

As Reported by the House Finance Committee

**133rd General Assembly
Regular Session
2019-2020**

Sub. H. B. No. 80

Representative Oelslager

**Cosponsors: Representatives Hambley, O'Brien, Patterson, Perales,
Plummer, Rogers**

A B I L L

To amend sections 4113.21, 4121.01, 4123.01, 1
4123.026, 4123.038, 4123.46, 4123.52, 4123.56, 2
4123.58, 4123.65, 4123.66, 4131.03, 4141.01, and 3
5747.01 and to enact sections 4121.471 and 4177.01 4
to 4177.06 of the Revised Code to make changes to 5
the Workers' Compensation Law, to create a 6
generally uniform definition of employee for 7
specified labor laws, to prohibit 8
misclassification under those laws, to make 9
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 47
Payments, \$828,200 in each fiscal year shall be used to fund the 48
expenses of the Workers' Compensation Fraud Unit within the 49
Attorney General's Office. These payments shall be processed at 50
the beginning of each quarter of each fiscal year and deposited 51
into the Workers' Compensation Section Fund (Fund 1950) used by 52
the Attorney General. 53

SAFETY AND HYGIENE 54

Notwithstanding section 4121.37 of the Revised Code, the 55
Treasurer of State shall remit \$24,080,000 cash in fiscal year 56
2020 and \$23,746,000 cash in fiscal year 2021 from the State 57
Insurance Fund to the state treasury to the credit of the Safety 58
and Hygiene Fund (Fund 8260). 59

SAFETY GRANTS 60

Notwithstanding section 4121.37 of the Revised Code, the 61
Treasurer of State shall remit \$20,000,000 in cash in fiscal year 62
2020 and \$20,000,000 in cash in fiscal year 2021 from the State 63
Insurance Fund to the state treasury to the credit of the Safety 64
and Hygiene Fund (Fund 8260) to be used for Safety Grants. 65

HEALTH AND SAFETY INITIATIVE 66

Notwithstanding section 4121.37 of Revised Code, the 67
Treasurer of State shall remit \$6,000,000 in cash in fiscal year 68
2020 and \$6,000,000 in cash in fiscal year 2021 from the State 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 program. 102
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, 4123.52, 4123.56, 4123.58, 4123.65, 4123.66, 183
4131.03, 4141.01, and 5747.01 be amended and sections 4121.471, 184
4177.01, 4177.02, 4177.03, 4177.04, 4177.05, and 4177.06 of the 185
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 lump sum 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 310
corporation, or any trustees, or board or officers of any 311

municipal corporation upon any matter over which the bureau has 312
jurisdiction. 313

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

(11) "Safe" or "safety," as applied to any employment or a 315
place of employment, means such freedom from danger to the life, 316
health, safety, or welfare of employees or frequenters as the 317
nature of the employment will reasonably permit, including 318
requirements as to the hours of labor with relation to the health 319
and welfare of employees. 320

(12) "Employee organization" means any labor or bona fide 321
organization in which employees participate and that exists for 322
the purpose, in whole or in part, of dealing with employers 323
concerning grievances, labor disputes, wages, hours, terms, and 324
other conditions of employment. 325

(13) "Motor carrier" has the same meaning as in section 326
4923.01 of the Revised Code. 327

(B) As used in the Revised Code: 328

(1) "Industrial commission" means the chairperson of the 329
three-member industrial commission created pursuant to section 330
4121.02 of the Revised Code when the context refers to the 331
authority vested in the chairperson as the chief executive officer 332
of the three-member industrial commission pursuant to divisions 333
(A), (B), (C), and (D) of section 4121.03 of the Revised Code. 334

(2) "Industrial commission" means the three-member industrial 335
commission created pursuant to section 4121.02 of the Revised Code 336
when the context refers to the authority vested in the 337
three-member industrial commission pursuant to division (E) of 338
section 4121.03 of the Revised Code. 339

(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	431

perform services;	432
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	433
(xvii) The person is not performing services for a number of employers at the same time;	434
(xviii) The person does not make the same services available to the general public;	435
(xix) The other contracting party has a right to discharge the person;	436
(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.	437
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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
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(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 to the person:	457
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(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 this chapter, any person excluded from the definition of "employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c),	520 521 522

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

(Q) "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

Sec. 4123.026. (A) The administrator of workers' 696
compensation, ~~or~~ a self-insuring public employer for the peace 697
officers, firefighters, and emergency medical workers employed by 698
or volunteering for that self-insuring public employer, or a 699
detention facility that is a self-insuring employer for the 700
facility's employees, including corrections officers, shall pay 701
the costs of conducting post-exposure medical diagnostic services, 702
consistent with the standards of medical care existing at the time 703
of the exposure, to investigate whether an injury or occupational 704
disease was sustained by a peace officer, firefighter, ~~or~~ 705
emergency medical worker, or detention facility employee, 706
including a corrections officer, when coming into contact with the 707

blood or other body fluid of another person in the course of and 708
arising out of the peace officer's, firefighter's, ~~or~~ emergency 709
medical worker's, or detention facility employee's employment, or 710
when responding to an inherently dangerous situation in the manner 711
described in, and in accordance with the conditions specified 712
under, division (A)(1)(a) of section 4123.01 of the Revised Code, 713
through any of the following means: 714

(1) Splash or spatter in the eye or mouth, including when 715
received in the course of conducting mouth-to-mouth resuscitation; 716

(2) A puncture in the skin; 717

(3) A cut in the skin or another opening in the skin such as 718
an open sore, wound, lesion, abrasion, or ulcer. 719

(B) As used in this section: 720

(1) ~~"Peace officer" has the same meaning as in section 721
2935.01 of the Revised Code.~~ 722

~~(2) "Firefighter" means a firefighter, whether paid or 723
volunteer, of a lawfully constituted fire department.~~ 724

~~(3) "Emergency medical worker" means a first responder, 725
emergency medical technician basic, emergency medical 726
technician intermediate, or emergency medical 727
technician paramedic, certified under Chapter 4765. of the Revised 728
Code, whether paid or volunteer 729~~

"Corrections officer" means a person employed by a detention 730
facility as a corrections officer. 731

(2) "Detention facility" means any public or private place 732
used for the confinement of a person charged with or convicted of 733
any crime in this state or another state or under the laws of the 734
United States or alleged or found to be a delinquent child or 735
unruly child in this state or another state or under the laws of 736
the United States. 737

Sec. 4123.038. As used in this section and section 4123.039 738
of the Revised Code: 739

(A) "Apprentice" and "apprenticeship agreement" have the 740
meaning defined in section ~~4111.25~~ 4139.01 of the Revised Code. 741

(B) "Related and supplemental instructions" means training 742
offered, conducted, supervised, or given under the sponsorship of 743
any joint apprenticeship committee or other sponsoring 744
organization to apprentices, which training is given in addition 745
to the approved schedule of work experience through employment, 746
and which is to be credited towards the minimum hours of related 747
and supplemental instructions required by section 4139.01 of the 748
Revised Code. 749

(C) "Pre-apprentice" means a person who receives formal 750
classroom training designed to provide the person with the basic 751
education, attitudes, skills, trade knowledge, and motivation 752
necessary to enter a formal apprenticeship program. 753

(D) "Entry-level trainee" means a person who possesses 754
experience that would qualify the person as a journeyperson but 755
for the existence of certain other disqualifying conditions and 756
who receives on-the-job training accompanied by classroom 757
instruction outside of normal working hours. 758

(E) "Journeyperson trainee" means a person with journeyperson 759
status in a given trade who receives classroom and laboratory 760
training for the purpose of broadening the person's skills and 761
acquainting the person with new techniques and ideas in the trade. 762

Sec. 4123.46. (A)(1) Except as provided in division (A)(2) of 763
this section, the bureau of workers' compensation shall disburse 764
the state insurance fund to employees of employers who have paid 765
into the fund the premiums applicable to the classes to which they 766
belong when the employees have been injured in the course of their 767

employment, wherever the injuries have occurred, and provided the 768
injuries have not been purposely self-inflicted, or to the 769
dependents of the employees in case death has ensued. 770

(2) As long as injuries have not been purposely 771
self-inflicted, the bureau shall disburse the surplus fund created 772
under section 4123.34 of the Revised Code to off-duty peace 773
officers, firefighters, and emergency medical ~~technicians, and~~ 774
~~first responders~~ workers, or to their dependents if death ensues, 775
who are injured while responding to inherently dangerous 776
situations that call for an immediate response on the part of the 777
person, regardless of whether the person was within the limits of 778
the person's jurisdiction when responding, on the condition that 779
the person responds to the situation as the person otherwise would 780
if the person were on duty in the person's jurisdiction. 781

~~As used in division (A)(2) of this section, "peace officer," 782
"firefighter," "emergency medical technician," "first responder," 783
and "jurisdiction" have the same meanings as in section 4123.01 of 784
the Revised Code. 785~~

(B) All self-insuring employers, in compliance with this 786
chapter, shall pay the compensation to injured employees, or to 787
the dependents of employees who have been killed in the course of 788
their employment, unless the injury or death of the employee was 789
purposely self-inflicted, and shall furnish the medical, surgical, 790
nurse, and hospital care and attention or funeral expenses as 791
would have been paid and furnished by virtue of this chapter under 792
a similar state of facts by the bureau out of the state insurance 793
fund if the employer had paid the premium into the fund. 794

If any rule or regulation of a self-insuring employer 795
provides for or authorizes the payment of greater compensation or 796
more complete or extended medical care, nursing, surgical, and 797
hospital attention, or funeral expenses to the injured employees, 798
or to the dependents of the employees as may be killed, the 799

employer shall pay to the employees, or to the dependents of 800
employees killed, the amount of compensation and furnish the 801
medical care, nursing, surgical, and hospital attention or funeral 802
expenses provided by the self-insuring employer's rules and 803
regulations. 804

(C) Payment to injured employees, or to their dependents in 805
case death has ensued, is in lieu of any and all rights of action 806
against the employer of the injured or killed employees. 807

Sec. 4123.52. (A) The jurisdiction of the industrial 808
commission and the authority of the administrator of workers' 809
compensation over each case is continuing, and the commission may 810
make such modification or change with respect to former findings 811
or orders with respect thereto, as, in its opinion is justified. 812
No modification or change nor any finding or award in respect of 813
any claim shall be made with respect to disability, compensation, 814
dependency, or benefits, after five years from the date of injury 815
in the absence of ~~the payment of~~ medical benefits being provided 816
under this chapter or in the absence of payment of compensation 817
under section 4123.57, 4123.58, or division (A) or (B) of section 818
4123.56 of the Revised Code or wages in lieu of compensation in a 819
manner so as to satisfy the requirements of section 4123.84 of the 820
Revised Code, in which event the modification, change, finding, or 821
award shall be made within five years from the date of the last 822
medical services being rendered or the date of the last payment of 823
compensation or from the date of death, nor unless written notice 824
of claim for the specific part or parts of the body injured or 825
disabled has been given as provided in section 4123.84 or 4123.85 826
of the Revised Code. The commission shall not make any 827
modification, change, finding, or award which shall award 828
compensation for a back period in excess of two years prior to the 829
date of filing application therefor. 830

(B) Notwithstanding division (A) of this section, and except 831
as otherwise provided in a rule that shall be adopted by the 832
administrator, with the advice and consent of the bureau of 833
workers' compensation board of directors, neither the 834
administrator nor the commission shall make any finding or award 835
for payment of medical or vocational rehabilitation services 836
submitted for payment more than one year after the date the 837
services were rendered or more than one year after the date the 838
services became payable under division (I) of section 4123.511 of 839
the Revised Code, whichever is later. No medical or vocational 840
rehabilitation provider shall bill a claimant for services 841
rendered if the administrator or commission is prohibited from 842
making that payment under this division. 843

