

**As Passed by House**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Am. Sub. H. B. No. 80**

**Representative Oelslager**

**Cosponsors: Representatives Hambley, O'Brien, Patterson, Perales,  
Plummer, Rogers, Baldrige, Cross, Edwards, Ghanbari, Holmes, A., Patton  
Seitz**

**A BILL**

To amend sections 4113.21, 4121.01, 4123.01, 1  
4123.026, 4123.038, 4123.46, 4123.51, 4123.52, 2  
4123.56, 4123.58, 4123.65, 4123.66, 4131.03, 3  
4141.01, and 5747.01 and to enact sections 4  
4121.471, 4123.513, and 4177.01 to 4177.06 of the 5  
Revised Code to make changes to the Workers' 6  
Compensation Law, to create a generally uniform 7  
definition of employee for specified labor laws, 8  
to prohibit misclassification under those laws, to 9  
make appropriations for the Bureau of Workers' 10  
Compensation and Department of Public Safety for 11  
the biennium beginning July 1, 2019, and ending 12  
June 30, 2021, and to provide authorization and 13  
conditions for the operation of the Bureau's 14  
programs. 15

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

**Section 1.** All items in this act are hereby appropriated out 16  
of any moneys in the state treasury to the credit of the 17  
designated fund. For all appropriations made in this act, those in 18

the first column are for fiscal year 2020, and those in the second 19  
column are for fiscal year 2021. The appropriations made in this 20  
act are in addition to any other appropriations made for the 21  
biennium beginning July 1, 2019, and ending June 30, 2021. 22

BWC BUREAU OF WORKERS' COMPENSATION 23

Dedicated Purpose Fund Group 24

7023 855407 Claims, Risk and \$ 120,939,816 \$ 124,329,031 25  
Medical Management

7023 855408 Fraud Prevention \$ 14,095,916 \$ 14,231,413 26

7023 855409 Administrative \$ 117,250,236 \$ 116,025,396 27  
Services

7023 855410 Attorney General \$ 4,621,850 \$ 4,621,850 28  
Payments

8220 855606 Coal Workers' Fund \$ 186,632 \$ 188,487 29

8230 855608 Marine Industry \$ 78,188 \$ 78,698 30

8250 855605 Disabled Workers \$ 193,419 \$ 195,709 31  
Relief Fund

8260 855609 Safety and Hygiene \$ 24,079,350 \$ 23,745,661 32  
Operating

8260 855610 Safety Grants \$ 20,000,000 \$ 20,000,000 33

8260 855611 Health and Safety \$ 6,000,000 \$ 6,000,000 34  
Initiative

8260 855612 Safety Campaign \$ 1,500,000 \$ 1,500,000 35

8260 855613 Research Grants \$ 2,000,000 \$ 2,000,000 36

8260 855618 Substance Use \$ 5,000,000 \$ 10,000,000 37  
Recovery and

Workplace Safety  
Program

8260 855619 Safety and Health \$ 2,000,000 \$ 0 38  
Center of Excellence

TOTAL DPF Dedicated Purpose Fund \$ 317,945,407 \$ 322,916,245 39  
Group

Federal Fund Group					40	
3490 855601	OSHA Enforcement	\$	1,676,000	\$	1,676,000	41
3FW0 855614	BLS SOII Grant	\$	195,104	\$	195,104	42
3FW0 855615	NIOSH Grant	\$	24,995	\$	0	43
TOTAL FED	Federal Fund Group	\$	1,896,099	\$	1,871,104	44
TOTAL ALL BUDGET FUND GROUPS		\$	319,841,506	\$	324,787,349	45

WORKERS' COMPENSATION FRAUD UNIT 46

Of the foregoing appropriation item 855410, Attorney General  
Payments, \$828,200 in each fiscal year shall be used to fund the  
expenses of the Workers' Compensation Fraud Unit within the  
Attorney General's Office. These payments shall be processed at  
the beginning of each quarter of each fiscal year and deposited  
into the Workers' Compensation Section Fund (Fund 1950) used by  
the Attorney General. 47  
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SAFETY AND HYGIENE 54

Notwithstanding section 4121.37 of the Revised Code, the  
Treasurer of State shall remit \$24,080,000 cash in fiscal year  
2020 and \$23,746,000 cash in fiscal year 2021 from the State  
Insurance Fund to the state treasury to the credit of the Safety  
and Hygiene Fund (Fund 8260). 55  
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SAFETY GRANTS 60

Notwithstanding section 4121.37 of the Revised Code, the  
Treasurer of State shall remit \$20,000,000 in cash in fiscal year  
2020 and \$20,000,000 in cash in fiscal year 2021 from the State  
Insurance Fund to the state treasury to the credit of the Safety  
and Hygiene Fund (Fund 8260) to be used for Safety Grants. 61  
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63  
64  
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HEALTH AND SAFETY INITIATIVE 66

Notwithstanding section 4121.37 of Revised Code, the  
Treasurer of State shall remit \$6,000,000 in cash in fiscal year  
2020 and \$6,000,000 in cash in fiscal year 2021 from the State 67  
68  
69

Insurance Fund to the state treasury to the credit of the Safety 70  
and Hygiene Fund (Fund 8260). These amounts shall be used under 71  
appropriation item 855611, Health and Safety Initiative, for the 72  
purpose of creating and operating a health and wellness program. 73

SAFETY CAMPAIGN 74

Notwithstanding section 4121.37 of the Revised Code, the 75  
Treasurer of State shall remit \$1,500,000 in cash in fiscal year 76  
2020 and \$1,500,000 in cash in fiscal year 2021 from the State 77  
Insurance Fund to the state treasury to the credit of the Safety 78  
and Hygiene Fund (Fund 8260). These amounts shall be used under 79  
appropriation item 855612, Safety Campaign, for the purpose of 80  
creating and operating a statewide safety awareness and education 81  
campaign. 82

FEDERAL GRANT PROGRAMS 83

The foregoing appropriation item 855609, Safety and Hygiene 84  
Operating, may be used to provide the state match for federal 85  
grant funding received by the Division of Safety and Hygiene. 86

VOCATIONAL REHABILITATION 87

The Bureau of Workers' Compensation and the Opportunities for 88  
Ohioans with Disabilities Agency may enter into an interagency 89  
agreement for the provision of vocational rehabilitation services 90  
and staff to mutually eligible clients. The Bureau may provide 91  
funds from the State Insurance Fund to fund vocational 92  
rehabilitation services and staff in accordance with the 93  
interagency agreement. 94

RESEARCH GRANTS 95

Notwithstanding section 4121.37 of the Revised Code, the 96  
Treasurer of State shall remit \$2,000,000 in cash in fiscal year 97  
2020 and \$2,000,000 in cash in fiscal year 2021 from the State 98  
Insurance Fund to the state treasury to the credit of the Safety 99

and Hygiene Fund (Fund 8260). These amounts shall be used under 100  
appropriation item 855613, Research Grants, for the purpose of 101  
creating and operating the occupational safety and health research 102  
program. 103

SUBSTANCE USE RECOVERY AND WORKPLACE SAFETY PROGRAM 104

Notwithstanding section 4121.37 of the Revised Code, the 105  
Treasurer of State shall remit \$5,000,000 in cash in fiscal year 106  
2020 and \$10,000,000 in cash in fiscal year 2021 from the State 107  
Insurance Fund to the state treasury to the credit of the Safety 108  
and Hygiene Fund (Fund 8260). These amounts shall be used under 109  
appropriation item 855618, Substance Use Recovery and Workplace 110  
Safety Program, for the purpose of creating and operating the 111  
opioid workplace safety program. 112

SAFETY AND HEALTH CENTER OF EXCELLENCE 113

Notwithstanding section 4121.37 of the Revised Code, the 114  
Treasurer of State shall remit \$2,000,000 in cash in fiscal year 115  
2020 from the State Insurance Fund to the state treasury to the 116  
credit of the Safety and Hygiene Fund (Fund 8260). These amounts 117  
shall be used under appropriation item 855619, Safety and Health 118  
Center of Excellence, for the purpose of creating a center of 119  
excellence at the Ohio Center of Occupational Safety and Health. 120

ADMINISTRATIVE COST FUND 121

Notwithstanding section 4123.341 of the Revised Code, the 122  
Treasurer of State shall remit up to \$25,000,000 cash in fiscal 123  
year 2020 and \$25,000,000 cash in fiscal year 2021 from the State 124  
Insurance Fund to the state treasury to the credit of the Workers' 125  
Compensation (Fund 7023). 126

DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING 127

To pay for the FY 2020 costs related to the Deputy Inspector 128  
General for the Bureau of Workers' Compensation and Industrial 129

Commission, on July 1, 2019, and January 1, 2020, or as soon as 130  
possible thereafter, the Director of Budget and Management shall 131  
transfer \$212,500 in cash from the Workers' Compensation Fund 132  
(Fund 7023) to the Deputy Inspector General for the Bureau of 133  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 134

To pay for the FY 2021 costs related to the Deputy Inspector 135  
General for the Bureau of Workers' Compensation and Industrial 136  
Commission, on July 1, 2020, and January 1, 2021, or as soon as 137  
possible thereafter, the Director of Budget and Management shall 138  
transfer \$212,500 in cash from the Workers' Compensation Fund 139  
(Fund 7023) to the Deputy Inspector General for the Bureau of 140  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 141

If additional amounts are needed, the Inspector General may 142  
seek Controlling Board approval for additional transfers of cash 143  
and to increase the amount appropriated in appropriation item 144  
965604, Deputy Inspector General for the Bureau of Workers' 145  
Compensation and Industrial Commission. 146

**Section 2. DPS DEPARTMENT OF PUBLIC SAFETY** 147

General Revenue Fund 148

GRF 763511 Local Disaster \$ 11,000,000 \$ 0 149

Assistance

TOTAL GRF General Revenue Fund \$ 11,000,000 \$ 0 150

TOTAL ALL BUDGET FUND GROUPS \$ 11,000,000 \$ 0 151

LOCAL DISASTER ASSISTANCE 152

On July 1, 2019, or as soon as possible thereafter, the 153  
Director of Budget and Management shall transfer \$11,000,000 cash 154  
from the Disaster Services Fund (Fund 5E20) to the General Revenue 155  
Fund. 156

Of the foregoing appropriation item 763511, Local Disaster 157  
Assistance, \$7,000,000 shall be used to pay the match requirement 158

necessary for eligible local governments to utilize federal 159  
disaster assistance funds released as a result of the Major 160  
Disaster Declaration issued by the President of the United States 161  
on April 17, 2018, and \$4,000,000 shall be used to pay the match 162  
requirement necessary for eligible local governments to utilize 163  
federal disaster assistance funds released as a result of the 164  
Major Disaster Declaration issued by the President of the United 165  
States on April 8, 2019. 166

**Section 3.** Law contained in the Main Operating Appropriations 167  
Act of the 133rd General Assembly that applies generally to the 168  
appropriations made in that act also applies generally to the 169  
appropriations made in this act. 170

**Section 4.** The provisions of law contained in this act, and 171  
their applications, are severable. If any provision of law 172  
contained in this act, or if any application of any provision of 173  
law contained in this act, is held invalid, the invalidity does 174  
not affect other provisions of law contained in this act and their 175  
applications that can be given effect without the invalid 176  
provision or application. 177

**Section 5.** Sections 1 to 5 of this act are exempt from the 178  
referendum under Ohio Constitution, Article II, Section 1d and 179  
section 1.471 of the Revised Code and therefore take effect 180  
immediately when this act becomes law. 181

**Section 6.** That sections 4113.21, 4121.01, 4123.01, 4123.026, 182  
4123.038, 4123.46, 4123.51, 4123.52, 4123.56, 4123.58, 4123.65, 183  
4123.66, 4131.03, 4141.01, and 5747.01 be amended and sections 184  
4121.471, 4123.513, 4177.01, 4177.02, 4177.03, 4177.04, 4177.05, 185  
and 4177.06 of the Revised Code be enacted to read as follows: 186

Sec. 4113.21. (A) No private employer shall require any 187  
prospective employee or applicant for employment to pay the cost 188  
of a medical examination required by the employer as a condition 189  
of employment. 190

(B) No public employer or private employer furnishing 191  
services to a public employer in accordance with a contract 192  
subject to the "Service Contract Act of 1965," 41 U.S.C. 6701 et 193  
seq., shall require any employee, prospective employee, or 194  
applicant for employment to pay the cost of a an initial or any 195  
subsequent medical ~~examination~~ examinations required by the public 196  
employer or private employer as a condition of employment or 197  
continued employment. 198

(C) As used in this section: 199

(1) "Private employer" means any individual, partnership, 200  
trust, estate, joint-stock company, insurance company, common 201  
carrier, public utility, or corporation, whether domestic or 202  
foreign, or the receiver, trustee in bankruptcy, trustee, or the 203  
successor thereof, who has in employment three or more individuals 204  
at any one time within a calendar year. 205

(2) "Public employer" means the United States, the state, any 206  
political subdivision of the state, and any agency of the United 207  
States, the state, or a political subdivision of the state. 208

(3) "Employee" means any person who may be permitted, 209  
required, or directed by any employer in consideration of direct 210  
or indirect gain or profit, to engage in any employment. 211

(D) Any employer who violates this section shall forfeit not 212  
more than one hundred dollars for each violation. The bureau of 213  
workers' compensation and the public utilities commission shall 214  
enforce this section. 215

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 of 216

the Revised Code: 217

(1) "Place of employment" means every place, whether indoors 218  
or out, or underground, and the premises appurtenant thereto, 219  
where either temporarily or permanently any industry, trade, or 220  
business is carried on, or where any process or operation, 221  
directly or indirectly related to any industry, trade, or 222  
business, is carried on and where any person is directly or 223  
indirectly employed by another for direct or indirect gain or 224  
profit, but does not include any place where persons are employed 225  
in private domestic service or agricultural pursuits which do not 226  
involve the use of mechanical power. 227

(2) "Employment" means any trade, occupation, or process of 228  
manufacture or any method of carrying on such trade, occupation, 229  
or process of manufacture in which any person may be engaged, 230  
except in such private domestic service or agricultural pursuits 231  
as do not involve the use of mechanical power. 232

(3) "Employer" means every person, firm, corporation, agent, 233  
manager, representative, or other person having control or custody 234  
of any employment, place of employment, or employee. "Employer" 235  
does not include a franchisor with respect to the franchisor's 236  
relationship with a franchisee or an employee of a franchisee, 237  
unless the franchisor agrees to assume that role in writing or a 238  
court of competent jurisdiction determines that the franchisor 239  
exercises a type or degree of control over the franchisee or the 240  
franchisee's employees that is not customarily exercised by a 241  
franchisor for the purpose of protecting the franchisor's 242  
trademark, brand, or both. For purposes of this division, 243  
"franchisor" and "franchisee" have the same meanings as in 16 244  
C.F.R. 436.1. 245

(4)(a) "Employee" means a person who ~~may be required or~~ 246  
~~directed by any employer, in consideration of direct or indirect~~ 247

~~gain or profit, to engage in any employment, or to go, or work, or~~ 248  
~~be at any time in any place of employment~~ is an employee under the 249  
rules adopted by the superintendent of industrial compliance 250  
pursuant to section 4177.01 of the Revised Code, including a 251  
person described in division (A)(4)(b) of this section if a motor 252  
carrier elects to consider the person to be an employee. 253

(b) "Employee" does not include a person who operates a 254  
vehicle or vessel in the performance of services for or on behalf 255  
of a motor carrier transporting property and to whom all of the 256  
following factors apply: 257

(i) The person owns the vehicle or vessel that is used in 258  
performing the services for or on behalf of the carrier, or the 259  
person leases the vehicle or vessel under a bona fide lease 260  
agreement that is not a temporary replacement lease agreement. For 261  
purposes of this division, a bona fide lease agreement does not 262  
include an agreement between the person and the motor carrier 263  
transporting property for which, or on whose behalf, the person 264  
provides services. 265

(ii) The person is responsible for supplying the necessary 266  
personal services to operate the vehicle or vessel used to provide 267  
the service. 268

(iii) The compensation paid to the person is based on factors 269  
related to work performed, including on a mileage-based rate or a 270  
percentage of any schedule of rates, and not solely on the basis 271  
of the hours or time expended. 272

(iv) The person substantially controls the means and manner 273  
of performing the services, in conformance with regulatory 274  
requirements and specifications of the shipper. 275

(v) The person enters into a written contract with the 276  
carrier for whom the person is performing the services that 277  
describes the relationship between the person and the carrier to 278

be that of an independent contractor and not that of an employee. 279

(vi) The person is responsible for substantially all of the 280  
principal operating costs of the vehicle or vessel and equipment 281  
used to provide the services, including maintenance, fuel, 282  
repairs, supplies, vehicle or vessel insurance, and personal 283  
expenses, except that the person may be paid by the carrier the 284  
carrier's fuel surcharge and incidental costs, including tolls, 285  
permits, and lumper fees. 286

(vii) The person is responsible for any economic loss or 287  
economic gain from the arrangement with the carrier. 288

(5) "Frequenter" means every person, other than an employee, 289  
who may go in or be in a place of employment under circumstances 290  
which render the person other than a trespasser. 291

(6) "Deputy" means any person employed by the industrial 292  
commission or the bureau of workers' compensation, designated as a 293  
deputy by the commission or the administrator of workers' 294  
compensation, who possesses special, technical, scientific, 295  
managerial, professional, or personal abilities or qualities in 296  
matters within the jurisdiction of the commission or the bureau, 297  
and who may be engaged in the performance of duties under the 298  
direction of the commission or the bureau calling for the exercise 299  
of such abilities or qualities. 300

(7) "Order" means any decision, rule, regulation, direction, 301  
requirement, or standard, or any other determination or decision 302  
that the bureau is empowered to and does make. 303

(8) "General order" means an order that applies generally 304  
throughout the state to all persons, employments, or places of 305  
employment, or all persons, employments, or places of employment 306  
of a class under the jurisdiction of the bureau. All other orders 307  
shall be considered special orders. 308

(9) "Local order" means any ordinance, order, rule, or 309

determination of the legislative authority of any municipal corporation, or any trustees, or board or officers of any municipal corporation upon any matter over which the bureau has jurisdiction.

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

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

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

(13) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code.

(B) As used in the Revised Code:

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

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

(3) "Industrial commission" means the industrial commission 340  
as a state agency when the context refers to the authority vested 341  
in the industrial commission as a state agency. 342

Sec. 4121.471. A claim for an additional award under Section 343  
35 of Article II, Ohio Constitution, alleging that an injury, 344  
occupational disease, or death resulted from an employer's failure 345  
to comply with a specific safety rule for the protection of the 346  
lives, health, and safety of employees shall be forever barred 347  
unless it is filed within one year after the date of the injury, 348  
death, or diagnosis of disability due to occupational disease. 349

**Sec. 4123.01.** As used in this chapter: 350

(A)(1) "Employee" means: 351

(a) ~~Every person in the service of the state, or of any 352~~  
~~county, municipal corporation, township, or school district 353~~  
~~therein who is an employee under the rules adopted by the 354~~  
superintendent of industrial compliance pursuant to section 355  
4177.01 of the Revised Code, including regular members of lawfully 356  
constituted police and fire departments of municipal corporations 357  
and townships, whether paid or volunteer, and wherever serving 358  
within the state or on temporary assignment outside thereof, and 359  
executive officers of boards of education, under any appointment 360  
or contract of hire, express or implied, oral or written, 361  
including any elected official of the state, or of any county, 362  
municipal corporation, or township, or members of boards of 363  
education. 364

As used in division (A)(1)(a) of this section, the term 365  
"employee" includes the following persons when responding to an 366  
inherently dangerous situation that calls for an immediate 367  
response on the part of the person, regardless of whether the 368  
person is within the limits of the jurisdiction of the person's 369

regular employment or voluntary service when responding, on the 370  
condition that the person responds to the situation as the person 371  
otherwise would if the person were on duty in the person's 372  
jurisdiction: 373

(i) ~~Off-duty peace officers. As used in division (A)(1)(a)(i)~~ 374  
~~of this section, "peace officer" has the same meaning as in~~ 375  
~~section 2935.01 of the Revised Code.~~ 376

(ii) ~~Off-duty firefighters, whether paid or volunteer, of a~~ 377  
~~lawfully constituted fire department.~~ 378

(iii) ~~Off-duty first responders, emergency medical~~ 379  
~~technicians basic, emergency medical technicians intermediate, or~~ 380  
~~emergency medical technicians paramedic, whether paid or~~ 381  
~~volunteer, emergency medical workers of an ambulance service~~ 382  
~~organization or emergency medical service organization pursuant to~~ 383  
~~Chapter 4765. of the Revised Code.~~ 384

(b) ~~Every person in the service of any person, firm, or~~ 385  
~~private corporation, including any public service corporation,~~ 386  
~~that (i) employs one or more persons regularly in the same~~ 387  
~~business or in or about the same establishment under any contract~~ 388  
~~of hire, express or implied, oral or written, including As used in~~ 389  
~~division (A)(1)(a) of this section, the term "employee" includes~~ 390  
~~aliens and minors, household workers who earn one hundred sixty~~ 391  
~~dollars or more in cash in any calendar quarter from a single~~ 392  
~~household, and casual workers who earn one hundred sixty dollars~~ 393  
~~or more in cash in any calendar quarter from a single employer, ~~or~~~~ 394  
~~(ii) is bound by any such contract of hire or by any other written~~ 395  
~~contract, to pay into the state insurance fund the premiums~~ 396  
~~provided by this chapter.~~ 397

