

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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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. 310
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(10) "Welfare" means comfort, decency, and moral well-being. 314

(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. 315
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(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. 321
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(13) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code. 326
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(B) As used in the Revised Code: 328

(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. 329
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(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. 335
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(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
(i) The person is required to comply with instructions from	402
the other contracting party regarding the manner or method of	403
performing services;	404
(ii) The person is required by the other contracting party to	405
have particular training;	406
(iii) The person's services are integrated into the regular	407
functioning of the other contracting party;	408
(iv) The person is required to perform the work personally;	409
(v) The person is hired, supervised, or paid by the other	410
contracting party;	411
(vi) A continuing relationship exists between the person and	412
the other contracting party that contemplates continuing or	413
recurring work even if the work is not full time;	414
(vii) The person's hours of work are established by the other	415
contracting party;	416
(viii) The person is required to devote full time to the	417
business of the other contracting party;	418
(ix) The person is required to perform the work on the	419
premises of the other contracting party;	420
(x) The person is required to follow the order of work set by	421
the other contracting party;	422
(xi) The person is required to make oral or written reports	423
of progress to the other contracting party;	424
(xii) The person is paid for services on a regular basis such	425
as hourly, weekly, or monthly;	426
(xiii) The person's expenses are paid for by the other	427
contracting party;	428
(xiv) The person's tools and materials are furnished by the	429

other contracting party;	430
(xv) The person is provided with the facilities used to perform services;	431 432
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	433 434
(xvii) The person is not performing services for a number of employers at the same time;	435 436
(xviii) The person does not make the same services available to the general public;	437 438
(xix) The other contracting party has a right to discharge the person;	439 440
(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.	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 lumper 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

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

the facilities used to perform services;	1734
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;	1735
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(xvii) The individual performing services is not performing services for more than two employers simultaneously;	1738
	1739
(xviii) The individual performing services does not make the services available to the general public;	1740
	1741
(xix) The employer has a right to discharge the individual performing services;	1742
	1743
(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.;	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
	1763

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 lumper 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 1795
they are found not subject to the "Federal Unemployment Tax Act," 1796
84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services 1797
are not required to be included under division (B)(2)(j) of this 1798
section: 1799

(a) Service performed after December 31, 1977, in 1800
agricultural labor, except as provided in division (A)(1)(d) of 1801
this section; 1802

(b) Domestic service performed after December 31, 1977, in a 1803
private home, local college club, or local chapter of a college 1804
fraternity or sorority except as provided in division (A)(1)(c) of 1805
this section; 1806

(c) Service performed after December 31, 1977, for this state 1807
or a political subdivision as described in division (B)(2)(a) of 1808
this section when performed: 1809

(i) As a publicly elected official; 1810

(ii) As a member of a legislative body, or a member of the 1811
judiciary; 1812

(iii) As a military member of the Ohio national guard; 1813

(iv) As an employee, not in the classified service as defined 1814
in section 124.11 of the Revised Code, serving on a temporary 1815
basis in case of fire, storm, snow, earthquake, flood, or similar 1816
emergency; 1817

(v) In a position which, under or pursuant to law, is 1818
designated as a major nontenured policymaking or advisory 1819
position, not in the classified service of the state, or a 1820
policymaking or advisory position the performance of the duties of 1821
which ordinarily does not require more than eight hours per week. 1822

(d) In the employ of any governmental unit or instrumentality 1823
of the United States; 1824

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

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

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

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

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

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

section:	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