(C) Division (B) of this section does not apply to requests 844
made by the centers for medicare and medicaid services in the 845
United States department of health and human services for 846
reimbursement of conditional payments made pursuant to section 847
1395y(b)(2) of title 42, United States Code (commonly known as the 848
"Medicare Secondary Payer Act"). 849

(D) This section does not affect the right of a claimant to 850
compensation accruing subsequent to the filing of any such 851
application, provided the application is filed within the time 852
limit provided in this section. 853

(E) This section does not deprive the commission of its 854
continuing jurisdiction to determine the questions raised by any 855
application for modification of award which has been filed with 856
the commission after June 1, 1932, and prior to the expiration of 857
the applicable period but in respect to which no award has been 858
granted or denied during the applicable period. 859

(F) The commission may, by general rules, provide for the 860
destruction of files of cases in which no further action may be 861
taken. 862

(G) The commission and administrator of workers' compensation 863
each may, by general rules, provide for the retention and 864
destruction of all other records in their possession or under 865
their control pursuant to section 121.211 and sections 149.34 to 866
149.36 of the Revised Code. The bureau of workers' compensation 867
may purchase or rent required equipment for the document retention 868
media, as determined necessary to preserve the records. 869
Photographs, microphotographs, microfilm, films, or other direct 870
document retention media, when properly identified, have the same 871
effect as the original record and may be offered in like manner 872
and may be received as evidence in proceedings before the 873
industrial commission, staff hearing officers, and district 874
hearing officers, and in any court where the original record could 875
have been introduced. 876

Sec. 4123.56. (A) Except as provided in division (D) of this 877
section, in the case of temporary disability, an employee shall 878
receive sixty-six and two-thirds per cent of the employee's 879
average weekly wage so long as such disability is total, not to 880
exceed a maximum amount of weekly compensation which is equal to 881
the statewide average weekly wage as defined in division (C) of 882
section 4123.62 of the Revised Code, and not less than a minimum 883
amount of compensation which is equal to thirty-three and 884
one-third per cent of the statewide average weekly wage as defined 885
in division (C) of section 4123.62 of the Revised Code unless the 886
employee's wage is less than thirty-three and one-third per cent 887
of the minimum statewide average weekly wage, in which event the 888
employee shall receive compensation equal to the employee's full 889
wages; provided that for the first twelve weeks of total 890
disability the employee shall receive seventy-two per cent of the 891
employee's full weekly wage, but not to exceed a maximum amount of 892
weekly compensation which is equal to the lesser of the statewide 893
average weekly wage as defined in division (C) of section 4123.62 894

of the Revised Code or one hundred per cent of the employee's net 895
take-home weekly wage. In the case of a self-insuring employer, 896
payments shall be for a duration based upon the medical reports of 897
the attending physician. If the employer disputes the attending 898
physician's report, payments may be terminated only upon 899
application and hearing by a district hearing officer pursuant to 900
division (C) of section 4123.511 of the Revised Code. Payments 901
shall continue pending the determination of the matter, however 902
payment shall not be made for the period when any employee has 903
returned to work, when an employee's treating physician has made a 904
written statement that the employee is capable of returning to the 905
employee's former position of employment, when work within the 906
physical capabilities of the employee is made available by the 907
employer or another employer, or when the employee has reached the 908
maximum medical improvement. Where the employee is capable of work 909
activity, but the employee's employer is unable to offer the 910
employee any employment, the employee shall register with the 911
director of job and family services, who shall assist the employee 912
in finding suitable employment. The termination of temporary total 913
disability, whether by order or otherwise, does not preclude the 914
commencement of temporary total disability at another point in 915
time if the employee again becomes temporarily totally disabled. 916

After two hundred weeks of temporary total disability 917
benefits, the medical section of the bureau of workers' 918
compensation shall schedule the claimant for an examination for an 919
evaluation to determine whether or not the temporary disability 920
has become permanent. A self-insuring employer shall notify the 921
bureau immediately after payment of two hundred weeks of temporary 922
total disability and request that the bureau schedule the claimant 923
for such an examination. 924

When the employee is awarded compensation for temporary total 925
disability for a period for which the employee has received 926

benefits under Chapter 4141. of the Revised Code, the bureau shall 927
pay an amount equal to the amount received from the award to the 928
director of job and family services and the director shall credit 929
the amount to the accounts of the employers to whose accounts the 930
payment of benefits was charged or is chargeable to the extent it 931
was charged or is chargeable. 932

If any compensation under this section has been paid for the 933
same period or periods for which temporary nonoccupational 934
accident and sickness insurance is or has been paid pursuant to an 935
insurance policy or program to which the employer has made the 936
entire contribution or payment for providing insurance or under a 937
nonoccupational accident and sickness program fully funded by the 938
employer, except as otherwise provided in this division 939
compensation paid under this section for the period or periods 940
shall be paid only to the extent by which the payment or payments 941
exceeds the amount of the nonoccupational insurance or program 942
paid or payable. Offset of the compensation shall be made only 943
upon the prior order of the bureau or industrial commission or 944
agreement of the claimant. If an employer provides supplemental 945
sick leave benefits in addition to temporary total disability 946
compensation paid under this section, and if the employer and an 947
employee agree in writing to the payment of the supplemental sick 948
leave benefits, temporary total disability benefits may be paid 949
without an offset for those supplemental sick leave benefits. 950

Except as otherwise provided in a collective bargaining 951
agreement, if an employee's temporary total disability 952
compensation is offset by an amount paid to the employee for 953
accrued sick leave, the employer shall do either of the following: 954

(1) Reinstate the sick leave that offset the employee's 955
temporary total disability compensation; 956

(2) Pay the employee the amount by which the employee's 957
temporary total compensation was offset by the sick leave. 958

As used in this division, "net take-home weekly wage" means 959
the amount obtained by dividing an employee's total remuneration, 960
as defined in section 4141.01 of the Revised Code, paid to or 961
earned by the employee during the first four of the last five 962
completed calendar quarters which immediately precede the first 963
day of the employee's entitlement to benefits under this division, 964
by the number of weeks during which the employee was paid or 965
earned remuneration during those four quarters, less the amount of 966
local, state, and federal income taxes deducted for each such 967
week. 968

(B)(1) If an employee in a claim allowed under this chapter 969
suffers a wage loss as a result of returning to employment other 970
than the employee's former position of employment due to an injury 971
or occupational disease, the employee shall receive compensation 972
at sixty-six and two-thirds per cent of the difference between the 973
employee's average weekly wage and the employee's present earnings 974
not to exceed the statewide average weekly wage. The payments may 975
continue for up to a maximum of two hundred weeks, but the 976
payments shall be reduced by the corresponding number of weeks in 977
which the employee receives payments pursuant to division (A)(2) 978
of section 4121.67 of the Revised Code. 979

(2) If an employee in a claim allowed under this chapter 980
suffers a wage loss as a result of being unable to find employment 981
consistent with the employee's disability resulting from the 982
employee's injury or occupational disease, the employee shall 983
receive compensation at sixty-six and two-thirds per cent of the 984
difference between the employee's average weekly wage and the 985
employee's present earnings, not to exceed the statewide average 986
weekly wage. The payments may continue for up to a maximum of 987
fifty-two weeks. The first twenty-six weeks of payments under 988
division (B)(2) of this section shall be in addition to the 989
maximum of two hundred weeks of payments allowed under division 990

(B)(1) of this section. If an employee in a claim allowed under 991
this chapter receives compensation under division (B)(2) of this 992
section in excess of twenty-six weeks, the number of weeks of 993
compensation allowable under division (B)(1) of this section shall 994
be reduced by the corresponding number of weeks in excess of 995
twenty-six, and up to fifty-two, that is allowable under division 996
(B)(1) of this section. 997

(3) The number of weeks of wage loss payable to an employee 998
under divisions (B)(1) and (2) of this section shall not exceed 999
two hundred and twenty-six weeks in the aggregate. 1000

(C) In the event an employee of a professional sports 1001
franchise domiciled in this state is disabled as the result of an 1002
injury or occupational disease, the total amount of payments made 1003
under a contract of hire or collective bargaining agreement to the 1004
employee during a period of disability is deemed an advanced 1005
payment of compensation payable under sections 4123.56 to 4123.58 1006
of the Revised Code. The employer shall be reimbursed the total 1007
amount of the advanced payments out of any award of compensation 1008
made pursuant to sections 4123.56 to 4123.58 of the Revised Code. 1009

(D) If an employee receives temporary total disability 1010
benefits pursuant to division (A) of this section and social 1011
security retirement benefits pursuant to the "Social Security 1012
Act," the weekly benefit amount under division (A) of this section 1013
shall not exceed sixty-six and two-thirds per cent of the 1014
statewide average weekly wage as defined in division (C) of 1015
section 4123.62 of the Revised Code. 1016

(E) If an employee is eligible for compensation under 1017
division (A) of this section, but the employee's full weekly wage 1018
has not been determined at the time payments are to commence under 1019
division (H) of section 4123.511 of the Revised Code, the employee 1020
shall receive thirty-three and one-third per cent of the statewide 1021
average weekly wage as defined in division (C) of section 4123.62 1022

of the Revised Code. On determination of the employee's full 1023
weekly wage, the compensation an employee receives shall be 1024
adjusted pursuant to division (A) of this section. 1025

If the amount of compensation an employee receives under this 1026
division is greater than the adjusted amount the employee receives 1027
under division (A) of this section that is based on the employee's 1028
full weekly wage, the excess amount shall be recovered in the 1029
manner provided in division (K) of section 4123.511 of the Revised 1030
Code. If the amount of compensation an employee receives under 1031
this division is less than the adjusted amount the employee 1032
receives under that division that is based on the employee's full 1033
weekly wage, the employee shall receive the difference between 1034
those two amounts. 1035

(F) If an employee is unable to work or suffers a wage loss 1036
as the direct result of a disability arising from an injury or 1037
occupational disease, the employee is entitled to receive 1038
compensation under this section, provided the employee is 1039
otherwise qualified. If an employee is not working or has suffered 1040
a wage loss as the direct result of reasons unrelated to a 1041
disability arising from an injury or occupational disease, the 1042
employee is not eligible to receive compensation under this 1043
section. It is the intent of the general assembly to supersede any 1044
previous judicial decision that applied the doctrine of voluntary 1045
abandonment to a claim brought under this section. 1046

Sec. 4123.58. (A) In cases of permanent total disability, the 1047
employee shall receive an award to continue until the employee's 1048
death in the amount of sixty-six and two-thirds per cent of the 1049
employee's average weekly wage, but, except as otherwise provided 1050
in division (B) of this section, not more than a maximum amount of 1051
weekly compensation which is equal to sixty-six and two-thirds per 1052
cent of the statewide average weekly wage as defined in division 1053

(C) of section 4123.62 of the Revised Code in effect on the date 1054
of injury or on the date the disability due to the occupational 1055
disease begins, nor not less than a minimum amount of weekly 1056
compensation which is equal to fifty per cent of the statewide 1057
average weekly wage as defined in division (C) of section 4123.62 1058
of the Revised Code in effect on the date of injury or on the date 1059
the disability due to the occupational disease begins, unless the 1060
employee's average weekly wage is less than fifty per cent of the 1061
statewide average weekly wage at the time of the injury, in which 1062
event the employee shall receive compensation in an amount equal 1063
to the employee's average weekly wage. 1064

(B) In the event the weekly workers' compensation amount when 1066
combined with disability benefits received pursuant to the Social 1067
Security Act is less than the statewide average weekly wage as 1068
defined in division (C) of section 4123.62 of the Revised Code, 1069
then the maximum amount of weekly compensation shall be the 1070
statewide average weekly wage as defined in division (C) of 1071
section 4123.62 of the Revised Code. At any time that social 1072
security disability benefits terminate or are reduced, the 1073
workers' compensation award shall be recomputed to pay the maximum 1074
amount permitted under this division. 1075