(c) ~~Every person who performs labor or provides services~~ 398  
~~pursuant to a construction contract, as defined in section 4123.79~~ 399  
~~of the Revised Code, if at least ten of the following criteria~~ 400

apply;	401
<del>(i) The person is required to comply with instructions from</del>	402
<del>the other contracting party regarding the manner or method of</del>	403
<del>performing services;</del>	404
<del>(ii) The person is required by the other contracting party to</del>	405
<del>have particular training;</del>	406
<del>(iii) The person's services are integrated into the regular</del>	407
<del>functioning of the other contracting party;</del>	408
<del>(iv) The person is required to perform the work personally;</del>	409
<del>(v) The person is hired, supervised, or paid by the other</del>	410
<del>contracting party;</del>	411
<del>(vi) A continuing relationship exists between the person and</del>	412
<del>the other contracting party that contemplates continuing or</del>	413
<del>recurring work even if the work is not full time;</del>	414
<del>(vii) The person's hours of work are established by the other</del>	415
<del>contracting party;</del>	416
<del>(viii) The person is required to devote full time to the</del>	417
<del>business of the other contracting party;</del>	418
<del>(ix) The person is required to perform the work on the</del>	419
<del>premises of the other contracting party;</del>	420
<del>(x) The person is required to follow the order of work set by</del>	421
<del>the other contracting party;</del>	422
<del>(xi) The person is required to make oral or written reports</del>	423
<del>of progress to the other contracting party;</del>	424
<del>(xii) The person is paid for services on a regular basis such</del>	425
<del>as hourly, weekly, or monthly;</del>	426
<del>(xiii) The person's expenses are paid for by the other</del>	427
<del>contracting party;</del>	428
<del>(xiv) The person's tools and materials are furnished by the</del>	429

<del>other contracting party;</del>	430
<del>(xv) The person is provided with the facilities used to perform services;</del>	431 432
<del>(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;</del>	433 434
<del>(xvii) The person is not performing services for a number of employers at the same time;</del>	435 436
<del>(xviii) The person does not make the same services available to the general public;</del>	437 438
<del>(xix) The other contracting party has a right to discharge the person;</del>	439 440
<del>(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.</del>	441 442 443
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or who is a self-insuring employer and who has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.	444 445 446 447 448 449 450 451 452 453 454 455 456
(d) Every person who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property, unless all of the following factors apply	457 458 459

to the person: 460

(i) The person owns the vehicle or vessel that is used in 461  
performing the services for or on behalf of the carrier, or the 462  
person leases the vehicle or vessel under a bona fide lease 463  
agreement that is not a temporary replacement lease agreement. For 464  
purposes of this division, a bona fide lease agreement does not 465  
include an agreement between the person and the motor carrier 466  
transporting property for which, or on whose behalf, the person 467  
provides services. 468

(ii) The person is responsible for supplying the necessary 469  
personal services to operate the vehicle or vessel used to provide 470  
the service. 471

(iii) The compensation paid to the person is based on factors 472  
related to work performed, including on a mileage-based rate or a 473  
percentage of any schedule of rates, and not solely on the basis 474  
of the hours or time expended. 475

(iv) The person substantially controls the means and manner 476  
of performing the services, in conformance with regulatory 477  
requirements and specifications of the shipper. 478

(v) The person enters into a written contract with the 479  
carrier for whom the person is performing the services that 480  
describes the relationship between the person and the carrier to 481  
be that of an independent contractor and not that of an employee. 482

(vi) The person is responsible for substantially all of the 483  
principal operating costs of the vehicle or vessel and equipment 484  
used to provide the services, including maintenance, fuel, 485  
repairs, supplies, vehicle or vessel insurance, and personal 486  
expenses, except that the person may be paid by the carrier the 487  
carrier's fuel surcharge and incidental costs, including tolls, 488  
permits, and lump sum fees. 489

(vii) The person is responsible for any economic loss or 490

economic gain from the arrangement with the carrier.	491
(2) "Employee" does not mean any of the following:	492
(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;	493 494 495
(b) Any officer of a family farm corporation;	496
(c) An individual incorporated as a corporation;	497
(d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as an officer;	498 499 500
(e) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code;	501 502 503 504 505
(f)(i) A qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;	506 507 508 509 510
(ii) A qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period on critical infrastructure owned or used by the employee's employer;	511 512 513 514 515
(iii) As used in division (A)(2)(f) of this section, "critical infrastructure," "disaster response period," "disaster work," and "qualifying employee" have the same meanings as in section 5703.94 of the Revised Code.	516 517 518 519
Any employer may elect to include as an "employee" within	520

this chapter, any person excluded from the definition of 521  
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c), 522  
or (e) of this section in accordance with rules adopted by the 523  
administrator, with the advice and consent of the bureau of 524  
workers' compensation board of directors. If an employer is a 525  
partnership, sole proprietorship, individual incorporated as a 526  
corporation, or family farm corporation, such employer may elect 527  
to include as an "employee" within this chapter, any member of 528  
such partnership, the owner of the sole proprietorship, the 529  
individual incorporated as a corporation, or the officers of the 530  
family farm corporation. Nothing in this section shall prohibit a 531  
partner, sole proprietor, or any person excluded from the 532  
definition of "employee" pursuant to division (A)(2)(a), (b), (c), 533  
or (e) of this section from electing to be included as an 534  
"employee" under this chapter in accordance with rules adopted by 535  
the administrator, with the advice and consent of the board. 536

In the event of an election, the employer or person electing 537  
coverage shall serve upon the bureau of workers' compensation 538  
written notice naming the person to be covered and include the 539  
person's remuneration for premium purposes in all future payroll 540  
reports. No partner, sole proprietor, or person excluded from the 541  
definition of "employee" pursuant to division (A)(1)(d) or 542  
(A)(2)(a), (b), (c), or (e) of this section, shall receive 543  
benefits or compensation under this chapter until the bureau 544  
receives written notice of the election permitted by this section. 545

For informational purposes only, the bureau shall prescribe 546  
such language as it considers appropriate, on such of its forms as 547  
it considers appropriate, to advise employers of their right to 548  
elect to include as an "employee" within this chapter a sole 549  
proprietor, any member of a partnership, or a person excluded from 550  
the definition of "employee" under division (A)(1)(d) or 551  
(A)(2)(a), (b), (c), or (e) of this section, that they should 552

check any health and disability insurance policy, or other form of 553  
health and disability plan or contract, presently covering them, 554  
or the purchase of which they may be considering, to determine 555  
whether such policy, plan, or contract excludes benefits for 556  
illness or injury that they might have elected to have covered by 557  
workers' compensation. 558

(B)(1) "Employer" means: 559

(a) The state, including state hospitals, each county, 560  
municipal corporation, township, school district, and hospital 561  
owned by a political subdivision or subdivisions other than the 562  
state; 563

(b) Every person, firm, professional employer organization, 564  
and private corporation, including any public service corporation, 565  
that (i) has in service one or more employees or shared employees 566  
regularly in the same business or in or about the same 567  
establishment under any contract of hire, express or implied, oral 568  
or written, or (ii) is bound by any such contract of hire or by 569  
any other written contract, to pay into the insurance fund the 570  
premiums provided by this chapter. 571

All such employers are subject to this chapter. Any member of 572  
a firm or association, who regularly performs manual labor in or 573  
about a mine, factory, or other establishment, including a 574  
household establishment, shall be considered an employee in 575  
determining whether such person, firm, or private corporation, or 576  
public service corporation, has in its service, one or more 577  
employees and the employer shall report the income derived from 578  
such labor to the bureau as part of the payroll of such employer, 579  
and such member shall thereupon be entitled to all the benefits of 580  
an employee. 581

(2) "Employer" does not include a franchisor with respect to 582  
the franchisor's relationship with a franchisee or an employee of 583

a franchisee, unless the franchisor agrees to assume that role in 584  
writing or a court of competent jurisdiction determines that the 585  
franchisor exercises a type or degree of control over the 586  
franchisee or the franchisee's employees that is not customarily 587  
exercised by a franchisor for the purpose of protecting the 588  
franchisor's trademark, brand, or both. For purposes of this 589  
division, "franchisor" and "franchisee" have the same meanings as 590  
in 16 C.F.R. 436.1. 591

(C) "Injury" includes any injury, whether caused by external 592  
accidental means or accidental in character and result, received 593  
in the course of, and arising out of, the injured employee's 594  
employment. "Injury" does not include: 595

(1) Psychiatric conditions except ~~where~~ as follows: 596

(a) Where the claimant's psychiatric conditions have arisen 597  
from an injury or occupational disease sustained by that claimant 598  
~~or where~~; 599

(b) Where the claimant's psychiatric conditions have arisen 600  
from sexual conduct in which the claimant was forced by threat of 601  
physical harm to engage or participate; 602

(c) Where the claimant is a peace officer, firefighter, or 603  
emergency medical worker and is diagnosed with post-traumatic 604  
stress disorder that has been received in the course of, and has 605  
arisen out of, the claimant's employment as a peace officer, 606  
firefighter, or emergency medical worker. 607

(2) Injury or disability caused primarily by the natural 608  
deterioration of tissue, an organ, or part of the body; 609

(3) Injury or disability incurred in voluntary participation 610  
in an employer-sponsored recreation or fitness activity if the 611  
employee signs a waiver of the employee's right to compensation or 612  
benefits under this chapter prior to engaging in the recreation or 613  
fitness activity; 614

(4) A condition that pre-existed an injury unless that 615  
pre-existing condition is substantially aggravated by the injury. 616  
Such a substantial aggravation must be documented by objective 617  
diagnostic findings, objective clinical findings, or objective 618  
test results. Subjective complaints may be evidence of such a 619  
substantial aggravation. However, subjective complaints without 620  
objective diagnostic findings, objective clinical findings, or 621  
objective test results are insufficient to substantiate a 622  
substantial aggravation. 623

(D) "Child" includes a posthumous child and a child legally 624  
adopted prior to the injury. 625

(E) "Family farm corporation" means a corporation founded for 626  
the purpose of farming agricultural land in which the majority of 627  
the voting stock is held by and the majority of the stockholders 628  
are persons or the spouse of persons related to each other within 629  
the fourth degree of kinship, according to the rules of the civil 630  
law, and at least one of the related persons is residing on or 631  
actively operating the farm, and none of whose stockholders are a 632  
corporation. A family farm corporation does not cease to qualify 633  
under this division where, by reason of any devise, bequest, or 634  
the operation of the laws of descent or distribution, the 635  
ownership of shares of voting stock is transferred to another 636  
person, as long as that person is within the degree of kinship 637  
stipulated in this division. 638

(F) "Occupational disease" means a disease contracted in the 639  
course of employment, which by its causes and the characteristics 640  
of its manifestation or the condition of the employment results in 641  
a hazard which distinguishes the employment in character from 642  
employment generally, and the employment creates a risk of 643  
contracting the disease in greater degree and in a different 644  
manner from the public in general. 645

(G) "Self-insuring employer" means an employer who is granted 646

the privilege of paying compensation and benefits directly under 647  
section 4123.35 of the Revised Code, including a board of county 648  
commissioners for the sole purpose of constructing a sports 649  
facility as defined in section 307.696 of the Revised Code, 650  
provided that the electors of the county in which the sports 651  
facility is to be built have approved construction of a sports 652  
facility by ballot election no later than November 6, 1997. 653

(H) "Private employer" means an employer as defined in 654  
division (B)(1)(b) of this section. 655

(I) "Professional employer organization" has the same meaning 656  
as in section 4125.01 of the Revised Code. 657

(J) "Public employer" means an employer as defined in 658  
division (B)(1)(a) of this section. 659

(K) "Sexual conduct" means vaginal intercourse between a male 660  
and female; anal intercourse, fellatio, and cunnilingus between 661  
persons regardless of gender; and, without privilege to do so, the 662  
insertion, however slight, of any part of the body or any 663  
instrument, apparatus, or other object into the vaginal or anal 664  
cavity of another. Penetration, however slight, is sufficient to 665  
complete vaginal or anal intercourse. 666

(L) "Other-states' insurer" means an insurance company that 667  
is authorized to provide workers' compensation insurance coverage 668  
in any of the states that permit employers to obtain insurance for 669  
workers' compensation claims through insurance companies. 670

(M) "Other-states' coverage" means both of the following: 671

(1) Insurance coverage secured by an eligible employer for 672  
workers' compensation claims of employees who are in employment 673  
relationships localized in a state other than this state or those 674  
employees' dependents; 675

(2) Insurance coverage secured by an eligible employer for 676

workers' compensation claims that arise in a state other than this 677  
state where an employer elects to obtain coverage through either 678  
the administrator or an other-states' insurer. 679

(N) "Limited other-states coverage" means insurance coverage 680  
provided by the administrator to an eligible employer for workers' 681  
compensation claims of employees who are in an employment 682  
relationship localized in this state but are temporarily working 683  
in a state other than this state, or those employees' dependents. 684

(O) "Motor carrier" has the same meaning as in section 685  
4923.01 of the Revised Code. 686

(P) "Peace officer" has the same meaning as in section 687  
2935.01 of the Revised Code. 688

(O) "Firefighter" means a firefighter, whether paid or 689  
volunteer, of a lawfully constituted fire department. 690

(R) "Emergency medical worker" means a first responder, 691  
emergency medical technician-basic, emergency medical 692  
technician-intermediate, or emergency medical 693  
technician-paramedic, certified under Chapter 4765. of the Revised 694  
Code, whether paid or volunteer. 695

(S) "Illegal alien" means an alien who is deportable if 696  
apprehended because of one of the following: 697

(1) The alien entered the United States illegally without the 698  
proper authorization and documents. 699

(2) The alien once entered the United States legally and has 700  
since violated the terms of the status under which the alien 701  
entered the United States, making that alien an "out-of-status" 702  
alien. 703

(3) The alien once entered the United States legally but has 704  
overstayed the time limits of the original legal status. 705

(T) "Unauthorized alien" means an alien who is not authorized 706

to be employed as determined in accordance with section 101(a) of 707  
the "Immigration Reform and Control Act of 1986," 8 U.S.C. 1324a. 708

**Sec. 4123.026.** (A) The administrator of workers' 709  
compensation, ~~or~~ a self-insuring public employer for the peace 710  
officers, firefighters, and emergency medical workers employed by 711  
or volunteering for that self-insuring public employer, or a 712  
detention facility that is a self-insuring employer for the 713  
facility's employees, including corrections officers, shall pay 714  
the costs of conducting post-exposure medical diagnostic services, 715  
consistent with the standards of medical care existing at the time 716  
of the exposure, to investigate whether an injury or occupational 717  
disease was sustained by a peace officer, firefighter, ~~or~~ 718  
emergency medical worker, or detention facility employee, 719  
including a corrections officer, when coming into contact with the 720  
blood or other body fluid of another person in the course of and 721  
arising out of the peace officer's, firefighter's, ~~or~~ emergency 722  
medical worker's, or detention facility employee's employment, or 723  
when responding to an inherently dangerous situation in the manner 724  
described in, and in accordance with the conditions specified 725  
under, division (A)(1)(a) of section 4123.01 of the Revised Code, 726  
through any of the following means: 727

(1) Splash or spatter in the eye or mouth, including when 728  
received in the course of conducting mouth-to-mouth resuscitation; 729

(2) A puncture in the skin; 730

(3) A cut in the skin or another opening in the skin such as 731  
an open sore, wound, lesion, abrasion, or ulcer. 732

(B) As used in this section: 733

(1) ~~"Peace officer" has the same meaning as in section~~ 734  
~~2935.01 of the Revised Code.~~ 735

~~(2) "Firefighter" means a firefighter, whether paid or~~ 736

~~volunteer, of a lawfully constituted fire department.~~ 737

~~(3) "Emergency medical worker" means a first responder, 738  
emergency medical technician basic, emergency medical 739  
technician intermediate, or emergency medical 740  
technician paramedic, certified under Chapter 4765. of the Revised 741  
Code, whether paid or volunteer 742~~

"Corrections officer" means a person employed by a detention 743  
facility as a corrections officer. 744

(2) "Detention facility" means any public or private place 745  
used for the confinement of a person charged with or convicted of 746  
any crime in this state or another state or under the laws of the 747  
United States or alleged or found to be a delinquent child or 748  
unruly child in this state or another state or under the laws of 749  
the United States. 750

**Sec. 4123.038.** As used in this section and section 4123.039 751  
of the Revised Code: 752

(A) "Apprentice" and "apprenticeship agreement" have the 753  
meaning defined in section ~~4111.25~~ 4139.01 of the Revised Code. 754

(B) "Related and supplemental instructions" means training 755  
offered, conducted, supervised, or given under the sponsorship of 756  
any joint apprenticeship committee or other sponsoring 757  
organization to apprentices, which training is given in addition 758  
to the approved schedule of work experience through employment, 759  
and which is to be credited towards the minimum hours of related 760  
and supplemental instructions required by section 4139.01 of the 761  
Revised Code. 762

(C) "Pre-apprentice" means a person who receives formal 763  
classroom training designed to provide the person with the basic 764  
education, attitudes, skills, trade knowledge, and motivation 765  
necessary to enter a formal apprenticeship program. 766

(D) "Entry-level trainee" means a person who possesses 767  
experience that would qualify the person as a journeyperson but 768  
for the existence of certain other disqualifying conditions and 769  
who receives on-the-job training accompanied by classroom 770  
instruction outside of normal working hours. 771

(E) "Journeyperson trainee" means a person with journeyperson 772  
status in a given trade who receives classroom and laboratory 773  
training for the purpose of broadening the person's skills and 774  
acquainting the person with new techniques and ideas in the trade. 775

**Sec. 4123.46.** (A)(1) Except as provided in division (A)(2) of 776  
this section, the bureau of workers' compensation shall disburse 777  
the state insurance fund to employees of employers who have paid 778  
into the fund the premiums applicable to the classes to which they 779  
belong when the employees have been injured in the course of their 780  
employment, wherever the injuries have occurred, and provided the 781  
injuries have not been purposely self-inflicted, or to the 782  
dependents of the employees in case death has ensued. 783

(2) As long as injuries have not been purposely 784  
self-inflicted, the bureau shall disburse the surplus fund created 785  
under section 4123.34 of the Revised Code to off-duty peace 786  
officers, firefighters, and emergency medical technicians, ~~and~~ 787  
~~first responders~~ workers, or to their dependents if death ensues, 788  
who are injured while responding to inherently dangerous 789  
situations that call for an immediate response on the part of the 790  
person, regardless of whether the person was within the limits of 791  
the person's jurisdiction when responding, on the condition that 792  
the person responds to the situation as the person otherwise would 793  
if the person were on duty in the person's jurisdiction. 794

~~As used in division (A)(2) of this section, "peace officer,"~~ 795  
~~"firefighter," "emergency medical technician," "first responder,"~~ 796  
~~and "jurisdiction" have the same meanings as in section 4123.01 of~~ 797

~~the Revised Code.~~ 798

(B) All self-insuring employers, in compliance with this 799  
chapter, shall pay the compensation to injured employees, or to 800  
the dependents of employees who have been killed in the course of 801  
their employment, unless the injury or death of the employee was 802  
purposely self-inflicted, and shall furnish the medical, surgical, 803  
nurse, and hospital care and attention or funeral expenses as 804  
would have been paid and furnished by virtue of this chapter under 805  
a similar state of facts by the bureau out of the state insurance 806  
fund if the employer had paid the premium into the fund. 807

If any rule or regulation of a self-insuring employer 808  
provides for or authorizes the payment of greater compensation or 809  
more complete or extended medical care, nursing, surgical, and 810  
hospital attention, or funeral expenses to the injured employees, 811  
or to the dependents of the employees as may be killed, the 812  
employer shall pay to the employees, or to the dependents of 813  
employees killed, the amount of compensation and furnish the 814  
medical care, nursing, surgical, and hospital attention or funeral 815  
expenses provided by the self-insuring employer's rules and 816  
regulations. 817

(C) Payment to injured employees, or to their dependents in 818  
case death has ensued, is in lieu of any and all rights of action 819  
against the employer of the injured or killed employees. 820

**Sec. 4123.51.** (A) The administrator of workers' compensation 821  
shall by published notices and other appropriate means endeavor to 822  
cause claims to be filed in the service office of the bureau of 823  
workers' compensation from which the investigation and 824  
determination of the claim may be made most expeditiously. A claim 825  
or appeal under this chapter or Chapter 4121., 4127., or 4131. of 826  
the Revised Code may be filed with any office of the bureau of 827  
workers' compensation or the industrial commission, within the 828

required statutory period, and is considered received for the 829  
purpose of processing the claims or appeals. 830

(B) The administrator, on the form an employee or an 831  
individual acting on behalf of the employee files with the 832  
administrator or a self-insuring employer to initiate a claim 833  
under this chapter or Chapter 4121., 4127., or 4131. of the 834  
Revised Code, shall include ~~a~~ all of the following: 835

(1) A statement that is substantially similar to the 836  
following statement in bold font and set apart from all other text 837  
in the form: 838

"By signing this form, I elect to only receive compensation, 839  
benefits, or both that are provided for in this claim under Ohio's 840  
workers' compensation laws. I understand and I hereby waive and 841  
release my right to receive compensation and benefits under the 842  
workers' compensation laws of another state for the injury or 843  
occupational disease, or the death resulting from an injury or 844  
occupational disease, for which I am filing this claim. I have not 845  
received compensation and benefits under the workers' compensation 846  
laws of another state for this claim, and I will not file and have 847  
not filed a claim in another state for the injury or occupational 848  
disease or death resulting from an injury or occupational disease 849  
for which I am filing this claim." 850

