the Revised Code. 1017

(J) "Public employer" means an employer as defined in 1018
division (B) (1) (a) of this section. 1019

(K) "Sexual conduct" means vaginal intercourse between a 1020
male and female; anal intercourse, fellatio, and cunnilingus 1021
between persons regardless of gender; and, without privilege to 1022
do so, the insertion, however slight, of any part of the body or 1023
any instrument, apparatus, or other object into the vaginal or 1024
anal cavity of another. Penetration, however slight, is 1025
sufficient to complete vaginal or anal intercourse. 1026

(L) "Other-states' insurer" means an insurance company 1027
that is authorized to provide workers' compensation insurance 1028
coverage in any of the states that permit employers to obtain 1029
insurance for workers' compensation claims through insurance 1030
companies. 1031

(M) "Other-states' coverage" means both of the following: 1032

(1) Insurance coverage secured by an eligible employer for 1033
workers' compensation claims of employees who are in employment 1034
relationships localized in a state other than this state or 1035
those employees' dependents; 1036

(2) Insurance coverage secured by an eligible employer for 1037

workers' compensation claims that arise in a state other than 1038
this state where an employer elects to obtain coverage through 1039
either the administrator or an other-states' insurer. 1040

(N) "Limited other-states coverage" means insurance 1041
coverage provided by the administrator to an eligible employer 1042
for workers' compensation claims of employees who are in an 1043
employment relationship localized in this state but are 1044
temporarily working in a state other than this state, or those 1045
employees' dependents. 1046

Sec. 4123.30. Money contributed by ~~the public~~ employers 1047
~~mentioned in division (B) (1) of section 4123.01 of the Revised~~ 1048
~~Code~~ constitutes the "public fund" and the money contributed by 1049
~~private employers mentioned in division (B) (2) of such section~~ 1050
constitutes the "private fund." Each such fund shall be 1051
collected, distributed, and its solvency maintained without 1052
regard to or reliance upon the other. Whenever in this chapter 1053
reference is made to the state insurance fund, the reference is 1054
to such two separate funds but such two separate funds and the 1055
net premiums contributed thereto by employers after adjustments 1056
and dividends, except for the amount thereof which is set aside 1057
for the investigation and prevention of industrial accidents and 1058
diseases pursuant to Section 35 of Article II, Ohio 1059
Constitution, any amounts set aside for actuarial services 1060
authorized or required by sections 4123.44 and 4123.47 of the 1061
Revised Code, and any amounts set aside to reinsure the 1062
liability of the respective insurance funds for the following 1063
payments, constitute a trust fund for the benefit of employers 1064
and employees mentioned in sections 4123.01, 4123.03, and 1065
4123.73 of the Revised Code for the payment of compensation, 1066
medical services, examinations, recommendations and 1067
determinations, nursing and hospital services, medicine, 1068

rehabilitation, death benefits, funeral expenses, and like 1069
benefits for loss sustained on account of injury, disease, or 1070
death provided for by this chapter, and for no other purpose. 1071
This section does not prevent the deposit or investment of all 1072
such moneys intermingled for such purpose but such funds shall 1073
be separate and distinct for all other purposes, and the rights 1074
and duties created in this chapter shall be construed to have 1075
been made with respect to two separate funds and so as to 1076
maintain and continue such funds separately except for deposit 1077
or investment. Disbursements shall not be made on account of 1078
injury, disease, or death of employees of employers who 1079
contribute to one of such funds unless the moneys to the credit 1080
of such fund are sufficient therefor and no such disbursements 1081
shall be made for moneys or credits paid or credited to the 1082
other fund. 1083

Sec. 4123.38. Every public employer ~~mentioned in division~~ 1084
~~(B) (1) of section 4123.01 of the Revised Code,~~ except for boards 1085
of county hospital trustees that are self-insurers under section 1086
4123.35 of the Revised Code, shall contribute to the public 1087
insurance fund the amount of money determined by the 1088
administrator of workers' compensation, and the manner of 1089
determining contributions and the classifications of employers 1090
is as provided in sections 4123.39 to 4123.41 and 4123.48 of the 1091
Revised Code. 1092

Sec. 4123.77. ~~Employers mentioned in division (B) (2) of~~ 1093
~~section 4123.01 of the Revised Code,~~ Private employers who fail 1094
to comply with section 4123.35 of the Revised Code are not 1095
entitled to the benefits of sections 4123.01 to 4123.94, 1096
inclusive, of the Revised Code, during the period of such 1097
noncompliance, but are liable to their employees for damages 1098
suffered by reason of personal injuries sustained in the course 1099

of employment caused by the wrongful act, neglect, or default of 1100
the employer, or any of the employer's officers, agents, or 1101
employees, and also to the personal representatives of such 1102
employees where death results from such injuries, and in such 1103
action the defendant shall not avail ~~himself or itself~~ self of 1104
the following common law defenses: 1105

(A) The defense of the fellow servant rule; 1106

(B) The defense of the assumption of risk; 1107

(C) The defense of contributory negligence. 1108

Such employers are subject to sections 4123.37 and 4123.75 1109
of the Revised Code. 1110

Sec. 4141.01. As used in this chapter, unless the context 1111
otherwise requires: 1112

(A) (1) "Employer" means the state, its instrumentalities, 1113
its political subdivisions and their instrumentalities, Indian 1114
tribes, and any individual or type of organization including any 1115
partnership, limited liability company, association, trust, 1116
estate, joint-stock company, insurance company, or corporation, 1117
whether domestic or foreign, or the receiver, trustee in 1118
bankruptcy, trustee, or the successor thereof, or the legal 1119
representative of a deceased person who subsequent to December 1120
31, 1971, or in the case of political subdivisions or their 1121
instrumentalities, subsequent to December 31, 1973: 1122

(a) Had in employment at least one individual, or in the 1123
case of a nonprofit organization, subsequent to December 31, 1124
1973, had not less than four individuals in employment for some 1125
portion of a day in each of twenty different calendar weeks, in 1126
either the current or the preceding calendar year whether or not 1127
the same individual was in employment in each such day; or 1128

(b) Except for a nonprofit organization, had paid for 1129
service in employment wages of fifteen hundred dollars or more 1130
in any calendar quarter in either the current or preceding 1131
calendar year; or 1132

(c) Had paid, subsequent to December 31, 1977, for 1133
employment in domestic service in a local college club, or local 1134
chapter of a college fraternity or sorority, cash remuneration 1135
of one thousand dollars or more in any calendar quarter in the 1136
current calendar year or the preceding calendar year, or had 1137
paid subsequent to December 31, 1977, for employment in domestic 1138
service in a private home cash remuneration of one thousand 1139
dollars in any calendar quarter in the current calendar year or 1140
the preceding calendar year: 1141

(i) For the purposes of divisions (A) (1) (a) and (b) of 1142
this section, there shall not be taken into account any wages 1143
paid to, or employment of, an individual performing domestic 1144
service as described in this division. 1145

(ii) An employer under this division shall not be an 1146
employer with respect to wages paid for any services other than 1147
domestic service unless the employer is also found to be an 1148
employer under division (A) (1) (a), (b), or (d) of this section. 1149

(d) As a farm operator or a crew leader subsequent to 1150
December 31, 1977, had in employment individuals in agricultural 1151
labor; and 1152

(i) During any calendar quarter in the current calendar 1153
year or the preceding calendar year, paid cash remuneration of 1154
twenty thousand dollars or more for the agricultural labor; or 1155

(ii) Had at least ten individuals in employment in 1156
agricultural labor, not including agricultural workers who are 1157

aliens admitted to the United States to perform agricultural 1158
labor pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1159
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1160
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in 1161
each of the twenty different calendar weeks, in either the 1162
current or preceding calendar year whether or not the same 1163
individual was in employment in each day; or 1164

(e) Is not otherwise an employer as defined under division 1165
(A)(1)(a) or (b) of this section; and 1166

(i) For which, within either the current or preceding 1167
calendar year, service, except for domestic service in a private 1168
home not covered under division (A)(1)(c) of this section, is or 1169
was performed with respect to which such employer is liable for 1170
any federal tax against which credit may be taken for 1171
contributions required to be paid into a state unemployment 1172
fund; 1173

(ii) Which, as a condition for approval of this chapter 1174
for full tax credit against the tax imposed by the "Federal 1175
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 1176
is required, pursuant to such act to be an employer under this 1177
chapter; or 1178

(iii) Who became an employer by election under division 1179
(A)(4) or (5) of this section and for the duration of such 1180
election; or 1181

(f) In the case of the state, its instrumentalities, its 1182
political subdivisions, and their instrumentalities, and Indian 1183
tribes, had in employment, as defined in divisions (B)(2)(a) and 1184
(B)(2)(1) of this section, at least one individual; 1185

(g) For the purposes of division (A)(1)(a) of this 1186

section, if any week includes both the thirty-first day of 1187
December and the first day of January, the days of that week 1188
before the first day of January shall be considered one calendar 1189
week and the days beginning the first day of January another 1190
week. 1191

(2) Each individual employed to perform or to assist in 1192
performing the work of any agent or employee of an employer is 1193
employed by such employer for all the purposes of this chapter, 1194
whether such individual was hired or paid directly by such 1195
employer or by such agent or employee, provided the employer had 1196
actual or constructive knowledge of the work. All individuals 1197
performing services for an employer of any person in this state 1198
who maintains two or more establishments within this state are 1199
employed by a single employer for the purposes of this chapter. 1200

(3) An employer subject to this chapter within any 1201
calendar year is subject to this chapter during the whole of 1202
such year and during the next succeeding calendar year. 1203

(4) An employer not otherwise subject to this chapter who 1204
files with the director of job and family services a written 1205
election to become an employer subject to this chapter for not 1206
less than two calendar years shall, with the written approval of 1207
such election by the director, become an employer subject to 1208
this chapter to the same extent as all other employers as of the 1209
date stated in such approval, and shall cease to be subject to 1210
this chapter as of the first day of January of any calendar year 1211
subsequent to such two calendar years only if at least thirty 1212
days prior to such first day of January the employer has filed 1213
with the director a written notice to that effect. 1214

(5) Any employer for whom services that do not constitute 1215
employment are performed may file with the director a written 1216

election that all such services performed by individuals in the 1217
employer's employ in one or more distinct establishments or 1218
places of business shall be deemed to constitute employment for 1219
all the purposes of this chapter, for not less than two calendar 1220
years. Upon written approval of the election by the director, 1221
such services shall be deemed to constitute employment subject 1222
to this chapter from and after the date stated in such approval. 1223
Such services shall cease to be employment subject to this 1224
chapter as of the first day of January of any calendar year 1225
subsequent to such two calendar years only if at least thirty 1226
days prior to such first day of January such employer has filed 1227
with the director a written notice to that effect. 1228

(6) "Employer" does not include a franchisor with respect 1229
to the franchisor's relationship with a franchisee or an 1230
employee of a franchisee, unless the franchisor agrees to assume 1231
that role in writing or a court of competent jurisdiction 1232
determines that the franchisor exercises a type or degree of 1233
control over the franchisee or the franchisee's employees that 1234
is not customarily exercised by a franchisor for the purpose of 1235
protecting the franchisor's trademark, brand, or both. For 1236
purposes of this division, "franchisor" and "franchisee" have 1237
the same meanings as in 16 C.F.R. 436.1. 1238

(B) (1) "Employment" means service performed by an 1239
individual for remuneration under any contract of hire, written 1240
or oral, express or implied, including service performed in 1241
interstate commerce and service performed by an officer of a 1242
corporation, without regard to whether such service is 1243
executive, managerial, or manual in nature, and without regard 1244
to whether such officer is a stockholder or a member of the 1245
board of directors of the corporation, unless it is shown to the 1246
satisfaction of the director that such individual has been and 1247

will continue to be free from direction or control over the 1248
performance of such service, both under a contract of service 1249
and in fact. The director shall adopt rules to define "direction 1250
or control." 1251