(C) Permanent total disability shall be compensated according 1076
to this section only when at least one of the following applies to 1077
the claimant: 1078

(1) The claimant has lost, or lost the use of both hands or 1079
both arms, or both feet or both legs, or both eyes, or of any two 1080
thereof; however, the loss or loss of use of one limb does not 1081
constitute the loss or loss of use of two body parts; 1082

(2) The impairment resulting from the employee's injury or 1083
occupational disease prevents the employee from engaging in 1084
sustained remunerative employment utilizing the employment skills 1085

that the employee has or may reasonably be expected to develop. 1086

(D) Permanent total disability shall not be compensated when 1087
the reason the employee is unable to engage in sustained 1088
remunerative employment is due to any of the following reasons, 1089
whether individually or in combination: 1090

(1) Impairments of the employee that are not the result of an 1091
allowed injury or occupational disease; 1092

(2) Solely the employee's age or aging; 1093

(3) The employee retired or otherwise ~~voluntarily abandoned~~ 1094
~~the workforce~~ is not working for reasons unrelated to the allowed 1095
injury or occupational disease. 1096

(4) The employee has not engaged in educational or 1097
rehabilitative efforts to enhance the employee's employability, 1098
unless such efforts are determined to be in vain. 1099

(E) Compensation payable under this section for permanent 1100
total disability is in addition to benefits payable under division 1101
(B) of section 4123.57 of the Revised Code. 1102

(F) If an employee is awarded compensation for permanent 1103
total disability under this section because the employee sustained 1104
a traumatic brain injury, the employee is entitled to that 1105
compensation regardless of the employee's employment in a 1106
sheltered workshop subsequent to the award, on the condition that 1107
the employee does not receive income, compensation, or 1108
remuneration from that employment in excess of two thousand 1109
dollars in any calendar quarter. As used in this division, 1110
"sheltered workshop" means a state agency or nonprofit 1111
organization established to carry out a program of rehabilitation 1112
for handicapped individuals or to provide these individuals with 1113
remunerative employment or other occupational rehabilitating 1114
activity. 1115

Sec. 4123.65. (A) A state fund employer or the employee of 1116
such an employer may file an application with the administrator of 1117
workers' compensation for approval of a final settlement of a 1118
claim under this chapter. The application shall include the 1119
settlement agreement, and except as otherwise specified in this 1120
division, be signed by the claimant and employer, and clearly set 1121
forth the circumstances by reason of which the proposed settlement 1122
is deemed desirable and that the parties agree to the terms of the 1123
settlement agreement. A claimant may file an application without 1124
an employer's signature in the following situations: 1125

(1) The employer is no longer doing business in Ohio; 1126

(2) The claim no longer is in the employer's industrial 1127
accident or occupational disease experience as provided in 1128
division (B) of section 4123.34 of the Revised Code and the 1129
claimant no longer is employed with that employer; 1130

(3) The employer has failed to comply with section 4123.35 of 1131
the Revised Code. 1132

If a claimant files an application without an employer's 1133
signature, and the employer still is doing business in this state, 1134
the administrator shall send written notice of the application to 1135
the employer immediately upon receipt of the application. If the 1136
employer fails to respond to the notice within thirty days after 1137
the notice is sent, the application need not contain the 1138
employer's signature. 1139

If a state fund employer or an employee of such an employer 1140
has not filed an application for a final settlement under this 1141
division, the administrator may file an application on behalf of 1142
the employer or the employee, provided that the administrator 1143
gives notice of the filing to the employer and the employee and to 1144
the representative of record of the employer and of the employee 1145
immediately upon the filing. An application filed by the 1146

administrator shall contain all of the information and signatures 1147
required of an employer or an employee who files an application 1148
under this division. Every self-insuring employer that enters into 1149
a final settlement agreement with an employee shall mail, within 1150
seven days of executing the agreement, a copy of the agreement to 1151
the administrator and the employee's representative. The 1152
administrator shall place the agreement into the claimant's file. 1153

(B) Except as provided in divisions (C) and (D) of this 1154
section, a settlement agreed to under this section is binding upon 1155
all parties thereto and as to items, injuries, and occupational 1156
diseases to which the settlement applies. 1157

(C) No settlement agreed to under division (A) of this 1158
section or agreed to by a self-insuring employer and the 1159
self-insuring employer's employee shall take effect until thirty 1160
days after the administrator approves the settlement for state 1161
fund employees and employers, or after the self-insuring employer 1162
and employee sign the final settlement agreement. ~~During~~ Except as 1163
otherwise provided in division (G) of this section, during the 1164
thirty-day period, the employer, employee, or administrator, for 1165
state fund settlements, and the employer or employee, for 1166
self-insuring settlements, may withdraw consent to the settlement 1167
by an employer providing written notice to the employer's employee 1168
and the administrator or by an employee providing written notice 1169
to the employee's employer and the administrator, or by the 1170
administrator providing written notice to the state fund employer 1171
and employee. If an employee dies during the thirty-day waiting 1172
period following the approval of a settlement, the settlement can 1173
be voided by any party for good cause shown. 1174

(D) At the time of agreement to any final settlement 1175
agreement under division (A) of this section or agreement between 1176
a self-insuring employer and the self-insuring employer's 1177
employee, the administrator, for state fund settlements, and the 1178

self-insuring employer, for self-insuring settlements, immediately 1179
shall send a copy of the agreement to the industrial commission 1180
who shall assign the matter to a staff hearing officer. The staff 1181
hearing officer shall determine, within the time limitations 1182
specified in division (C) of this section, whether the settlement 1183
agreement is or is not a gross miscarriage of justice. If the 1184
staff hearing officer determines within that time period that the 1185
settlement agreement is clearly unfair, the staff hearing officer 1186
shall issue an order disapproving the settlement agreement. If the 1187
staff hearing officer determines that the settlement agreement is 1188
not clearly unfair or fails to act within those time limits, the 1189
settlement agreement is approved. 1190

(E) A settlement entered into under this section may pertain 1191
to one or more claims of a claimant, or one or more parts of a 1192
claim, or the compensation or benefits pertaining to either, or 1193
any combination thereof, provided that nothing in this section 1194
shall be interpreted to require a claimant to enter into a 1195
settlement agreement for every claim that has been filed with the 1196
bureau of workers' compensation by that claimant under Chapter 1197
4121., 4123., 4127., or 4131. of the Revised Code. 1198

(F) A settlement entered into under this section is not 1199
appealable under section 4123.511 or 4123.512 of the Revised Code. 1200

(G) Notwithstanding any provision of the Revised Code to the 1201
contrary, if a settlement application is filed under this section 1202
regarding a claim that is no longer in an employer's industrial 1203
accident or occupational disease experience as provided in 1204
division (B) of section 4123.34 of the Revised Code, the employer 1205
shall not deny consent or withdraw consent regarding that 1206
settlement application. 1207

Sec. 4123.66. (A) In addition to the compensation provided 1208
for in this chapter, the administrator of workers' compensation 1209

shall disburse and pay from the state insurance fund the amounts 1210
for medical, nurse, and hospital services and medicine as the 1211
administrator deems proper and, in case death ensues from the 1212
injury or occupational disease, the administrator shall disburse 1213
and pay from the fund reasonable funeral expenses in an amount not 1214
to exceed ~~fifty-five~~ seven thousand five hundred dollars. The 1215
bureau of workers' compensation shall reimburse anyone, whether 1216
dependent, volunteer, or otherwise, who pays the funeral expenses 1217
of any employee whose death ensues from any injury or occupational 1218
disease as provided in this section. The administrator may adopt 1219
rules, with the advice and consent of the bureau of workers' 1220
compensation board of directors, with respect to furnishing 1221
medical, nurse, and hospital service and medicine to injured or 1222
disabled employees entitled thereto, and for the payment therefor. 1223
In case an injury or industrial accident that injures an employee 1224
also causes damage to the employee's eyeglasses, artificial teeth 1225
or other denture, or hearing aid, or in the event an injury or 1226
occupational disease makes it necessary or advisable to replace, 1227
repair, or adjust the same, the bureau shall disburse and pay a 1228
reasonable amount to repair or replace the same. 1229

(B) The administrator, in the rules the administrator adopts 1230
pursuant to division (A) of this section, may adopt rules 1231
specifying the circumstances under which the bureau may make 1232
immediate payment for the first fill of prescription drugs for 1233
medical conditions identified in an application for compensation 1234
or benefits under section 4123.84 or 4123.85 of the Revised Code 1235
that occurs prior to the date the administrator issues an initial 1236
determination order under division (B) of section 4123.511 of the 1237
Revised Code. If the claim is ultimately disallowed in a final 1238
administrative or judicial order, and if the employer is a state 1239
fund employer who pays assessments into the surplus fund account 1240
created under section 4123.34 of the Revised Code, the payments 1241

for medical services made pursuant to this division for the first 1242
fill of prescription drugs shall be charged to and paid from the 1243
surplus fund account and not charged through the state insurance 1244
fund to the employer against whom the claim was filed. 1245

(C)(1) If an employer or a welfare plan has provided to or on 1246
behalf of an employee any benefits or compensation for an injury 1247
or occupational disease and that injury or occupational disease is 1248
determined compensable under this chapter, the employer or a 1249
welfare plan may request that the administrator reimburse the 1250
employer or welfare plan for the amount the employer or welfare 1251
plan paid to or on behalf of the employee in compensation or 1252
benefits. The administrator shall reimburse the employer or 1253
welfare plan for the compensation and benefits paid if, at the 1254
time the employer or welfare plan provides the benefits or 1255
compensation to or on behalf of employee, the injury or 1256
occupational disease had not been determined to be compensable 1257
under this chapter and if the employee was not receiving 1258
compensation or benefits under this chapter for that injury or 1259
occupational disease. The administrator shall reimburse the 1260
employer or welfare plan in the amount that the administrator 1261
would have paid to or on behalf of the employee under this chapter 1262
if the injury or occupational disease originally would have been 1263
determined compensable under this chapter. If the employer is a 1264
merit-rated employer, the administrator shall adjust the amount of 1265
premium next due from the employer according to the amount the 1266
administrator pays the employer. The administrator shall adopt 1267
rules, in accordance with Chapter 119. of the Revised Code, to 1268
implement this division. 1269

(2) As used in this division, "welfare plan" has the same 1270
meaning as in division (1) of 29 U.S.C.A. 1002. 1271

(D)(1) Subject to the requirements of division (D)(2) of this 1272
section, the administrator may make a payment of up to five 1273

hundred dollars to either of the following:	1274
(a) The centers of medicare and medicaid services, for	1275
reimbursement of conditional payments made pursuant to the	1276
"Medicare Secondary Payer Act," 42 U.S.C. 1395y;	1277
(b) The Ohio department of medicaid, or a medical assistance	1278
provider to whom the department has assigned a right of recovery	1279
for a claim for which the department has notified the provider	1280
that the department intends to recoup the department's prior	1281
payment for the claim, for reimbursement under sections 5160.35 to	1282
5160.43 of the Revised Code for the cost of medical assistance	1283
paid on behalf of a medical assistance recipient.	1284
(2) The administrator may make a payment under division	1285
(D)(1) of this section if the administrator makes a reasonable	1286
determination that both of the following apply:	1287
(a) The payment is for reimbursement of benefits for an	1288
injury or occupational disease.	1289
(b) The injury or occupational disease is compensable, or is	1290
likely to be compensable, under this chapter or Chapter 4121.,	1291
4127., or 4131. of the Revised Code.	1292
(3) Any payment made pursuant to this division shall be	1293
charged to and paid from the surplus fund account created under	1294
section 4123.34 of the Revised Code.	1295
(4) Nothing in this division shall be construed as limiting	1296
the centers of medicare and medicaid services, the department, or	1297
any other entity with a lawful right to reimbursement from	1298
recovering sums greater than five hundred dollars.	1299
(5) The administrator may adopt rules, with the advice and	1300
consent of the bureau of workers' compensation board of directors,	1301
to implement this division.	1302
Sec. 4131.03. (A) For the relief of persons who are entitled	1303

to receive benefits by virtue of the federal act, there is hereby 1304
established a coal-workers pneumoconiosis fund, which shall be 1305
separate from the funds established and administered pursuant to 1306
Chapter 4123. of the Revised Code. The fund shall consist of 1307
premiums and other payments thereto by subscribers who elect to 1308
subscribe to the fund to insure the payment of benefits required 1309
by the federal act. 1310