(2) For a claimant who is an employee, all of the following: 851

(a) A place for the claimant to state whether the claimant is 852  
a citizen of the United States; 853

(b) A place for the claimant to state whether the claimant is 854  
an illegal alien or an unauthorized alien; 855

(c) A place for a claimant who is not a United States 856  
citizen, illegal alien, or unauthorized alien to provide the 857  
claimant's alien registration number or other signifier that the 858  
claimant is authorized to work by the United States department of 859

homeland security or its successor and the expiration date of the 860  
claimant's authorization to work. 861

(3) For a claimant who is a dependent of an individual who 862  
was an employee and who died as a result of suffering an injury or 863  
contracting an occupational disease, all of the following: 864

(a) A place for the claimant to state whether the claimant is 865  
a citizen of the United States; 866

(b) A place for the claimant to state whether the claimant is 867  
an illegal alien or an unauthorized alien; 868

(c) A place for the claimant to state whether the claimant 869  
resides in the United States; 870

(d) A place for a claimant who resides in the United States 871  
and is not a United States citizen to provide proof that the 872  
claimant resides in the United States lawfully; 873

(e) A place for the claimant to provide the following 874  
information about the deceased employee: 875

(i) Whether the deceased employee was a United States 876  
citizen; 877

(ii) Whether the deceased employee was an illegal alien or an 878  
unauthorized alien; 879

(iii) For a deceased employee who was not a United States 880  
citizen, illegal alien, or unauthorized alien, the deceased 881  
employee's alien registration number or other signifier that the 882  
deceased employee was authorized to work by the United States 883  
department of homeland security or its successor and the 884  
expiration date of the deceased employee's authorization to work. 885

**Sec. 4123.513. A claimant who provides false information** 886  
**required under division (B)(2) or (3) of section 4123.51 of the** 887  
**Revised Code is ineligible to receive compensation or benefits** 888

under the claim for which the false information was supplied and 889  
shall be subject to prosecution for a violation of section 2913.48 890  
of the Revised Code. 891

**Sec. 4123.52.** (A) The jurisdiction of the industrial 892  
commission and the authority of the administrator of workers' 893  
compensation over each case is continuing, and the commission may 894  
make such modification or change with respect to former findings 895  
or orders with respect thereto, as, in its opinion is justified. 896  
No modification or change nor any finding or award in respect of 897  
any claim shall be made with respect to disability, compensation, 898  
dependency, or benefits, after five years from the date of injury 899  
in the absence of ~~the payment of~~ medical benefits being provided 900  
under this chapter or in the absence of payment of compensation 901  
under section 4123.57, 4123.58, or division (A) or (B) of section 902  
4123.56 of the Revised Code or wages in lieu of compensation in a 903  
manner so as to satisfy the requirements of section 4123.84 of the 904  
Revised Code, in which event the modification, change, finding, or 905  
award shall be made within five years from the date of the last 906  
medical services being rendered or the date of the last payment of 907  
compensation or from the date of death, nor unless written notice 908  
of claim for the specific part or parts of the body injured or 909  
disabled has been given as provided in section 4123.84 or 4123.85 910  
of the Revised Code. The commission shall not make any 911  
modification, change, finding, or award which shall award 912  
compensation for a back period in excess of two years prior to the 913  
date of filing application therefor. 914

(B) Notwithstanding division (A) of this section, and except 915  
as otherwise provided in a rule that shall be adopted by the 916  
administrator, with the advice and consent of the bureau of 917  
workers' compensation board of directors, neither the 918  
administrator nor the commission shall make any finding or award 919

for payment of medical or vocational rehabilitation services 920  
submitted for payment more than one year after the date the 921  
services were rendered or more than one year after the date the 922  
services became payable under division (I) of section 4123.511 of 923  
the Revised Code, whichever is later. No medical or vocational 924  
rehabilitation provider shall bill a claimant for services 925  
rendered if the administrator or commission is prohibited from 926  
making that payment under this division. 927

(C) Division (B) of this section does not apply to requests 928  
made by the centers for medicare and medicaid services in the 929  
United States department of health and human services for 930  
reimbursement of conditional payments made pursuant to section 931  
1395y(b)(2) of title 42, United States Code (commonly known as the 932  
"Medicare Secondary Payer Act"). 933

(D) This section does not affect the right of a claimant to 934  
compensation accruing subsequent to the filing of any such 935  
application, provided the application is filed within the time 936  
limit provided in this section. 937

(E) This section does not deprive the commission of its 938  
continuing jurisdiction to determine the questions raised by any 939  
application for modification of award which has been filed with 940  
the commission after June 1, 1932, and prior to the expiration of 941  
the applicable period but in respect to which no award has been 942  
granted or denied during the applicable period. 943

(F) The commission may, by general rules, provide for the 944  
destruction of files of cases in which no further action may be 945  
taken. 946

(G) The commission and administrator of workers' compensation 947  
each may, by general rules, provide for the retention and 948  
destruction of all other records in their possession or under 949  
their control pursuant to section 121.211 and sections 149.34 to 950

149.36 of the Revised Code. The bureau of workers' compensation 951  
may purchase or rent required equipment for the document retention 952  
media, as determined necessary to preserve the records. 953  
Photographs, microphotographs, microfilm, films, or other direct 954  
document retention media, when properly identified, have the same 955  
effect as the original record and may be offered in like manner 956  
and may be received as evidence in proceedings before the 957  
industrial commission, staff hearing officers, and district 958  
hearing officers, and in any court where the original record could 959  
have been introduced. 960

**Sec. 4123.56.** (A) Except as provided in division (D) of this 961  
section, in the case of temporary disability, an employee shall 962  
receive sixty-six and two-thirds per cent of the employee's 963  
average weekly wage so long as such disability is total, not to 964  
exceed a maximum amount of weekly compensation which is equal to 965  
the statewide average weekly wage as defined in division (C) of 966  
section 4123.62 of the Revised Code, and not less than a minimum 967  
amount of compensation which is equal to thirty-three and 968  
one-third per cent of the statewide average weekly wage as defined 969  
in division (C) of section 4123.62 of the Revised Code unless the 970  
employee's wage is less than thirty-three and one-third per cent 971  
of the minimum statewide average weekly wage, in which event the 972  
employee shall receive compensation equal to the employee's full 973  
wages; provided that for the first twelve weeks of total 974  
disability the employee shall receive seventy-two per cent of the 975  
employee's full weekly wage, but not to exceed a maximum amount of 976  
weekly compensation which is equal to the lesser of the statewide 977  
average weekly wage as defined in division (C) of section 4123.62 978  
of the Revised Code or one hundred per cent of the employee's net 979  
take-home weekly wage. In the case of a self-insuring employer, 980  
payments shall be for a duration based upon the medical reports of 981  
the attending physician. If the employer disputes the attending 982

physician's report, payments may be terminated only upon 983  
application and hearing by a district hearing officer pursuant to 984  
division (C) of section 4123.511 of the Revised Code. Payments 985  
shall continue pending the determination of the matter, however 986  
payment shall not be made for the period when any employee has 987  
returned to work, when an employee's treating physician has made a 988  
written statement that the employee is capable of returning to the 989  
employee's former position of employment, when work within the 990  
physical capabilities of the employee is made available by the 991  
employer or another employer, or when the employee has reached the 992  
maximum medical improvement. Where the employee is capable of work 993  
activity, but the employee's employer is unable to offer the 994  
employee any employment, the employee shall register with the 995  
director of job and family services, who shall assist the employee 996  
in finding suitable employment. The termination of temporary total 997  
disability, whether by order or otherwise, does not preclude the 998  
commencement of temporary total disability at another point in 999  
time if the employee again becomes temporarily totally disabled. 1000

After two hundred weeks of temporary total disability 1001  
benefits, the medical section of the bureau of workers' 1002  
compensation shall schedule the claimant for an examination for an 1003  
evaluation to determine whether or not the temporary disability 1004  
has become permanent. A self-insuring employer shall notify the 1005  
bureau immediately after payment of two hundred weeks of temporary 1006  
total disability and request that the bureau schedule the claimant 1007  
for such an examination. 1008

When the employee is awarded compensation for temporary total 1009  
disability for a period for which the employee has received 1010  
benefits under Chapter 4141. of the Revised Code, the bureau shall 1011  
pay an amount equal to the amount received from the award to the 1012  
director of job and family services and the director shall credit 1013  
the amount to the accounts of the employers to whose accounts the 1014

payment of benefits was charged or is chargeable to the extent it 1015  
was charged or is chargeable. 1016

If any compensation under this section has been paid for the 1017  
same period or periods for which temporary nonoccupational 1018  
accident and sickness insurance is or has been paid pursuant to an 1019  
insurance policy or program to which the employer has made the 1020  
entire contribution or payment for providing insurance or under a 1021  
nonoccupational accident and sickness program fully funded by the 1022  
employer, except as otherwise provided in this division 1023  
compensation paid under this section for the period or periods 1024  
shall be paid only to the extent by which the payment or payments 1025  
exceeds the amount of the nonoccupational insurance or program 1026  
paid or payable. Offset of the compensation shall be made only 1027  
upon the prior order of the bureau or industrial commission or 1028  
agreement of the claimant. If an employer provides supplemental 1029  
sick leave benefits in addition to temporary total disability 1030  
compensation paid under this section, and if the employer and an 1031  
employee agree in writing to the payment of the supplemental sick 1032  
leave benefits, temporary total disability benefits may be paid 1033  
without an offset for those supplemental sick leave benefits. 1034

Except as otherwise provided in a collective bargaining 1035  
agreement, if an employee's temporary total disability 1036  
compensation is offset by an amount paid to the employee for 1037  
accrued sick leave, the employer shall do either of the following: 1038

(1) Reinstate the sick leave that offset the employee's 1039  
temporary total disability compensation; 1040

(2) Pay the employee the amount by which the employee's 1041  
temporary total compensation was offset by the sick leave. 1042

As used in this division, "net take-home weekly wage" means 1043  
the amount obtained by dividing an employee's total remuneration, 1044  
as defined in section 4141.01 of the Revised Code, paid to or 1045

earned by the employee during the first four of the last five 1046  
completed calendar quarters which immediately precede the first 1047  
day of the employee's entitlement to benefits under this division, 1048  
by the number of weeks during which the employee was paid or 1049  
earned remuneration during those four quarters, less the amount of 1050  
local, state, and federal income taxes deducted for each such 1051  
week. 1052

(B)(1) If an employee in a claim allowed under this chapter 1053  
suffers a wage loss as a result of returning to employment other 1054  
than the employee's former position of employment due to an injury 1055  
or occupational disease, the employee shall receive compensation 1056  
at sixty-six and two-thirds per cent of the difference between the 1057  
employee's average weekly wage and the employee's present earnings 1058  
not to exceed the statewide average weekly wage. The payments may 1059  
continue for up to a maximum of two hundred weeks, but the 1060  
payments shall be reduced by the corresponding number of weeks in 1061  
which the employee receives payments pursuant to division (A)(2) 1062  
of section 4121.67 of the Revised Code. 1063

(2) If an employee in a claim allowed under this chapter 1064  
suffers a wage loss as a result of being unable to find employment 1065  
consistent with the employee's disability resulting from the 1066  
employee's injury or occupational disease, the employee shall 1067  
receive compensation at sixty-six and two-thirds per cent of the 1068  
difference between the employee's average weekly wage and the 1069  
employee's present earnings, not to exceed the statewide average 1070  
weekly wage. The payments may continue for up to a maximum of 1071  
fifty-two weeks. The first twenty-six weeks of payments under 1072  
division (B)(2) of this section shall be in addition to the 1073  
maximum of two hundred weeks of payments allowed under division 1074  
(B)(1) of this section. If an employee in a claim allowed under 1075  
this chapter receives compensation under division (B)(2) of this 1076  
section in excess of twenty-six weeks, the number of weeks of 1077

compensation allowable under division (B)(1) of this section shall 1078  
be reduced by the corresponding number of weeks in excess of 1079  
twenty-six, and up to fifty-two, that is allowable under division 1080  
(B)(1) of this section. 1081

(3) The number of weeks of wage loss payable to an employee 1082  
under divisions (B)(1) and (2) of this section shall not exceed 1083  
two hundred and twenty-six weeks in the aggregate. 1084

(C) In the event an employee of a professional sports 1085  
franchise domiciled in this state is disabled as the result of an 1086  
injury or occupational disease, the total amount of payments made 1087  
under a contract of hire or collective bargaining agreement to the 1088  
employee during a period of disability is deemed an advanced 1089  
payment of compensation payable under sections 4123.56 to 4123.58 1090  
of the Revised Code. The employer shall be reimbursed the total 1091  
amount of the advanced payments out of any award of compensation 1092  
made pursuant to sections 4123.56 to 4123.58 of the Revised Code. 1093

(D) If an employee receives temporary total disability 1094  
benefits pursuant to division (A) of this section and social 1095  
security retirement benefits pursuant to the "Social Security 1096  
Act," the weekly benefit amount under division (A) of this section 1097  
shall not exceed sixty-six and two-thirds per cent of the 1098  
statewide average weekly wage as defined in division (C) of 1099  
section 4123.62 of the Revised Code. 1100

(E) If an employee is eligible for compensation under 1101  
division (A) of this section, but the employee's full weekly wage 1102  
has not been determined at the time payments are to commence under 1103  
division (H) of section 4123.511 of the Revised Code, the employee 1104  
shall receive thirty-three and one-third per cent of the statewide 1105  
average weekly wage as defined in division (C) of section 4123.62 1106  
of the Revised Code. On determination of the employee's full 1107  
weekly wage, the compensation an employee receives shall be 1108  
adjusted pursuant to division (A) of this section. 1109

If the amount of compensation an employee receives under this 1110  
division is greater than the adjusted amount the employee receives 1111  
under division (A) of this section that is based on the employee's 1112  
full weekly wage, the excess amount shall be recovered in the 1113  
manner provided in division (K) of section 4123.511 of the Revised 1114  
Code. If the amount of compensation an employee receives under 1115  
this division is less than the adjusted amount the employee 1116  
receives under that division that is based on the employee's full 1117  
weekly wage, the employee shall receive the difference between 1118  
those two amounts. 1119

(F) If an employee is unable to work or suffers a wage loss 1120  
as the direct result of a disability arising from an injury or 1121  
occupational disease, the employee is entitled to receive 1122  
compensation under this section, provided the employee is 1123  
otherwise qualified. If an employee is not working or has suffered 1124  
a wage loss as the direct result of reasons unrelated to a 1125  
disability arising from an injury or occupational disease, the 1126  
employee is not eligible to receive compensation under this 1127  
section. It is the intent of the general assembly to supersede any 1128  
previous judicial decision that applied the doctrine of voluntary 1129  
abandonment to a claim brought under this section. 1130

**Sec. 4123.58.** (A) In cases of permanent total disability, the 1131  
employee shall receive an award to continue until the employee's 1132  
death in the amount of sixty-six and two-thirds per cent of the 1133  
employee's average weekly wage, but, except as otherwise provided 1134  
in division (B) of this section, not more than a maximum amount of 1135  
weekly compensation which is equal to sixty-six and two-thirds per 1136  
cent of the statewide average weekly wage as defined in division 1137  
(C) of section 4123.62 of the Revised Code in effect on the date 1138  
of injury or on the date the disability due to the occupational 1139  
disease begins, nor not less than a minimum amount of weekly 1140  
compensation which is equal to fifty per cent of the statewide 1141

average weekly wage as defined in division (C) of section 4123.62 1142  
of the Revised Code in effect on the date of injury or on the date 1143  
the disability due to the occupational disease begins, unless the 1144  
employee's average weekly wage is less than fifty per cent of the 1145  
statewide average weekly wage at the time of the injury, in which 1146  
event the employee shall receive compensation in an amount equal 1147  
to the employee's average weekly wage. 1148

1149

(B) In the event the weekly workers' compensation amount when 1150  
combined with disability benefits received pursuant to the Social 1151  
Security Act is less than the statewide average weekly wage as 1152  
defined in division (C) of section 4123.62 of the Revised Code, 1153  
then the maximum amount of weekly compensation shall be the 1154  
statewide average weekly wage as defined in division (C) of 1155  
section 4123.62 of the Revised Code. At any time that social 1156  
security disability benefits terminate or are reduced, the 1157  
workers' compensation award shall be recomputed to pay the maximum 1158  
amount permitted under this division. 1159

(C) Permanent total disability shall be compensated according 1160  
to this section only when at least one of the following applies to 1161  
the claimant: 1162

(1) The claimant has lost, or lost the use of both hands or 1163  
both arms, or both feet or both legs, or both eyes, or of any two 1164  
thereof; however, the loss or loss of use of one limb does not 1165  
constitute the loss or loss of use of two body parts; 1166

(2) The impairment resulting from the employee's injury or 1167  
occupational disease prevents the employee from engaging in 1168  
sustained remunerative employment utilizing the employment skills 1169  
that the employee has or may reasonably be expected to develop. 1170

(D) Permanent total disability shall not be compensated when 1171  
the reason the employee is unable to engage in sustained 1172

remunerative employment is due to any of the following reasons, 1173  
whether individually or in combination: 1174

(1) Impairments of the employee that are not the result of an 1175  
allowed injury or occupational disease; 1176

(2) Solely the employee's age or aging; 1177

(3) The employee retired or otherwise ~~voluntarily abandoned~~ 1178  
~~the workforce~~ is not working for reasons unrelated to the allowed 1179  
injury or occupational disease. 1180

(4) The employee has not engaged in educational or 1181  
rehabilitative efforts to enhance the employee's employability, 1182  
unless such efforts are determined to be in vain. 1183

(E) Compensation payable under this section for permanent 1184  
total disability is in addition to benefits payable under division 1185  
(B) of section 4123.57 of the Revised Code. 1186

(F) If an employee is awarded compensation for permanent 1187  
total disability under this section because the employee sustained 1188  
a traumatic brain injury, the employee is entitled to that 1189  
compensation regardless of the employee's employment in a 1190  
sheltered workshop subsequent to the award, on the condition that 1191  
the employee does not receive income, compensation, or 1192  
remuneration from that employment in excess of two thousand 1193  
dollars in any calendar quarter. As used in this division, 1194  
"sheltered workshop" means a state agency or nonprofit 1195  
organization established to carry out a program of rehabilitation 1196  
for handicapped individuals or to provide these individuals with 1197  
remunerative employment or other occupational rehabilitating 1198  
activity. 1199

**Sec. 4123.65.** (A) A state fund employer or the employee of 1200  
such an employer may file an application with the administrator of 1201  
workers' compensation for approval of a final settlement of a 1202

claim under this chapter. The application shall include the 1203  
settlement agreement, and except as otherwise specified in this 1204  
division, be signed by the claimant and employer, and clearly set 1205  
forth the circumstances by reason of which the proposed settlement 1206  
is deemed desirable and that the parties agree to the terms of the 1207  
settlement agreement. A claimant may file an application without 1208  
an employer's signature in the following situations: 1209

(1) The employer is no longer doing business in Ohio; 1210

(2) The claim no longer is in the employer's industrial 1211  
accident or occupational disease experience as provided in 1212  
division (B) of section 4123.34 of the Revised Code and the 1213  
claimant no longer is employed with that employer; 1214

(3) The employer has failed to comply with section 4123.35 of 1215  
the Revised Code. 1216

If a claimant files an application without an employer's 1217  
signature, and the employer still is doing business in this state, 1218  
the administrator shall send written notice of the application to 1219  
the employer immediately upon receipt of the application. If the 1220  
employer fails to respond to the notice within thirty days after 1221  
the notice is sent, the application need not contain the 1222  
employer's signature. 1223

If a state fund employer or an employee of such an employer 1224  
has not filed an application for a final settlement under this 1225  
division, the administrator may file an application on behalf of 1226  
the employer or the employee, provided that the administrator 1227  
gives notice of the filing to the employer and the employee and to 1228  
the representative of record of the employer and of the employee 1229  
immediately upon the filing. An application filed by the 1230  
administrator shall contain all of the information and signatures 1231  
required of an employer or an employee who files an application 1232  
under this division. Every self-insuring employer that enters into 1233

a final settlement agreement with an employee shall mail, within 1234  
seven days of executing the agreement, a copy of the agreement to 1235  
the administrator and the employee's representative. The 1236  
administrator shall place the agreement into the claimant's file. 1237

(B) Except as provided in divisions (C) and (D) of this 1238  
section, a settlement agreed to under this section is binding upon 1239  
all parties thereto and as to items, injuries, and occupational 1240  
diseases to which the settlement applies. 1241

(C) No settlement agreed to under division (A) of this 1242  
section or agreed to by a self-insuring employer and the 1243  
self-insuring employer's employee shall take effect until thirty 1244  
days after the administrator approves the settlement for state 1245  
fund employees and employers, or after the self-insuring employer 1246  
and employee sign the final settlement agreement. ~~During~~ Except as 1247  
otherwise provided in division (G) of this section, during the 1248  
thirty-day period, the employer, employee, or administrator, for 1249  
state fund settlements, and the employer or employee, for 1250  
self-insuring settlements, may withdraw consent to the settlement 1251  
by an employer providing written notice to the employer's employee 1252  
and the administrator or by an employee providing written notice 1253  
to the employee's employer and the administrator, or by the 1254  
administrator providing written notice to the state fund employer 1255  
and employee. If an employee dies during the thirty-day waiting 1256  
period following the approval of a settlement, the settlement can 1257  
be voided by any party for good cause shown. 1258