(2) "Employment" includes: 1252

(a) Service performed after December 31, 1977, by an 1253
individual in the employ of the state or any of its 1254
instrumentalities, or any political subdivision thereof or any 1255
of its instrumentalities or any instrumentality of more than one 1256
of the foregoing or any instrumentality of any of the foregoing 1257
and one or more other states or political subdivisions and 1258
without regard to divisions (A) (1) (a) and (b) of this section, 1259
provided that such service is excluded from employment as 1260
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1261
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 1262
(3) of this section; or the services of employees covered by 1263
voluntary election, as provided under divisions (A) (4) and (5) 1264
of this section; 1265

(b) Service performed after December 31, 1971, by an 1266
individual in the employ of a religious, charitable, 1267
educational, or other organization which is excluded from the 1268
term "employment" as defined in the "Federal Unemployment Tax 1269
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1270
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 1271
excluded under division (B) (3) of this section; 1272

(c) Domestic service performed after December 31, 1977, 1273
for an employer, as provided in division (A) (1) (c) of this 1274
section; 1275

(d) Agricultural labor performed after December 31, 1977, 1276

for a farm operator or a crew leader, as provided in division	1277
(A) (1) (d) of this section;	1278
(e) Service not covered under division (B) (1) of this	1279
section which is performed after December 31, 1971:	1280
(i) As an agent-driver or commission-driver engaged in	1281
distributing meat products, vegetable products, fruit products,	1282
bakery products, beverages other than milk, laundry, or dry-	1283
cleaning services, for the individual's employer or principal;	1284
(ii) As a traveling or city salesperson, other than as an	1285
agent-driver or commission-driver, engaged on a full-time basis	1286
in the solicitation on behalf of and in the transmission to the	1287
salesperson's employer or principal except for sideline sales	1288
activities on behalf of some other person of orders from	1289
wholesalers, retailers, contractors, or operators of hotels,	1290
restaurants, or other similar establishments for merchandise for	1291
resale, or supplies for use in their business operations,	1292
provided that for the purposes of division (B) (2) (e) (ii) of this	1293
section, the services shall be deemed employment if the contract	1294
of service contemplates that substantially all of the services	1295
are to be performed personally by the individual and that the	1296
individual does not have a substantial investment in facilities	1297
used in connection with the performance of the services other	1298
than in facilities for transportation, and the services are not	1299
in the nature of a single transaction that is not a part of a	1300
continuing relationship with the person for whom the services	1301
are performed.	1302
(f) An individual's entire service performed within or	1303
both within and without the state if:	1304
(i) The service is localized in this state.	1305

(ii) The service is not localized in any state, but some 1306
of the service is performed in this state and either the base of 1307
operations, or if there is no base of operations then the place 1308
from which such service is directed or controlled, is in this 1309
state or the base of operations or place from which such service 1310
is directed or controlled is not in any state in which some part 1311
of the service is performed but the individual's residence is in 1312
this state. 1313

(g) Service not covered under division (B) (2) (f) (ii) of 1314
this section and performed entirely without this state, with 1315
respect to no part of which contributions are required and paid 1316
under an unemployment compensation law of any other state, the 1317
Virgin Islands, Canada, or of the United States, if the 1318
individual performing such service is a resident of this state 1319
and the director approves the election of the employer for whom 1320
such services are performed; or, if the individual is not a 1321
resident of this state but the place from which the service is 1322
directed or controlled is in this state, the entire services of 1323
such individual shall be deemed to be employment subject to this 1324
chapter, provided service is deemed to be localized within this 1325
state if the service is performed entirely within this state or 1326
if the service is performed both within and without this state 1327
but the service performed without this state is incidental to 1328
the individual's service within the state, for example, is 1329
temporary or transitory in nature or consists of isolated 1330
transactions; 1331

(h) Service of an individual who is a citizen of the 1332
United States, performed outside the United States except in 1333
Canada after December 31, 1971, or the Virgin Islands, after 1334
December 31, 1971, and before the first day of January of the 1335
year following that in which the United States secretary of 1336

labor approves the Virgin Islands law for the first time, in the 1337
employ of an American employer, other than service which is 1338
"employment" under divisions (B) (2) (f) and (g) of this section 1339
or similar provisions of another state's law, if: 1340

(i) The employer's principal place of business in the 1341
United States is located in this state; 1342

(ii) The employer has no place of business in the United 1343
States, but the employer is an individual who is a resident of 1344
this state; or the employer is a corporation which is organized 1345
under the laws of this state, or the employer is a partnership 1346
or a trust and the number of partners or trustees who are 1347
residents of this state is greater than the number who are 1348
residents of any other state; or 1349

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1350
(ii) of this section is met but the employer has elected 1351
coverage in this state or the employer having failed to elect 1352
coverage in any state, the individual has filed a claim for 1353
benefits, based on such service, under this chapter. 1354

(i) For the purposes of division (B) (2) (h) of this 1355
section, the term "American employer" means an employer who is 1356
an individual who is a resident of the United States; or a 1357
partnership, if two-thirds or more of the partners are residents 1358
of the United States; or a trust, if all of the trustees are 1359
residents of the United States; or a corporation organized under 1360
the laws of the United States or of any state, provided the term 1361
"United States" includes the states, the District of Columbia, 1362
the Commonwealth of Puerto Rico, and the Virgin Islands. 1363

(j) Notwithstanding any other provisions of divisions (B) 1364
(1) and (2) of this section, service, except for domestic 1365

service in a private home not covered under division (A) (1) (c) 1366
of this section, with respect to which a tax is required to be 1367
paid under any federal law imposing a tax against which credit 1368
may be taken for contributions required to be paid into a state 1369
unemployment fund, or service, except for domestic service in a 1370
private home not covered under division (A) (1) (c) of this 1371
section, which, as a condition for full tax credit against the 1372
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1373
26 U.S.C.A. 3301 to 3311, is required to be covered under this 1374
chapter. 1375

(k) Construction services performed by any individual 1376
under a construction contract, as defined in section 4141.39 of 1377
the Revised Code, if the director determines that the employer 1378
for whom services are performed has the right to direct or 1379
control the performance of the services and that the individuals 1380
who perform the services receive remuneration for the services 1381
performed. The director shall presume that the employer for whom 1382
services are performed has the right to direct or control the 1383
performance of the services if ten or more of the following 1384
criteria apply: 1385

(i) The employer directs or controls the manner or method 1386
by which instructions are given to the individual performing 1387
services; 1388

(ii) The employer requires particular training for the 1389
individual performing services; 1390

(iii) Services performed by the individual are integrated 1391
into the regular functioning of the employer; 1392

(iv) The employer requires that services be provided by a 1393
particular individual; 1394

(v) The employer hires, supervises, or pays the wages of the individual performing services;	1395 1396
(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full-time work;	1397 1398 1399
(vii) The employer requires the individual to perform services during established hours;	1400 1401
(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;	1402 1403 1404
(ix) The employer requires the individual to perform services on the employer's premises;	1405 1406
(x) The employer requires the individual performing services to follow the order of work established by the employer;	1407 1408 1409
(xi) The employer requires the individual performing services to make oral or written reports of progress;	1410 1411
(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;	1412 1413
(xiii) The employer pays expenses for the individual performing services;	1414 1415
(xiv) The employer furnishes the tools and materials for use by the individual to perform services;	1416 1417
(xv) The individual performing services has not invested in the facilities used to perform services;	1418 1419
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the	1420 1421

services;	1422
(xvii) The individual performing services is not	1423
performing services for more than two employers simultaneously;	1424
(xviii) The individual performing services does not make	1425
the services available to the general public;	1426
(xix) The employer has a right to discharge the individual	1427
performing services;	1428
(xx) The individual performing services has the right to	1429
end the individual's relationship with the employer without	1430
incurring liability pursuant to an employment contract or	1431
agreement.	1432
(1) Service performed by an individual in the employ of an	1433
Indian tribe as defined by section 4(e) of the "Indian Self-	1434
Determination and Education Assistance Act," 88 Stat. 2204	1435
(1975), 25 U.S.C.A. 450b(e), including any subdivision,	1436
subsidiary, or business enterprise wholly owned by an Indian	1437
tribe provided that the service is excluded from employment as	1438
defined in the "Federal Unemployment Tax Act," 53 Stat. 183	1439
(1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded	1440
under division (B)(3) of this section.	1441
(3) "Employment" does not include the following services	1442
if they are found not subject to the "Federal Unemployment Tax	1443
Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the	1444
services are not required to be included under division (B)(2)	1445
(j) of this section:	1446
(a) Service performed after December 31, 1977, in	1447
agricultural labor, except as provided in division (A)(1)(d) of	1448
this section;	1449

(b) Domestic service performed after December 31, 1977, in	1450
a private home, local college club, or local chapter of a	1451
college fraternity or sorority except as provided in division	1452
(A) (1) (c) of this section;	1453
(c) Service performed after December 31, 1977, for this	1454
state or a political subdivision as described in division (B) (2)	1455
(a) of this section when performed:	1456
(i) As a publicly elected official;	1457
(ii) As a member of a legislative body, or a member of the	1458
judiciary;	1459
(iii) As a military member of the Ohio national guard;	1460
(iv) As an employee, not in the classified service as	1461
defined in section 124.11 of the Revised Code, serving on a	1462
temporary basis in case of fire, storm, snow, earthquake, flood,	1463
or similar emergency;	1464
(v) In a position which, under or pursuant to law, is	1465
designated as a major nontenured policymaking or advisory	1466
position, not in the classified service of the state, or a	1467
policymaking or advisory position the performance of the duties	1468
of which ordinarily does not require more than eight hours per	1469
week.	1470
(d) In the employ of any governmental unit or	1471
instrumentality of the United States;	1472
(e) Service performed after December 31, 1971:	1473
(i) Service in the employ of an educational institution or	1474
institution of higher education, including those operated by the	1475
state or a political subdivision, if such service is performed	1476
by a student who is enrolled and is regularly attending classes	1477

at the educational institution or institution of higher 1478
education; or 1479

(ii) By an individual who is enrolled at a nonprofit or 1480
public educational institution which normally maintains a 1481
regular faculty and curriculum and normally has a regularly 1482
organized body of students in attendance at the place where its 1483
educational activities are carried on as a student in a full- 1484
time program, taken for credit at the institution, which 1485
combines academic instruction with work experience, if the 1486
service is an integral part of the program, and the institution 1487
has so certified to the employer, provided that this subdivision 1488
shall not apply to service performed in a program established 1489
for or on behalf of an employer or group of employers. 1490

(f) Service performed by an individual in the employ of 1491
the individual's son, daughter, or spouse and service performed 1492
by a child under the age of eighteen in the employ of the 1493
child's father or mother; 1494

(g) Service performed for one or more principals by an 1495
individual who is compensated on a commission basis, who in the 1496
performance of the work is master of the individual's own time 1497
and efforts, and whose remuneration is wholly dependent on the 1498
amount of effort the individual chooses to expend, and which 1499
service is not subject to the "Federal Unemployment Tax Act," 53 1500
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1501
after December 31, 1971: 1502

(i) By an individual for an employer as an insurance agent 1503
or as an insurance solicitor, if all this service is performed 1504
for remuneration solely by way of commission; 1505

(ii) As a home worker performing work, according to 1506

specifications furnished by the employer for whom the services 1507
are performed, on materials or goods furnished by such employer 1508
which are required to be returned to the employer or to a person 1509
designated for that purpose. 1510

(h) Service performed after December 31, 1971: 1511

(i) In the employ of a church or convention or association 1512
of churches, or in an organization which is operated primarily 1513
for religious purposes and which is operated, supervised, 1514
controlled, or principally supported by a church or convention 1515
or association of churches; 1516

(ii) By a duly ordained, commissioned, or licensed 1517
minister of a church in the exercise of the individual's 1518
ministry or by a member of a religious order in the exercise of 1519
duties required by such order; or 1520