(B) The coal-workers pneumoconiosis fund shall be in the 1311
custody of the treasurer of state. The bureau of workers' 1312
compensation shall make disbursements from the fund to those 1313
persons entitled to payment therefrom and in the amounts required 1314
pursuant to sections 4131.01 to 4131.06 of the Revised Code. All 1315
investment earnings of the fund shall be credited to the fund. 1316

The director of natural resources annually may request the 1317
administrator of workers' compensation to transfer a portion of 1318
the funds from the net position of the coal-workers pneumoconiosis 1319
fund to the mining regulation and safety fund created in section 1320
1513.30 of the Revised Code for the purposes specified in that 1321
section. If the administrator receives a request, the 1322
administrator shall transfer an amount not to exceed one million 1323
dollars on the first day of July or as soon as possible 1324
thereafter. 1325

The administrator, with the advice and consent of the bureau 1326
of workers' compensation board of directors, shall adopt rules in 1327
accordance with Chapter 119. of the Revised Code governing the 1328
transfer to ensure the solvency of the coal-workers pneumoconiosis 1329
fund. For that purpose, the administrator may establish tests in 1330
the rules based on measures of net assets, liabilities, expenses, 1331
interest, dividend income, or other factors that the administrator 1332
determines appropriate that may be applied before a transfer. 1333

(C) The administrator shall have the same powers to invest 1334
any of the surplus or reserve belonging to the coal-workers 1335

pneumoconiosis fund as are delegated to the administrator under 1336
section 4123.44 of the Revised Code with respect to the state 1337
insurance fund. 1338

(D) If the administrator determines that reinsurance of the 1339
risks of the coal-workers pneumoconiosis fund is necessary to 1340
assure solvency of the fund, the administrator may: 1341

(1) Enter into contracts for the purchase of reinsurance 1342
coverage of the risks of the fund with any company or agency 1343
authorized by law to issue contracts of reinsurance; 1344

(2) Pay the cost of reinsurance from the fund; 1345

(3) Include the costs of reinsurance as a liability and 1346
estimated liability of the fund. 1347

Sec. 4141.01. As used in this chapter, unless the context 1348
otherwise requires: 1349

(A)(1) "Employer" means the state, its instrumentalities, its 1350
political subdivisions and their instrumentalities, Indian tribes, 1351
and any individual or type of organization including any 1352
partnership, limited liability company, association, trust, 1353
estate, joint-stock company, insurance company, or corporation, 1354
whether domestic or foreign, or the receiver, trustee in 1355
bankruptcy, trustee, or the successor thereof, or the legal 1356
representative of a deceased person who subsequent to December 31, 1357
1971, or in the case of political subdivisions or their 1358
instrumentalities, subsequent to December 31, 1973: 1359

(a) Had in employment at least one individual, or in the case 1360
of a nonprofit organization, subsequent to December 31, 1973, had 1361
not less than four individuals in employment for some portion of a 1362
day in each of twenty different calendar weeks, in either the 1363
current or the preceding calendar year whether or not the same 1364
individual was in employment in each such day; or 1365

(b) Except for a nonprofit organization, had paid for service 1366
in employment wages of fifteen hundred dollars or more in any 1367
calendar quarter in either the current or preceding calendar year; 1368
or 1369

(c) Had paid, subsequent to December 31, 1977, for employment 1370
in domestic service in a local college club, or local chapter of a 1371
college fraternity or sorority, cash remuneration of one thousand 1372
dollars or more in any calendar quarter in the current calendar 1373
year or the preceding calendar year, or had paid subsequent to 1374
December 31, 1977, for employment in domestic service in a private 1375
home cash remuneration of one thousand dollars in any calendar 1376
quarter in the current calendar year or the preceding calendar 1377
year: 1378

(i) For the purposes of divisions (A)(1)(a) and (b) of this 1379
section, there shall not be taken into account any wages paid to, 1380
or employment of, an individual performing domestic service as 1381
described in this division. 1382

(ii) An employer under this division shall not be an employer 1383
with respect to wages paid for any services other than domestic 1384
service unless the employer is also found to be an employer under 1385
division (A)(1)(a), (b), or (d) of this section. 1386

(d) As a farm operator or a crew leader subsequent to 1387
December 31, 1977, had in employment individuals in agricultural 1388
labor; and 1389

(i) During any calendar quarter in the current calendar year 1390
or the preceding calendar year, paid cash remuneration of twenty 1391
thousand dollars or more for the agricultural labor; or 1392

(ii) Had at least ten individuals in employment in 1393
agricultural labor, not including agricultural workers who are 1394
aliens admitted to the United States to perform agricultural labor 1395
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1396

"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1397
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 1398
of the twenty different calendar weeks, in either the current or 1399
preceding calendar year whether or not the same individual was in 1400
employment in each day; or 1401

(e) Is not otherwise an employer as defined under division 1402
(A)(1)(a) or (b) of this section; and 1403

(i) For which, within either the current or preceding 1404
calendar year, service, except for domestic service in a private 1405
home not covered under division (A)(1)(c) of this section, is or 1406
was performed with respect to which such employer is liable for 1407
any federal tax against which credit may be taken for 1408
contributions required to be paid into a state unemployment fund; 1409

(ii) Which, as a condition for approval of this chapter for 1410
full tax credit against the tax imposed by the "Federal 1411
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 1412
required, pursuant to such act to be an employer under this 1413
chapter; or 1414

(iii) Who became an employer by election under division 1415
(A)(4) or (5) of this section and for the duration of such 1416
election; or 1417

(f) In the case of the state, its instrumentalities, its 1418
political subdivisions, and their instrumentalities, and Indian 1419
tribes, had in employment, as defined in divisions (B)(2)(a) and 1420
(B)(2)(1) of this section, at least one individual; 1421

(g) For the purposes of division (A)(1)(a) of this section, 1422
if any week includes both the thirty-first day of December and the 1423
first day of January, the days of that week before the first day 1424
of January shall be considered one calendar week and the days 1425
beginning the first day of January another week. 1426

(2) Each individual employed to perform or to assist in 1427

performing the work of any agent or employee of an employer is 1428
employed by such employer for all the purposes of this chapter, 1429
whether such individual was hired or paid directly by such 1430
employer or by such agent or employee, provided the employer had 1431
actual or constructive knowledge of the work. All individuals 1432
performing services for an employer of any person in this state 1433
who maintains two or more establishments within this state are 1434
employed by a single employer for the purposes of this chapter. 1435

(3) An employer subject to this chapter within any calendar 1436
year is subject to this chapter during the whole of such year and 1437
during the next succeeding calendar year. 1438

(4) An employer not otherwise subject to this chapter who 1439
files with the director of job and family services a written 1440
election to become an employer subject to this chapter for not 1441
less than two calendar years shall, with the written approval of 1442
such election by the director, become an employer subject to this 1443
chapter to the same extent as all other employers as of the date 1444
stated in such approval, and shall cease to be subject to this 1445
chapter as of the first day of January of any calendar year 1446
subsequent to such two calendar years only if at least thirty days 1447
prior to such first day of January the employer has filed with the 1448
director a written notice to that effect. 1449

(5) Any employer for whom services that do not constitute 1450
employment are performed may file with the director a written 1451
election that all such services performed by individuals in the 1452
employer's employ in one or more distinct establishments or places 1453
of business shall be deemed to constitute employment for all the 1454
purposes of this chapter, for not less than two calendar years. 1455
Upon written approval of the election by the director, such 1456
services shall be deemed to constitute employment subject to this 1457
chapter from and after the date stated in such approval. Such 1458
services shall cease to be employment subject to this chapter as 1459

of the first day of January of any calendar year subsequent to 1460
such two calendar years only if at least thirty days prior to such 1461
first day of January such employer has filed with the director a 1462
written notice to that effect. 1463

(6) "Employer" does not include a franchisor with respect to 1464
the franchisor's relationship with a franchisee or an employee of 1465
a franchisee, unless the franchisor agrees to assume that role in 1466
writing or a court of competent jurisdiction determines that the 1467
franchisor exercises a type or degree of control over the 1468
franchisee or the franchisee's employees that is not customarily 1469
exercised by a franchisor for the purpose of protecting the 1470
franchisor's trademark, brand, or both. For purposes of this 1471
division, "franchisor" and "franchisee" have the same meanings as 1472
in 16 C.F.R. 436.1. 1473

(B)(1) "Employment" means service performed by an individual 1474
for remuneration under any contract of hire, written or oral, 1475
express or implied, including service performed in interstate 1476
commerce and service performed by an officer of a corporation, 1477
without regard to whether such service is executive, managerial, 1478
or manual in nature, and without regard to whether such officer is 1479
a stockholder or a member of the board of directors of the 1480
corporation, unless it is shown to the satisfaction of the 1481
director, based upon a determination made by the superintendent of 1482
industrial compliance under Chapter 4177. of the Revised Code, 1483
that such individual has been and will continue to be free from 1484
direction or control over the performance of such service, both 1485
under a contract of service and in fact. ~~The director shall adopt~~ 1486
~~rules to define "direction or control."~~ 1487

(2) "Employment" includes: 1488

(a) Service performed after December 31, 1977, by an 1489
individual in the employ of the state or any of its 1490
instrumentalities, or any political subdivision thereof or any of 1491

its instrumentalities or any instrumentality of more than one of 1492
the foregoing or any instrumentality of any of the foregoing and 1493
one or more other states or political subdivisions and without 1494
regard to divisions (A)(1)(a) and (b) of this section, provided 1495
that such service is excluded from employment as defined in the 1496
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 1497
3306(c)(7) and is not excluded under division (B)(3) of this 1498
section; or the services of employees covered by voluntary 1499
election, as provided under divisions (A)(4) and (5) of this 1500
section; 1501

(b) Service performed after December 31, 1971, by an 1502
individual in the employ of a religious, charitable, educational, 1503
or other organization which is excluded from the term "employment" 1504
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 1505
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 1506
3306(c)(8) of that act and is not excluded under division (B)(3) 1507
of this section; 1508

(c) Domestic service performed after December 31, 1977, for 1509
an employer, as provided in division (A)(1)(c) of this section; 1510

(d) Agricultural labor performed after December 31, 1977, for 1511
a farm operator or a crew leader, as provided in division 1512
(A)(1)(d) of this section; 1513

(e) Subject to division (B)(2)(m) of this section, service 1514
not covered under division (B)(1) of this section which is 1515
performed after December 31, 1971: 1516

(i) As an agent-driver or commission-driver engaged in 1517
distributing meat products, vegetable products, fruit products, 1518
bakery products, beverages other than milk, laundry, or 1519
dry-cleaning services, for the individual's employer or principal; 1520