(D) At the time of agreement to any final settlement 1259  
agreement under division (A) of this section or agreement between 1260  
a self-insuring employer and the self-insuring employer's 1261  
employee, the administrator, for state fund settlements, and the 1262  
self-insuring employer, for self-insuring settlements, immediately 1263  
shall send a copy of the agreement to the industrial commission 1264  
who shall assign the matter to a staff hearing officer. The staff 1265

hearing officer shall determine, within the time limitations 1266  
specified in division (C) of this section, whether the settlement 1267  
agreement is or is not a gross miscarriage of justice. If the 1268  
staff hearing officer determines within that time period that the 1269  
settlement agreement is clearly unfair, the staff hearing officer 1270  
shall issue an order disapproving the settlement agreement. If the 1271  
staff hearing officer determines that the settlement agreement is 1272  
not clearly unfair or fails to act within those time limits, the 1273  
settlement agreement is approved. 1274

(E) A settlement entered into under this section may pertain 1275  
to one or more claims of a claimant, or one or more parts of a 1276  
claim, or the compensation or benefits pertaining to either, or 1277  
any combination thereof, provided that nothing in this section 1278  
shall be interpreted to require a claimant to enter into a 1279  
settlement agreement for every claim that has been filed with the 1280  
bureau of workers' compensation by that claimant under Chapter 1281  
4121., 4123., 4127., or 4131. of the Revised Code. 1282

(F) A settlement entered into under this section is not 1283  
appealable under section 4123.511 or 4123.512 of the Revised Code. 1284

(G) Notwithstanding any provision of the Revised Code to the 1285  
contrary, if a settlement application is filed under this section 1286  
regarding a claim that is no longer in an employer's industrial 1287  
accident or occupational disease experience as provided in 1288  
division (B) of section 4123.34 of the Revised Code, the employer 1289  
shall not deny consent or withdraw consent regarding that 1290  
settlement application. 1291

**Sec. 4123.66.** (A) In addition to the compensation provided 1292  
for in this chapter, the administrator of workers' compensation 1293  
shall disburse and pay from the state insurance fund the amounts 1294  
for medical, nurse, and hospital services and medicine as the 1295  
administrator deems proper and, in case death ensues from the 1296

injury or occupational disease, the administrator shall disburse 1297  
and pay from the fund reasonable funeral expenses in an amount not 1298  
to exceed ~~fifty-five~~ seven thousand five hundred dollars. The 1299  
bureau of workers' compensation shall reimburse anyone, whether 1300  
dependent, volunteer, or otherwise, who pays the funeral expenses 1301  
of any employee whose death ensues from any injury or occupational 1302  
disease as provided in this section. The administrator may adopt 1303  
rules, with the advice and consent of the bureau of workers' 1304  
compensation board of directors, with respect to furnishing 1305  
medical, nurse, and hospital service and medicine to injured or 1306  
disabled employees entitled thereto, and for the payment therefor. 1307  
In case an injury or industrial accident that injures an employee 1308  
also causes damage to the employee's eyeglasses, artificial teeth 1309  
or other denture, or hearing aid, or in the event an injury or 1310  
occupational disease makes it necessary or advisable to replace, 1311  
repair, or adjust the same, the bureau shall disburse and pay a 1312  
reasonable amount to repair or replace the same. 1313

(B) The administrator, in the rules the administrator adopts 1314  
pursuant to division (A) of this section, may adopt rules 1315  
specifying the circumstances under which the bureau may make 1316  
immediate payment for the first fill of prescription drugs for 1317  
medical conditions identified in an application for compensation 1318  
or benefits under section 4123.84 or 4123.85 of the Revised Code 1319  
that occurs prior to the date the administrator issues an initial 1320  
determination order under division (B) of section 4123.511 of the 1321  
Revised Code. If the claim is ultimately disallowed in a final 1322  
administrative or judicial order, and if the employer is a state 1323  
fund employer who pays assessments into the surplus fund account 1324  
created under section 4123.34 of the Revised Code, the payments 1325  
for medical services made pursuant to this division for the first 1326  
fill of prescription drugs shall be charged to and paid from the 1327  
surplus fund account and not charged through the state insurance 1328

fund to the employer against whom the claim was filed. 1329

(C)(1) If an employer or a welfare plan has provided to or on 1330  
behalf of an employee any benefits or compensation for an injury 1331  
or occupational disease and that injury or occupational disease is 1332  
determined compensable under this chapter, the employer or a 1333  
welfare plan may request that the administrator reimburse the 1334  
employer or welfare plan for the amount the employer or welfare 1335  
plan paid to or on behalf of the employee in compensation or 1336  
benefits. The administrator shall reimburse the employer or 1337  
welfare plan for the compensation and benefits paid if, at the 1338  
time the employer or welfare plan provides the benefits or 1339  
compensation to or on behalf of employee, the injury or 1340  
occupational disease had not been determined to be compensable 1341  
under this chapter and if the employee was not receiving 1342  
compensation or benefits under this chapter for that injury or 1343  
occupational disease. The administrator shall reimburse the 1344  
employer or welfare plan in the amount that the administrator 1345  
would have paid to or on behalf of the employee under this chapter 1346  
if the injury or occupational disease originally would have been 1347  
determined compensable under this chapter. If the employer is a 1348  
merit-rated employer, the administrator shall adjust the amount of 1349  
premium next due from the employer according to the amount the 1350  
administrator pays the employer. The administrator shall adopt 1351  
rules, in accordance with Chapter 119. of the Revised Code, to 1352  
implement this division. 1353

(2) As used in this division, "welfare plan" has the same 1354  
meaning as in division (1) of 29 U.S.C.A. 1002. 1355

(D)(1) Subject to the requirements of division (D)(2) of this 1356  
section, the administrator may make a payment of up to five 1357  
hundred dollars to either of the following: 1358

(a) The centers of medicare and medicaid services, for 1359  
reimbursement of conditional payments made pursuant to the 1360

"Medicare Secondary Payer Act," 42 U.S.C. 1395y; 1361

(b) The Ohio department of medicaid, or a medical assistance 1362  
provider to whom the department has assigned a right of recovery 1363  
for a claim for which the department has notified the provider 1364  
that the department intends to recoup the department's prior 1365  
payment for the claim, for reimbursement under sections 5160.35 to 1366  
5160.43 of the Revised Code for the cost of medical assistance 1367  
paid on behalf of a medical assistance recipient. 1368

(2) The administrator may make a payment under division 1369  
(D)(1) of this section if the administrator makes a reasonable 1370  
determination that both of the following apply: 1371

(a) The payment is for reimbursement of benefits for an 1372  
injury or occupational disease. 1373

(b) The injury or occupational disease is compensable, or is 1374  
likely to be compensable, under this chapter or Chapter 4121., 1375  
4127., or 4131. of the Revised Code. 1376

(3) Any payment made pursuant to this division shall be 1377  
charged to and paid from the surplus fund account created under 1378  
section 4123.34 of the Revised Code. 1379

(4) Nothing in this division shall be construed as limiting 1380  
the centers of medicare and medicaid services, the department, or 1381  
any other entity with a lawful right to reimbursement from 1382  
recovering sums greater than five hundred dollars. 1383

(5) The administrator may adopt rules, with the advice and 1384  
consent of the bureau of workers' compensation board of directors, 1385  
to implement this division. 1386

**Sec. 4131.03.** (A) For the relief of persons who are entitled 1387  
to receive benefits by virtue of the federal act, there is hereby 1388  
established a coal-workers pneumoconiosis fund, which shall be 1389  
separate from the funds established and administered pursuant to 1390

Chapter 4123. of the Revised Code. The fund shall consist of 1391  
premiums and other payments thereto by subscribers who elect to 1392  
subscribe to the fund to insure the payment of benefits required 1393  
by the federal act. 1394

(B) The coal-workers pneumoconiosis fund shall be in the 1395  
custody of the treasurer of state. The bureau of workers' 1396  
compensation shall make disbursements from the fund to those 1397  
persons entitled to payment therefrom and in the amounts required 1398  
pursuant to sections 4131.01 to 4131.06 of the Revised Code. All 1399  
investment earnings of the fund shall be credited to the fund. 1400

The director of natural resources annually may request the 1401  
administrator of workers' compensation to transfer a portion of 1402  
the funds from the net position of the coal-workers pneumoconiosis 1403  
fund to the mining regulation and safety fund created in section 1404  
1513.30 of the Revised Code for the purposes specified in that 1405  
section. If the administrator receives a request, the 1406  
administrator shall transfer an amount not to exceed one million 1407  
dollars on the first day of July or as soon as possible 1408  
thereafter. 1409

The administrator, with the advice and consent of the bureau 1410  
of workers' compensation board of directors, shall adopt rules in 1411  
accordance with Chapter 119. of the Revised Code governing the 1412  
transfer to ensure the solvency of the coal-workers pneumoconiosis 1413  
fund. For that purpose, the administrator may establish tests in 1414  
the rules based on measures of net assets, liabilities, expenses, 1415  
interest, dividend income, or other factors that the administrator 1416  
determines appropriate that may be applied before a transfer. 1417

(C) The administrator shall have the same powers to invest 1418  
any of the surplus or reserve belonging to the coal-workers 1419  
pneumoconiosis fund as are delegated to the administrator under 1420  
section 4123.44 of the Revised Code with respect to the state 1421  
insurance fund. 1422

(D) If the administrator determines that reinsurance of the risks of the coal-workers pneumoconiosis fund is necessary to assure solvency of the fund, the administrator may:

(1) Enter into contracts for the purchase of reinsurance coverage of the risks of the fund with any company or agency authorized by law to issue contracts of reinsurance;

(2) Pay the cost of reinsurance from the fund;

(3) Include the costs of reinsurance as a liability and estimated liability of the fund.

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

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

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

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

or 1453

(c) Had paid, subsequent to December 31, 1977, for employment 1454  
in domestic service in a local college club, or local chapter of a 1455  
college fraternity or sorority, cash remuneration of one thousand 1456  
dollars or more in any calendar quarter in the current calendar 1457  
year or the preceding calendar year, or had paid subsequent to 1458  
December 31, 1977, for employment in domestic service in a private 1459  
home cash remuneration of one thousand dollars in any calendar 1460  
quarter in the current calendar year or the preceding calendar 1461  
year: 1462

(i) For the purposes of divisions (A)(1)(a) and (b) of this 1463  
section, there shall not be taken into account any wages paid to, 1464  
or employment of, an individual performing domestic service as 1465  
described in this division. 1466

(ii) An employer under this division shall not be an employer 1467  
with respect to wages paid for any services other than domestic 1468  
service unless the employer is also found to be an employer under 1469  
division (A)(1)(a), (b), or (d) of this section. 1470

(d) As a farm operator or a crew leader subsequent to 1471  
December 31, 1977, had in employment individuals in agricultural 1472  
labor; and 1473

(i) During any calendar quarter in the current calendar year 1474  
or the preceding calendar year, paid cash remuneration of twenty 1475  
thousand dollars or more for the agricultural labor; or 1476

(ii) Had at least ten individuals in employment in 1477  
agricultural labor, not including agricultural workers who are 1478  
aliens admitted to the United States to perform agricultural labor 1479  
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1480  
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1481  
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 1482  
of the twenty different calendar weeks, in either the current or 1483

preceding calendar year whether or not the same individual was in 1484  
employment in each day; or 1485

(e) Is not otherwise an employer as defined under division 1486  
(A)(1)(a) or (b) of this section; and 1487

(i) For which, within either the current or preceding 1488  
calendar year, service, except for domestic service in a private 1489  
home not covered under division (A)(1)(c) of this section, is or 1490  
was performed with respect to which such employer is liable for 1491  
any federal tax against which credit may be taken for 1492  
contributions required to be paid into a state unemployment fund; 1493

(ii) Which, as a condition for approval of this chapter for 1494  
full tax credit against the tax imposed by the "Federal 1495  
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 1496  
required, pursuant to such act to be an employer under this 1497  
chapter; or 1498

(iii) Who became an employer by election under division 1499  
(A)(4) or (5) of this section and for the duration of such 1500  
election; or 1501

(f) In the case of the state, its instrumentalities, its 1502  
political subdivisions, and their instrumentalities, and Indian 1503  
tribes, had in employment, as defined in divisions (B)(2)(a) and 1504  
(B)(2)(1) of this section, at least one individual; 1505

(g) For the purposes of division (A)(1)(a) of this section, 1506  
if any week includes both the thirty-first day of December and the 1507  
first day of January, the days of that week before the first day 1508  
of January shall be considered one calendar week and the days 1509  
beginning the first day of January another week. 1510

(2) Each individual employed to perform or to assist in 1511  
performing the work of any agent or employee of an employer is 1512  
employed by such employer for all the purposes of this chapter, 1513  
whether such individual was hired or paid directly by such 1514

employer or by such agent or employee, provided the employer had 1515  
actual or constructive knowledge of the work. All individuals 1516  
performing services for an employer of any person in this state 1517  
who maintains two or more establishments within this state are 1518  
employed by a single employer for the purposes of this chapter. 1519

(3) An employer subject to this chapter within any calendar 1520  
year is subject to this chapter during the whole of such year and 1521  
during the next succeeding calendar year. 1522

(4) An employer not otherwise subject to this chapter who 1523  
files with the director of job and family services a written 1524  
election to become an employer subject to this chapter for not 1525  
less than two calendar years shall, with the written approval of 1526  
such election by the director, become an employer subject to this 1527  
chapter to the same extent as all other employers as of the date 1528  
stated in such approval, and shall cease to be subject to this 1529  
chapter as of the first day of January of any calendar year 1530  
subsequent to such two calendar years only if at least thirty days 1531  
prior to such first day of January the employer has filed with the 1532  
director a written notice to that effect. 1533

(5) Any employer for whom services that do not constitute 1534  
employment are performed may file with the director a written 1535  
election that all such services performed by individuals in the 1536  
employer's employ in one or more distinct establishments or places 1537  
of business shall be deemed to constitute employment for all the 1538  
purposes of this chapter, for not less than two calendar years. 1539  
Upon written approval of the election by the director, such 1540  
services shall be deemed to constitute employment subject to this 1541  
chapter from and after the date stated in such approval. Such 1542  
services shall cease to be employment subject to this chapter as 1543  
of the first day of January of any calendar year subsequent to 1544  
such two calendar years only if at least thirty days prior to such 1545  
first day of January such employer has filed with the director a 1546

written notice to that effect. 1547

(6) "Employer" does not include a franchisor with respect to 1548  
the franchisor's relationship with a franchisee or an employee of 1549  
a franchisee, unless the franchisor agrees to assume that role in 1550  
writing or a court of competent jurisdiction determines that the 1551  
franchisor exercises a type or degree of control over the 1552  
franchisee or the franchisee's employees that is not customarily 1553  
exercised by a franchisor for the purpose of protecting the 1554  
franchisor's trademark, brand, or both. For purposes of this 1555  
division, "franchisor" and "franchisee" have the same meanings as 1556  
in 16 C.F.R. 436.1. 1557

(B)(1) "Employment" means service performed by an individual 1558  
for remuneration under any contract of hire, written or oral, 1559  
express or implied, including service performed in interstate 1560  
commerce and service performed by an officer of a corporation, 1561  
without regard to whether such service is executive, managerial, 1562  
or manual in nature, and without regard to whether such officer is 1563  
a stockholder or a member of the board of directors of the 1564  
corporation, unless it is shown to the satisfaction of the 1565  
director, based upon a determination made by the superintendent of 1566  
industrial compliance under Chapter 4177. of the Revised Code, 1567  
that such individual has been and will continue to be free from 1568  
direction or control over the performance of such service, both 1569  
under a contract of service and in fact. ~~The director shall adopt~~ 1570  
~~rules to define "direction or control."~~ 1571

(2) "Employment" includes: 1572

(a) Service performed after December 31, 1977, by an 1573  
individual in the employ of the state or any of its 1574  
instrumentalities, or any political subdivision thereof or any of 1575  
its instrumentalities or any instrumentality of more than one of 1576  
the foregoing or any instrumentality of any of the foregoing and 1577  
one or more other states or political subdivisions and without 1578

regard to divisions (A)(1)(a) and (b) of this section, provided 1579  
that such service is excluded from employment as defined in the 1580  
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 1581  
3306(c)(7) and is not excluded under division (B)(3) of this 1582  
section; or the services of employees covered by voluntary 1583  
election, as provided under divisions (A)(4) and (5) of this 1584  
section; 1585

(b) Service performed after December 31, 1971, by an 1586  
individual in the employ of a religious, charitable, educational, 1587  
or other organization which is excluded from the term "employment" 1588  
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 1589  
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 1590  
3306(c)(8) of that act and is not excluded under division (B)(3) 1591  
of this section; 1592

(c) Domestic service performed after December 31, 1977, for 1593  
an employer, as provided in division (A)(1)(c) of this section; 1594

(d) Agricultural labor performed after December 31, 1977, for 1595  
a farm operator or a crew leader, as provided in division 1596  
(A)(1)(d) of this section; 1597

(e) Subject to division (B)(2)(m) of this section, service 1598  
not covered under division (B)(1) of this section which is 1599  
performed after December 31, 1971: 1600

(i) As an agent-driver or commission-driver engaged in 1601  
distributing meat products, vegetable products, fruit products, 1602  
bakery products, beverages other than milk, laundry, or 1603  
dry-cleaning services, for the individual's employer or principal; 1604

(ii) As a traveling or city salesperson, other than as an 1605  
agent-driver or commission-driver, engaged on a full-time basis in 1606  
the solicitation on behalf of and in the transmission to the 1607  
salesperson's employer or principal except for sideline sales 1608  
activities on behalf of some other person of orders from 1609

wholesalers, retailers, contractors, or operators of hotels, 1610  
restaurants, or other similar establishments for merchandise for 1611  
resale, or supplies for use in their business operations, provided 1612  
that for the purposes of division (B)(2)(e)(ii) of this section, 1613  
the services shall be deemed employment if the contract of service 1614  
contemplates that substantially all of the services are to be 1615  
performed personally by the individual and that the individual 1616  
does not have a substantial investment in facilities used in 1617  
connection with the performance of the services other than in 1618  
facilities for transportation, and the services are not in the 1619  
nature of a single transaction that is not a part of a continuing 1620  
relationship with the person for whom the services are performed. 1621

(f) An individual's entire service performed within or both 1622  
within and without the state if: 1623

(i) The service is localized in this state. 1624

(ii) The service is not localized in any state, but some of 1625  
the service is performed in this state and either the base of 1626  
operations, or if there is no base of operations then the place 1627  
from which such service is directed or controlled, is in this 1628  
state or the base of operations or place from which such service 1629  
is directed or controlled is not in any state in which some part 1630  
of the service is performed but the individual's residence is in 1631  
this state. 1632

(g) Service not covered under division (B)(2)(f)(ii) of this 1633  
section and performed entirely without this state, with respect to 1634  
no part of which contributions are required and paid under an 1635  
unemployment compensation law of any other state, the Virgin 1636  
Islands, Canada, or of the United States, if the individual 1637  
performing such service is a resident of this state and the 1638  
director approves the election of the employer for whom such 1639  
services are performed; or, if the individual is not a resident of 1640  
this state but the place from which the service is directed or 1641

controlled is in this state, the entire services of such 1642  
individual shall be deemed to be employment subject to this 1643  
chapter, provided service is deemed to be localized within this 1644  
state if the service is performed entirely within this state or if 1645  
the service is performed both within and without this state but 1646  
the service performed without this state is incidental to the 1647  
individual's service within the state, for example, is temporary 1648  
or transitory in nature or consists of isolated transactions; 1649

(h) Service of an individual who is a citizen of the United 1650  
States, performed outside the United States except in Canada after 1651  
December 31, 1971, or the Virgin Islands, after December 31, 1971, 1652  
and before the first day of January of the year following that in 1653  
which the United States secretary of labor approves the Virgin 1654  
Islands law for the first time, in the employ of an American 1655  
employer, other than service which is "employment" under divisions 1656  
(B)(2)(f) and (g) of this section or similar provisions of another 1657  
state's law, if: 1658

(i) The employer's principal place of business in the United 1659  
States is located in this state; 1660

(ii) The employer has no place of business in the United 1661  
States, but the employer is an individual who is a resident of 1662  
this state; or the employer is a corporation which is organized 1663  
under the laws of this state, or the employer is a partnership or 1664  
a trust and the number of partners or trustees who are residents 1665  
of this state is greater than the number who are residents of any 1666  
other state; or 1667

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 1668  
of this section is met but the employer has elected coverage in 1669  
this state or the employer having failed to elect coverage in any 1670  
state, the individual has filed a claim for benefits, based on 1671  
such service, under this chapter. 1672

(i) For the purposes of division (B)(2)(h) of this section, 1673  
the term "American employer" means an employer who is an 1674  
individual who is a resident of the United States; or a 1675  
partnership, if two-thirds or more of the partners are residents 1676  
of the United States; or a trust, if all of the trustees are 1677  
residents of the United States; or a corporation organized under 1678  
the laws of the United States or of any state, provided the term 1679  
"United States" includes the states, the District of Columbia, the 1680  
Commonwealth of Puerto Rico, and the Virgin Islands. 1681