(iii) In a facility conducted for the purpose of carrying 1521
out a program of rehabilitation for individuals whose earning 1522
capacity is impaired by age or physical or mental deficiency or 1523
injury, or providing remunerative work for individuals who 1524
because of their impaired physical or mental capacity cannot be 1525
readily absorbed in the competitive labor market, by an 1526
individual receiving such rehabilitation or remunerative work. 1527

(i) Service performed after June 30, 1939, with respect to 1528
which unemployment compensation is payable under the "Railroad 1529
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1530
351; 1531

(j) Service performed by an individual in the employ of 1532
any organization exempt from income tax under section 501 of the 1533
"Internal Revenue Code of 1954," if the remuneration for such 1534
service does not exceed fifty dollars in any calendar quarter, 1535

or if such service is in connection with the collection of dues 1536
or premiums for a fraternal beneficial society, order, or 1537
association and is performed away from the home office or is 1538
ritualistic service in connection with any such society, order, 1539
or association; 1540

(k) Casual labor not in the course of an employer's trade 1541
or business; incidental service performed by an officer, 1542
appraiser, or member of a finance committee of a bank, building 1543
and loan association, savings and loan association, or savings 1544
association when the remuneration for such incidental service 1545
exclusive of the amount paid or allotted for directors' fees 1546
does not exceed sixty dollars per calendar quarter is casual 1547
labor; 1548

(l) Service performed in the employ of a voluntary 1549
employees' beneficial association providing for the payment of 1550
life, sickness, accident, or other benefits to the members of 1551
such association or their dependents or their designated 1552
beneficiaries, if admission to a membership in such association 1553
is limited to individuals who are officers or employees of a 1554
municipal or public corporation, of a political subdivision of 1555
the state, or of the United States and no part of the net 1556
earnings of such association inures, other than through such 1557
payments, to the benefit of any private shareholder or 1558
individual; 1559

(m) Service performed by an individual in the employ of a 1560
foreign government, including service as a consular or other 1561
officer or employee or of a nondiplomatic representative; 1562

(n) Service performed in the employ of an instrumentality 1563
wholly owned by a foreign government if the service is of a 1564
character similar to that performed in foreign countries by 1565

employees of the United States or of an instrumentality thereof 1566
and if the director finds that the secretary of state of the 1567
United States has certified to the secretary of the treasury of 1568
the United States that the foreign government, with respect to 1569
whose instrumentality exemption is claimed, grants an equivalent 1570
exemption with respect to similar service performed in the 1571
foreign country by employees of the United States and of 1572
instrumentalities thereof; 1573

(o) Service with respect to which unemployment 1574
compensation is payable under an unemployment compensation 1575
system established by an act of congress; 1576

(p) Service performed as a student nurse in the employ of 1577
a hospital or a nurses' training school by an individual who is 1578
enrolled and is regularly attending classes in a nurses' 1579
training school chartered or approved pursuant to state law, and 1580
service performed as an intern in the employ of a hospital by an 1581
individual who has completed a four years' course in a medical 1582
school chartered or approved pursuant to state law; 1583

(q) Service performed by an individual under the age of 1584
eighteen in the delivery or distribution of newspapers or 1585
shopping news, not including delivery or distribution to any 1586
point for subsequent delivery or distribution; 1587

(r) Service performed in the employ of the United States 1588
or an instrumentality of the United States immune under the 1589
Constitution of the United States from the contributions imposed 1590
by this chapter, except that to the extent that congress permits 1591
states to require any instrumentalities of the United States to 1592
make payments into an unemployment fund under a state 1593
unemployment compensation act, this chapter shall be applicable 1594
to such instrumentalities and to services performed for such 1595

instrumentalities in the same manner, to the same extent, and on 1596
the same terms as to all other employers, individuals, and 1597
services, provided that if this state is not certified for any 1598
year by the proper agency of the United States under section 1599
3304 of the "Internal Revenue Code of 1954," the payments 1600
required of such instrumentalities with respect to such year 1601
shall be refunded by the director from the fund in the same 1602
manner and within the same period as is provided in division (E) 1603
of section 4141.09 of the Revised Code with respect to 1604
contributions erroneously collected; 1605

(s) Service performed by an individual as a member of a 1606
band or orchestra, provided such service does not represent the 1607
principal occupation of such individual, and which service is 1608
not subject to or required to be covered for full tax credit 1609
against the tax imposed by the "Federal Unemployment Tax Act," 1610
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1611

(t) Service performed in the employ of a day camp whose 1612
camping season does not exceed twelve weeks in any calendar 1613
year, and which service is not subject to the "Federal 1614
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1615
3311. Service performed after December 31, 1971: 1616

(i) In the employ of a hospital, if the service is 1617
performed by a patient of the hospital, as defined in division 1618
(W) of this section; 1619

(ii) For a prison or other correctional institution by an 1620
inmate of the prison or correctional institution; 1621

(iii) Service performed after December 31, 1977, by an 1622
inmate of a custodial institution operated by the state, a 1623
political subdivision, or a nonprofit organization. 1624

(u) Service that is performed by a nonresident alien 1625
individual for the period the individual temporarily is present 1626
in the United States as a nonimmigrant under division (F), (J), 1627
(M), or (Q) of section 101(a)(15) of the "Immigration and 1628
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1629
that is excluded under section 3306(c)(19) of the "Federal 1630
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1631
3311. 1632

(v) Notwithstanding any other provisions of division (B) 1633
(3) of this section, services that are excluded under divisions 1634
(B)(3)(g), (j), (k), and (l) of this section shall not be 1635
excluded from employment when performed for a nonprofit 1636
organization, as defined in division (X) of this section, or for 1637
this state or its instrumentalities, or for a political 1638
subdivision or its instrumentalities or for Indian tribes; 1639

(w) Service that is performed by an individual working as 1640
an election official or election worker if the amount of 1641
remuneration received by the individual during the calendar year 1642
for services as an election official or election worker is less 1643
than one thousand dollars; 1644

(x) Service performed for an elementary or secondary 1645
school that is operated primarily for religious purposes, that 1646
is described in subsection 501(c)(3) and exempt from federal 1647
income taxation under subsection 501(a) of the Internal Revenue 1648
Code, 26 U.S.C.A. 501; 1649

(y) Service performed by a person committed to a penal 1650
institution. 1651

(z) Service performed for an Indian tribe as described in 1652
division (B)(2)(1) of this section when performed in any of the 1653

following manners: 1654

(i) As a publicly elected official; 1655

(ii) As a member of an Indian tribal council; 1656

(iii) As a member of a legislative or judiciary body; 1657

(iv) In a position which, pursuant to Indian tribal law, 1658
is designated as a major nontenured policymaking or advisory 1659
position, or a policymaking or advisory position where the 1660
performance of the duties ordinarily does not require more than 1661
eight hours of time per week; 1662

(v) As an employee serving on a temporary basis in the 1663
case of a fire, storm, snow, earthquake, flood, or similar 1664
emergency. 1665

(aa) Service performed after December 31, 1971, for a 1666
nonprofit organization, this state or its instrumentalities, a 1667
political subdivision or its instrumentalities, or an Indian 1668
tribe as part of an unemployment work-relief or work-training 1669
program assisted or financed in whole or in part by any federal 1670
agency or an agency of a state or political subdivision, 1671
thereof, by an individual receiving the work-relief or work- 1672
training. 1673

(bb) Participation in a learn to earn program as defined 1674
in section 4141.293 of the Revised Code. 1675

(4) If the services performed during one half or more of 1676
any pay period by an employee for the person employing that 1677
employee constitute employment, all the services of such 1678
employee for such period shall be deemed to be employment; but 1679
if the services performed during more than one half of any such 1680
pay period by an employee for the person employing that employee 1681

do not constitute employment, then none of the services of such 1682
employee for such period shall be deemed to be employment. As 1683
used in division (B) (4) of this section, "pay period" means a 1684
period, of not more than thirty-one consecutive days, for which 1685
payment of remuneration is ordinarily made to the employee by 1686
the person employing that employee. Division (B) (4) of this 1687
section does not apply to services performed in a pay period by 1688
an employee for the person employing that employee, if any of 1689
such service is excepted by division (B) (3) (o) of this section. 1690

(C) "Benefits" means money payments payable to an 1691
individual who has established benefit rights, as provided in 1692
this chapter, for loss of remuneration due to the individual's 1693
unemployment. 1694

(D) "Benefit rights" means the weekly benefit amount and 1695
the maximum benefit amount that may become payable to an 1696
individual within the individual's benefit year as determined by 1697
the director. 1698

(E) "Claim for benefits" means a claim for waiting period 1699
or benefits for a designated week. 1700

(F) "Additional claim" means the first claim for benefits 1701
filed following any separation from employment during a benefit 1702
year; "continued claim" means any claim other than the first 1703
claim for benefits and other than an additional claim. 1704

(G) "Wages" means remuneration paid to an employee by each 1705
of the employee's employers with respect to employment; except 1706
that wages shall not include that part of remuneration paid 1707
during any calendar year to an individual by an employer or such 1708
employer's predecessor in interest in the same business or 1709
enterprise, which in any calendar year is in excess of nine 1710

thousand dollars on and after January 1, 1995; nine thousand 1711
five hundred dollars on and after January 1, 2018; and nine 1712
thousand dollars on and after January 1, 2020. Remuneration in 1713
excess of such amounts shall be deemed wages subject to 1714
contribution to the same extent that such remuneration is 1715
defined as wages under the "Federal Unemployment Tax Act," 84 1716
Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 1717
remuneration paid an employee by an employer with respect to 1718
employment in another state, upon which contributions were 1719
required and paid by such employer under the unemployment 1720
compensation act of such other state, shall be included as a 1721
part of remuneration in computing the amount specified in this 1722
division. 1723

(H) (1) "Remuneration" means all compensation for personal 1724
services, including commissions and bonuses and the cash value 1725
of all compensation in any medium other than cash, except that 1726
in the case of agricultural or domestic service, "remuneration" 1727
includes only cash remuneration. Gratuities customarily received 1728
by an individual in the course of the individual's employment 1729
from persons other than the individual's employer and which are 1730
accounted for by such individual to the individual's employer 1731
are taxable wages. 1732

The reasonable cash value of compensation paid in any 1733
medium other than cash shall be estimated and determined in 1734
accordance with rules prescribed by the director, provided that 1735
"remuneration" does not include: 1736

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1737
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1738
713, 26 U.S.C.A. 3301 to 3311, as amended; 1739

(b) The payment by an employer, without deduction from the 1740

remuneration of the individual in the employer's employ, of the 1741
tax imposed upon an individual in the employer's employ under 1742
section 3101 of the "Internal Revenue Code of 1954," with 1743
respect to services performed after October 1, 1941. 1744

(2) "Cash remuneration" means all remuneration paid in 1745
cash, including commissions and bonuses, but not including the 1746
cash value of all compensation in any medium other than cash. 1747

(I) "Interested party" means the director and any party to 1748
whom notice of a determination of an application for benefit 1749
rights or a claim for benefits is required to be given under 1750
section 4141.28 of the Revised Code. 1751

(J) "Annual payroll" means the total amount of wages 1752
subject to contributions during a twelve-month period ending 1753
with the last day of the second calendar quarter of any calendar 1754
year. 1755

(K) "Average annual payroll" means the average of the last 1756
three annual payrolls of an employer, provided that if, as of 1757
any computation date, the employer has had less than three 1758
annual payrolls in such three-year period, such average shall be 1759
based on the annual payrolls which the employer has had as of 1760
such date. 1761

(L) (1) "Contributions" means the money payments to the 1762
state unemployment compensation fund required of employers by 1763
section 4141.25 of the Revised Code and of the state and any of 1764
its political subdivisions electing to pay contributions under 1765
section 4141.242 of the Revised Code. Employers paying 1766
contributions shall be described as "contributory employers." 1767

(2) "Payments in lieu of contributions" means the money 1768
payments to the state unemployment compensation fund required of 1769

reimbursing employers under sections 4141.241 and 4141.242 of 1770
the Revised Code. 1771