(ii) As a traveling or city salesperson, other than as an 1521
agent-driver or commission-driver, engaged on a full-time basis in 1522

the solicitation on behalf of and in the transmission to the 1523
salesperson's employer or principal except for sideline sales 1524
activities on behalf of some other person of orders from 1525
wholesalers, retailers, contractors, or operators of hotels, 1526
restaurants, or other similar establishments for merchandise for 1527
resale, or supplies for use in their business operations, provided 1528
that for the purposes of division (B)(2)(e)(ii) of this section, 1529
the services shall be deemed employment if the contract of service 1530
contemplates that substantially all of the services are to be 1531
performed personally by the individual and that the individual 1532
does not have a substantial investment in facilities used in 1533
connection with the performance of the services other than in 1534
facilities for transportation, and the services are not in the 1535
nature of a single transaction that is not a part of a continuing 1536
relationship with the person for whom the services are performed. 1537

(f) An individual's entire service performed within or both 1538
within and without the state if: 1539

(i) The service is localized in this state. 1540

(ii) The service is not localized in any state, but some of 1541
the service is performed in this state and either the base of 1542
operations, or if there is no base of operations then the place 1543
from which such service is directed or controlled, is in this 1544
state or the base of operations or place from which such service 1545
is directed or controlled is not in any state in which some part 1546
of the service is performed but the individual's residence is in 1547
this state. 1548

(g) Service not covered under division (B)(2)(f)(ii) of this 1549
section and performed entirely without this state, with respect to 1550
no part of which contributions are required and paid under an 1551
unemployment compensation law of any other state, the Virgin 1552
Islands, Canada, or of the United States, if the individual 1553
performing such service is a resident of this state and the 1554

director approves the election of the employer for whom such 1555
services are performed; or, if the individual is not a resident of 1556
this state but the place from which the service is directed or 1557
controlled is in this state, the entire services of such 1558
individual shall be deemed to be employment subject to this 1559
chapter, provided service is deemed to be localized within this 1560
state if the service is performed entirely within this state or if 1561
the service is performed both within and without this state but 1562
the service performed without this state is incidental to the 1563
individual's service within the state, for example, is temporary 1564
or transitory in nature or consists of isolated transactions; 1565

(h) Service of an individual who is a citizen of the United 1566
States, performed outside the United States except in Canada after 1567
December 31, 1971, or the Virgin Islands, after December 31, 1971, 1568
and before the first day of January of the year following that in 1569
which the United States secretary of labor approves the Virgin 1570
Islands law for the first time, in the employ of an American 1571
employer, other than service which is "employment" under divisions 1572
(B)(2)(f) and (g) of this section or similar provisions of another 1573
state's law, if: 1574

(i) The employer's principal place of business in the United 1575
States is located in this state; 1576

(ii) The employer has no place of business in the United 1577
States, but the employer is an individual who is a resident of 1578
this state; or the employer is a corporation which is organized 1579
under the laws of this state, or the employer is a partnership or 1580
a trust and the number of partners or trustees who are residents 1581
of this state is greater than the number who are residents of any 1582
other state; or 1583

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 1584
of this section is met but the employer has elected coverage in 1585
this state or the employer having failed to elect coverage in any 1586

state, the individual has filed a claim for benefits, based on 1587
such service, under this chapter. 1588

(i) For the purposes of division (B)(2)(h) of this section, 1589
the term "American employer" means an employer who is an 1590
individual who is a resident of the United States; or a 1591
partnership, if two-thirds or more of the partners are residents 1592
of the United States; or a trust, if all of the trustees are 1593
residents of the United States; or a corporation organized under 1594
the laws of the United States or of any state, provided the term 1595
"United States" includes the states, the District of Columbia, the 1596
Commonwealth of Puerto Rico, and the Virgin Islands. 1597

(j) Notwithstanding any other provisions of divisions (B)(1) 1598
and (2) of this section, service, except for domestic service in a 1599
private home not covered under division (A)(1)(c) of this section, 1600
with respect to which a tax is required to be paid under any 1601
federal law imposing a tax against which credit may be taken for 1602
contributions required to be paid into a state unemployment fund, 1603
or service, except for domestic service in a private home not 1604
covered under division (A)(1)(c) of this section, which, as a 1605
condition for full tax credit against the tax imposed by the 1606
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1607
3311, is required to be covered under this chapter. 1608

(k) Construction services performed by any individual under a 1609
construction contract, as defined in section 4141.39 of the 1610
Revised Code, ~~if the director determines that the employer for~~ 1611
~~whom services are performed has the right to direct or control the~~ 1612
~~performance of the services and that the individuals who perform~~ 1613
~~the services receive remuneration for the services performed. The~~ 1614
~~director shall presume that the employer for whom services are~~ 1615
~~performed has the right to direct or control the performance of~~ 1616
~~the services if ten or more of the following criteria apply:~~ 1617

~~(i) The employer directs or controls the manner or method by~~ 1618

which instructions are given to the individual performing	1619
services;	1620
(ii) The employer requires particular training for the	1621
individual performing services;	1622
(iii) Services performed by the individual are integrated	1623
into the regular functioning of the employer;	1624
(iv) The employer requires that services be provided by a	1625
particular individual;	1626
(v) The employer hires, supervises, or pays the wages of the	1627
individual performing services;	1628
(vi) A continuing relationship between the employer and the	1629
individual performing services exists which contemplates	1630
continuing or recurring work, even if not full time work;	1631
(vii) The employer requires the individual to perform	1632
services during established hours;	1633
(viii) The employer requires that the individual performing	1634
services be devoted on a full time basis to the business of the	1635
employer;	1636
(ix) The employer requires the individual to perform services	1637
on the employer's premises;	1638
(x) The employer requires the individual performing services	1639
to follow the order of work established by the employer;	1640
(xi) The employer requires the individual performing services	1641
to make oral or written reports of progress;	1642
(xii) The employer makes payment to the individual for	1643
services on a regular basis, such as hourly, weekly, or monthly;	1644
(xiii) The employer pays expenses for the individual	1645
performing services;	1646
(xiv) The employer furnishes the tools and materials for use	1647

by the individual to perform services;	1648
(xv) The individual performing services has not invested in the facilities used to perform services;	1649
(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;	1651
(xvii) The individual performing services is not performing services for more than two employers simultaneously;	1652
(xviii) The individual performing services does not make the services available to the general public;	1653
(xix) The employer has a right to discharge the individual performing services;	1654
(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.	1655
(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.	1660
(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:	1661
(i) The individual owns the vehicle or vessel that is used in	1662
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performing the services for or on behalf of the carrier, or the 1678
individual leases the vehicle or vessel under a bona fide lease 1679
agreement that is not a temporary replacement lease agreement. For 1680
purposes of this division, a bona fide lease agreement does not 1681
include an agreement between the individual and the motor carrier 1682
transporting property for which, or on whose behalf, the 1683
individual provides services. 1684

(ii) The individual is responsible for supplying the 1685
necessary personal services to operate the vehicle or vessel used 1686
to provide the service. 1687

(iii) The compensation paid to the individual is based on 1688
factors related to work performed, including on a mileage-based 1689
rate or a percentage of any schedule of rates, and not solely on 1690
the basis of the hours or time expended. 1691

(iv) The individual substantially controls the means and 1692
manner of performing the services, in conformance with regulatory 1693
requirements and specifications of the shipper. 1694

(v) The individual enters into a written contract with the 1695
carrier for whom the individual is performing the services that 1696
describes the relationship between the individual and the carrier 1697
to be that of an independent contractor and not that of an 1698
employee. 1699

(vi) The individual is responsible for substantially all of 1700
the principal operating costs of the vehicle or vessel and 1701
equipment used to provide the services, including maintenance, 1702
fuel, repairs, supplies, vehicle or vessel insurance, and personal 1703
expenses, except that the individual may be paid by the carrier 1704
the carrier's fuel surcharge and incidental costs, including 1705
tolls, permits, and lump sum fees. 1706

(vii) The individual is responsible for any economic loss or 1707
economic gain from the arrangement with the carrier. 1708

(viii) The individual is not performing services described in 1709
26 U.S.C. 3306(c)(7) or (8). 1710

(3) "Employment" does not include the following services if 1711
they are found not subject to the "Federal Unemployment Tax Act," 1712
84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services 1713
are not required to be included under division (B)(2)(j) of this 1714
section: 1715

(a) Service performed after December 31, 1977, in 1716
agricultural labor, except as provided in division (A)(1)(d) of 1717
this section; 1718

(b) Domestic service performed after December 31, 1977, in a 1719
private home, local college club, or local chapter of a college 1720
fraternity or sorority except as provided in division (A)(1)(c) of 1721
this section; 1722

(c) Service performed after December 31, 1977, for this state 1723
or a political subdivision as described in division (B)(2)(a) of 1724
this section when performed: 1725

(i) As a publicly elected official; 1726

(ii) As a member of a legislative body, or a member of the 1727
judiciary; 1728

(iii) As a military member of the Ohio national guard; 1729

(iv) As an employee, not in the classified service as defined 1730
in section 124.11 of the Revised Code, serving on a temporary 1731
basis in case of fire, storm, snow, earthquake, flood, or similar 1732
emergency; 1733

(v) In a position which, under or pursuant to law, is 1734
designated as a major nontenured policymaking or advisory 1735
position, not in the classified service of the state, or a 1736
policymaking or advisory position the performance of the duties of 1737
which ordinarily does not require more than eight hours per week. 1738

(d) In the employ of any governmental unit or instrumentality of the United States;	1739 1740
(e) Service performed after December 31, 1971:	1741
(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	1742 1743 1744 1745 1746
(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.	1747 1748 1749 1750 1751 1752 1753 1754 1755 1756 1757
(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;	1758 1759 1760 1761
(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:	1762 1763 1764 1765 1766 1767 1768 1769

(i) By an individual for an employer as an insurance agent or as an insurance solicitor, if all this service is performed for remuneration solely by way of commission;	1770 1771 1772
(ii) As a home worker performing work, according to specifications furnished by the employer for whom the services are performed, on materials or goods furnished by such employer which are required to be returned to the employer or to a person designated for that purpose.	1773 1774 1775 1776 1777
(h) Service performed after December 31, 1971:	1778
(i) In the employ of a church or convention or association of churches, or in an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;	1779 1780 1781 1782 1783
(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry or by a member of a religious order in the exercise of duties required by such order; or	1784 1785 1786 1787
(iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.	1788 1789 1790 1791 1792 1793 1794
(i) Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the "Railroad Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351;	1795 1796 1797
(j) Service performed by an individual in the employ of any organization exempt from income tax under section 501 of the "Internal Revenue Code of 1954," if the remuneration for such	1798 1799 1800

service does not exceed fifty dollars in any calendar quarter, or 1801
if such service is in connection with the collection of dues or 1802
premiums for a fraternal beneficial society, order, or association 1803
and is performed away from the home office or is ritualistic 1804
service in connection with any such society, order, or 1805
association; 1806

(k) Casual labor not in the course of an employer's trade or 1807
business; incidental service performed by an officer, appraiser, 1808
or member of a finance committee of a bank, building and loan 1809
association, savings and loan association, or savings association 1810
when the remuneration for such incidental service exclusive of the 1811
amount paid or allotted for directors' fees does not exceed sixty 1812
dollars per calendar quarter is casual labor; 1813

(l) Service performed in the employ of a voluntary employees' 1814
beneficial association providing for the payment of life, 1815
sickness, accident, or other benefits to the members of such 1816
association or their dependents or their designated beneficiaries, 1817
if admission to a membership in such association is limited to 1818
individuals who are officers or employees of a municipal or public 1819
corporation, of a political subdivision of the state, or of the 1820
United States and no part of the net earnings of such association 1821
inures, other than through such payments, to the benefit of any 1822
private shareholder or individual; 1823

(m) Service performed by an individual in the employ of a 1824
foreign government, including service as a consular or other 1825
officer or employee or of a nondiplomatic representative; 1826