(j) Notwithstanding any other provisions of divisions (B)(1) 1682  
and (2) of this section, service, except for domestic service in a 1683  
private home not covered under division (A)(1)(c) of this section, 1684  
with respect to which a tax is required to be paid under any 1685  
federal law imposing a tax against which credit may be taken for 1686  
contributions required to be paid into a state unemployment fund, 1687  
or service, except for domestic service in a private home not 1688  
covered under division (A)(1)(c) of this section, which, as a 1689  
condition for full tax credit against the tax imposed by the 1690  
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1691  
3311, is required to be covered under this chapter. 1692

(k) Construction services performed by any individual under a 1693  
construction contract, as defined in section 4141.39 of the 1694  
Revised Code, ~~if the director determines that the employer for~~ 1695  
~~whom services are performed has the right to direct or control the~~ 1696  
~~performance of the services and that the individuals who perform~~ 1697  
~~the services receive remuneration for the services performed. The~~ 1698  
~~director shall presume that the employer for whom services are~~ 1699  
~~performed has the right to direct or control the performance of~~ 1700  
~~the services if ten or more of the following criteria apply:~~ 1701

~~(i) The employer directs or controls the manner or method by~~ 1702  
~~which instructions are given to the individual performing~~ 1703  
~~services;~~ 1704

<del>(ii) The employer requires particular training for the individual performing services;</del>	1705 1706
<del>(iii) Services performed by the individual are integrated into the regular functioning of the employer;</del>	1707 1708
<del>(iv) The employer requires that services be provided by a particular individual;</del>	1709 1710
<del>(v) The employer hires, supervises, or pays the wages of the individual performing services;</del>	1711 1712
<del>(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full time work;</del>	1713 1714 1715
<del>(vii) The employer requires the individual to perform services during established hours;</del>	1716 1717
<del>(viii) The employer requires that the individual performing services be devoted on a full time basis to the business of the employer;</del>	1718 1719 1720
<del>(ix) The employer requires the individual to perform services on the employer's premises;</del>	1721 1722
<del>(x) The employer requires the individual performing services to follow the order of work established by the employer;</del>	1723 1724
<del>(xi) The employer requires the individual performing services to make oral or written reports of progress;</del>	1725 1726
<del>(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;</del>	1727 1728
<del>(xiii) The employer pays expenses for the individual performing services;</del>	1729 1730
<del>(xiv) The employer furnishes the tools and materials for use by the individual to perform services;</del>	1731 1732
<del>(xv) The individual performing services has not invested in</del>	1733

<del>the facilities used to perform services;</del>	1734
<del>(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;</del>	1735
	1736
	1737
<del>(xvii) The individual performing services is not performing services for more than two employers simultaneously;</del>	1738
	1739
<del>(xviii) The individual performing services does not make the services available to the general public;</del>	1740
	1741
<del>(xix) The employer has a right to discharge the individual performing services;</del>	1742
	1743
<del>(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.;</del>	1744
	1745
	1746
(1) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division (B)(3) of this section.	1747
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(m) Service performed by an individual for or on behalf of a motor carrier transporting property as an operator of a vehicle or vessel, unless all of the following factors apply to the individual and the motor carrier has not elected to consider the individual's service as employment:	1756
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(i) The individual owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the individual leases the vehicle or vessel under a bona fide lease	1761
	1762
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agreement that is not a temporary replacement lease agreement. For 1764  
purposes of this division, a bona fide lease agreement does not 1765  
include an agreement between the individual and the motor carrier 1766  
transporting property for which, or on whose behalf, the 1767  
individual provides services. 1768

(ii) The individual is responsible for supplying the 1769  
necessary personal services to operate the vehicle or vessel used 1770  
to provide the service. 1771

(iii) The compensation paid to the individual is based on 1772  
factors related to work performed, including on a mileage-based 1773  
rate or a percentage of any schedule of rates, and not solely on 1774  
the basis of the hours or time expended. 1775

(iv) The individual substantially controls the means and 1776  
manner of performing the services, in conformance with regulatory 1777  
requirements and specifications of the shipper. 1778

(v) The individual enters into a written contract with the 1779  
carrier for whom the individual is performing the services that 1780  
describes the relationship between the individual and the carrier 1781  
to be that of an independent contractor and not that of an 1782  
employee. 1783

(vi) The individual is responsible for substantially all of 1784  
the principal operating costs of the vehicle or vessel and 1785  
equipment used to provide the services, including maintenance, 1786  
fuel, repairs, supplies, vehicle or vessel insurance, and personal 1787  
expenses, except that the individual may be paid by the carrier 1788  
the carrier's fuel surcharge and incidental costs, including 1789  
tolls, permits, and lump sum fees. 1790

(vii) The individual is responsible for any economic loss or 1791  
economic gain from the arrangement with the carrier. 1792

(viii) The individual is not performing services described in 1793  
26 U.S.C. 3306(c)(7) or (8). 1794

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

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

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

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

(i) As a publicly elected official;

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

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

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

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

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

(e) Service performed after December 31, 1971:	1825
(i) Service in the employ of an educational institution or institution of higher education, including those operated by the state or a political subdivision, if such service is performed by a student who is enrolled and is regularly attending classes at the educational institution or institution of higher education; or	1826 1827 1828 1829 1830
(ii) By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, provided that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.	1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841
(f) Service performed by an individual in the employ of the individual's son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of the child's father or mother;	1842 1843 1844 1845
(g) Service performed for one or more principals by an individual who is compensated on a commission basis, who in the performance of the work is master of the individual's own time and efforts, and whose remuneration is wholly dependent on the amount of effort the individual chooses to expend, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 31, 1971:	1846 1847 1848 1849 1850 1851 1852 1853
(i) By an individual for an employer as an insurance agent or as an insurance solicitor, if all this service is performed for	1854 1855

remuneration solely by way of commission; 1856

(ii) As a home worker performing work, according to 1857  
specifications furnished by the employer for whom the services are 1858  
performed, on materials or goods furnished by such employer which 1859  
are required to be returned to the employer or to a person 1860  
designated for that purpose. 1861

(h) Service performed after December 31, 1971: 1862

(i) In the employ of a church or convention or association of 1863  
churches, or in an organization which is operated primarily for 1864  
religious purposes and which is operated, supervised, controlled, 1865  
or principally supported by a church or convention or association 1866  
of churches; 1867

(ii) By a duly ordained, commissioned, or licensed minister 1868  
of a church in the exercise of the individual's ministry or by a 1869  
member of a religious order in the exercise of duties required by 1870  
such order; or 1871

(iii) In a facility conducted for the purpose of carrying out 1872  
a program of rehabilitation for individuals whose earning capacity 1873  
is impaired by age or physical or mental deficiency or injury, or 1874  
providing remunerative work for individuals who because of their 1875  
impaired physical or mental capacity cannot be readily absorbed in 1876  
the competitive labor market, by an individual receiving such 1877  
rehabilitation or remunerative work. 1878

(i) Service performed after June 30, 1939, with respect to 1879  
which unemployment compensation is payable under the "Railroad 1880  
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1881

(j) Service performed by an individual in the employ of any 1882  
organization exempt from income tax under section 501 of the 1883  
"Internal Revenue Code of 1954," if the remuneration for such 1884  
service does not exceed fifty dollars in any calendar quarter, or 1885  
if such service is in connection with the collection of dues or 1886

premiums for a fraternal beneficial society, order, or association 1887  
and is performed away from the home office or is ritualistic 1888  
service in connection with any such society, order, or 1889  
association; 1890

(k) Casual labor not in the course of an employer's trade or 1891  
business; incidental service performed by an officer, appraiser, 1892  
or member of a finance committee of a bank, building and loan 1893  
association, savings and loan association, or savings association 1894  
when the remuneration for such incidental service exclusive of the 1895  
amount paid or allotted for directors' fees does not exceed sixty 1896  
dollars per calendar quarter is casual labor; 1897

(l) Service performed in the employ of a voluntary employees' 1898  
beneficial association providing for the payment of life, 1899  
sickness, accident, or other benefits to the members of such 1900  
association or their dependents or their designated beneficiaries, 1901  
if admission to a membership in such association is limited to 1902  
individuals who are officers or employees of a municipal or public 1903  
corporation, of a political subdivision of the state, or of the 1904  
United States and no part of the net earnings of such association 1905  
inures, other than through such payments, to the benefit of any 1906  
private shareholder or individual; 1907

(m) Service performed by an individual in the employ of a 1908  
foreign government, including service as a consular or other 1909  
officer or employee or of a nondiplomatic representative; 1910

(n) Service performed in the employ of an instrumentality 1911  
wholly owned by a foreign government if the service is of a 1912  
character similar to that performed in foreign countries by 1913  
employees of the United States or of an instrumentality thereof 1914  
and if the director finds that the secretary of state of the 1915  
United States has certified to the secretary of the treasury of 1916  
the United States that the foreign government, with respect to 1917  
whose instrumentality exemption is claimed, grants an equivalent 1918

exemption with respect to similar service performed in the foreign 1919  
country by employees of the United States and of instrumentalities 1920  
thereof; 1921

(o) Service with respect to which unemployment compensation 1922  
is payable under an unemployment compensation system established 1923  
by an act of congress; 1924

(p) Service performed as a student nurse in the employ of a 1925  
hospital or a nurses' training school by an individual who is 1926  
enrolled and is regularly attending classes in a nurses' training 1927  
school chartered or approved pursuant to state law, and service 1928  
performed as an intern in the employ of a hospital by an 1929  
individual who has completed a four years' course in a medical 1930  
school chartered or approved pursuant to state law; 1931

(q) Service performed by an individual under the age of 1932  
eighteen in the delivery or distribution of newspapers or shopping 1933  
news, not including delivery or distribution to any point for 1934  
subsequent delivery or distribution; 1935

(r) Service performed in the employ of the United States or 1936  
an instrumentality of the United States immune under the 1937  
Constitution of the United States from the contributions imposed 1938  
by this chapter, except that to the extent that congress permits 1939  
states to require any instrumentalities of the United States to 1940  
make payments into an unemployment fund under a state unemployment 1941  
compensation act, this chapter shall be applicable to such 1942  
instrumentalities and to services performed for such 1943  
instrumentalities in the same manner, to the same extent, and on 1944  
the same terms as to all other employers, individuals, and 1945  
services, provided that if this state is not certified for any 1946  
year by the proper agency of the United States under section 3304 1947  
of the "Internal Revenue Code of 1954," the payments required of 1948  
such instrumentalities with respect to such year shall be refunded 1949  
by the director from the fund in the same manner and within the 1950

same period as is provided in division (E) of section 4141.09 of 1951  
the Revised Code with respect to contributions erroneously 1952  
collected; 1953

(s) Service performed by an individual as a member of a band 1954  
or orchestra, provided such service does not represent the 1955  
principal occupation of such individual, and which service is not 1956  
subject to or required to be covered for full tax credit against 1957  
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1958  
183 (1939), 26 U.S.C.A. 3301 to 3311. 1959

(t) Service performed in the employ of a day camp whose 1960  
camping season does not exceed twelve weeks in any calendar year, 1961  
and which service is not subject to the "Federal Unemployment Tax 1962  
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1963  
performed after December 31, 1971: 1964

(i) In the employ of a hospital, if the service is performed 1965  
by a patient of the hospital, as defined in division (W) of this 1966  
section; 1967

(ii) For a prison or other correctional institution by an 1968  
inmate of the prison or correctional institution; 1969

(iii) Service performed after December 31, 1977, by an inmate 1970  
of a custodial institution operated by the state, a political 1971  
subdivision, or a nonprofit organization. 1972

(u) Service that is performed by a nonresident alien 1973  
individual for the period the individual temporarily is present in 1974  
the United States as a nonimmigrant under division (F), (J), (M), 1975  
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1976  
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1977  
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1978  
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1979

(v) Notwithstanding any other provisions of division (B)(3) 1980  
of this section, services that are excluded under divisions 1981

(B)(3)(g), (j), (k), and (l) of this section shall not be excluded 1982  
from employment when performed for a nonprofit organization, as 1983  
defined in division (X) of this section, or for this state or its 1984  
instrumentalities, or for a political subdivision or its 1985  
instrumentalities or for Indian tribes; 1986

(w) Service that is performed by an individual working as an 1987  
election official or election worker if the amount of remuneration 1988  
received by the individual during the calendar year for services 1989  
as an election official or election worker is less than one 1990  
thousand dollars; 1991

(x) Service performed for an elementary or secondary school 1992  
that is operated primarily for religious purposes, that is 1993  
described in subsection 501(c)(3) and exempt from federal income 1994  
taxation under subsection 501(a) of the Internal Revenue Code, 26 1995  
U.S.C.A. 501; 1996

(y) Service performed by a person committed to a penal 1997  
institution. 1998

(z) Service performed for an Indian tribe as described in 1999  
division (B)(2)(l) of this section when performed in any of the 2000  
following manners: 2001

(i) As a publicly elected official; 2002

(ii) As a member of an Indian tribal council; 2003

(iii) As a member of a legislative or judiciary body; 2004

(iv) In a position which, pursuant to Indian tribal law, is 2005  
designated as a major nontenured policymaking or advisory 2006  
position, or a policymaking or advisory position where the 2007  
performance of the duties ordinarily does not require more than 2008  
eight hours of time per week; 2009

(v) As an employee serving on a temporary basis in the case 2010  
of a fire, storm, snow, earthquake, flood, or similar emergency. 2011

(aa) Service performed after December 31, 1971, for a 2012  
nonprofit organization, this state or its instrumentalities, a 2013  
political subdivision or its instrumentalities, or an Indian tribe 2014  
as part of an unemployment work-relief or work-training program 2015  
assisted or financed in whole or in part by any federal agency or 2016  
an agency of a state or political subdivision, thereof, by an 2017  
individual receiving the work-relief or work-training. 2018

(bb) Participation in a learn to earn program as defined in 2019  
section 4141.293 of the Revised Code. 2020

(4) If the services performed during one half or more of any 2021  
pay period by an employee for the person employing that employee 2022  
constitute employment, all the services of such employee for such 2023  
period shall be deemed to be employment; but if the services 2024  
performed during more than one half of any such pay period by an 2025  
employee for the person employing that employee do not constitute 2026  
employment, then none of the services of such employee for such 2027  
period shall be deemed to be employment. As used in division 2028  
(B)(4) of this section, "pay period" means a period, of not more 2029  
than thirty-one consecutive days, for which payment of 2030  
remuneration is ordinarily made to the employee by the person 2031  
employing that employee. Division (B)(4) of this section does not 2032  
apply to services performed in a pay period by an employee for the 2033  
person employing that employee, if any of such service is excepted 2034  
by division (B)(3)(o) of this section. 2035

(C) "Benefits" means money payments payable to an individual 2036  
who has established benefit rights, as provided in this chapter, 2037  
for loss of remuneration due to the individual's unemployment. 2038

(D) "Benefit rights" means the weekly benefit amount and the 2039  
maximum benefit amount that may become payable to an individual 2040  
within the individual's benefit year as determined by the 2041  
director. 2042

(E) "Claim for benefits" means a claim for waiting period or 2043  
benefits for a designated week. 2044

(F) "Additional claim" means the first claim for benefits 2045  
filed following any separation from employment during a benefit 2046  
year; "continued claim" means any claim other than the first claim 2047  
for benefits and other than an additional claim. 2048

(G) "Wages" means remuneration paid to an employee by each of 2049  
the employee's employers with respect to employment; except that 2050  
wages shall not include that part of remuneration paid during any 2051  
calendar year to an individual by an employer or such employer's 2052  
predecessor in interest in the same business or enterprise, which 2053  
in any calendar year is in excess of nine thousand dollars on and 2054  
after January 1, 1995; nine thousand five hundred dollars on and 2055  
after January 1, 2018; and nine thousand dollars on and after 2056  
January 1, 2020. Remuneration in excess of such amounts shall be 2057  
deemed wages subject to contribution to the same extent that such 2058  
remuneration is defined as wages under the "Federal Unemployment 2059  
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 2060  
amended. The remuneration paid an employee by an employer with 2061  
respect to employment in another state, upon which contributions 2062  
were required and paid by such employer under the unemployment 2063  
compensation act of such other state, shall be included as a part 2064  
of remuneration in computing the amount specified in this 2065  
division. 2066

(H)(1) "Remuneration" means all compensation for personal 2067  
services, including commissions and bonuses and the cash value of 2068  
all compensation in any medium other than cash, except that in the 2069  
case of agricultural or domestic service, "remuneration" includes 2070  
only cash remuneration. Gratuities customarily received by an 2071  
individual in the course of the individual's employment from 2072  
persons other than the individual's employer and which are 2073  
accounted for by such individual to the individual's employer are 2074

taxable wages. 2075

The reasonable cash value of compensation paid in any medium 2076  
other than cash shall be estimated and determined in accordance 2077  
with rules prescribed by the director, provided that 2078  
"remuneration" does not include: 2079

(a) Payments as provided in divisions (b)(2) to (b)(20) of 2080  
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 2081  
26 U.S.C.A. 3301 to 3311, as amended; 2082

(b) The payment by an employer, without deduction from the 2083  
remuneration of the individual in the employer's employ, of the 2084  
tax imposed upon an individual in the employer's employ under 2085  
section 3101 of the "Internal Revenue Code of 1954," with respect 2086  
to services performed after October 1, 1941. 2087

(2) "Cash remuneration" means all remuneration paid in cash, 2088  
including commissions and bonuses, but not including the cash 2089  
value of all compensation in any medium other than cash. 2090

(I) "Interested party" means the director and any party to 2091  
whom notice of a determination of an application for benefit 2092  
rights or a claim for benefits is required to be given under 2093  
section 4141.28 of the Revised Code. 2094

(J) "Annual payroll" means the total amount of wages subject 2095  
to contributions during a twelve-month period ending with the last 2096  
day of the second calendar quarter of any calendar year. 2097

(K) "Average annual payroll" means the average of the last 2098  
three annual payrolls of an employer, provided that if, as of any 2099  
computation date, the employer has had less than three annual 2100  
payrolls in such three-year period, such average shall be based on 2101  
the annual payrolls which the employer has had as of such date. 2102

(L)(1) "Contributions" means the money payments to the state 2103  
unemployment compensation fund required of employers by section 2104

4141.25 of the Revised Code and of the state and any of its 2105  
political subdivisions electing to pay contributions under section 2106  
4141.242 of the Revised Code. Employers paying contributions shall 2107  
be described as "contributory employers." 2108

(2) "Payments in lieu of contributions" means the money 2109  
payments to the state unemployment compensation fund required of 2110  
reimbursing employers under sections 4141.241 and 4141.242 of the 2111  
Revised Code. 2112

(M) An individual is "totally unemployed" in any week during 2113  
which the individual performs no services and with respect to such 2114  
week no remuneration is payable to the individual. 2115

(N) An individual is "partially unemployed" in any week if, 2116  
due to involuntary loss of work, the total remuneration payable to 2117  
the individual for such week is less than the individual's weekly 2118  
benefit amount. 2119

(O) "Week" means the calendar week ending at midnight 2120  
Saturday unless an equivalent week of seven consecutive calendar 2121  
days is prescribed by the director. 2122

(1) "Qualifying week" means any calendar week in an 2123  
individual's base period with respect to which the individual 2124  
earns or is paid remuneration in employment subject to this 2125  
chapter. A calendar week with respect to which an individual earns 2126  
remuneration but for which payment was not made within the base 2127  
period, when necessary to qualify for benefit rights, may be 2128  
considered to be a qualifying week. The number of qualifying weeks 2129  
which may be established in a calendar quarter shall not exceed 2130  
the number of calendar weeks in the quarter. 2131

(2) "Average weekly wage" means the amount obtained by 2132  
dividing an individual's total remuneration for all qualifying 2133  
weeks during the base period by the number of such qualifying 2134  
weeks, provided that if the computation results in an amount that 2135

is not a multiple of one dollar, such amount shall be rounded to 2136  
the next lower multiple of one dollar. 2137

(P) "Weekly benefit amount" means the amount of benefits an 2138  
individual would be entitled to receive for one week of total 2139  
unemployment. 2140

(Q)(1) "Base period" means the first four of the last five 2141  
completed calendar quarters immediately preceding the first day of 2142  
an individual's benefit year, except as provided in division 2143  
(Q)(2) of this section. 2144

(2) If an individual does not have sufficient qualifying 2145  
weeks and wages in the base period to qualify for benefit rights, 2146  
the individual's base period shall be the four most recently 2147  
completed calendar quarters preceding the first day of the 2148  
individual's benefit year. Such base period shall be known as the 2149  
"alternate base period." If information as to weeks and wages for 2150  
the most recent quarter of the alternate base period is not 2151  
available to the director from the regular quarterly reports of 2152  
wage information, which are systematically accessible, the 2153  
director may, consistent with the provisions of section 4141.28 of 2154  
the Revised Code, base the determination of eligibility for 2155  
benefits on the affidavit of the claimant with respect to weeks 2156  
and wages for that calendar quarter. The claimant shall furnish 2157  
payroll documentation, where available, in support of the 2158  
affidavit. The determination based upon the alternate base period 2159  
as it relates to the claimant's benefit rights, shall be amended 2160  
when the quarterly report of wage information from the employer is 2161  
timely received and that information causes a change in the 2162  
determination. As provided in division (B) of section 4141.28 of 2163  
the Revised Code, any benefits paid and charged to an employer's 2164  
account, based upon a claimant's affidavit, shall be adjusted 2165  
effective as of the beginning of the claimant's benefit year. No 2166  
calendar quarter in a base period or alternate base period shall 2167

be used to establish a subsequent benefit year. 2168

(3) The "base period" of a combined wage claim, as described 2169  
in division (H) of section 4141.43 of the Revised Code, shall be 2170  
the base period prescribed by the law of the state in which the 2171  
claim is allowed. 2172