(M) An individual is "totally unemployed" in any week 1772
during which the individual performs no services and with 1773
respect to such week no remuneration is payable to the 1774
individual. 1775

(N) An individual is "partially unemployed" in any week 1776
if, due to involuntary loss of work, the total remuneration 1777
payable to the individual for such week is less than the 1778
individual's weekly benefit amount. 1779

(O) "Week" means the calendar week ending at midnight 1780
Saturday unless an equivalent week of seven consecutive calendar 1781
days is prescribed by the director. 1782

(1) "Qualifying week" means any calendar week in an 1783
individual's base period with respect to which the individual 1784
earns or is paid remuneration in employment subject to this 1785
chapter. A calendar week with respect to which an individual 1786
earns remuneration but for which payment was not made within the 1787
base period, when necessary to qualify for benefit rights, may 1788
be considered to be a qualifying week. The number of qualifying 1789
weeks which may be established in a calendar quarter shall not 1790
exceed the number of calendar weeks in the quarter. 1791

(2) "Average weekly wage" means the amount obtained by 1792
dividing an individual's total remuneration for all qualifying 1793
weeks during the base period by the number of such qualifying 1794
weeks, provided that if the computation results in an amount 1795
that is not a multiple of one dollar, such amount shall be 1796
rounded to the next lower multiple of one dollar. 1797

(P) "Weekly benefit amount" means the amount of benefits 1798

an individual would be entitled to receive for one week of total unemployment. 1799
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(Q) (1) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except as provided in division (Q) (2) of this section. 1801
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(2) If an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period shall be the four most recently completed calendar quarters preceding the first day of the individual's benefit year. Such base period shall be known as the "alternate base period." If information as to weeks and wages for the most recent quarter of the alternate base period is not available to the director from the regular quarterly reports of wage information, which are systematically accessible, the director may, consistent with the provisions of section 4141.28 of the Revised Code, base the determination of eligibility for benefits on the affidavit of the claimant with respect to weeks and wages for that calendar quarter. The claimant shall furnish payroll documentation, where available, in support of the affidavit. The determination based upon the alternate base period as it relates to the claimant's benefit rights, shall be amended when the quarterly report of wage information from the employer is timely received and that information causes a change in the determination. As provided in division (B) of section 4141.28 of the Revised Code, any benefits paid and charged to an employer's account, based upon a claimant's affidavit, shall be adjusted effective as of the beginning of the claimant's benefit year. No calendar quarter in a base period or alternate base period shall be used to establish a subsequent benefit year. 1805
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(3) The "base period" of a combined wage claim, as 1830
described in division (H) of section 4141.43 of the Revised 1831
Code, shall be the base period prescribed by the law of the 1832
state in which the claim is allowed. 1833

(4) For purposes of determining the weeks that comprise a 1834
completed calendar quarter under this division, only those weeks 1835
ending at midnight Saturday within the calendar quarter shall be 1836
utilized. 1837

(R) (1) "Benefit year" with respect to an individual means 1838
the fifty-two week period beginning with the first day of that 1839
week with respect to which the individual first files a valid 1840
application for determination of benefit rights, and thereafter 1841
the fifty-two week period beginning with the first day of that 1842
week with respect to which the individual next files a valid 1843
application for determination of benefit rights after the 1844
termination of the individual's last preceding benefit year, 1845
except that the application shall not be considered valid unless 1846
the individual has had employment in six weeks that is subject 1847
to this chapter or the unemployment compensation act of another 1848
state, or the United States, and has, since the beginning of the 1849
individual's previous benefit year, in the employment earned 1850
three times the average weekly wage determined for the previous 1851
benefit year. The "benefit year" of a combined wage claim, as 1852
described in division (H) of section 4141.43 of the Revised 1853
Code, shall be the benefit year prescribed by the law of the 1854
state in which the claim is allowed. Any application for 1855
determination of benefit rights made in accordance with section 1856
4141.28 of the Revised Code is valid if the individual filing 1857
such application is unemployed, has been employed by an employer 1858
or employers subject to this chapter in at least twenty 1859
qualifying weeks within the individual's base period, and has 1860

earned or been paid remuneration at an average weekly wage of 1861
not less than twenty-seven and one-half per cent of the 1862
statewide average weekly wage for such weeks. For purposes of 1863
determining whether an individual has had sufficient employment 1864
since the beginning of the individual's previous benefit year to 1865
file a valid application, "employment" means the performance of 1866
services for which remuneration is payable. 1867

(2) Effective for benefit years beginning on and after 1868
December 26, 2004, any application for determination of benefit 1869
rights made in accordance with section 4141.28 of the Revised 1870
Code is valid if the individual satisfies the criteria described 1871
in division (R) (1) of this section, and if the reason for the 1872
individual's separation from employment is not disqualifying 1873
pursuant to division (D) (2) of section 4141.29 or section 1874
4141.291 of the Revised Code. A disqualification imposed 1875
pursuant to division (D) (2) of section 4141.29 or section 1876
4141.291 of the Revised Code must be removed as provided in 1877
those sections as a requirement of establishing a valid 1878
application for benefit years beginning on and after December 1879
26, 2004. 1880

(3) The statewide average weekly wage shall be calculated 1881
by the director once a year based on the twelve-month period 1882
ending the thirtieth day of June, as set forth in division (B) 1883
(3) of section 4141.30 of the Revised Code, rounded down to the 1884
nearest dollar. Increases or decreases in the amount of 1885
remuneration required to have been earned or paid in order for 1886
individuals to have filed valid applications shall become 1887
effective on Sunday of the calendar week in which the first day 1888
of January occurs that follows the twelve-month period ending 1889
the thirtieth day of June upon which the calculation of the 1890
statewide average weekly wage was based. 1891

(4) As used in this division, an individual is 1892
"unemployed" if, with respect to the calendar week in which such 1893
application is filed, the individual is "partially unemployed" 1894
or "totally unemployed" as defined in this section or if, prior 1895
to filing the application, the individual was separated from the 1896
individual's most recent work for any reason which terminated 1897
the individual's employee-employer relationship, or was laid off 1898
indefinitely or for a definite period of seven or more days. 1899

(S) "Calendar quarter" means the period of three 1900
consecutive calendar months ending on the thirty-first day of 1901
March, the thirtieth day of June, the thirtieth day of 1902
September, and the thirty-first day of December, or the 1903
equivalent thereof as the director prescribes by rule. 1904

(T) "Computation date" means the first day of the third 1905
calendar quarter of any calendar year. 1906

(U) "Contribution period" means the calendar year 1907
beginning on the first day of January of any year. 1908

(V) "Agricultural labor," for the purpose of this 1909
division, means any service performed prior to January 1, 1972, 1910
which was agricultural labor as defined in this division prior 1911
to that date, and service performed after December 31, 1971: 1912

(1) On a farm, in the employ of any person, in connection 1913
with cultivating the soil, or in connection with raising or 1914
harvesting any agricultural or horticultural commodity, 1915
including the raising, shearing, feeding, caring for, training, 1916
and management of livestock, bees, poultry, and fur-bearing 1917
animals and wildlife; 1918

(2) In the employ of the owner or tenant or other operator 1919
of a farm in connection with the operation, management, 1920

conservation, improvement, or maintenance of such farm and its 1921
tools and equipment, or in salvaging timber or clearing land of 1922
brush and other debris left by hurricane, if the major part of 1923
such service is performed on a farm; 1924

(3) In connection with the production or harvesting of any 1925
commodity defined as an agricultural commodity in section 15 (g) 1926
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1927
U.S.C. 1141j, as amended, or in connection with the ginning of 1928
cotton, or in connection with the operation or maintenance of 1929
ditches, canals, reservoirs, or waterways, not owned or operated 1930
for profit, used exclusively for supplying and storing water for 1931
farming purposes; 1932

(4) In the employ of the operator of a farm in handling, 1933
planting, drying, packing, packaging, processing, freezing, 1934
grading, storing, or delivering to storage or to market or to a 1935
carrier for transportation to market, in its unmanufactured 1936
state, any agricultural or horticultural commodity, but only if 1937
the operator produced more than one half of the commodity with 1938
respect to which such service is performed; 1939

(5) In the employ of a group of operators of farms, or a 1940
cooperative organization of which the operators are members, in 1941
the performance of service described in division (V) (4) of this 1942
section, but only if the operators produced more than one-half 1943
of the commodity with respect to which the service is performed; 1944

(6) Divisions (V) (4) and (5) of this section shall not be 1945
deemed to be applicable with respect to service performed: 1946

(a) In connection with commercial canning or commercial 1947
freezing or in connection with any agricultural or horticultural 1948
commodity after its delivery to a terminal market for 1949

distribution for consumption; or	1950
(b) On a farm operated for profit if the service is not in the course of the employer's trade or business.	1951 1952
As used in division (V) of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.	1953 1954 1955 1956 1957
(W) "Hospital" means an institution which has been registered or licensed by the Ohio department of health as a hospital.	1958 1959 1960
(X) "Nonprofit organization" means an organization, or group of organizations, described in section 501(c) (3) of the "Internal Revenue Code of 1954," and exempt from income tax under section 501(a) of that code.	1961 1962 1963 1964
(Y) "Institution of higher education" means a public or nonprofit educational institution, including an educational institution operated by an Indian tribe, which:	1965 1966 1967
(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent;	1968 1969 1970
(2) Is legally authorized in this state or by the Indian tribe to provide a program of education beyond high school; and	1971 1972
(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized	1973 1974 1975 1976 1977

occupation.	1978
For the purposes of this division, all colleges and	1979
universities in this state are institutions of higher education.	1980
(Z) For the purposes of this chapter, "states" includes	1981
the District of Columbia, the Commonwealth of Puerto Rico, and	1982
the Virgin Islands.	1983
(AA) "Alien" means, for the purposes of division (A) (1) (d)	1984
of this section, an individual who is an alien admitted to the	1985
United States to perform service in agricultural labor pursuant	1986
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and	1987
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101.	1988
(BB) (1) "Crew leader" means an individual who furnishes	1989
individuals to perform agricultural labor for any other employer	1990
or farm operator, and:	1991
(a) Pays, either on the individual's own behalf or on	1992
behalf of the other employer or farm operator, the individuals	1993
so furnished by the individual for the service in agricultural	1994
labor performed by them;	1995
(b) Has not entered into a written agreement with the	1996
other employer or farm operator under which the agricultural	1997
worker is designated as in the employ of the other employer or	1998
farm operator.	1999
(2) For the purposes of this chapter, any individual who	2000
is a member of a crew furnished by a crew leader to perform	2001
service in agricultural labor for any other employer or farm	2002
operator shall be treated as an employee of the crew leader if:	2003
(a) The crew leader holds a valid certificate of	2004
registration under the "Farm Labor Contractor Registration Act	2005

of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 2006

(b) Substantially all the members of the crew operate or 2007
maintain tractors, mechanized harvesting or crop-dusting 2008
equipment, or any other mechanized equipment, which is provided 2009
by the crew leader; and 2010

(c) If the individual is not in the employment of the 2011
other employer or farm operator within the meaning of division 2012
(B)(1) of this section. 2013

(3) For the purposes of this division, any individual who 2014
is furnished by a crew leader to perform service in agricultural 2015
labor for any other employer or farm operator and who is not 2016
treated as in the employment of the crew leader under division 2017
(BB)(2) of this section shall be treated as the employee of the 2018
other employer or farm operator and not of the crew leader. The 2019
other employer or farm operator shall be treated as having paid 2020
cash remuneration to the individual in an amount equal to the 2021
amount of cash remuneration paid to the individual by the crew 2022
leader, either on the crew leader's own behalf or on behalf of 2023
the other employer or farm operator, for the service in 2024
agricultural labor performed for the other employer or farm 2025
operator. 2026

(CC) "Educational institution" means an institution other 2027
than an institution of higher education as defined in division 2028
(Y) of this section, including an educational institution 2029
operated by an Indian tribe, which: 2030