(n) Service performed in the employ of an instrumentality 1827
wholly owned by a foreign government if the service is of a 1828
character similar to that performed in foreign countries by 1829
employees of the United States or of an instrumentality thereof 1830
and if the director finds that the secretary of state of the 1831
United States has certified to the secretary of the treasury of 1832

the United States that the foreign government, with respect to 1833
whose instrumentality exemption is claimed, grants an equivalent 1834
exemption with respect to similar service performed in the foreign 1835
country by employees of the United States and of instrumentalities 1836
thereof; 1837

(o) Service with respect to which unemployment compensation 1838
is payable under an unemployment compensation system established 1839
by an act of congress; 1840

(p) Service performed as a student nurse in the employ of a 1841
hospital or a nurses' training school by an individual who is 1842
enrolled and is regularly attending classes in a nurses' training 1843
school chartered or approved pursuant to state law, and service 1844
performed as an intern in the employ of a hospital by an 1845
individual who has completed a four years' course in a medical 1846
school chartered or approved pursuant to state law; 1847

(q) Service performed by an individual under the age of 1848
eighteen in the delivery or distribution of newspapers or shopping 1849
news, not including delivery or distribution to any point for 1850
subsequent delivery or distribution; 1851

(r) Service performed in the employ of the United States or 1852
an instrumentality of the United States immune under the 1853
Constitution of the United States from the contributions imposed 1854
by this chapter, except that to the extent that congress permits 1855
states to require any instrumentalities of the United States to 1856
make payments into an unemployment fund under a state unemployment 1857
compensation act, this chapter shall be applicable to such 1858
instrumentalities and to services performed for such 1859
instrumentalities in the same manner, to the same extent, and on 1860
the same terms as to all other employers, individuals, and 1861
services, provided that if this state is not certified for any 1862
year by the proper agency of the United States under section 3304 1863
of the "Internal Revenue Code of 1954," the payments required of 1864

such instrumentalities with respect to such year shall be refunded 1865
by the director from the fund in the same manner and within the 1866
same period as is provided in division (E) of section 4141.09 of 1867
the Revised Code with respect to contributions erroneously 1868
collected; 1869

(s) Service performed by an individual as a member of a band 1870
or orchestra, provided such service does not represent the 1871
principal occupation of such individual, and which service is not 1872
subject to or required to be covered for full tax credit against 1873
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1874
183 (1939), 26 U.S.C.A. 3301 to 3311. 1875

(t) Service performed in the employ of a day camp whose 1876
camping season does not exceed twelve weeks in any calendar year, 1877
and which service is not subject to the "Federal Unemployment Tax 1878
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1879
performed after December 31, 1971: 1880

(i) In the employ of a hospital, if the service is performed 1881
by a patient of the hospital, as defined in division (W) of this 1882
section; 1883

(ii) For a prison or other correctional institution by an 1884
inmate of the prison or correctional institution; 1885

(iii) Service performed after December 31, 1977, by an inmate 1886
of a custodial institution operated by the state, a political 1887
subdivision, or a nonprofit organization. 1888

(u) Service that is performed by a nonresident alien 1889
individual for the period the individual temporarily is present in 1890
the United States as a nonimmigrant under division (F), (J), (M), 1891
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1892
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1893
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1894
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1895

(v) Notwithstanding any other provisions of division (B)(3) 1896
of this section, services that are excluded under divisions 1897
(B)(3)(g), (j), (k), and (l) of this section shall not be excluded 1898
from employment when performed for a nonprofit organization, as 1899
defined in division (X) of this section, or for this state or its 1900
instrumentalities, or for a political subdivision or its 1901
instrumentalities or for Indian tribes; 1902

(w) Service that is performed by an individual working as an 1903
election official or election worker if the amount of remuneration 1904
received by the individual during the calendar year for services 1905
as an election official or election worker is less than one 1906
thousand dollars; 1907

(x) Service performed for an elementary or secondary school 1908
that is operated primarily for religious purposes, that is 1909
described in subsection 501(c)(3) and exempt from federal income 1910
taxation under subsection 501(a) of the Internal Revenue Code, 26 1911
U.S.C.A. 501; 1912

(y) Service performed by a person committed to a penal 1913
institution. 1914

(z) Service performed for an Indian tribe as described in 1915
division (B)(2)(1) of this section when performed in any of the 1916
following manners: 1917

(i) As a publicly elected official; 1918

(ii) As a member of an Indian tribal council; 1919

(iii) As a member of a legislative or judiciary body; 1920

(iv) In a position which, pursuant to Indian tribal law, is 1921
designated as a major nontenured policymaking or advisory 1922
position, or a policymaking or advisory position where the 1923
performance of the duties ordinarily does not require more than 1924
eight hours of time per week; 1925

(v) As an employee serving on a temporary basis in the case 1926
of a fire, storm, snow, earthquake, flood, or similar emergency. 1927

(aa) Service performed after December 31, 1971, for a 1928
nonprofit organization, this state or its instrumentalities, a 1929
political subdivision or its instrumentalities, or an Indian tribe 1930
as part of an unemployment work-relief or work-training program 1931
assisted or financed in whole or in part by any federal agency or 1932
an agency of a state or political subdivision, thereof, by an 1933
individual receiving the work-relief or work-training. 1934

(bb) Participation in a learn to earn program as defined in 1935
section 4141.293 of the Revised Code. 1936

(4) If the services performed during one half or more of any 1937
pay period by an employee for the person employing that employee 1938
constitute employment, all the services of such employee for such 1939
period shall be deemed to be employment; but if the services 1940
performed during more than one half of any such pay period by an 1941
employee for the person employing that employee do not constitute 1942
employment, then none of the services of such employee for such 1943
period shall be deemed to be employment. As used in division 1944
(B)(4) of this section, "pay period" means a period, of not more 1945
than thirty-one consecutive days, for which payment of 1946
remuneration is ordinarily made to the employee by the person 1947
employing that employee. Division (B)(4) of this section does not 1948
apply to services performed in a pay period by an employee for the 1949
person employing that employee, if any of such service is excepted 1950
by division (B)(3)(o) of this section. 1951

(C) "Benefits" means money payments payable to an individual 1952
who has established benefit rights, as provided in this chapter, 1953
for loss of remuneration due to the individual's unemployment. 1954

(D) "Benefit rights" means the weekly benefit amount and the 1955
maximum benefit amount that may become payable to an individual 1956

within the individual's benefit year as determined by the 1957
director. 1958

(E) "Claim for benefits" means a claim for waiting period or 1959
benefits for a designated week. 1960

(F) "Additional claim" means the first claim for benefits 1961
filed following any separation from employment during a benefit 1962
year; "continued claim" means any claim other than the first claim 1963
for benefits and other than an additional claim. 1964

(G) "Wages" means remuneration paid to an employee by each of 1965
the employee's employers with respect to employment; except that 1966
wages shall not include that part of remuneration paid during any 1967
calendar year to an individual by an employer or such employer's 1968
predecessor in interest in the same business or enterprise, which 1969
in any calendar year is in excess of nine thousand dollars on and 1970
after January 1, 1995; nine thousand five hundred dollars on and 1971
after January 1, 2018; and nine thousand dollars on and after 1972
January 1, 2020. Remuneration in excess of such amounts shall be 1973
deemed wages subject to contribution to the same extent that such 1974
remuneration is defined as wages under the "Federal Unemployment 1975
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1976
amended. The remuneration paid an employee by an employer with 1977
respect to employment in another state, upon which contributions 1978
were required and paid by such employer under the unemployment 1979
compensation act of such other state, shall be included as a part 1980
of remuneration in computing the amount specified in this 1981
division. 1982

(H)(1) "Remuneration" means all compensation for personal 1983
services, including commissions and bonuses and the cash value of 1984
all compensation in any medium other than cash, except that in the 1985
case of agricultural or domestic service, "remuneration" includes 1986
only cash remuneration. Gratuities customarily received by an 1987
individual in the course of the individual's employment from 1988

persons other than the individual's employer and which are 1989
accounted for by such individual to the individual's employer are 1990
taxable wages. 1991

The reasonable cash value of compensation paid in any medium 1992
other than cash shall be estimated and determined in accordance 1993
with rules prescribed by the director, provided that 1994
"remuneration" does not include: 1995

(a) Payments as provided in divisions (b)(2) to (b)(20) of 1996
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 1997
26 U.S.C.A. 3301 to 3311, as amended; 1998

(b) The payment by an employer, without deduction from the 1999
remuneration of the individual in the employer's employ, of the 2000
tax imposed upon an individual in the employer's employ under 2001
section 3101 of the "Internal Revenue Code of 1954," with respect 2002
to services performed after October 1, 1941. 2003

(2) "Cash remuneration" means all remuneration paid in cash, 2004
including commissions and bonuses, but not including the cash 2005
value of all compensation in any medium other than cash. 2006

(I) "Interested party" means the director and any party to 2007
whom notice of a determination of an application for benefit 2008
rights or a claim for benefits is required to be given under 2009
section 4141.28 of the Revised Code. 2010

(J) "Annual payroll" means the total amount of wages subject 2011
to contributions during a twelve-month period ending with the last 2012
day of the second calendar quarter of any calendar year. 2013

(K) "Average annual payroll" means the average of the last 2014
three annual payrolls of an employer, provided that if, as of any 2015
computation date, the employer has had less than three annual 2016
payrolls in such three-year period, such average shall be based on 2017
the annual payrolls which the employer has had as of such date. 2018

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

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

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

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

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

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

(2) "Average weekly wage" means the amount obtained by dividing an individual's total remuneration for all qualifying

weeks during the base period by the number of such qualifying 2050
weeks, provided that if the computation results in an amount that 2051
is not a multiple of one dollar, such amount shall be rounded to 2052
the next lower multiple of one dollar. 2053

(P) "Weekly benefit amount" means the amount of benefits an 2054
individual would be entitled to receive for one week of total 2055
unemployment. 2056

(Q)(1) "Base period" means the first four of the last five 2057
completed calendar quarters immediately preceding the first day of 2058
an individual's benefit year, except as provided in division 2059
(Q)(2) of this section. 2060

(2) If an individual does not have sufficient qualifying 2061
weeks and wages in the base period to qualify for benefit rights, 2062
the individual's base period shall be the four most recently 2063
completed calendar quarters preceding the first day of the 2064
individual's benefit year. Such base period shall be known as the 2065
"alternate base period." If information as to weeks and wages for 2066
the most recent quarter of the alternate base period is not 2067
available to the director from the regular quarterly reports of 2068
wage information, which are systematically accessible, the 2069
director may, consistent with the provisions of section 4141.28 of 2070
the Revised Code, base the determination of eligibility for 2071
benefits on the affidavit of the claimant with respect to weeks 2072
and wages for that calendar quarter. The claimant shall furnish 2073
payroll documentation, where available, in support of the 2074
affidavit. The determination based upon the alternate base period 2075
as it relates to the claimant's benefit rights, shall be amended 2076
when the quarterly report of wage information from the employer is 2077
timely received and that information causes a change in the 2078
determination. As provided in division (B) of section 4141.28 of 2079
the Revised Code, any benefits paid and charged to an employer's 2080
account, based upon a claimant's affidavit, shall be adjusted 2081

effective as of the beginning of the claimant's benefit year. No 2082
calendar quarter in a base period or alternate base period shall 2083
be used to establish a subsequent benefit year. 2084

(3) The "base period" of a combined wage claim, as described 2085
in division (H) of section 4141.43 of the Revised Code, shall be 2086
the base period prescribed by the law of the state in which the 2087
claim is allowed. 2088

(4) For purposes of determining the weeks that comprise a 2089
completed calendar quarter under this division, only those weeks 2090
ending at midnight Saturday within the calendar quarter shall be 2091
utilized. 2092