(4) For purposes of determining the weeks that comprise a 2173  
completed calendar quarter under this division, only those weeks 2174  
ending at midnight Saturday within the calendar quarter shall be 2175  
utilized. 2176

(R)(1) "Benefit year" with respect to an individual means the 2177  
fifty-two week period beginning with the first day of that week 2178  
with respect to which the individual first files a valid 2179  
application for determination of benefit rights, and thereafter 2180  
the fifty-two week period beginning with the first day of that 2181  
week with respect to which the individual next files a valid 2182  
application for determination of benefit rights after the 2183  
termination of the individual's last preceding benefit year, 2184  
except that the application shall not be considered valid unless 2185  
the individual has had employment in six weeks that is subject to 2186  
this chapter or the unemployment compensation act of another 2187  
state, or the United States, and has, since the beginning of the 2188  
individual's previous benefit year, in the employment earned three 2189  
times the average weekly wage determined for the previous benefit 2190  
year. The "benefit year" of a combined wage claim, as described in 2191  
division (H) of section 4141.43 of the Revised Code, shall be the 2192  
benefit year prescribed by the law of the state in which the claim 2193  
is allowed. Any application for determination of benefit rights 2194  
made in accordance with section 4141.28 of the Revised Code is 2195  
valid if the individual filing such application is unemployed, has 2196  
been employed by an employer or employers subject to this chapter 2197  
in at least twenty qualifying weeks within the individual's base 2198  
period, and has earned or been paid remuneration at an average 2199

weekly wage of not less than twenty-seven and one-half per cent of 2200  
the statewide average weekly wage for such weeks. For purposes of 2201  
determining whether an individual has had sufficient employment 2202  
since the beginning of the individual's previous benefit year to 2203  
file a valid application, "employment" means the performance of 2204  
services for which remuneration is payable. 2205

(2) Effective for benefit years beginning on and after 2206  
December 26, 2004, any application for determination of benefit 2207  
rights made in accordance with section 4141.28 of the Revised Code 2208  
is valid if the individual satisfies the criteria described in 2209  
division (R)(1) of this section, and if the reason for the 2210  
individual's separation from employment is not disqualifying 2211  
pursuant to division (D)(2) of section 4141.29 or section 4141.291 2212  
of the Revised Code. A disqualification imposed pursuant to 2213  
division (D)(2) of section 4141.29 or section 4141.291 of the 2214  
Revised Code must be removed as provided in those sections as a 2215  
requirement of establishing a valid application for benefit years 2216  
beginning on and after December 26, 2004. 2217

(3) The statewide average weekly wage shall be calculated by 2218  
the director once a year based on the twelve-month period ending 2219  
the thirtieth day of June, as set forth in division (B)(3) of 2220  
section 4141.30 of the Revised Code, rounded down to the nearest 2221  
dollar. Increases or decreases in the amount of remuneration 2222  
required to have been earned or paid in order for individuals to 2223  
have filed valid applications shall become effective on Sunday of 2224  
the calendar week in which the first day of January occurs that 2225  
follows the twelve-month period ending the thirtieth day of June 2226  
upon which the calculation of the statewide average weekly wage 2227  
was based. 2228

(4) As used in this division, an individual is "unemployed" 2229  
if, with respect to the calendar week in which such application is 2230  
filed, the individual is "partially unemployed" or "totally 2231

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

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

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

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

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

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

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

(3) In connection with the production or harvesting of any

commodity defined as an agricultural commodity in section 15 (g) 2263  
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 2264  
U.S.C. 1141j, as amended, or in connection with the ginning of 2265  
cotton, or in connection with the operation or maintenance of 2266  
ditches, canals, reservoirs, or waterways, not owned or operated 2267  
for profit, used exclusively for supplying and storing water for 2268  
farming purposes; 2269

(4) In the employ of the operator of a farm in handling, 2270  
planting, drying, packing, packaging, processing, freezing, 2271  
grading, storing, or delivering to storage or to market or to a 2272  
carrier for transportation to market, in its unmanufactured state, 2273  
any agricultural or horticultural commodity, but only if the 2274  
operator produced more than one half of the commodity with respect 2275  
to which such service is performed; 2276

(5) In the employ of a group of operators of farms, or a 2277  
cooperative organization of which the operators are members, in 2278  
the performance of service described in division (V)(4) of this 2279  
section, but only if the operators produced more than one-half of 2280  
the commodity with respect to which the service is performed; 2281

(6) Divisions (V)(4) and (5) of this section shall not be 2282  
deemed to be applicable with respect to service performed: 2283

(a) In connection with commercial canning or commercial 2284  
freezing or in connection with any agricultural or horticultural 2285  
commodity after its delivery to a terminal market for distribution 2286  
for consumption; or 2287

(b) On a farm operated for profit if the service is not in 2288  
the course of the employer's trade or business. 2289

As used in division (V) of this section, "farm" includes 2290  
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 2291  
plantations, ranches, nurseries, ranges, greenhouses, or other 2292  
similar structures used primarily for the raising of agricultural 2293

or horticultural commodities and orchards.	2294
(W) "Hospital" means an institution which has been registered	2295
or licensed by the Ohio department of health as a hospital.	2296
(X) "Nonprofit organization" means an organization, or group	2297
of organizations, described in section 501(c)(3) of the "Internal	2298
Revenue Code of 1954," and exempt from income tax under section	2299
501(a) of that code.	2300
(Y) "Institution of higher education" means a public or	2301
nonprofit educational institution, including an educational	2302
institution operated by an Indian tribe, which:	2303
(1) Admits as regular students only individuals having a	2304
certificate of graduation from a high school, or the recognized	2305
equivalent;	2306
(2) Is legally authorized in this state or by the Indian	2307
tribe to provide a program of education beyond high school; and	2308
(3) Provides an educational program for which it awards a	2309
bachelor's or higher degree, or provides a program which is	2310
acceptable for full credit toward such a degree, a program of	2311
post-graduate or post-doctoral studies, or a program of training	2312
to prepare students for gainful employment in a recognized	2313
occupation.	2314
For the purposes of this division, all colleges and	2315
universities in this state are institutions of higher education.	2316
(Z) For the purposes of this chapter, "states" includes the	2317
District of Columbia, the Commonwealth of Puerto Rico, and the	2318
Virgin Islands.	2319
(AA) "Alien" means, for the purposes of division (A)(1)(d) of	2320
this section, an individual who is an alien admitted to the United	2321
States to perform service in agricultural labor pursuant to	2322
sections 214 (c) and 101 (a)(15)(H) of the "Immigration and	2323

Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 2324

(BB)(1) "Crew leader" means an individual who furnishes 2325  
individuals to perform agricultural labor for any other employer 2326  
or farm operator, and: 2327

(a) Pays, either on the individual's own behalf or on behalf 2328  
of the other employer or farm operator, the individuals so 2329  
furnished by the individual for the service in agricultural labor 2330  
performed by them; 2331

(b) Has not entered into a written agreement with the other 2332  
employer or farm operator under which the agricultural worker is 2333  
designated as in the employ of the other employer or farm 2334  
operator. 2335

(2) For the purposes of this chapter, any individual who is a 2336  
member of a crew furnished by a crew leader to perform service in 2337  
agricultural labor for any other employer or farm operator shall 2338  
be treated as an employee of the crew leader if: 2339

(a) The crew leader holds a valid certificate of registration 2340  
under the "Farm Labor Contractor Registration Act of 1963," 90 2341  
Stat. 2668, 7 U.S.C. 2041; or 2342

(b) Substantially all the members of the crew operate or 2343  
maintain tractors, mechanized harvesting or crop-dusting 2344  
equipment, or any other mechanized equipment, which is provided by 2345  
the crew leader; and 2346

(c) If the individual is not in the employment of the other 2347  
employer or farm operator within the meaning of division (B)(1) of 2348  
this section. 2349

(3) For the purposes of this division, any individual who is 2350  
furnished by a crew leader to perform service in agricultural 2351  
labor for any other employer or farm operator and who is not 2352  
treated as in the employment of the crew leader under division 2353

(BB)(2) of this section shall be treated as the employee of the 2354  
other employer or farm operator and not of the crew leader. The 2355  
other employer or farm operator shall be treated as having paid 2356  
cash remuneration to the individual in an amount equal to the 2357  
amount of cash remuneration paid to the individual by the crew 2358  
leader, either on the crew leader's own behalf or on behalf of the 2359  
other employer or farm operator, for the service in agricultural 2360  
labor performed for the other employer or farm operator. 2361

(CC) "Educational institution" means an institution other 2362  
than an institution of higher education as defined in division (Y) 2363  
of this section, including an educational institution operated by 2364  
an Indian tribe, which: 2365

(1) Offers participants, trainees, or students an organized 2366  
course of study or training designed to transfer to them 2367  
knowledge, skills, information, doctrines, attitudes, or abilities 2368  
from, by, or under the guidance of an instructor or teacher; and 2369

(2) Is approved, chartered, or issued a permit to operate as 2370  
a school by the state board of education, other government agency, 2371  
or Indian tribe that is authorized within the state to approve, 2372  
charter, or issue a permit for the operation of a school. 2373

For the purposes of this division, the courses of study or 2374  
training which the institution offers may be academic, technical, 2375  
trade, or preparation for gainful employment in a recognized 2376  
occupation. 2377

(DD) "Cost savings day" means any unpaid day off from work in 2378  
which employees continue to accrue employee benefits which have a 2379  
determinable value including, but not limited to, vacation, 2380  
pension contribution, sick time, and life and health insurance. 2381

(EE) "Motor carrier" has the same meaning as in section 2382  
4923.01 of the Revised Code. 2383

(FF) "Employee" means every person who is an employee under 2384

the rules adopted by the superintendent of industrial compliance 2385  
pursuant to section 4177.01 of the Revised Code, unless the 2386  
services performed by the individual do not constitute 2387  
"employment" as defined in division (B) of this section. 2388

**Sec. 4177.01.** The superintendent of industrial compliance 2389  
shall adopt rules to establish a test to determine whether an 2390  
individual is an employee or independent contractor for purposes 2391  
of Chapters 4121., 4123., 4127., 4131., 4141., and 5747. of the 2392  
Revised Code, consistent with the common law rules for determining 2393  
an employer-employee relationship used by the United States 2394  
internal revenue service pursuant to section 3121(d)(2) of the 2395  
"Internal Revenue Code of 1986," 26 U.S.C. 3121(d)(2). 2396

**Sec. 4177.02.** No employer shall fail to consider an 2397  
individual who is an employee under the rules adopted by the 2398  
superintendent of industrial compliance pursuant to section 2399  
4177.01 of the Revised Code to be an employee for purposes of 2400  
Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the Revised 2401  
Code, unless the individual is otherwise not considered an 2402  
employee under the applicable law. 2403

**Sec. 4177.03.** The superintendent of industrial compliance 2404  
shall enforce this chapter. The superintendent shall adopt rules 2405  
in accordance with Chapter 119. of the Revised Code to implement 2406  
and administer this chapter. 2407

**Sec. 4177.04.** (A) An individual may file a complaint with the 2408  
superintendent of industrial compliance against an employer if the 2409  
individual reasonably believes that the employer is in violation 2410  
of section 4177.02 of the Revised Code. On receipt of a complaint, 2411  
the superintendent shall conduct an investigation into whether the 2412  
employer violated section 4177.02 of the Revised Code. 2413

(B) If, after an investigation pursuant to division (A) of this section, the superintendent determines that reasonable evidence exists that an employer has violated section 4177.02 of the Revised Code, the superintendent shall send written notice to the employer and hold a hearing regarding the alleged violation in accordance with Chapter 119. of the Revised Code. 2414  
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(C) If the superintendent determines, after the hearing, that an employer has misclassified an employee as an independent contractor, that determination is binding on the administrator of workers' compensation, the director of job and family services, and the tax commissioner unless the individual is otherwise not considered an employee under the applicable law. Notwithstanding any provision of this section to the contrary, nothing in this chapter shall be construed to limit or otherwise constrain the duties and powers of the administrator under Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the director under Chapter 4141. of the Revised Code, or the tax commissioner under Chapter 5703. or 5747. of the Revised Code. 2420  
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(D) The superintendent's determination is an order that the employer may appeal in accordance with section 119.12 of the Revised Code. 2432  
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**Sec. 4177.05.** (A) If, after a hearing held in accordance with section 4177.04 of the Revised Code, the superintendent of industrial compliance determines that an employer violated section 4177.02 of the Revised Code, the superintendent shall do both of the following: 2435  
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(1) Notify the administrator of workers' compensation, the director of job and family services, and the tax commissioner, each of whom shall determine whether the employer's violation of section 4177.02 of the Revised Code results in the employer not complying with the requirements of Chapter 4121., 4123., 4127., 2440  
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4131., 4141., or 5747. of the Revised Code, as applicable; 2445

(2) For each day after a complaint was filed under division 2446  
(A) of section 4177.04 of the Revised Code, assess against the 2447  
employer a penalty of five hundred dollars for each employee the 2448  
employer misclassified as an independent contractor in violation 2449  
of section 4177.02 of the Revised Code. 2450

(B) The superintendent shall not assess a penalty against an 2451  
employer under division (A)(2) of this section if the employer 2452  
voluntarily comes into compliance with section 4177.02 of the 2453  
Revised Code ten days before the hearing is held pursuant to 2454  
section 4177.04 of the Revised Code. 2455

(C) Regardless of the superintendent's determination, the 2456  
superintendent shall notify the child support enforcement agency 2457  
in the county in which the employee or independent contractor 2458  
resides of each individual who is receiving income. 2459

**Sec. 4177.06.** There is hereby created in the state treasury 2460  
the employee classification fund. The superintendent of industrial 2461  
compliance shall deposit all moneys the superintendent receives 2462  
under this chapter into the fund. The superintendent shall use the 2463  
fund for the administration, investigation, and other expenses 2464  
incurred in carrying out the superintendent's powers and duties 2465  
under this chapter. 2466

**Sec. 5747.01.** Except as otherwise expressly provided or 2467  
clearly appearing from the context, any term used in this chapter 2468  
that is not otherwise defined in this section has the same meaning 2469  
as when used in a comparable context in the laws of the United 2470  
States relating to federal income taxes or if not used in a 2471  
comparable context in those laws, has the same meaning as in 2472  
section 5733.40 of the Revised Code. Any reference in this chapter 2473  
to the Internal Revenue Code includes other laws of the United 2474

States relating to federal income taxes.	2475
As used in this chapter:	2476
(A) "Adjusted gross income" or "Ohio adjusted gross income"	2477
means federal adjusted gross income, as defined and used in the	2478
Internal Revenue Code, adjusted as provided in this section:	2479
(1) Add interest or dividends on obligations or securities of	2480
any state or of any political subdivision or authority of any	2481
state, other than this state and its subdivisions and authorities.	2482
(2) Add interest or dividends on obligations of any	2483
authority, commission, instrumentality, territory, or possession	2484
of the United States to the extent that the interest or dividends	2485
are exempt from federal income taxes but not from state income	2486
taxes.	2487
(3) Deduct interest or dividends on obligations of the United	2488
States and its territories and possessions or of any authority,	2489
commission, or instrumentality of the United States to the extent	2490
that the interest or dividends are included in federal adjusted	2491
gross income but exempt from state income taxes under the laws of	2492
the United States.	2493
(4) Deduct disability and survivor's benefits to the extent	2494
included in federal adjusted gross income.	2495
(5) Deduct benefits under Title II of the Social Security Act	2496
and tier 1 railroad retirement benefits to the extent included in	2497
federal adjusted gross income under section 86 of the Internal	2498
Revenue Code.	2499
(6) In the case of a taxpayer who is a beneficiary of a trust	2500
that makes an accumulation distribution as defined in section 665	2501
of the Internal Revenue Code, add, for the beneficiary's taxable	2502
years beginning before 2002, the portion, if any, of such	2503
distribution that does not exceed the undistributed net income of	2504

the trust for the three taxable years preceding the taxable year 2505  
in which the distribution is made to the extent that the portion 2506  
was not included in the trust's taxable income for any of the 2507  
trust's taxable years beginning in 2002 or thereafter. 2508

"Undistributed net income of a trust" means the taxable income of 2509  
the trust increased by (a)(i) the additions to adjusted gross 2510  
income required under division (A) of this section and (ii) the 2511  
personal exemptions allowed to the trust pursuant to section 2512  
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 2513  
deductions to adjusted gross income required under division (A) of 2514  
this section, (ii) the amount of federal income taxes attributable 2515  
to such income, and (iii) the amount of taxable income that has 2516  
been included in the adjusted gross income of a beneficiary by 2517  
reason of a prior accumulation distribution. Any undistributed net 2518  
income included in the adjusted gross income of a beneficiary 2519  
shall reduce the undistributed net income of the trust commencing 2520  
with the earliest years of the accumulation period. 2521

(7) Deduct the amount of wages and salaries, if any, not 2522  
otherwise allowable as a deduction but that would have been 2523  
allowable as a deduction in computing federal adjusted gross 2524  
income for the taxable year, had the targeted jobs credit allowed 2525  
and determined under sections 38, 51, and 52 of the Internal 2526  
Revenue Code not been in effect. 2527

(8) Deduct any interest or interest equivalent on public 2528  
obligations and purchase obligations to the extent that the 2529  
interest or interest equivalent is included in federal adjusted 2530  
gross income. 2531

(9) Add any loss or deduct any gain resulting from the sale, 2532  
exchange, or other disposition of public obligations to the extent 2533  
that the loss has been deducted or the gain has been included in 2534  
computing federal adjusted gross income. 2535

(10) Deduct or add amounts, as provided under section 5747.70 2536

of the Revised Code, related to contributions to variable college 2537  
savings program accounts made or tuition units purchased pursuant 2538  
to Chapter 3334. of the Revised Code. 2539

(11)(a) Deduct, to the extent not otherwise allowable as a 2540  
deduction or exclusion in computing federal or Ohio adjusted gross 2541  
income for the taxable year, the amount the taxpayer paid during 2542  
the taxable year for medical care insurance and qualified 2543  
long-term care insurance for the taxpayer, the taxpayer's spouse, 2544  
and dependents. No deduction for medical care insurance under 2545  
division (A)(11) of this section shall be allowed either to any 2546  
taxpayer who is eligible to participate in any subsidized health 2547  
plan maintained by any employer of the taxpayer or of the 2548  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2549  
application would be entitled to, benefits under part A of Title 2550  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 2551  
301, as amended. For the purposes of division (A)(11)(a) of this 2552  
section, "subsidized health plan" means a health plan for which 2553  
the employer pays any portion of the plan's cost. The deduction 2554  
allowed under division (A)(11)(a) of this section shall be the net 2555  
of any related premium refunds, related premium reimbursements, or 2556  
related insurance premium dividends received during the taxable 2557  
year. 2558

(b) Deduct, to the extent not otherwise deducted or excluded 2559  
in computing federal or Ohio adjusted gross income during the 2560  
taxable year, the amount the taxpayer paid during the taxable 2561  
year, not compensated for by any insurance or otherwise, for 2562  
medical care of the taxpayer, the taxpayer's spouse, and 2563  
dependents, to the extent the expenses exceed seven and one-half 2564  
per cent of the taxpayer's federal adjusted gross income. 2565

(c) Deduct, to the extent not otherwise deducted or excluded 2566  
in computing federal or Ohio adjusted gross income, any amount 2567  
included in federal adjusted gross income under section 105 or not 2568

excluded under section 106 of the Internal Revenue Code solely 2569  
because it relates to an accident and health plan for a person who 2570  
otherwise would be a "qualifying relative" and thus a "dependent" 2571  
under section 152 of the Internal Revenue Code but for the fact 2572  
that the person fails to meet the income and support limitations 2573  
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 2574

(d) For purposes of division (A)(11) of this section, 2575  
"medical care" has the meaning given in section 213 of the 2576  
Internal Revenue Code, subject to the special rules, limitations, 2577  
and exclusions set forth therein, and "qualified long-term care" 2578  
has the same meaning given in section 7702B(c) of the Internal 2579  
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 2580  
of this section, "dependent" includes a person who otherwise would 2581  
be a "qualifying relative" and thus a "dependent" under section 2582  
152 of the Internal Revenue Code but for the fact that the person 2583  
fails to meet the income and support limitations under section 2584  
152(d)(1)(B) and (C) of the Internal Revenue Code. 2585

(12)(a) Deduct any amount included in federal adjusted gross 2586  
income solely because the amount represents a reimbursement or 2587  
refund of expenses that in any year the taxpayer had deducted as 2588  
an itemized deduction pursuant to section 63 of the Internal 2589  
Revenue Code and applicable United States department of the 2590  
treasury regulations. The deduction otherwise allowed under 2591  
division (A)(12)(a) of this section shall be reduced to the extent 2592  
the reimbursement is attributable to an amount the taxpayer 2593  
deducted under this section in any taxable year. 2594

(b) Add any amount not otherwise included in Ohio adjusted 2595  
gross income for any taxable year to the extent that the amount is 2596  
attributable to the recovery during the taxable year of any amount 2597  
deducted or excluded in computing federal or Ohio adjusted gross 2598  
income in any taxable year. 2599

(13) Deduct any portion of the deduction described in section 2600

1341(a)(2) of the Internal Revenue Code, for repaying previously 2601  
reported income received under a claim of right, that meets both 2602  
of the following requirements: 2603