(1) Offers participants, trainees, or students an 2031
organized course of study or training designed to transfer to 2032
them knowledge, skills, information, doctrines, attitudes, or 2033
abilities from, by, or under the guidance of an instructor or 2034

teacher; and 2035

(2) Is approved, chartered, or issued a permit to operate 2036
as a school by the state board of education, other government 2037
agency, or Indian tribe that is authorized within the state to 2038
approve, charter, or issue a permit for the operation of a 2039
school. 2040

For the purposes of this division, the courses of study or 2041
training which the institution offers may be academic, 2042
technical, trade, or preparation for gainful employment in a 2043
recognized occupation. 2044

(DD) "Cost savings day" means any unpaid day off from work 2045
in which employees continue to accrue employee benefits which 2046
have a determinable value including, but not limited to, 2047
vacation, pension contribution, sick time, and life and health 2048
insurance. 2049

Sec. 5747.01. Except as otherwise expressly provided or 2050
clearly appearing from the context, any term used in this 2051
chapter that is not otherwise defined in this section has the 2052
same meaning as when used in a comparable context in the laws of 2053
the United States relating to federal income taxes or if not 2054
used in a comparable context in those laws, has the same meaning 2055
as in section 5733.40 of the Revised Code. Any reference in this 2056
chapter to the Internal Revenue Code includes other laws of the 2057
United States relating to federal income taxes. 2058

As used in this chapter: 2059

(A) "Adjusted gross income" or "Ohio adjusted gross 2060
income" means federal adjusted gross income, as defined and used 2061
in the Internal Revenue Code, adjusted as provided in this 2062
section: 2063

(1) Add interest or dividends on obligations or securities	2064
of any state or of any political subdivision or authority of any	2065
state, other than this state and its subdivisions and	2066
authorities.	2067
(2) Add interest or dividends on obligations of any	2068
authority, commission, instrumentality, territory, or possession	2069
of the United States to the extent that the interest or	2070
dividends are exempt from federal income taxes but not from	2071
state income taxes.	2072
(3) Deduct interest or dividends on obligations of the	2073
United States and its territories and possessions or of any	2074
authority, commission, or instrumentality of the United States	2075
to the extent that the interest or dividends are included in	2076
federal adjusted gross income but exempt from state income taxes	2077
under the laws of the United States.	2078
(4) Deduct disability and survivor's benefits to the	2079
extent included in federal adjusted gross income.	2080
(5) Deduct benefits under Title II of the Social Security	2081
Act and tier 1 railroad retirement benefits to the extent	2082
included in federal adjusted gross income under section 86 of	2083
the Internal Revenue Code.	2084
(6) In the case of a taxpayer who is a beneficiary of a	2085
trust that makes an accumulation distribution as defined in	2086
section 665 of the Internal Revenue Code, add, for the	2087
beneficiary's taxable years beginning before 2002, the portion,	2088
if any, of such distribution that does not exceed the	2089
undistributed net income of the trust for the three taxable	2090
years preceding the taxable year in which the distribution is	2091
made to the extent that the portion was not included in the	2092

trust's taxable income for any of the trust's taxable years 2093
beginning in 2002 or thereafter. "Undistributed net income of a 2094
trust" means the taxable income of the trust increased by (a) (i) 2095
the additions to adjusted gross income required under division 2096
(A) of this section and (ii) the personal exemptions allowed to 2097
the trust pursuant to section 642(b) of the Internal Revenue 2098
Code, and decreased by (b) (i) the deductions to adjusted gross 2099
income required under division (A) of this section, (ii) the 2100
amount of federal income taxes attributable to such income, and 2101
(iii) the amount of taxable income that has been included in the 2102
adjusted gross income of a beneficiary by reason of a prior 2103
accumulation distribution. Any undistributed net income included 2104
in the adjusted gross income of a beneficiary shall reduce the 2105
undistributed net income of the trust commencing with the 2106
earliest years of the accumulation period. 2107

(7) Deduct the amount of wages and salaries, if any, not 2108
otherwise allowable as a deduction but that would have been 2109
allowable as a deduction in computing federal adjusted gross 2110
income for the taxable year, had the targeted jobs credit 2111
allowed and determined under sections 38, 51, and 52 of the 2112
Internal Revenue Code not been in effect. 2113

(8) Deduct any interest or interest equivalent on public 2114
obligations and purchase obligations to the extent that the 2115
interest or interest equivalent is included in federal adjusted 2116
gross income. 2117

(9) Add any loss or deduct any gain resulting from the 2118
sale, exchange, or other disposition of public obligations to 2119
the extent that the loss has been deducted or the gain has been 2120
included in computing federal adjusted gross income. 2121

(10) Deduct or add amounts, as provided under section 2122

5747.70 of the Revised Code, related to contributions to 2123
variable college savings program accounts made or tuition units 2124
purchased pursuant to Chapter 3334. of the Revised Code. 2125

(11) (a) Deduct, to the extent not otherwise allowable as a 2126
deduction or exclusion in computing federal or Ohio adjusted 2127
gross income for the taxable year, the amount the taxpayer paid 2128
during the taxable year for medical care insurance and qualified 2129
long-term care insurance for the taxpayer, the taxpayer's 2130
spouse, and dependents. No deduction for medical care insurance 2131
under division (A) (11) of this section shall be allowed either 2132
to any taxpayer who is eligible to participate in any subsidized 2133
health plan maintained by any employer of the taxpayer or of the 2134
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2135
application would be entitled to, benefits under part A of Title 2136
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 2137
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 2138
of this section, "subsidized health plan" means a health plan 2139
for which the employer pays any portion of the plan's cost. The 2140
deduction allowed under division (A) (11) (a) of this section 2141
shall be the net of any related premium refunds, related premium 2142
reimbursements, or related insurance premium dividends received 2143
during the taxable year. 2144

(b) Deduct, to the extent not otherwise deducted or 2145
excluded in computing federal or Ohio adjusted gross income 2146
during the taxable year, the amount the taxpayer paid during the 2147
taxable year, not compensated for by any insurance or otherwise, 2148
for medical care of the taxpayer, the taxpayer's spouse, and 2149
dependents, to the extent the expenses exceed seven and one-half 2150
per cent of the taxpayer's federal adjusted gross income. 2151

(c) Deduct, to the extent not otherwise deducted or 2152

excluded in computing federal or Ohio adjusted gross income, any 2153
amount included in federal adjusted gross income under section 2154
105 or not excluded under section 106 of the Internal Revenue 2155
Code solely because it relates to an accident and health plan 2156
for a person who otherwise would be a "qualifying relative" and 2157
thus a "dependent" under section 152 of the Internal Revenue 2158
Code but for the fact that the person fails to meet the income 2159
and support limitations under section 152(d)(1)(B) and (C) of 2160
the Internal Revenue Code. 2161

(d) For purposes of division (A)(11) of this section, 2162
"medical care" has the meaning given in section 213 of the 2163
Internal Revenue Code, subject to the special rules, 2164
limitations, and exclusions set forth therein, and "qualified 2165
long-term care" has the same meaning given in section 7702B(c) 2166
of the Internal Revenue Code. Solely for purposes of divisions 2167
(A)(11)(a) and (c) of this section, "dependent" includes a 2168
person who otherwise would be a "qualifying relative" and thus a 2169
"dependent" under section 152 of the Internal Revenue Code but 2170
for the fact that the person fails to meet the income and 2171
support limitations under section 152(d)(1)(B) and (C) of the 2172
Internal Revenue Code. 2173

(12)(a) Deduct any amount included in federal adjusted 2174
gross income solely because the amount represents a 2175
reimbursement or refund of expenses that in any year the 2176
taxpayer had deducted as an itemized deduction pursuant to 2177
section 63 of the Internal Revenue Code and applicable United 2178
States department of the treasury regulations. The deduction 2179
otherwise allowed under division (A)(12)(a) of this section 2180
shall be reduced to the extent the reimbursement is attributable 2181
to an amount the taxpayer deducted under this section in any 2182
taxable year. 2183

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

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

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

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

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

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

(b) Add the amounts distributed from a medical savings

account under division (A) (2) of section 3924.68 of the Revised Code during the taxable year. 2213
2214

(16) Add any amount claimed as a credit under section 2215
5747.059 or 5747.65 of the Revised Code to the extent that such 2216
amount satisfies either of the following: 2217

(a) The amount was deducted or excluded from the 2218
computation of the taxpayer's federal adjusted gross income as 2219
required to be reported for the taxpayer's taxable year under 2220
the Internal Revenue Code; 2221

(b) The amount resulted in a reduction of the taxpayer's 2222
federal adjusted gross income as required to be reported for any 2223
of the taxpayer's taxable years under the Internal Revenue Code. 2224

(17) Deduct the amount contributed by the taxpayer to an 2225
individual development account program established by a county 2226
department of job and family services pursuant to sections 2227
329.11 to 329.14 of the Revised Code for the purpose of matching 2228
funds deposited by program participants. On request of the tax 2229
commissioner, the taxpayer shall provide any information that, 2230
in the tax commissioner's opinion, is necessary to establish the 2231
amount deducted under division (A) (17) of this section. 2232

(18) Beginning in taxable year 2001 but not for any 2233
taxable year beginning after December 31, 2005, if the taxpayer 2234
is married and files a joint return and the combined federal 2235
adjusted gross income of the taxpayer and the taxpayer's spouse 2236
for the taxable year does not exceed one hundred thousand 2237
dollars, or if the taxpayer is single and has a federal adjusted 2238
gross income for the taxable year not exceeding fifty thousand 2239
dollars, deduct amounts paid during the taxable year for 2240
qualified tuition and fees paid to an eligible institution for 2241

the taxpayer, the taxpayer's spouse, or any dependent of the 2242
taxpayer, who is a resident of this state and is enrolled in or 2243
attending a program that culminates in a degree or diploma at an 2244
eligible institution. The deduction may be claimed only to the 2245
extent that qualified tuition and fees are not otherwise 2246
deducted or excluded for any taxable year from federal or Ohio 2247
adjusted gross income. The deduction may not be claimed for 2248
educational expenses for which the taxpayer claims a credit 2249
under section 5747.27 of the Revised Code. 2250

(19) Add any reimbursement received during the taxable 2251
year of any amount the taxpayer deducted under division (A) (18) 2252
of this section in any previous taxable year to the extent the 2253
amount is not otherwise included in Ohio adjusted gross income. 2254

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 2255
(v) of this section, add five-sixths of the amount of 2256
depreciation expense allowed by subsection (k) of section 168 of 2257
the Internal Revenue Code, including the taxpayer's 2258
proportionate or distributive share of the amount of 2259
depreciation expense allowed by that subsection to a pass- 2260
through entity in which the taxpayer has a direct or indirect 2261
ownership interest. 2262

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2263
of this section, add five-sixths of the amount of qualifying 2264
section 179 depreciation expense, including the taxpayer's 2265
proportionate or distributive share of the amount of qualifying 2266
section 179 depreciation expense allowed to any pass-through 2267
entity in which the taxpayer has a direct or indirect ownership 2268
interest. 2269

(iii) Subject to division (A) (20) (a) (v) of this section, 2270
for taxable years beginning in 2012 or thereafter, if the 2271

increase in income taxes withheld by the taxpayer is equal to or 2272
greater than ten per cent of income taxes withheld by the 2273
taxpayer during the taxpayer's immediately preceding taxable 2274
year, "two-thirds" shall be substituted for "five-sixths" for 2275
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2276

(iv) Subject to division (A) (20) (a) (v) of this section, 2277
for taxable years beginning in 2012 or thereafter, a taxpayer is 2278
not required to add an amount under division (A) (20) of this 2279
section if the increase in income taxes withheld by the taxpayer 2280
and by any pass-through entity in which the taxpayer has a 2281
direct or indirect ownership interest is equal to or greater 2282
than the sum of (I) the amount of qualifying section 179 2283
depreciation expense and (II) the amount of depreciation expense 2284
allowed to the taxpayer by subsection (k) of section 168 of the 2285
Internal Revenue Code, and including the taxpayer's 2286
proportionate or distributive shares of such amounts allowed to 2287
any such pass-through entities. 2288