(R)(1) "Benefit year" with respect to an individual means the 2093
fifty-two week period beginning with the first day of that week 2094
with respect to which the individual first files a valid 2095
application for determination of benefit rights, and thereafter 2096
the fifty-two week period beginning with the first day of that 2097
week with respect to which the individual next files a valid 2098
application for determination of benefit rights after the 2099
termination of the individual's last preceding benefit year, 2100
except that the application shall not be considered valid unless 2101
the individual has had employment in six weeks that is subject to 2102
this chapter or the unemployment compensation act of another 2103
state, or the United States, and has, since the beginning of the 2104
individual's previous benefit year, in the employment earned three 2105
times the average weekly wage determined for the previous benefit 2106
year. The "benefit year" of a combined wage claim, as described in 2107
division (H) of section 4141.43 of the Revised Code, shall be the 2108
benefit year prescribed by the law of the state in which the claim 2109
is allowed. Any application for determination of benefit rights 2110
made in accordance with section 4141.28 of the Revised Code is 2111
valid if the individual filing such application is unemployed, has 2112
been employed by an employer or employers subject to this chapter 2113

in at least twenty qualifying weeks within the individual's base 2114
period, and has earned or been paid remuneration at an average 2115
weekly wage of not less than twenty-seven and one-half per cent of 2116
the statewide average weekly wage for such weeks. For purposes of 2117
determining whether an individual has had sufficient employment 2118
since the beginning of the individual's previous benefit year to 2119
file a valid application, "employment" means the performance of 2120
services for which remuneration is payable. 2121

(2) Effective for benefit years beginning on and after 2122
December 26, 2004, any application for determination of benefit 2123
rights made in accordance with section 4141.28 of the Revised Code 2124
is valid if the individual satisfies the criteria described in 2125
division (R)(1) of this section, and if the reason for the 2126
individual's separation from employment is not disqualifying 2127
pursuant to division (D)(2) of section 4141.29 or section 4141.291 2128
of the Revised Code. A disqualification imposed pursuant to 2129
division (D)(2) of section 4141.29 or section 4141.291 of the 2130
Revised Code must be removed as provided in those sections as a 2131
requirement of establishing a valid application for benefit years 2132
beginning on and after December 26, 2004. 2133

(3) The statewide average weekly wage shall be calculated by 2134
the director once a year based on the twelve-month period ending 2135
the thirtieth day of June, as set forth in division (B)(3) of 2136
section 4141.30 of the Revised Code, rounded down to the nearest 2137
dollar. Increases or decreases in the amount of remuneration 2138
required to have been earned or paid in order for individuals to 2139
have filed valid applications shall become effective on Sunday of 2140
the calendar week in which the first day of January occurs that 2141
follows the twelve-month period ending the thirtieth day of June 2142
upon which the calculation of the statewide average weekly wage 2143
was based. 2144

(4) As used in this division, an individual is "unemployed" 2145

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

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

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

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

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

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

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

is performed on a farm; 2177

(3) In connection with the production or harvesting of any 2178
commodity defined as an agricultural commodity in section 15 (g) 2179
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 2180
U.S.C. 1141j, as amended, or in connection with the ginning of 2181
cotton, or in connection with the operation or maintenance of 2182
ditches, canals, reservoirs, or waterways, not owned or operated 2183
for profit, used exclusively for supplying and storing water for 2184
farming purposes; 2185

(4) In the employ of the operator of a farm in handling, 2186
planting, drying, packing, packaging, processing, freezing, 2187
grading, storing, or delivering to storage or to market or to a 2188
carrier for transportation to market, in its unmanufactured state, 2189
any agricultural or horticultural commodity, but only if the 2190
operator produced more than one half of the commodity with respect 2191
to which such service is performed; 2192

(5) In the employ of a group of operators of farms, or a 2193
cooperative organization of which the operators are members, in 2194
the performance of service described in division (V)(4) of this 2195
section, but only if the operators produced more than one-half of 2196
the commodity with respect to which the service is performed; 2197

(6) Divisions (V)(4) and (5) of this section shall not be 2198
deemed to be applicable with respect to service performed: 2199

(a) In connection with commercial canning or commercial 2200
freezing or in connection with any agricultural or horticultural 2201
commodity after its delivery to a terminal market for distribution 2202
for consumption; or 2203

(b) On a farm operated for profit if the service is not in 2204
the course of the employer's trade or business. 2205

As used in division (V) of this section, "farm" includes 2206
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 2207

plantations, ranches, nurseries, ranges, greenhouses, or other 2208
similar structures used primarily for the raising of agricultural 2209
or horticultural commodities and orchards. 2210

(W) "Hospital" means an institution which has been registered 2211
or licensed by the Ohio department of health as a hospital. 2212

(X) "Nonprofit organization" means an organization, or group 2213
of organizations, described in section 501(c)(3) of the "Internal 2214
Revenue Code of 1954," and exempt from income tax under section 2215
501(a) of that code. 2216

(Y) "Institution of higher education" means a public or 2217
nonprofit educational institution, including an educational 2218
institution operated by an Indian tribe, which: 2219

(1) Admits as regular students only individuals having a 2220
certificate of graduation from a high school, or the recognized 2221
equivalent; 2222

(2) Is legally authorized in this state or by the Indian 2223
tribe to provide a program of education beyond high school; and 2224

(3) Provides an educational program for which it awards a 2225
bachelor's or higher degree, or provides a program which is 2226
acceptable for full credit toward such a degree, a program of 2227
post-graduate or post-doctoral studies, or a program of training 2228
to prepare students for gainful employment in a recognized 2229
occupation. 2230

For the purposes of this division, all colleges and 2231
universities in this state are institutions of higher education. 2232

(Z) For the purposes of this chapter, "states" includes the 2233
District of Columbia, the Commonwealth of Puerto Rico, and the 2234
Virgin Islands. 2235

(AA) "Alien" means, for the purposes of division (A)(1)(d) of 2236
this section, an individual who is an alien admitted to the United 2237

States to perform service in agricultural labor pursuant to 2238
sections 214 (c) and 101 (a)(15)(H) of the "Immigration and 2239
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 2240

(BB)(1) "Crew leader" means an individual who furnishes 2241
individuals to perform agricultural labor for any other employer 2242
or farm operator, and: 2243

(a) Pays, either on the individual's own behalf or on behalf 2244
of the other employer or farm operator, the individuals so 2245
furnished by the individual for the service in agricultural labor 2246
performed by them; 2247

(b) Has not entered into a written agreement with the other 2248
employer or farm operator under which the agricultural worker is 2249
designated as in the employ of the other employer or farm 2250
operator. 2251

(2) For the purposes of this chapter, any individual who is a 2252
member of a crew furnished by a crew leader to perform service in 2253
agricultural labor for any other employer or farm operator shall 2254
be treated as an employee of the crew leader if: 2255

(a) The crew leader holds a valid certificate of registration 2256
under the "Farm Labor Contractor Registration Act of 1963," 90 2257
Stat. 2668, 7 U.S.C. 2041; or 2258

(b) Substantially all the members of the crew operate or 2259
maintain tractors, mechanized harvesting or crop-dusting 2260
equipment, or any other mechanized equipment, which is provided by 2261
the crew leader; and 2262

(c) If the individual is not in the employment of the other 2263
employer or farm operator within the meaning of division (B)(1) of 2264
this section. 2265

(3) For the purposes of this division, any individual who is 2266
furnished by a crew leader to perform service in agricultural 2267

labor for any other employer or farm operator and who is not 2268
treated as in the employment of the crew leader under division 2269
(BB)(2) of this section shall be treated as the employee of the 2270
other employer or farm operator and not of the crew leader. The 2271
other employer or farm operator shall be treated as having paid 2272
cash remuneration to the individual in an amount equal to the 2273
amount of cash remuneration paid to the individual by the crew 2274
leader, either on the crew leader's own behalf or on behalf of the 2275
other employer or farm operator, for the service in agricultural 2276
labor performed for the other employer or farm operator. 2277

(CC) "Educational institution" means an institution other 2278
than an institution of higher education as defined in division (Y) 2279
of this section, including an educational institution operated by 2280
an Indian tribe, which: 2281

(1) Offers participants, trainees, or students an organized 2282
course of study or training designed to transfer to them 2283
knowledge, skills, information, doctrines, attitudes, or abilities 2284
from, by, or under the guidance of an instructor or teacher; and 2285

(2) Is approved, chartered, or issued a permit to operate as 2286
a school by the state board of education, other government agency, 2287
or Indian tribe that is authorized within the state to approve, 2288
charter, or issue a permit for the operation of a school. 2289

For the purposes of this division, the courses of study or 2290
training which the institution offers may be academic, technical, 2291
trade, or preparation for gainful employment in a recognized 2292
occupation. 2293

(DD) "Cost savings day" means any unpaid day off from work in 2294
which employees continue to accrue employee benefits which have a 2295
determinable value including, but not limited to, vacation, 2296
pension contribution, sick time, and life and health insurance. 2297

(EE) "Motor carrier" has the same meaning as in section 2298

4923.01 of the Revised Code.	2299
<u>(FF) "Employee" means every person who is an employee under</u>	2300
<u>the rules adopted by the superintendent of industrial compliance</u>	2301
<u>pursuant to section 4177.01 of the Revised Code, unless the</u>	2302
<u>services performed by the individual do not constitute</u>	2303
<u>"employment" as defined in division (B) of this section.</u>	2304
<u>Sec. 4177.01. The superintendent of industrial compliance</u>	2305
<u>shall adopt rules to establish a test to determine whether an</u>	2306
<u>individual is an employee or independent contractor for purposes</u>	2307
<u>of Chapters 4121., 4123., 4127., 4131., 4141., and 5747. of the</u>	2308
<u>Revised Code, consistent with the common law rules for determining</u>	2309
<u>an employer-employee relationship used by the United States</u>	2310
<u>internal revenue service pursuant to section 3121(d)(2) of the</u>	2311
<u>"Internal Revenue Code of 1986," 26 U.S.C. 3121(d)(2).</u>	2312
<u>Sec. 4177.02. No employer shall fail to consider an</u>	2313
<u>individual who is an employee under the rules adopted by the</u>	2314
<u>superintendent of industrial compliance pursuant to section</u>	2315
<u>4177.01 of the Revised Code to be an employee for purposes of</u>	2316
<u>Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the Revised</u>	2317
<u>Code, unless the individual is otherwise not considered an</u>	2318
<u>employee under the applicable law.</u>	2319
<u>Sec. 4177.03. The superintendent of industrial compliance</u>	2320
<u>shall enforce this chapter. The superintendent shall adopt rules</u>	2321
<u>in accordance with Chapter 119. of the Revised Code to implement</u>	2322
<u>and administer this chapter.</u>	2323
<u>Sec. 4177.04. (A) An individual may file a complaint with the</u>	2324
<u>superintendent of industrial compliance against an employer if the</u>	2325
<u>individual reasonably believes that the employer is in violation</u>	2326
<u>of section 4177.02 of the Revised Code. On receipt of a complaint,</u>	2327

the superintendent shall conduct an investigation into whether the 2328
employer violated section 4177.02 of the Revised Code. 2329

(B) If, after an investigation pursuant to division (A) of 2330
this section, the superintendent determines that reasonable 2331
evidence exists that an employer has violated section 4177.02 of 2332
the Revised Code, the superintendent shall send written notice to 2333
the employer and hold a hearing regarding the alleged violation in 2334
accordance with Chapter 119. of the Revised Code. 2335

(C) If the superintendent determines, after the hearing, that 2336
an employer has misclassified an employee as an independent 2337
contractor, that determination is binding on the administrator of 2338
workers' compensation, the director of job and family services, 2339
and the tax commissioner unless the individual is otherwise not 2340
considered an employee under the applicable law. Notwithstanding 2341
any provision of this section to the contrary, nothing in this 2342
chapter shall be construed to limit or otherwise constrain the 2343
duties and powers of the administrator under Chapter 4121., 4123., 2344
4127., or 4131. of the Revised Code, the director under Chapter 2345
4141. of the Revised Code, or the tax commissioner under Chapter 2346
5703. or 5747. of the Revised Code. 2347