(a) It is allowable for repayment of an item that was 2604  
included in the taxpayer's adjusted gross income for a prior 2605  
taxable year and did not qualify for a credit under division (A) 2606  
or (B) of section 5747.05 of the Revised Code for that year; 2607

(b) It does not otherwise reduce the taxpayer's adjusted 2608  
gross income for the current or any other taxable year. 2609

(14) Deduct an amount equal to the deposits made to, and net 2610  
investment earnings of, a medical savings account during the 2611  
taxable year, in accordance with section 3924.66 of the Revised 2612  
Code. The deduction allowed by division (A)(14) of this section 2613  
does not apply to medical savings account deposits and earnings 2614  
otherwise deducted or excluded for the current or any other 2615  
taxable year from the taxpayer's federal adjusted gross income. 2616

(15)(a) Add an amount equal to the funds withdrawn from a 2617  
medical savings account during the taxable year, and the net 2618  
investment earnings on those funds, when the funds withdrawn were 2619  
used for any purpose other than to reimburse an account holder 2620  
for, or to pay, eligible medical expenses, in accordance with 2621  
section 3924.66 of the Revised Code; 2622

(b) Add the amounts distributed from a medical savings 2623  
account under division (A)(2) of section 3924.68 of the Revised 2624  
Code during the taxable year. 2625

(16) Add any amount claimed as a credit under section 2626  
5747.059 or 5747.65 of the Revised Code to the extent that such 2627  
amount satisfies either of the following: 2628

(a) The amount was deducted or excluded from the computation 2629  
of the taxpayer's federal adjusted gross income as required to be 2630  
reported for the taxpayer's taxable year under the Internal 2631

Revenue Code; 2632

(b) The amount resulted in a reduction of the taxpayer's 2633  
federal adjusted gross income as required to be reported for any 2634  
of the taxpayer's taxable years under the Internal Revenue Code. 2635

(17) Deduct the amount contributed by the taxpayer to an 2636  
individual development account program established by a county 2637  
department of job and family services pursuant to sections 329.11 2638  
to 329.14 of the Revised Code for the purpose of matching funds 2639  
deposited by program participants. On request of the tax 2640  
commissioner, the taxpayer shall provide any information that, in 2641  
the tax commissioner's opinion, is necessary to establish the 2642  
amount deducted under division (A)(17) of this section. 2643

(18) Beginning in taxable year 2001 but not for any taxable 2644  
year beginning after December 31, 2005, if the taxpayer is married 2645  
and files a joint return and the combined federal adjusted gross 2646  
income of the taxpayer and the taxpayer's spouse for the taxable 2647  
year does not exceed one hundred thousand dollars, or if the 2648  
taxpayer is single and has a federal adjusted gross income for the 2649  
taxable year not exceeding fifty thousand dollars, deduct amounts 2650  
paid during the taxable year for qualified tuition and fees paid 2651  
to an eligible institution for the taxpayer, the taxpayer's 2652  
spouse, or any dependent of the taxpayer, who is a resident of 2653  
this state and is enrolled in or attending a program that 2654  
culminates in a degree or diploma at an eligible institution. The 2655  
deduction may be claimed only to the extent that qualified tuition 2656  
and fees are not otherwise deducted or excluded for any taxable 2657  
year from federal or Ohio adjusted gross income. The deduction may 2658  
not be claimed for educational expenses for which the taxpayer 2659  
claims a credit under section 5747.27 of the Revised Code. 2660

(19) Add any reimbursement received during the taxable year 2661  
of any amount the taxpayer deducted under division (A)(18) of this 2662  
section in any previous taxable year to the extent the amount is 2663

not otherwise included in Ohio adjusted gross income. 2664

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and 2665  
(v) of this section, add five-sixths of the amount of depreciation 2666  
expense allowed by subsection (k) of section 168 of the Internal 2667  
Revenue Code, including the taxpayer's proportionate or 2668  
distributive share of the amount of depreciation expense allowed 2669  
by that subsection to a pass-through entity in which the taxpayer 2670  
has a direct or indirect ownership interest. 2671

(ii) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of 2672  
this section, add five-sixths of the amount of qualifying section 2673  
179 depreciation expense, including the taxpayer's proportionate 2674  
or distributive share of the amount of qualifying section 179 2675  
depreciation expense allowed to any pass-through entity in which 2676  
the taxpayer has a direct or indirect ownership interest. 2677

(iii) Subject to division (A)(20)(a)(v) of this section, for 2678  
taxable years beginning in 2012 or thereafter, if the increase in 2679  
income taxes withheld by the taxpayer is equal to or greater than 2680  
ten per cent of income taxes withheld by the taxpayer during the 2681  
taxpayer's immediately preceding taxable year, "two-thirds" shall 2682  
be substituted for "five-sixths" for the purpose of divisions 2683  
(A)(20)(a)(i) and (ii) of this section. 2684

(iv) Subject to division (A)(20)(a)(v) of this section, for 2685  
taxable years beginning in 2012 or thereafter, a taxpayer is not 2686  
required to add an amount under division (A)(20) of this section 2687  
if the increase in income taxes withheld by the taxpayer and by 2688  
any pass-through entity in which the taxpayer has a direct or 2689  
indirect ownership interest is equal to or greater than the sum of 2690  
(I) the amount of qualifying section 179 depreciation expense and 2691  
(II) the amount of depreciation expense allowed to the taxpayer by 2692  
subsection (k) of section 168 of the Internal Revenue Code, and 2693  
including the taxpayer's proportionate or distributive shares of 2694  
such amounts allowed to any such pass-through entities. 2695

(v) If a taxpayer directly or indirectly incurs a net 2696  
operating loss for the taxable year for federal income tax 2697  
purposes, to the extent such loss resulted from depreciation 2698  
expense allowed by subsection (k) of section 168 of the Internal 2699  
Revenue Code and by qualifying section 179 depreciation expense, 2700  
"the entire" shall be substituted for "five-sixths of the" for the 2701  
purpose of divisions (A)(20)(a)(i) and (ii) of this section. 2702

The tax commissioner, under procedures established by the 2703  
commissioner, may waive the add-backs related to a pass-through 2704  
entity if the taxpayer owns, directly or indirectly, less than 2705  
five per cent of the pass-through entity. 2706

(b) Nothing in division (A)(20) of this section shall be 2707  
construed to adjust or modify the adjusted basis of any asset. 2708

(c) To the extent the add-back required under division 2709  
(A)(20)(a) of this section is attributable to property generating 2710  
nonbusiness income or loss allocated under section 5747.20 of the 2711  
Revised Code, the add-back shall be situated to the same location 2712  
as the nonbusiness income or loss generated by the property for 2713  
the purpose of determining the credit under division (A) of 2714  
section 5747.05 of the Revised Code. Otherwise, the add-back shall 2715  
be apportioned, subject to one or more of the four alternative 2716  
methods of apportionment enumerated in section 5747.21 of the 2717  
Revised Code. 2718

(d) For the purposes of division (A)(20)(a)(v) of this 2719  
section, net operating loss carryback and carryforward shall not 2720  
include the allowance of any net operating loss deduction 2721  
carryback or carryforward to the taxable year to the extent such 2722  
loss resulted from depreciation allowed by section 168(k) of the 2723  
Internal Revenue Code and by the qualifying section 179 2724  
depreciation expense amount. 2725

(e) For the purposes of divisions (A)(20) and (21) of this 2726

section:	2727
(i) "Income taxes withheld" means the total amount withheld	2728
and remitted under sections 5747.06 and 5747.07 of the Revised	2729
Code by an employer during the employer's taxable year.	2730
(ii) "Increase in income taxes withheld" means the amount by	2731
which the amount of income taxes withheld by an employer during	2732
the employer's current taxable year exceeds the amount of income	2733
taxes withheld by that employer during the employer's immediately	2734
preceding taxable year.	2735
(iii) "Qualifying section 179 depreciation expense" means the	2736
difference between (I) the amount of depreciation expense directly	2737
or indirectly allowed to a taxpayer under section 179 of the	2738
Internal Revised Code, and (II) the amount of depreciation expense	2739
directly or indirectly allowed to the taxpayer under section 179	2740
of the Internal Revenue Code as that section existed on December	2741
31, 2002.	2742
(21)(a) If the taxpayer was required to add an amount under	2743
division (A)(20)(a) of this section for a taxable year, deduct one	2744
of the following:	2745
(i) One-fifth of the amount so added for each of the five	2746
succeeding taxable years if the amount so added was five-sixths of	2747
qualifying section 179 depreciation expense or depreciation	2748
expense allowed by subsection (k) of section 168 of the Internal	2749
Revenue Code;	2750
(ii) One-half of the amount so added for each of the two	2751
succeeding taxable years if the amount so added was two-thirds of	2752
such depreciation expense;	2753
(iii) One-sixth of the amount so added for each of the six	2754
succeeding taxable years if the entire amount of such depreciation	2755
expense was so added.	2756

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

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

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

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

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

of the Revised Code. 2789

(24) Deduct, to the extent included in federal adjusted gross 2790  
income and not otherwise allowable as a deduction or exclusion in 2791  
computing federal or Ohio adjusted gross income for the taxable 2792  
year, military pay and allowances received by the taxpayer during 2793  
the taxable year for active duty service in the United States 2794  
army, air force, navy, marine corps, or coast guard or reserve 2795  
components thereof or the national guard. The deduction may not be 2796  
claimed for military pay and allowances received by the taxpayer 2797  
while the taxpayer is stationed in this state. 2798

(25) Deduct, to the extent not otherwise allowable as a 2799  
deduction or exclusion in computing federal or Ohio adjusted gross 2800  
income for the taxable year and not otherwise compensated for by 2801  
any other source, the amount of qualified organ donation expenses 2802  
incurred by the taxpayer during the taxable year, not to exceed 2803  
ten thousand dollars. A taxpayer may deduct qualified organ 2804  
donation expenses only once for all taxable years beginning with 2805  
taxable years beginning in 2007. 2806

For the purposes of division (A)(25) of this section: 2807

(a) "Human organ" means all or any portion of a human liver, 2808  
pancreas, kidney, intestine, or lung, and any portion of human 2809  
bone marrow. 2810

(b) "Qualified organ donation expenses" means travel 2811  
expenses, lodging expenses, and wages and salary forgone by a 2812  
taxpayer in connection with the taxpayer's donation, while living, 2813  
of one or more of the taxpayer's human organs to another human 2814  
being. 2815

(26) Deduct, to the extent not otherwise deducted or excluded 2816  
in computing federal or Ohio adjusted gross income for the taxable 2817  
year, amounts received by the taxpayer as retired personnel pay 2818  
for service in the uniformed services or reserve components 2819

thereof, or the national guard, or received by the surviving 2820  
spouse or former spouse of such a taxpayer under the survivor 2821  
benefit plan on account of such a taxpayer's death. If the 2822  
taxpayer receives income on account of retirement paid under the 2823  
federal civil service retirement system or federal employees 2824  
retirement system, or under any successor retirement program 2825  
enacted by the congress of the United States that is established 2826  
and maintained for retired employees of the United States 2827  
government, and such retirement income is based, in whole or in 2828  
part, on credit for the taxpayer's uniformed service, the 2829  
deduction allowed under this division shall include only that 2830  
portion of such retirement income that is attributable to the 2831  
taxpayer's uniformed service, to the extent that portion of such 2832  
retirement income is otherwise included in federal adjusted gross 2833  
income and is not otherwise deducted under this section. Any 2834  
amount deducted under division (A)(26) of this section is not 2835  
included in a taxpayer's adjusted gross income for the purposes of 2836  
section 5747.055 of the Revised Code. No amount may be deducted 2837  
under division (A)(26) of this section on the basis of which a 2838  
credit was claimed under section 5747.055 of the Revised Code. 2839

(27) Deduct, to the extent not otherwise deducted or excluded 2840  
in computing federal or Ohio adjusted gross income for the taxable 2841  
year, the amount the taxpayer received during the taxable year 2842  
from the military injury relief fund created in section 5902.05 of 2843  
the Revised Code. 2844

(28) Deduct, to the extent not otherwise deducted or excluded 2845  
in computing federal or Ohio adjusted gross income for the taxable 2846  
year, the amount the taxpayer received as a veterans bonus during 2847  
the taxable year from the Ohio department of veterans services as 2848  
authorized by Section 2r of Article VIII, Ohio Constitution. 2849

(29) Deduct, to the extent not otherwise deducted or excluded 2850  
in computing federal or Ohio adjusted gross income for the taxable 2851

year, any income derived from a transfer agreement or from the 2852  
enterprise transferred under that agreement under section 4313.02 2853  
of the Revised Code. 2854

(30) Deduct, to the extent not otherwise deducted or excluded 2855  
in computing federal or Ohio adjusted gross income for the taxable 2856  
year, Ohio college opportunity or federal Pell grant amounts 2857  
received by the taxpayer or the taxpayer's spouse or dependent 2858  
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 2859  
1070a, et seq., and used to pay room or board furnished by the 2860  
educational institution for which the grant was awarded at the 2861  
institution's facilities, including meal plans administered by the 2862  
institution. For the purposes of this division, receipt of a grant 2863  
includes the distribution of a grant directly to an educational 2864  
institution and the crediting of the grant to the enrollee's 2865  
account with the institution. 2866

(31)(a) For taxable years beginning in 2015, deduct from the 2867  
portion of an individual's adjusted gross income that is business 2868  
income, to the extent not otherwise deducted or excluded in 2869  
computing federal or Ohio adjusted gross income for the taxable 2870  
year, the lesser of the following amounts: 2871

(i) Seventy-five per cent of the individual's business 2872  
income; 2873

(ii) Ninety-three thousand seven hundred fifty dollars for 2874  
each spouse if spouses file separate returns under section 5747.08 2875  
of the Revised Code or one hundred eighty-seven thousand five 2876  
hundred dollars for all other individuals. 2877

(b) For taxable years beginning in 2016 or thereafter, deduct 2878  
from the portion of an individual's adjusted gross income that is 2879  
business income, to the extent not otherwise deducted or excluded 2880  
in computing federal adjusted gross income for the taxable year, 2881  
one hundred twenty-five thousand dollars for each spouse if 2882

spouses file separate returns under section 5747.08 of the Revised Code or two hundred fifty thousand dollars for all other individuals.

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

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

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

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

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

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

(B) "Business income" means income, including gain or loss, arising from transactions, activities, and sources in the regular

course of a trade or business and includes income, gain, or loss 2914  
from real property, tangible property, and intangible property if 2915  
the acquisition, rental, management, and disposition of the 2916  
property constitute integral parts of the regular course of a 2917  
trade or business operation. "Business income" includes income, 2918  
including gain or loss, from a partial or complete liquidation of 2919  
a business, including, but not limited to, gain or loss from the 2920  
sale or other disposition of goodwill. 2921

(C) "Nonbusiness income" means all income other than business 2922  
income and may include, but is not limited to, compensation, rents 2923  
and royalties from real or tangible personal property, capital 2924  
gains, interest, dividends and distributions, patent or copyright 2925  
royalties, or lottery winnings, prizes, and awards. 2926

(D) "Compensation" means any form of remuneration paid to an 2927  
employee for personal services. 2928

(E) "Fiduciary" means a guardian, trustee, executor, 2929  
administrator, receiver, conservator, or any other person acting 2930  
in any fiduciary capacity for any individual, trust, or estate. 2931

(F) "Fiscal year" means an accounting period of twelve months 2932  
ending on the last day of any month other than December. 2933

(G) "Individual" means any natural person. 2934

(H) "Internal Revenue Code" means the "Internal Revenue Code 2935  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2936

(I) "Resident" means any of the following, provided that 2937  
division (I)(3) of this section applies only to taxable years of a 2938  
trust beginning in 2002 or thereafter: 2939

(1) An individual who is domiciled in this state, subject to 2940  
section 5747.24 of the Revised Code; 2941

(2) The estate of a decedent who at the time of death was 2942  
domiciled in this state. The domicile tests of section 5747.24 of 2943

the Revised Code are not controlling for purposes of division 2944  
(I)(2) of this section. 2945

(3) A trust that, in whole or part, resides in this state. If 2946  
only part of a trust resides in this state, the trust is a 2947  
resident only with respect to that part. 2948

For the purposes of division (I)(3) of this section: 2949

(a) A trust resides in this state for the trust's current 2950  
taxable year to the extent, as described in division (I)(3)(d) of 2951  
this section, that the trust consists directly or indirectly, in 2952  
whole or in part, of assets, net of any related liabilities, that 2953  
were transferred, or caused to be transferred, directly or 2954  
indirectly, to the trust by any of the following: 2955

(i) A person, a court, or a governmental entity or 2956  
instrumentality on account of the death of a decedent, but only if 2957  
the trust is described in division (I)(3)(e)(i) or (ii) of this 2958  
section; 2959

(ii) A person who was domiciled in this state for the 2960  
purposes of this chapter when the person directly or indirectly 2961  
transferred assets to an irrevocable trust, but only if at least 2962  
one of the trust's qualifying beneficiaries is domiciled in this 2963  
state for the purposes of this chapter during all or some portion 2964  
of the trust's current taxable year; 2965

(iii) A person who was domiciled in this state for the 2966  
purposes of this chapter when the trust document or instrument or 2967  
part of the trust document or instrument became irrevocable, but 2968  
only if at least one of the trust's qualifying beneficiaries is a 2969  
resident domiciled in this state for the purposes of this chapter 2970  
during all or some portion of the trust's current taxable year. If 2971  
a trust document or instrument became irrevocable upon the death 2972  
of a person who at the time of death was domiciled in this state 2973  
for purposes of this chapter, that person is a person described in 2974

division (I)(3)(a)(iii) of this section. 2975

(b) A trust is irrevocable to the extent that the transferor 2976  
is not considered to be the owner of the net assets of the trust 2977  
under sections 671 to 678 of the Internal Revenue Code. 2978

(c) With respect to a trust other than a charitable lead 2979  
trust, "qualifying beneficiary" has the same meaning as "potential 2980  
current beneficiary" as defined in section 1361(e)(2) of the 2981  
Internal Revenue Code, and with respect to a charitable lead trust 2982  
"qualifying beneficiary" is any current, future, or contingent 2983  
beneficiary, but with respect to any trust "qualifying 2984  
beneficiary" excludes a person or a governmental entity or 2985  
instrumentality to any of which a contribution would qualify for 2986  
the charitable deduction under section 170 of the Internal Revenue 2987  
Code. 2988

(d) For the purposes of division (I)(3)(a) of this section, 2989  
the extent to which a trust consists directly or indirectly, in 2990  
whole or in part, of assets, net of any related liabilities, that 2991  
were transferred directly or indirectly, in whole or part, to the 2992  
trust by any of the sources enumerated in that division shall be 2993  
ascertained by multiplying the fair market value of the trust's 2994  
assets, net of related liabilities, by the qualifying ratio, which 2995  
shall be computed as follows: 2996

(i) The first time the trust receives assets, the numerator 2997  
of the qualifying ratio is the fair market value of those assets 2998  
at that time, net of any related liabilities, from sources 2999  
enumerated in division (I)(3)(a) of this section. The denominator 3000  
of the qualifying ratio is the fair market value of all the 3001  
trust's assets at that time, net of any related liabilities. 3002

(ii) Each subsequent time the trust receives assets, a 3003  
revised qualifying ratio shall be computed. The numerator of the 3004  
revised qualifying ratio is the sum of (1) the fair market value 3005

of the trust's assets immediately prior to the subsequent 3006  
transfer, net of any related liabilities, multiplied by the 3007  
qualifying ratio last computed without regard to the subsequent 3008  
transfer, and (2) the fair market value of the subsequently 3009  
transferred assets at the time transferred, net of any related 3010  
liabilities, from sources enumerated in division (I)(3)(a) of this 3011  
section. The denominator of the revised qualifying ratio is the 3012  
fair market value of all the trust's assets immediately after the 3013  
subsequent transfer, net of any related liabilities. 3014

(iii) Whether a transfer to the trust is by or from any of 3015  
the sources enumerated in division (I)(3)(a) of this section shall 3016  
be ascertained without regard to the domicile of the trust's 3017  
beneficiaries. 3018

(e) For the purposes of division (I)(3)(a)(i) of this 3019  
section: 3020

(i) A trust is described in division (I)(3)(e)(i) of this 3021  
section if the trust is a testamentary trust and the testator of 3022  
that testamentary trust was domiciled in this state at the time of 3023  
the testator's death for purposes of the taxes levied under 3024  
Chapter 5731. of the Revised Code. 3025

(ii) A trust is described in division (I)(3)(e)(ii) of this 3026  
section if the transfer is a qualifying transfer described in any 3027  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 3028  
irrevocable inter vivos trust, and at least one of the trust's 3029  
qualifying beneficiaries is domiciled in this state for purposes 3030  
of this chapter during all or some portion of the trust's current 3031  
taxable year. 3032

(f) For the purposes of division (I)(3)(e)(ii) of this 3033  
section, a "qualifying transfer" is a transfer of assets, net of 3034  
any related liabilities, directly or indirectly to a trust, if the 3035  
transfer is described in any of the following: 3036

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

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

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

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

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

(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly

created in connection with or as a result of the death of an 3068  
individual who, for purposes of the taxes levied under Chapter 3069  
5731. of the Revised Code, was domiciled in this state at the time 3070  
of the individual's death. 3071

(g) The tax commissioner may adopt rules to ascertain the 3072  
part of a trust residing in this state. 3073