(v) If a taxpayer directly or indirectly incurs a net 2289
operating loss for the taxable year for federal income tax 2290
purposes, to the extent such loss resulted from depreciation 2291
expense allowed by subsection (k) of section 168 of the Internal 2292
Revenue Code and by qualifying section 179 depreciation expense, 2293
"the entire" shall be substituted for "five-sixths of the" for 2294
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2295

The tax commissioner, under procedures established by the 2296
commissioner, may waive the add-backs related to a pass-through 2297
entity if the taxpayer owns, directly or indirectly, less than 2298
five per cent of the pass-through entity. 2299

(b) Nothing in division (A) (20) of this section shall be 2300
construed to adjust or modify the adjusted basis of any asset. 2301

(c) To the extent the add-back required under division (A) 2302
(20)(a) of this section is attributable to property generating 2303
nonbusiness income or loss allocated under section 5747.20 of 2304
the Revised Code, the add-back shall be situated to the same 2305
location as the nonbusiness income or loss generated by the 2306
property for the purpose of determining the credit under 2307
division (A) of section 5747.05 of the Revised Code. Otherwise, 2308
the add-back shall be apportioned, subject to one or more of the 2309
four alternative methods of apportionment enumerated in section 2310
5747.21 of the Revised Code. 2311

(d) For the purposes of division (A)(20)(a)(v) of this 2312
section, net operating loss carryback and carryforward shall not 2313
include the allowance of any net operating loss deduction 2314
carryback or carryforward to the taxable year to the extent such 2315
loss resulted from depreciation allowed by section 168(k) of the 2316
Internal Revenue Code and by the qualifying section 179 2317
depreciation expense amount. 2318

(e) For the purposes of divisions (A)(20) and (21) of this 2319
section: 2320

(i) "Income taxes withheld" means the total amount 2321
withheld and remitted under sections 5747.06 and 5747.07 of the 2322
Revised Code by an employer during the employer's taxable year. 2323

(ii) "Increase in income taxes withheld" means the amount 2324
by which the amount of income taxes withheld by an employer 2325
during the employer's current taxable year exceeds the amount of 2326
income taxes withheld by that employer during the employer's 2327
immediately preceding taxable year. 2328

(iii) "Qualifying section 179 depreciation expense" means 2329
the difference between (I) the amount of depreciation expense 2330

directly or indirectly allowed to a taxpayer under section 179 2331
of the Internal Revised Code, and (II) the amount of 2332
depreciation expense directly or indirectly allowed to the 2333
taxpayer under section 179 of the Internal Revenue Code as that 2334
section existed on December 31, 2002. 2335

(21) (a) If the taxpayer was required to add an amount 2336
under division (A) (20) (a) of this section for a taxable year, 2337
deduct one of the following: 2338

(i) One-fifth of the amount so added for each of the five 2339
succeeding taxable years if the amount so added was five-sixths 2340
of qualifying section 179 depreciation expense or depreciation 2341
expense allowed by subsection (k) of section 168 of the Internal 2342
Revenue Code; 2343

(ii) One-half of the amount so added for each of the two 2344
succeeding taxable years if the amount so added was two-thirds 2345
of such depreciation expense; 2346

(iii) One-sixth of the amount so added for each of the six 2347
succeeding taxable years if the entire amount of such 2348
depreciation expense was so added. 2349

(b) If the amount deducted under division (A) (21) (a) of 2350
this section is attributable to an add-back allocated under 2351
division (A) (20) (c) of this section, the amount deducted shall 2352
be situated to the same location. Otherwise, the add-back shall 2353
be apportioned using the apportionment factors for the taxable 2354
year in which the deduction is taken, subject to one or more of 2355
the four alternative methods of apportionment enumerated in 2356
section 5747.21 of the Revised Code. 2357

(c) No deduction is available under division (A) (21) (a) of 2358
this section with regard to any depreciation allowed by section 2359

168(k) of the Internal Revenue Code and by the qualifying 2360
section 179 depreciation expense amount to the extent that such 2361
depreciation results in or increases a federal net operating 2362
loss carryback or carryforward. If no such deduction is 2363
available for a taxable year, the taxpayer may carry forward the 2364
amount not deducted in such taxable year to the next taxable 2365
year and add that amount to any deduction otherwise available 2366
under division (A) (21) (a) of this section for that next taxable 2367
year. The carryforward of amounts not so deducted shall continue 2368
until the entire addition required by division (A) (20) (a) of 2369
this section has been deducted. 2370

(d) No refund shall be allowed as a result of adjustments 2371
made by division (A) (21) of this section. 2372

(22) Deduct, to the extent not otherwise deducted or 2373
excluded in computing federal or Ohio adjusted gross income for 2374
the taxable year, the amount the taxpayer received during the 2375
taxable year as reimbursement for life insurance premiums under 2376
section 5919.31 of the Revised Code. 2377

(23) Deduct, to the extent not otherwise deducted or 2378
excluded in computing federal or Ohio adjusted gross income for 2379
the taxable year, the amount the taxpayer received during the 2380
taxable year as a death benefit paid by the adjutant general 2381
under section 5919.33 of the Revised Code. 2382

(24) Deduct, to the extent included in federal adjusted 2383
gross income and not otherwise allowable as a deduction or 2384
exclusion in computing federal or Ohio adjusted gross income for 2385
the taxable year, military pay and allowances received by the 2386
taxpayer during the taxable year for active duty service in the 2387
United States army, air force, navy, marine corps, or coast 2388
guard or reserve components thereof or the national guard. The 2389

deduction may not be claimed for military pay and allowances 2390
received by the taxpayer while the taxpayer is stationed in this 2391
state. 2392

(25) Deduct, to the extent not otherwise allowable as a 2393
deduction or exclusion in computing federal or Ohio adjusted 2394
gross income for the taxable year and not otherwise compensated 2395
for by any other source, the amount of qualified organ donation 2396
expenses incurred by the taxpayer during the taxable year, not 2397
to exceed ten thousand dollars. A taxpayer may deduct qualified 2398
organ donation expenses only once for all taxable years 2399
beginning with taxable years beginning in 2007. 2400

For the purposes of division (A) (25) of this section: 2401

(a) "Human organ" means all or any portion of a human 2402
liver, pancreas, kidney, intestine, or lung, and any portion of 2403
human bone marrow. 2404

(b) "Qualified organ donation expenses" means travel 2405
expenses, lodging expenses, and wages and salary forgone by a 2406
taxpayer in connection with the taxpayer's donation, while 2407
living, of one or more of the taxpayer's human organs to another 2408
human being. 2409

(26) Deduct, to the extent not otherwise deducted or 2410
excluded in computing federal or Ohio adjusted gross income for 2411
the taxable year, amounts received by the taxpayer as retired 2412
personnel pay for service in the uniformed services or reserve 2413
components thereof, or the national guard, or received by the 2414
surviving spouse or former spouse of such a taxpayer under the 2415
survivor benefit plan on account of such a taxpayer's death. If 2416
the taxpayer receives income on account of retirement paid under 2417
the federal civil service retirement system or federal employees 2418

retirement system, or under any successor retirement program 2419
enacted by the congress of the United States that is established 2420
and maintained for retired employees of the United States 2421
government, and such retirement income is based, in whole or in 2422
part, on credit for the taxpayer's uniformed service, the 2423
deduction allowed under this division shall include only that 2424
portion of such retirement income that is attributable to the 2425
taxpayer's uniformed service, to the extent that portion of such 2426
retirement income is otherwise included in federal adjusted 2427
gross income and is not otherwise deducted under this section. 2428
Any amount deducted under division (A) (26) of this section is 2429
not included in a taxpayer's adjusted gross income for the 2430
purposes of section 5747.055 of the Revised Code. No amount may 2431
be deducted under division (A) (26) of this section on the basis 2432
of which a credit was claimed under section 5747.055 of the 2433
Revised Code. 2434

(27) Deduct, to the extent not otherwise deducted or 2435
excluded in computing federal or Ohio adjusted gross income for 2436
the taxable year, the amount the taxpayer received during the 2437
taxable year from the military injury relief fund created in 2438
section 5902.05 of the Revised Code. 2439

(28) Deduct, to the extent not otherwise deducted or 2440
excluded in computing federal or Ohio adjusted gross income for 2441
the taxable year, the amount the taxpayer received as a veterans 2442
bonus during the taxable year from the Ohio department of 2443
veterans services as authorized by Section 2r of Article VIII, 2444
Ohio Constitution. 2445

(29) Deduct, to the extent not otherwise deducted or 2446
excluded in computing federal or Ohio adjusted gross income for 2447
the taxable year, any income derived from a transfer agreement 2448

or from the enterprise transferred under that agreement under 2449
section 4313.02 of the Revised Code. 2450

(30) Deduct, to the extent not otherwise deducted or 2451
excluded in computing federal or Ohio adjusted gross income for 2452
the taxable year, Ohio college opportunity or federal Pell grant 2453
amounts received by the taxpayer or the taxpayer's spouse or 2454
dependent pursuant to section 3333.122 of the Revised Code or 20 2455
U.S.C. 1070a, et seq., and used to pay room or board furnished 2456
by the educational institution for which the grant was awarded 2457
at the institution's facilities, including meal plans 2458
administered by the institution. For the purposes of this 2459
division, receipt of a grant includes the distribution of a 2460
grant directly to an educational institution and the crediting 2461
of the grant to the enrollee's account with the institution. 2462

(31) (a) For taxable years beginning in 2015, deduct from 2463
the portion of an individual's adjusted gross income that is 2464
business income, to the extent not otherwise deducted or 2465
excluded in computing federal or Ohio adjusted gross income for 2466
the taxable year, the lesser of the following amounts: 2467

(i) Seventy-five per cent of the individual's business 2468
income; 2469

(ii) Ninety-three thousand seven hundred fifty dollars for 2470
each spouse if spouses file separate returns under section 2471
5747.08 of the Revised Code or one hundred eighty-seven thousand 2472
five hundred dollars for all other individuals. 2473

(b) For taxable years beginning in 2016 or thereafter, 2474
deduct from the portion of an individual's adjusted gross income 2475
that is business income, to the extent not otherwise deducted or 2476
excluded in computing federal adjusted gross income for the 2477

taxable year, one hundred twenty-five thousand dollars for each 2478
spouse if spouses file separate returns under section 5747.08 of 2479
the Revised Code or two hundred fifty thousand dollars for all 2480
other individuals. 2481

(32) Deduct, as provided under section 5747.78 of the 2482
Revised Code, contributions to ABLE savings accounts made in 2483
accordance with sections 113.50 to 113.56 of the Revised Code. 2484

(33) (a) Deduct, to the extent not otherwise deducted or 2485
excluded in computing federal or Ohio adjusted gross income 2486
during the taxable year, all of the following: 2487

(i) Compensation paid to a qualifying employee described 2488
in division (A) (14) (a) of section 5703.94 of the Revised Code to 2489
the extent such compensation is for disaster work conducted in 2490
this state during a disaster response period pursuant to a 2491
qualifying solicitation received by the employee's employer; 2492

(ii) Compensation paid to a qualifying employee described 2493
in division (A) (14) (b) of section 5703.94 of the Revised Code to 2494
the extent such compensation is for disaster work conducted in 2495
this state by the employee during the disaster response period 2496
on critical infrastructure owned or used by the employee's 2497
employer; 2498

(iii) Income received by an out-of-state disaster business 2499
for disaster work conducted in this state during a disaster 2500
response period, or, if the out-of-state disaster business is a 2501
pass-through entity, a taxpayer's distributive share of the 2502
pass-through entity's income from the business conducting 2503
disaster work in this state during a disaster response period, 2504
if, in either case, the disaster work is conducted pursuant to a 2505
qualifying solicitation received by the business. 2506

(b) All terms used in division (A) (33) of this section 2507
have the same meanings as in section 5703.94 of the Revised 2508
Code. 2509

(B) "Business income" means income, including gain or 2510
loss, arising from transactions, activities, and sources in the 2511
regular course of a trade or business and includes income, gain, 2512
or loss from real property, tangible property, and intangible 2513
property if the acquisition, rental, management, and disposition 2514
of the property constitute integral parts of the regular course 2515
of a trade or business operation. "Business income" includes 2516
income, including gain or loss, from a partial or complete 2517
liquidation of a business, including, but not limited to, gain 2518
or loss from the sale or other disposition of goodwill. 2519

(C) "Nonbusiness income" means all income other than 2520
business income and may include, but is not limited to, 2521
compensation, rents and royalties from real or tangible personal 2522
property, capital gains, interest, dividends and distributions, 2523
patent or copyright royalties, or lottery winnings, prizes, and 2524
awards. 2525

(D) "Compensation" means any form of remuneration paid to 2526
an employee for personal services. 2527

(E) "Fiduciary" means a guardian, trustee, executor, 2528
administrator, receiver, conservator, or any other person acting 2529
in any fiduciary capacity for any individual, trust, or estate. 2530

(F) "Fiscal year" means an accounting period of twelve 2531
months ending on the last day of any month other than December. 2532

(G) "Individual" means any natural person. 2533

(H) "Internal Revenue Code" means the "Internal Revenue 2534
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2535

(I) "Resident" means any of the following, provided that 2536
division (I) (3) of this section applies only to taxable years of 2537
a trust beginning in 2002 or thereafter: 2538

(1) An individual who is domiciled in this state, subject 2539
to section 5747.24 of the Revised Code; 2540

(2) The estate of a decedent who at the time of death was 2541
domiciled in this state. The domicile tests of section 5747.24 2542
of the Revised Code are not controlling for purposes of division 2543
(I) (2) of this section. 2544

(3) A trust that, in whole or part, resides in this state. 2545
If only part of a trust resides in this state, the trust is a 2546
resident only with respect to that part. 2547

For the purposes of division (I) (3) of this section: 2548

(a) A trust resides in this state for the trust's current 2549
taxable year to the extent, as described in division (I) (3) (d) 2550
of this section, that the trust consists directly or indirectly, 2551
in whole or in part, of assets, net of any related liabilities, 2552
that were transferred, or caused to be transferred, directly or 2553
indirectly, to the trust by any of the following: 2554

(i) A person, a court, or a governmental entity or 2555
instrumentality on account of the death of a decedent, but only 2556
if the trust is described in division (I) (3) (e) (i) or (ii) of 2557
this section; 2558

(ii) A person who was domiciled in this state for the 2559
purposes of this chapter when the person directly or indirectly 2560
transferred assets to an irrevocable trust, but only if at least 2561
one of the trust's qualifying beneficiaries is domiciled in this 2562
state for the purposes of this chapter during all or some 2563
portion of the trust's current taxable year; 2564

(iii) A person who was domiciled in this state for the 2565
purposes of this chapter when the trust document or instrument 2566
or part of the trust document or instrument became irrevocable, 2567
but only if at least one of the trust's qualifying beneficiaries 2568
is a resident domiciled in this state for the purposes of this 2569
chapter during all or some portion of the trust's current 2570
taxable year. If a trust document or instrument became 2571
irrevocable upon the death of a person who at the time of death 2572
was domiciled in this state for purposes of this chapter, that 2573
person is a person described in division (I) (3) (a) (iii) of this 2574
section. 2575

(b) A trust is irrevocable to the extent that the 2576
transferor is not considered to be the owner of the net assets 2577
of the trust under sections 671 to 678 of the Internal Revenue 2578
Code. 2579

(c) With respect to a trust other than a charitable lead 2580
trust, "qualifying beneficiary" has the same meaning as 2581
"potential current beneficiary" as defined in section 1361(e) (2) 2582
of the Internal Revenue Code, and with respect to a charitable 2583
lead trust "qualifying beneficiary" is any current, future, or 2584
contingent beneficiary, but with respect to any trust 2585
"qualifying beneficiary" excludes a person or a governmental 2586
entity or instrumentality to any of which a contribution would 2587
qualify for the charitable deduction under section 170 of the 2588
Internal Revenue Code. 2589

(d) For the purposes of division (I) (3) (a) of this 2590
section, the extent to which a trust consists directly or 2591
indirectly, in whole or in part, of assets, net of any related 2592
liabilities, that were transferred directly or indirectly, in 2593
whole or part, to the trust by any of the sources enumerated in 2594

that division shall be ascertained by multiplying the fair 2595
market value of the trust's assets, net of related liabilities, 2596
by the qualifying ratio, which shall be computed as follows: 2597

(i) The first time the trust receives assets, the 2598
numerator of the qualifying ratio is the fair market value of 2599
those assets at that time, net of any related liabilities, from 2600
sources enumerated in division (I) (3) (a) of this section. The 2601
denominator of the qualifying ratio is the fair market value of 2602
all the trust's assets at that time, net of any related 2603
liabilities. 2604

(ii) Each subsequent time the trust receives assets, a 2605
revised qualifying ratio shall be computed. The numerator of the 2606
revised qualifying ratio is the sum of (1) the fair market value 2607
of the trust's assets immediately prior to the subsequent 2608
transfer, net of any related liabilities, multiplied by the 2609
qualifying ratio last computed without regard to the subsequent 2610
transfer, and (2) the fair market value of the subsequently 2611
transferred assets at the time transferred, net of any related 2612
liabilities, from sources enumerated in division (I) (3) (a) of 2613
this section. The denominator of the revised qualifying ratio is 2614
the fair market value of all the trust's assets immediately 2615
after the subsequent transfer, net of any related liabilities. 2616

(iii) Whether a transfer to the trust is by or from any of 2617
the sources enumerated in division (I) (3) (a) of this section 2618
shall be ascertained without regard to the domicile of the 2619
trust's beneficiaries. 2620

(e) For the purposes of division (I) (3) (a) (i) of this 2621
section: 2622

(i) A trust is described in division (I) (3) (e) (i) of this 2623

section if the trust is a testamentary trust and the testator of 2624
that testamentary trust was domiciled in this state at the time 2625
of the testator's death for purposes of the taxes levied under 2626
Chapter 5731. of the Revised Code. 2627

(ii) A trust is described in division (I) (3) (e) (ii) of 2628
this section if the transfer is a qualifying transfer described 2629
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 2630
trust is an irrevocable inter vivos trust, and at least one of 2631
the trust's qualifying beneficiaries is domiciled in this state 2632
for purposes of this chapter during all or some portion of the 2633
trust's current taxable year. 2634

(f) For the purposes of division (I) (3) (e) (ii) of this 2635
section, a "qualifying transfer" is a transfer of assets, net of 2636
any related liabilities, directly or indirectly to a trust, if 2637
the transfer is described in any of the following: 2638

(i) The transfer is made to a trust, created by the 2639
decedent before the decedent's death and while the decedent was 2640
domiciled in this state for the purposes of this chapter, and, 2641
prior to the death of the decedent, the trust became irrevocable 2642
while the decedent was domiciled in this state for the purposes 2643
of this chapter. 2644

(ii) The transfer is made to a trust to which the 2645
decedent, prior to the decedent's death, had directly or 2646
indirectly transferred assets, net of any related liabilities, 2647
while the decedent was domiciled in this state for the purposes 2648
of this chapter, and prior to the death of the decedent the 2649
trust became irrevocable while the decedent was domiciled in 2650
this state for the purposes of this chapter. 2651

(iii) The transfer is made on account of a contractual 2652

relationship existing directly or indirectly between the 2653
transferor and either the decedent or the estate of the decedent 2654
at any time prior to the date of the decedent's death, and the 2655
decedent was domiciled in this state at the time of death for 2656
purposes of the taxes levied under Chapter 5731. of the Revised 2657
Code. 2658

(iv) The transfer is made to a trust on account of a 2659
contractual relationship existing directly or indirectly between 2660
the transferor and another person who at the time of the 2661
decedent's death was domiciled in this state for purposes of 2662
this chapter. 2663

(v) The transfer is made to a trust on account of the will 2664
of a testator who was domiciled in this state at the time of the 2665
testator's death for purposes of the taxes levied under Chapter 2666
5731. of the Revised Code. 2667

(vi) The transfer is made to a trust created by or caused 2668
to be created by a court, and the trust was directly or 2669
indirectly created in connection with or as a result of the 2670
death of an individual who, for purposes of the taxes levied 2671
under Chapter 5731. of the Revised Code, was domiciled in this 2672
state at the time of the individual's death. 2673

(g) The tax commissioner may adopt rules to ascertain the 2674
part of a trust residing in this state. 2675

(J) "Nonresident" means an individual or estate that is 2676
not a resident. An individual who is a resident for only part of 2677
a taxable year is a nonresident for the remainder of that 2678
taxable year. 2679

(K) "Pass-through entity" has the same meaning as in 2680
section 5733.04 of the Revised Code. 2681

(L) "Return" means the notifications and reports required 2682
to be filed pursuant to this chapter for the purpose of 2683
reporting the tax due and includes declarations of estimated tax 2684
when so required. 2685

(M) "Taxable year" means the calendar year or the 2686
taxpayer's fiscal year ending during the calendar year, or 2687
fractional part thereof, upon which the adjusted gross income is 2688
calculated pursuant to this chapter. 2689

(N) "Taxpayer" means any person subject to the tax imposed 2690
by section 5747.02 of the Revised Code or any pass-through 2691
entity that makes the election under division (D) of section 2692
5747.08 of the Revised Code. 2693

(O) "Dependents" means dependents as defined in the 2694
Internal Revenue Code and as claimed in the taxpayer's federal 2695
income tax return for the taxable year or which the taxpayer 2696
would have been permitted to claim had the taxpayer filed a 2697
federal income tax return. 2698

(P) "Principal county of employment" means, in the case of 2699
a nonresident, the county within the state in which a taxpayer 2700
performs services for an employer or, if those services are 2701
performed in more than one county, the county in which the major 2702
portion of the services are performed. 2703

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2704
Code: 2705

(1) "Subdivision" means any county, municipal corporation, 2706
park district, or township. 2707

(2) "Essential local government purposes" includes all 2708
functions that any subdivision is required by general law to 2709
exercise, including like functions that are exercised under a 2710

charter adopted pursuant to the Ohio Constitution. 2711

(R) "Overpayment" means any amount already paid that 2712
exceeds the figure determined to be the correct amount of the 2713
tax. 2714

(S) "Taxable income" or "Ohio taxable income" applies only 2715
to estates and trusts, and means federal taxable income, as 2716
defined and used in the Internal Revenue Code, adjusted as 2717
follows: 2718

(1) Add interest or dividends, net of ordinary, necessary, 2719
and reasonable expenses not deducted in computing federal 2720
taxable income, on obligations or securities of any state or of 2721
any political subdivision or authority of any state, other than 2722
this state and its subdivisions and authorities, but only to the 2723
extent that such net amount is not otherwise includible in Ohio 2724
taxable income and is described in either division (S) (1) (a) or 2725
(b) of this section: 2726

(a) The net amount is not attributable to the S portion of 2727
an electing small business trust and has not been distributed to 2728
beneficiaries for the taxable year; 2729

(b) The net amount is attributable to the S portion of an 2730
electing small business trust for the taxable year. 2731

(2) Add interest or dividends, net of ordinary, necessary, 2732
and reasonable expenses not deducted in computing federal 2733
taxable income, on obligations of any authority, commission, 2734
instrumentality, territory, or possession of the United States 2735
to the extent that the interest or dividends are exempt from 2736
federal income taxes but not from state income taxes, but only 2737
to the extent that such net amount is not otherwise includible 2738
in Ohio taxable income and is described in either division (S) 2739