(J) "Nonresident" means an individual or estate that is not a 3074  
resident. An individual who is a resident for only part of a 3075  
taxable year is a nonresident for the remainder of that taxable 3076  
year. 3077

(K) "Pass-through entity" has the same meaning as in section 3078  
5733.04 of the Revised Code. 3079

(L) "Return" means the notifications and reports required to 3080  
be filed pursuant to this chapter for the purpose of reporting the 3081  
tax due and includes declarations of estimated tax when so 3082  
required. 3083

(M) "Taxable year" means the calendar year or the taxpayer's 3084  
fiscal year ending during the calendar year, or fractional part 3085  
thereof, upon which the adjusted gross income is calculated 3086  
pursuant to this chapter. 3087

(N) "Taxpayer" means any person subject to the tax imposed by 3088  
section 5747.02 of the Revised Code or any pass-through entity 3089  
that makes the election under division (D) of section 5747.08 of 3090  
the Revised Code. 3091

(O) "Dependents" means dependents as defined in the Internal 3092  
Revenue Code and as claimed in the taxpayer's federal income tax 3093  
return for the taxable year or which the taxpayer would have been 3094  
permitted to claim had the taxpayer filed a federal income tax 3095  
return. 3096

(P) "Principal county of employment" means, in the case of a 3097

nonresident, the county within the state in which a taxpayer 3098  
performs services for an employer or, if those services are 3099  
performed in more than one county, the county in which the major 3100  
portion of the services are performed. 3101

(Q) As used in sections 5747.50 to 5747.55 of the Revised 3102  
Code: 3103

(1) "Subdivision" means any county, municipal corporation, 3104  
park district, or township. 3105

(2) "Essential local government purposes" includes all 3106  
functions that any subdivision is required by general law to 3107  
exercise, including like functions that are exercised under a 3108  
charter adopted pursuant to the Ohio Constitution. 3109

(R) "Overpayment" means any amount already paid that exceeds 3110  
the figure determined to be the correct amount of the tax. 3111

(S) "Taxable income" or "Ohio taxable income" applies only to 3112  
estates and trusts, and means federal taxable income, as defined 3113  
and used in the Internal Revenue Code, adjusted as follows: 3114

(1) Add interest or dividends, net of ordinary, necessary, 3115  
and reasonable expenses not deducted in computing federal taxable 3116  
income, on obligations or securities of any state or of any 3117  
political subdivision or authority of any state, other than this 3118  
state and its subdivisions and authorities, but only to the extent 3119  
that such net amount is not otherwise includible in Ohio taxable 3120  
income and is described in either division (S)(1)(a) or (b) of 3121  
this section: 3122

(a) The net amount is not attributable to the S portion of an 3123  
electing small business trust and has not been distributed to 3124  
beneficiaries for the taxable year; 3125

(b) The net amount is attributable to the S portion of an 3126  
electing small business trust for the taxable year. 3127

(2) Add interest or dividends, net of ordinary, necessary, 3128  
and reasonable expenses not deducted in computing federal taxable 3129  
income, on obligations of any authority, commission, 3130  
instrumentality, territory, or possession of the United States to 3131  
the extent that the interest or dividends are exempt from federal 3132  
income taxes but not from state income taxes, but only to the 3133  
extent that such net amount is not otherwise includible in Ohio 3134  
taxable income and is described in either division (S)(1)(a) or 3135  
(b) of this section; 3136

(3) Add the amount of personal exemption allowed to the 3137  
estate pursuant to section 642(b) of the Internal Revenue Code; 3138

(4) Deduct interest or dividends, net of related expenses 3139  
deducted in computing federal taxable income, on obligations of 3140  
the United States and its territories and possessions or of any 3141  
authority, commission, or instrumentality of the United States to 3142  
the extent that the interest or dividends are exempt from state 3143  
taxes under the laws of the United States, but only to the extent 3144  
that such amount is included in federal taxable income and is 3145  
described in either division (S)(1)(a) or (b) of this section; 3146

(5) Deduct the amount of wages and salaries, if any, not 3147  
otherwise allowable as a deduction but that would have been 3148  
allowable as a deduction in computing federal taxable income for 3149  
the taxable year, had the targeted jobs credit allowed under 3150  
sections 38, 51, and 52 of the Internal Revenue Code not been in 3151  
effect, but only to the extent such amount relates either to 3152  
income included in federal taxable income for the taxable year or 3153  
to income of the S portion of an electing small business trust for 3154  
the taxable year; 3155

(6) Deduct any interest or interest equivalent, net of 3156  
related expenses deducted in computing federal taxable income, on 3157  
public obligations and purchase obligations, but only to the 3158  
extent that such net amount relates either to income included in 3159

federal taxable income for the taxable year or to income of the S 3160  
portion of an electing small business trust for the taxable year; 3161

(7) Add any loss or deduct any gain resulting from sale, 3162  
exchange, or other disposition of public obligations to the extent 3163  
that such loss has been deducted or such gain has been included in 3164  
computing either federal taxable income or income of the S portion 3165  
of an electing small business trust for the taxable year; 3166

(8) Except in the case of the final return of an estate, add 3167  
any amount deducted by the taxpayer on both its Ohio estate tax 3168  
return pursuant to section 5731.14 of the Revised Code, and on its 3169  
federal income tax return in determining federal taxable income; 3170

(9)(a) Deduct any amount included in federal taxable income 3171  
solely because the amount represents a reimbursement or refund of 3172  
expenses that in a previous year the decedent had deducted as an 3173  
itemized deduction pursuant to section 63 of the Internal Revenue 3174  
Code and applicable treasury regulations. The deduction otherwise 3175  
allowed under division (S)(9)(a) of this section shall be reduced 3176  
to the extent the reimbursement is attributable to an amount the 3177  
taxpayer or decedent deducted under this section in any taxable 3178  
year. 3179

(b) Add any amount not otherwise included in Ohio taxable 3180  
income for any taxable year to the extent that the amount is 3181  
attributable to the recovery during the taxable year of any amount 3182  
deducted or excluded in computing federal or Ohio taxable income 3183  
in any taxable year, but only to the extent such amount has not 3184  
been distributed to beneficiaries for the taxable year. 3185

(10) Deduct any portion of the deduction described in section 3186  
1341(a)(2) of the Internal Revenue Code, for repaying previously 3187  
reported income received under a claim of right, that meets both 3188  
of the following requirements: 3189

(a) It is allowable for repayment of an item that was 3190

included in the taxpayer's taxable income or the decedent's 3191  
adjusted gross income for a prior taxable year and did not qualify 3192  
for a credit under division (A) or (B) of section 5747.05 of the 3193  
Revised Code for that year. 3194

(b) It does not otherwise reduce the taxpayer's taxable 3195  
income or the decedent's adjusted gross income for the current or 3196  
any other taxable year. 3197

(11) Add any amount claimed as a credit under section 3198  
5747.059 or 5747.65 of the Revised Code to the extent that the 3199  
amount satisfies either of the following: 3200

(a) The amount was deducted or excluded from the computation 3201  
of the taxpayer's federal taxable income as required to be 3202  
reported for the taxpayer's taxable year under the Internal 3203  
Revenue Code; 3204

(b) The amount resulted in a reduction in the taxpayer's 3205  
federal taxable income as required to be reported for any of the 3206  
taxpayer's taxable years under the Internal Revenue Code. 3207

(12) Deduct any amount, net of related expenses deducted in 3208  
computing federal taxable income, that a trust is required to 3209  
report as farm income on its federal income tax return, but only 3210  
if the assets of the trust include at least ten acres of land 3211  
satisfying the definition of "land devoted exclusively to 3212  
agricultural use" under section 5713.30 of the Revised Code, 3213  
regardless of whether the land is valued for tax purposes as such 3214  
land under sections 5713.30 to 5713.38 of the Revised Code. If the 3215  
trust is a pass-through entity investor, section 5747.231 of the 3216  
Revised Code applies in ascertaining if the trust is eligible to 3217  
claim the deduction provided by division (S)(12) of this section 3218  
in connection with the pass-through entity's farm income. 3219

Except for farm income attributable to the S portion of an 3220  
electing small business trust, the deduction provided by division 3221

(S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S)(12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.

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

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

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

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

(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

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

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

(Y) "Month" means a calendar month.

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

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

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

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

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

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

(BB)(1) "Modified business income" means the business income 3283  
included in a trust's Ohio taxable income after such taxable 3284  
income is first reduced by the qualifying trust amount, if any. 3285

(2) "Qualifying trust amount" of a trust means capital gains 3286  
and losses from the sale, exchange, or other disposition of equity 3287  
or ownership interests in, or debt obligations of, a qualifying 3288  
investee to the extent included in the trust's Ohio taxable 3289  
income, but only if the following requirements are satisfied: 3290

(a) The book value of the qualifying investee's physical 3291  
assets in this state and everywhere, as of the last day of the 3292  
qualifying investee's fiscal or calendar year ending immediately 3293  
prior to the date on which the trust recognizes the gain or loss, 3294  
is available to the trust. 3295

(b) The requirements of section 5747.011 of the Revised Code 3296  
are satisfied for the trust's taxable year in which the trust 3297  
recognizes the gain or loss. 3298

Any gain or loss that is not a qualifying trust amount is 3299  
modified business income, qualifying investment income, or 3300  
modified nonbusiness income, as the case may be. 3301

(3) "Modified nonbusiness income" means a trust's Ohio 3302  
taxable income other than modified business income, other than the 3303  
qualifying trust amount, and other than qualifying investment 3304  
income, as defined in section 5747.012 of the Revised Code, to the 3305  
extent such qualifying investment income is not otherwise part of 3306  
modified business income. 3307

(4) "Modified Ohio taxable income" applies only to trusts, 3308  
and means the sum of the amounts described in divisions (BB)(4)(a) 3309  
to (c) of this section: 3310

(a) The fraction, calculated under section 5747.013, and 3311  
applying section 5747.231 of the Revised Code, multiplied by the 3312  
sum of the following amounts: 3313

(i) The trust's modified business income; 3314

(ii) The trust's qualifying investment income, as defined in 3315  
section 5747.012 of the Revised Code, but only to the extent the 3316  
qualifying investment income does not otherwise constitute 3317  
modified business income and does not otherwise constitute a 3318  
qualifying trust amount. 3319

(b) The qualifying trust amount multiplied by a fraction, the 3320  
numerator of which is the sum of the book value of the qualifying 3321  
investee's physical assets in this state on the last day of the 3322  
qualifying investee's fiscal or calendar year ending immediately 3323  
prior to the day on which the trust recognizes the qualifying 3324  
trust amount, and the denominator of which is the sum of the book 3325  
value of the qualifying investee's total physical assets 3326  
everywhere on the last day of the qualifying investee's fiscal or 3327  
calendar year ending immediately prior to the day on which the 3328  
trust recognizes the qualifying trust amount. If, for a taxable 3329  
year, the trust recognizes a qualifying trust amount with respect 3330  
to more than one qualifying investee, the amount described in 3331  
division (BB)(4)(b) of this section shall equal the sum of the 3332  
products so computed for each such qualifying investee. 3333

(c)(i) With respect to a trust or portion of a trust that is 3334  
a resident as ascertained in accordance with division (I)(3)(d) of 3335  
this section, its modified nonbusiness income. 3336

(ii) With respect to a trust or portion of a trust that is 3337  
not a resident as ascertained in accordance with division 3338  
(I)(3)(d) of this section, the amount of its modified nonbusiness 3339  
income satisfying the descriptions in divisions (B)(2) to (5) of 3340  
section 5747.20 of the Revised Code, except as otherwise provided 3341  
in division (BB)(4)(c)(ii) of this section. With respect to a 3342  
trust or portion of a trust that is not a resident as ascertained 3343  
in accordance with division (I)(3)(d) of this section, the trust's 3344  
portion of modified nonbusiness income recognized from the sale, 3345

exchange, or other disposition of a debt interest in or equity 3346  
interest in a section 5747.212 entity, as defined in section 3347  
5747.212 of the Revised Code, without regard to division (A) of 3348  
that section, shall not be allocated to this state in accordance 3349  
with section 5747.20 of the Revised Code but shall be apportioned 3350  
to this state in accordance with division (B) of section 5747.212 3351  
of the Revised Code without regard to division (A) of that 3352  
section. 3353

If the allocation and apportionment of a trust's income under 3354  
divisions (BB)(4)(a) and (c) of this section do not fairly 3355  
represent the modified Ohio taxable income of the trust in this 3356  
state, the alternative methods described in division (C) of 3357  
section 5747.21 of the Revised Code may be applied in the manner 3358  
and to the same extent provided in that section. 3359

(5)(a) Except as set forth in division (BB)(5)(b) of this 3360  
section, "qualifying investee" means a person in which a trust has 3361  
an equity or ownership interest, or a person or unit of government 3362  
the debt obligations of either of which are owned by a trust. For 3363  
the purposes of division (BB)(2)(a) of this section and for the 3364  
purpose of computing the fraction described in division (BB)(4)(b) 3365  
of this section, all of the following apply: 3366

(i) If the qualifying investee is a member of a qualifying 3367  
controlled group on the last day of the qualifying investee's 3368  
fiscal or calendar year ending immediately prior to the date on 3369  
which the trust recognizes the gain or loss, then "qualifying 3370  
investee" includes all persons in the qualifying controlled group 3371  
on such last day. 3372

(ii) If the qualifying investee, or if the qualifying 3373  
investee and any members of the qualifying controlled group of 3374  
which the qualifying investee is a member on the last day of the 3375  
qualifying investee's fiscal or calendar year ending immediately 3376  
prior to the date on which the trust recognizes the gain or loss, 3377

separately or cumulatively own, directly or indirectly, on the 3378  
last day of the qualifying investee's fiscal or calendar year 3379  
ending immediately prior to the date on which the trust recognizes 3380  
the qualifying trust amount, more than fifty per cent of the 3381  
equity of a pass-through entity, then the qualifying investee and 3382  
the other members are deemed to own the proportionate share of the 3383  
pass-through entity's physical assets which the pass-through 3384  
entity directly or indirectly owns on the last day of the 3385  
pass-through entity's calendar or fiscal year ending within or 3386  
with the last day of the qualifying investee's fiscal or calendar 3387  
year ending immediately prior to the date on which the trust 3388  
recognizes the qualifying trust amount. 3389

(iii) For the purposes of division (BB)(5)(a)(iii) of this 3390  
section, "upper level pass-through entity" means a pass-through 3391  
entity directly or indirectly owning any equity of another 3392  
pass-through entity, and "lower level pass-through entity" means 3393  
that other pass-through entity. 3394

An upper level pass-through entity, whether or not it is also 3395  
a qualifying investee, is deemed to own, on the last day of the 3396  
upper level pass-through entity's calendar or fiscal year, the 3397  
proportionate share of the lower level pass-through entity's 3398  
physical assets that the lower level pass-through entity directly 3399  
or indirectly owns on the last day of the lower level pass-through 3400  
entity's calendar or fiscal year ending within or with the last 3401  
day of the upper level pass-through entity's fiscal or calendar 3402  
year. If the upper level pass-through entity directly and 3403  
indirectly owns less than fifty per cent of the equity of the 3404  
lower level pass-through entity on each day of the upper level 3405  
pass-through entity's calendar or fiscal year in which or with 3406  
which ends the calendar or fiscal year of the lower level 3407  
pass-through entity and if, based upon clear and convincing 3408  
evidence, complete information about the location and cost of the 3409

physical assets of the lower pass-through entity is not available 3410  
to the upper level pass-through entity, then solely for purposes 3411  
of ascertaining if a gain or loss constitutes a qualifying trust 3412  
amount, the upper level pass-through entity shall be deemed as 3413  
owning no equity of the lower level pass-through entity for each 3414  
day during the upper level pass-through entity's calendar or 3415  
fiscal year in which or with which ends the lower level 3416  
pass-through entity's calendar or fiscal year. Nothing in division 3417  
(BB)(5)(a)(iii) of this section shall be construed to provide for 3418  
any deduction or exclusion in computing any trust's Ohio taxable 3419  
income. 3420

(b) With respect to a trust that is not a resident for the 3421  
taxable year and with respect to a part of a trust that is not a 3422  
resident for the taxable year, "qualifying investee" for that 3423  
taxable year does not include a C corporation if both of the 3424  
following apply: 3425

(i) During the taxable year the trust or part of the trust 3426  
recognizes a gain or loss from the sale, exchange, or other 3427  
disposition of equity or ownership interests in, or debt 3428  
obligations of, the C corporation. 3429

(ii) Such gain or loss constitutes nonbusiness income. 3430

(6) "Available" means information is such that a person is 3431  
able to learn of the information by the due date plus extensions, 3432  
if any, for filing the return for the taxable year in which the 3433  
trust recognizes the gain or loss. 3434

(CC) "Qualifying controlled group" has the same meaning as in 3435  
section 5733.04 of the Revised Code. 3436

(DD) "Related member" has the same meaning as in section 3437  
5733.042 of the Revised Code. 3438

(EE)(1) For the purposes of division (EE) of this section: 3439

(a) "Qualifying person" means any person other than a 3440  
qualifying corporation. 3441

(b) "Qualifying corporation" means any person classified for 3442  
federal income tax purposes as an association taxable as a 3443  
corporation, except either of the following: 3444

(i) A corporation that has made an election under subchapter 3445  
S, chapter one, subtitle A, of the Internal Revenue Code for its 3446  
taxable year ending within, or on the last day of, the investor's 3447  
taxable year; 3448

(ii) A subsidiary that is wholly owned by any corporation 3449  
that has made an election under subchapter S, chapter one, 3450  
subtitle A of the Internal Revenue Code for its taxable year 3451  
ending within, or on the last day of, the investor's taxable year. 3452

(2) For the purposes of this chapter, unless expressly stated 3453  
otherwise, no qualifying person indirectly owns any asset directly 3454  
or indirectly owned by any qualifying corporation. 3455

(FF) For purposes of this chapter and Chapter 5751. of the 3456  
Revised Code: 3457

(1) "Trust" does not include a qualified pre-income tax 3458  
trust. 3459

(2) A "qualified pre-income tax trust" is any pre-income tax 3460  
trust that makes a qualifying pre-income tax trust election as 3461  
described in division (FF)(3) of this section. 3462

(3) A "qualifying pre-income tax trust election" is an 3463  
election by a pre-income tax trust to subject to the tax imposed 3464  
by section 5751.02 of the Revised Code the pre-income tax trust 3465  
and all pass-through entities of which the trust owns or controls, 3466  
directly, indirectly, or constructively through related interests, 3467  
five per cent or more of the ownership or equity interests. The 3468  
trustee shall notify the tax commissioner in writing of the 3469

election on or before April 15, 2006. The election, if timely 3470  
made, shall be effective on and after January 1, 2006, and shall 3471  
apply for all tax periods and tax years until revoked by the 3472  
trustee of the trust. 3473

(4) A "pre-income tax trust" is a trust that satisfies all of 3474  
the following requirements: 3475

(a) The document or instrument creating the trust was 3476  
executed by the grantor before January 1, 1972; 3477

(b) The trust became irrevocable upon the creation of the 3478  
trust; and 3479

(c) The grantor was domiciled in this state at the time the 3480  
trust was created. 3481

(GG) "Uniformed services" has the same meaning as in 10 3482  
U.S.C. 101. 3483

(HH) "Taxable business income" means the amount by which an 3484  
individual's business income that is included in federal adjusted 3485  
gross income exceeds the amount of business income the individual 3486  
is authorized to deduct under division (A)(31) of this section for 3487  
the taxable year. 3488

(II) "Employer" does not include a franchisor with respect to 3489  
the franchisor's relationship with a franchisee or an employee of 3490  
a franchisee, unless the franchisor agrees to assume that role in 3491  
writing or a court of competent jurisdiction determines that the 3492  
franchisor exercises a type or degree of control over the 3493  
franchisee or the franchisee's employees that is not customarily 3494  
exercised by a franchisor for the purpose of protecting the 3495  
franchisor's trademark, brand, or both. For purposes of this 3496  
division, "franchisor" and "franchisee" have the same meanings as 3497  
in 16 C.F.R. 436.1. 3498

(JJ) "Employee" means an individual who is an employee under 3499

the rules adopted by the superintendent of industrial compliance 3500  
pursuant to section 4177.01 of the Revised Code. 3501

**Section 7.** That existing sections 4113.21, 4121.01, 4123.01, 3502  
4123.026, 4123.038, 4123.46, 4123.51, 4123.52, 4123.56, 4123.58, 3503  
4123.65, 4123.66, 4131.03, 4141.01, and 5747.01 of the Revised 3504  
Code are hereby repealed. 3505

**Section 8.** Sections 4121.471, 4123.01, 4123.026, 4123.46, 3506  
4123.51, 4123.513, 4123.52, 4123.56, 4123.58, 4123.65, and 4123.66 3507  
of the Revised Code, as amended or enacted by Section 6 of this 3508  
act, apply to claims under Chapter 4121., 4123., 4127., or 4131. 3509  
of the Revised Code arising on or after the effective date of this 3510  
section, except that division (F) of section 4123.56 and section 3511  
4123.58 of the Revised Code as amended by Section 6 of this act 3512  
also apply to claims that are pending on the effective date of 3513  
this section. 3514

**Section 9.** Division (A) of section 4123.512 of the Revised 3515  
Code, as amended by Sub. H.B. 27 of the 132nd General Assembly, 3516  
applies to claims under Chapter 4121., 4123., 4127., or 4131. of 3517  
the Revised Code pending on or arising after September 29, 2017. 3518