(1) (a) or (b) of this section;	2740
(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;	2741 2742
(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S) (1) (a) or (b) of this section;	2743 2744 2745 2746 2747 2748 2749 2750 2751
(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;	2752 2753 2754 2755 2756 2757 2758 2759 2760
(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;	2761 2762 2763 2764 2765 2766 2767
(7) Add any loss or deduct any gain resulting from sale,	2768

exchange, or other disposition of public obligations to the 2769
extent that such loss has been deducted or such gain has been 2770
included in computing either federal taxable income or income of 2771
the S portion of an electing small business trust for the 2772
taxable year; 2773

(8) Except in the case of the final return of an estate, 2774
add any amount deducted by the taxpayer on both its Ohio estate 2775
tax return pursuant to section 5731.14 of the Revised Code, and 2776
on its federal income tax return in determining federal taxable 2777
income; 2778

(9) (a) Deduct any amount included in federal taxable 2779
income solely because the amount represents a reimbursement or 2780
refund of expenses that in a previous year the decedent had 2781
deducted as an itemized deduction pursuant to section 63 of the 2782
Internal Revenue Code and applicable treasury regulations. The 2783
deduction otherwise allowed under division (S) (9) (a) of this 2784
section shall be reduced to the extent the reimbursement is 2785
attributable to an amount the taxpayer or decedent deducted 2786
under this section in any taxable year. 2787

(b) Add any amount not otherwise included in Ohio taxable 2788
income for any taxable year to the extent that the amount is 2789
attributable to the recovery during the taxable year of any 2790
amount deducted or excluded in computing federal or Ohio taxable 2791
income in any taxable year, but only to the extent such amount 2792
has not been distributed to beneficiaries for the taxable year. 2793

(10) Deduct any portion of the deduction described in 2794
section 1341(a) (2) of the Internal Revenue Code, for repaying 2795
previously reported income received under a claim of right, that 2796
meets both of the following requirements: 2797

(a) It is allowable for repayment of an item that was 2798
included in the taxpayer's taxable income or the decedent's 2799
adjusted gross income for a prior taxable year and did not 2800
qualify for a credit under division (A) or (B) of section 2801
5747.05 of the Revised Code for that year. 2802

(b) It does not otherwise reduce the taxpayer's taxable 2803
income or the decedent's adjusted gross income for the current 2804
or any other taxable year. 2805

(11) Add any amount claimed as a credit under section 2806
5747.059 or 5747.65 of the Revised Code to the extent that the 2807
amount satisfies either of the following: 2808

(a) The amount was deducted or excluded from the 2809
computation of the taxpayer's federal taxable income as required 2810
to be reported for the taxpayer's taxable year under the 2811
Internal Revenue Code; 2812

(b) The amount resulted in a reduction in the taxpayer's 2813
federal taxable income as required to be reported for any of the 2814
taxpayer's taxable years under the Internal Revenue Code. 2815

(12) Deduct any amount, net of related expenses deducted 2816
in computing federal taxable income, that a trust is required to 2817
report as farm income on its federal income tax return, but only 2818
if the assets of the trust include at least ten acres of land 2819
satisfying the definition of "land devoted exclusively to 2820
agricultural use" under section 5713.30 of the Revised Code, 2821
regardless of whether the land is valued for tax purposes as 2822
such land under sections 5713.30 to 5713.38 of the Revised Code. 2823
If the trust is a pass-through entity investor, section 5747.231 2824
of the Revised Code applies in ascertaining if the trust is 2825
eligible to claim the deduction provided by division (S)(12) of 2826

this section in connection with the pass-through entity's farm income. 2827
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Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S) (12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S) (12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter. 2829
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(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income. 2835
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(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A) (20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S) (14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter. 2838
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(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code. 2845
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(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) (7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code. 2848
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(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state. 2852
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(W) "Pass-through entity investor" means any person who, 2855

during any portion of a taxable year of a pass-through entity, 2856
is a partner, member, shareholder, or equity investor in that 2857
pass-through entity. 2858

(X) "Banking day" has the same meaning as in section 2859
1304.01 of the Revised Code. 2860

(Y) "Month" means a calendar month. 2861

(Z) "Quarter" means the first three months, the second 2862
three months, the third three months, or the last three months 2863
of the taxpayer's taxable year. 2864

(AA) (1) "Eligible institution" means a state university or 2865
state institution of higher education as defined in section 2866
3345.011 of the Revised Code, or a private, nonprofit college, 2867
university, or other post-secondary institution located in this 2868
state that possesses a certificate of authorization issued by 2869
the chancellor of higher education pursuant to Chapter 1713. of 2870
the Revised Code or a certificate of registration issued by the 2871
state board of career colleges and schools under Chapter 3332. 2872
of the Revised Code. 2873

(2) "Qualified tuition and fees" means tuition and fees 2874
imposed by an eligible institution as a condition of enrollment 2875
or attendance, not exceeding two thousand five hundred dollars 2876
in each of the individual's first two years of post-secondary 2877
education. If the individual is a part-time student, "qualified 2878
tuition and fees" includes tuition and fees paid for the 2879
academic equivalent of the first two years of post-secondary 2880
education during a maximum of five taxable years, not exceeding 2881
a total of five thousand dollars. "Qualified tuition and fees" 2882
does not include: 2883

(a) Expenses for any course or activity involving sports, 2884

games, or hobbies unless the course or activity is part of the individual's degree or diploma program;	2885 2886
(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction;	2887 2888 2889
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.	2890 2891 2892
(BB) (1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any.	2893 2894 2895 2896
(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied:	2897 2898 2899 2900 2901 2902
(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust.	2903 2904 2905 2906 2907
(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.	2908 2909 2910
Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.	2911 2912 2913

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

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

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

(i) The trust's modified business income;

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

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

with respect to more than one qualifying investee, the amount 2943
described in division (BB) (4) (b) of this section shall equal the 2944
sum of the products so computed for each such qualifying 2945
investee. 2946

(c) (i) With respect to a trust or portion of a trust that 2947
is a resident as ascertained in accordance with division (I) (3) 2948
(d) of this section, its modified nonbusiness income. 2949

(ii) With respect to a trust or portion of a trust that is 2950
not a resident as ascertained in accordance with division (I) (3) 2951
(d) of this section, the amount of its modified nonbusiness 2952
income satisfying the descriptions in divisions (B) (2) to (5) of 2953
section 5747.20 of the Revised Code, except as otherwise 2954
provided in division (BB) (4) (c) (ii) of this section. With 2955
respect to a trust or portion of a trust that is not a resident 2956
as ascertained in accordance with division (I) (3) (d) of this 2957
section, the trust's portion of modified nonbusiness income 2958
recognized from the sale, exchange, or other disposition of a 2959
debt interest in or equity interest in a section 5747.212 2960
entity, as defined in section 5747.212 of the Revised Code, 2961
without regard to division (A) of that section, shall not be 2962
allocated to this state in accordance with section 5747.20 of 2963
the Revised Code but shall be apportioned to this state in 2964
accordance with division (B) of section 5747.212 of the Revised 2965
Code without regard to division (A) of that section. 2966

If the allocation and apportionment of a trust's income 2967
under divisions (BB) (4) (a) and (c) of this section do not fairly 2968
represent the modified Ohio taxable income of the trust in this 2969
state, the alternative methods described in division (C) of 2970
section 5747.21 of the Revised Code may be applied in the manner 2971
and to the same extent provided in that section. 2972

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

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

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

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

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

(b) With respect to a trust that is not a resident for the 3034
taxable year and with respect to a part of a trust that is not a 3035
resident for the taxable year, "qualifying investee" for that 3036
taxable year does not include a C corporation if both of the 3037
following apply: 3038

(i) During the taxable year the trust or part of the trust 3039
recognizes a gain or loss from the sale, exchange, or other 3040
disposition of equity or ownership interests in, or debt 3041
obligations of, the C corporation. 3042

(ii) Such gain or loss constitutes nonbusiness income. 3043

(6) "Available" means information is such that a person is 3044
able to learn of the information by the due date plus 3045
extensions, if any, for filing the return for the taxable year 3046
in which the trust recognizes the gain or loss. 3047

(CC) "Qualifying controlled group" has the same meaning as 3048
in section 5733.04 of the Revised Code. 3049

(DD) "Related member" has the same meaning as in section 3050
5733.042 of the Revised Code. 3051

(EE) (1) For the purposes of division (EE) of this section: 3052

(a) "Qualifying person" means any person other than a 3053
qualifying corporation. 3054

(b) "Qualifying corporation" means any person classified 3055
for federal income tax purposes as an association taxable as a 3056
corporation, except either of the following: 3057

(i) A corporation that has made an election under 3058
subchapter S, chapter one, subtitle A, of the Internal Revenue 3059
Code for its taxable year ending within, or on the last day of, 3060
the investor's taxable year; 3061

(ii) A subsidiary that is wholly owned by any corporation 3062
that has made an election under subchapter S, chapter one, 3063
subtitle A of the Internal Revenue Code for its taxable year 3064
ending within, or on the last day of, the investor's taxable 3065
year. 3066

(2) For the purposes of this chapter, unless expressly 3067
stated otherwise, no qualifying person indirectly owns any asset 3068
directly or indirectly owned by any qualifying corporation. 3069

(FF) For purposes of this chapter and Chapter 5751. of the 3070
Revised Code: 3071

(1) "Trust" does not include a qualified pre-income tax 3072
trust. 3073

(2) A "qualified pre-income tax trust" is any pre-income 3074
tax trust that makes a qualifying pre-income tax trust election 3075
as described in division (FF)(3) of this section. 3076

(3) A "qualifying pre-income tax trust election" is an 3077
election by a pre-income tax trust to subject to the tax imposed 3078
by section 5751.02 of the Revised Code the pre-income tax trust 3079
and all pass-through entities of which the trust owns or 3080
controls, directly, indirectly, or constructively through 3081
related interests, five per cent or more of the ownership or 3082
equity interests. The trustee shall notify the tax commissioner 3083
in writing of the election on or before April 15, 2006. The 3084
election, if timely made, shall be effective on and after 3085
January 1, 2006, and shall apply for all tax periods and tax 3086
years until revoked by the trustee of the trust. 3087

(4) A "pre-income tax trust" is a trust that satisfies all 3088
of the following requirements: 3089

(a) The document or instrument creating the trust was 3090

executed by the grantor before January 1, 1972; 3091

(b) The trust became irrevocable upon the creation of the 3092
trust; and 3093

(c) The grantor was domiciled in this state at the time 3094
the trust was created. 3095

(GG) "Uniformed services" has the same meaning as in 10 3096
U.S.C. 101. 3097

(HH) "Taxable business income" means the amount by which 3098
an individual's business income that is included in federal 3099
adjusted gross income exceeds the amount of business income the 3100
individual is authorized to deduct under division (A) (31) of 3101
this section for the taxable year. 3102

(II) "Employer" does not include a franchisor with respect 3103
to the franchisor's relationship with a franchisee or an 3104
employee of a franchisee, unless the franchisor agrees to assume 3105
that role in writing or a court of competent jurisdiction 3106
determines that the franchisor exercises a type or degree of 3107
control over the franchisee or the franchisee's employees that 3108
is not customarily exercised by a franchisor for the purpose of 3109
protecting the franchisor's trademark, brand, or both. For 3110
purposes of this division, "franchisor" and "franchisee" have 3111
the same meanings as in 16 C.F.R. 436.1. 3112

Section 2. That existing sections 123.153, 1349.61, 3113
4111.03, 4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 3114
4123.38, 4123.77, 4141.01, and 5747.01 of the Revised Code are 3115
hereby repealed. 3116

Section 3. Section 4111.03 of the Revised Code is 3117
presented in this act as a composite of the section as amended 3118
by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General 3119

Assembly. The General Assembly, applying the principle stated in	3120
division (B) of section 1.52 of the Revised Code that amendments	3121
are to be harmonized if reasonably capable of simultaneous	3122
operation, finds that the composite is the resulting version of	3123
the section in effect prior to the effective date of the section	3124
as presented in this act.	3125