(D) The superintendent's determination is an order that the 2348
employer may appeal in accordance with section 119.12 of the 2349
Revised Code. 2350

Sec. 4177.05. (A) If, after a hearing held in accordance with 2351
section 4177.04 of the Revised Code, the superintendent of 2352
industrial compliance determines that an employer violated section 2353
4177.02 of the Revised Code, the superintendent shall do both of 2354
the following: 2355

(1) Notify the administrator of workers' compensation, the 2356
director of job and family services, and the tax commissioner, 2357

each of whom shall determine whether the employer's violation of 2358
section 4177.02 of the Revised Code results in the employer not 2359
complying with the requirements of Chapter 4121., 4123., 4127., 2360
4131., 4141., or 5747. of the Revised Code, as applicable; 2361

(2) For each day after a complaint was filed under division 2362
(A) of section 4177.04 of the Revised Code, assess against the 2363
employer a penalty of five hundred dollars for each employee the 2364
employer misclassified as an independent contractor in violation 2365
of section 4177.02 of the Revised Code. 2366

(B) The superintendent shall not assess a penalty against an 2367
employer under division (A)(2) of this section if the employer 2368
voluntarily comes into compliance with section 4177.02 of the 2369
Revised Code ten days before the hearing is held pursuant to 2370
section 4177.04 of the Revised Code. 2371

(C) Regardless of the superintendent's determination, the 2372
superintendent shall notify the child support enforcement agency 2373
in the county in which the employee or independent contractor 2374
resides of each individual who is receiving income. 2375

Sec. 4177.06. There is hereby created in the state treasury 2376
the employee classification fund. The superintendent of industrial 2377
compliance shall deposit all moneys the superintendent receives 2378
under this chapter into the fund. The superintendent shall use the 2379
fund for the administration, investigation, and other expenses 2380
incurred in carrying out the superintendent's powers and duties 2381
under this chapter. 2382

Sec. 5747.01. Except as otherwise expressly provided or 2383
clearly appearing from the context, any term used in this chapter 2384
that is not otherwise defined in this section has the same meaning 2385
as when used in a comparable context in the laws of the United 2386
States relating to federal income taxes or if not used in a 2387

comparable context in those laws, has the same meaning as in 2388
section 5733.40 of the Revised Code. Any reference in this chapter 2389
to the Internal Revenue Code includes other laws of the United 2390
States relating to federal income taxes. 2391

As used in this chapter: 2392

(A) "Adjusted gross income" or "Ohio adjusted gross income" 2393
means federal adjusted gross income, as defined and used in the 2394
Internal Revenue Code, adjusted as provided in this section: 2395

(1) Add interest or dividends on obligations or securities of 2396
any state or of any political subdivision or authority of any 2397
state, other than this state and its subdivisions and authorities. 2398

(2) Add interest or dividends on obligations of any 2399
authority, commission, instrumentality, territory, or possession 2400
of the United States to the extent that the interest or dividends 2401
are exempt from federal income taxes but not from state income 2402
taxes. 2403

(3) Deduct interest or dividends on obligations of the United 2404
States and its territories and possessions or of any authority, 2405
commission, or instrumentality of the United States to the extent 2406
that the interest or dividends are included in federal adjusted 2407
gross income but exempt from state income taxes under the laws of 2408
the United States. 2409

(4) Deduct disability and survivor's benefits to the extent 2410
included in federal adjusted gross income. 2411

(5) Deduct benefits under Title II of the Social Security Act 2412
and tier 1 railroad retirement benefits to the extent included in 2413
federal adjusted gross income under section 86 of the Internal 2414
Revenue Code. 2415

(6) In the case of a taxpayer who is a beneficiary of a trust 2416
that makes an accumulation distribution as defined in section 665 2417

of the Internal Revenue Code, add, for the beneficiary's taxable 2418
years beginning before 2002, the portion, if any, of such 2419
distribution that does not exceed the undistributed net income of 2420
the trust for the three taxable years preceding the taxable year 2421
in which the distribution is made to the extent that the portion 2422
was not included in the trust's taxable income for any of the 2423
trust's taxable years beginning in 2002 or thereafter. 2424

"Undistributed net income of a trust" means the taxable income of 2425
the trust increased by (a)(i) the additions to adjusted gross 2426
income required under division (A) of this section and (ii) the 2427
personal exemptions allowed to the trust pursuant to section 2428
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 2429
deductions to adjusted gross income required under division (A) of 2430
this section, (ii) the amount of federal income taxes attributable 2431
to such income, and (iii) the amount of taxable income that has 2432
been included in the adjusted gross income of a beneficiary by 2433
reason of a prior accumulation distribution. Any undistributed net 2434
income included in the adjusted gross income of a beneficiary 2435
shall reduce the undistributed net income of the trust commencing 2436
with the earliest years of the accumulation period. 2437

(7) Deduct the amount of wages and salaries, if any, not 2438
otherwise allowable as a deduction but that would have been 2439
allowable as a deduction in computing federal adjusted gross 2440
income for the taxable year, had the targeted jobs credit allowed 2441
and determined under sections 38, 51, and 52 of the Internal 2442
Revenue Code not been in effect. 2443

(8) Deduct any interest or interest equivalent on public 2444
obligations and purchase obligations to the extent that the 2445
interest or interest equivalent is included in federal adjusted 2446
gross income. 2447

(9) Add any loss or deduct any gain resulting from the sale, 2448
exchange, or other disposition of public obligations to the extent 2449

that the loss has been deducted or the gain has been included in 2450
computing federal adjusted gross income. 2451

(10) Deduct or add amounts, as provided under section 5747.70 2452
of the Revised Code, related to contributions to variable college 2453
savings program accounts made or tuition units purchased pursuant 2454
to Chapter 3334. of the Revised Code. 2455

(11)(a) Deduct, to the extent not otherwise allowable as a 2456
deduction or exclusion in computing federal or Ohio adjusted gross 2457
income for the taxable year, the amount the taxpayer paid during 2458
the taxable year for medical care insurance and qualified 2459
long-term care insurance for the taxpayer, the taxpayer's spouse, 2460
and dependents. No deduction for medical care insurance under 2461
division (A)(11) of this section shall be allowed either to any 2462
taxpayer who is eligible to participate in any subsidized health 2463
plan maintained by any employer of the taxpayer or of the 2464
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2465
application would be entitled to, benefits under part A of Title 2466
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 2467
301, as amended. For the purposes of division (A)(11)(a) of this 2468
section, "subsidized health plan" means a health plan for which 2469
the employer pays any portion of the plan's cost. The deduction 2470
allowed under division (A)(11)(a) of this section shall be the net 2471
of any related premium refunds, related premium reimbursements, or 2472
related insurance premium dividends received during the taxable 2473
year. 2474

(b) Deduct, to the extent not otherwise deducted or excluded 2475
in computing federal or Ohio adjusted gross income during the 2476
taxable year, the amount the taxpayer paid during the taxable 2477
year, not compensated for by any insurance or otherwise, for 2478
medical care of the taxpayer, the taxpayer's spouse, and 2479
dependents, to the extent the expenses exceed seven and one-half 2480
per cent of the taxpayer's federal adjusted gross income. 2481

(c) Deduct, to the extent not otherwise deducted or excluded 2482
in computing federal or Ohio adjusted gross income, any amount 2483
included in federal adjusted gross income under section 105 or not 2484
excluded under section 106 of the Internal Revenue Code solely 2485
because it relates to an accident and health plan for a person who 2486
otherwise would be a "qualifying relative" and thus a "dependent" 2487
under section 152 of the Internal Revenue Code but for the fact 2488
that the person fails to meet the income and support limitations 2489
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 2490

(d) For purposes of division (A)(11) of this section, 2491
"medical care" has the meaning given in section 213 of the 2492
Internal Revenue Code, subject to the special rules, limitations, 2493
and exclusions set forth therein, and "qualified long-term care" 2494
has the same meaning given in section 7702B(c) of the Internal 2495
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 2496
of this section, "dependent" includes a person who otherwise would 2497
be a "qualifying relative" and thus a "dependent" under section 2498
152 of the Internal Revenue Code but for the fact that the person 2499
fails to meet the income and support limitations under section 2500
152(d)(1)(B) and (C) of the Internal Revenue Code. 2501

(12)(a) Deduct any amount included in federal adjusted gross 2502
income solely because the amount represents a reimbursement or 2503
refund of expenses that in any year the taxpayer had deducted as 2504
an itemized deduction pursuant to section 63 of the Internal 2505
Revenue Code and applicable United States department of the 2506
treasury regulations. The deduction otherwise allowed under 2507
division (A)(12)(a) of this section shall be reduced to the extent 2508
the reimbursement is attributable to an amount the taxpayer 2509
deducted under this section in any taxable year. 2510

(b) Add any amount not otherwise included in Ohio adjusted 2511
gross income for any taxable year to the extent that the amount is 2512
attributable to the recovery during the taxable year of any amount 2513

deducted or excluded in computing federal or Ohio adjusted gross 2514
income in any taxable year. 2515

(13) Deduct any portion of the deduction described in section 2516
1341(a)(2) of the Internal Revenue Code, for repaying previously 2517
reported income received under a claim of right, that meets both 2518
of the following requirements: 2519

(a) It is allowable for repayment of an item that was 2520
included in the taxpayer's adjusted gross income for a prior 2521
taxable year and did not qualify for a credit under division (A) 2522
or (B) of section 5747.05 of the Revised Code for that year; 2523

(b) It does not otherwise reduce the taxpayer's adjusted 2524
gross income for the current or any other taxable year. 2525

(14) Deduct an amount equal to the deposits made to, and net 2526
investment earnings of, a medical savings account during the 2527
taxable year, in accordance with section 3924.66 of the Revised 2528
Code. The deduction allowed by division (A)(14) of this section 2529
does not apply to medical savings account deposits and earnings 2530
otherwise deducted or excluded for the current or any other 2531
taxable year from the taxpayer's federal adjusted gross income. 2532

(15)(a) Add an amount equal to the funds withdrawn from a 2533
medical savings account during the taxable year, and the net 2534
investment earnings on those funds, when the funds withdrawn were 2535
used for any purpose other than to reimburse an account holder 2536
for, or to pay, eligible medical expenses, in accordance with 2537
section 3924.66 of the Revised Code; 2538

(b) Add the amounts distributed from a medical savings 2539
account under division (A)(2) of section 3924.68 of the Revised 2540
Code during the taxable year. 2541

(16) Add any amount claimed as a credit under section 2542
5747.059 or 5747.65 of the Revised Code to the extent that such 2543
amount satisfies either of the following: 2544

(a) The amount was deducted or excluded from the computation 2545
of the taxpayer's federal adjusted gross income as required to be 2546
reported for the taxpayer's taxable year under the Internal 2547
Revenue Code; 2548

(b) The amount resulted in a reduction of the taxpayer's 2549
federal adjusted gross income as required to be reported for any 2550
of the taxpayer's taxable years under the Internal Revenue Code. 2551

(17) Deduct the amount contributed by the taxpayer to an 2552
individual development account program established by a county 2553
department of job and family services pursuant to sections 329.11 2554
to 329.14 of the Revised Code for the purpose of matching funds 2555
deposited by program participants. On request of the tax 2556
commissioner, the taxpayer shall provide any information that, in 2557
the tax commissioner's opinion, is necessary to establish the 2558
amount deducted under division (A)(17) of this section. 2559

(18) Beginning in taxable year 2001 but not for any taxable 2560
year beginning after December 31, 2005, if the taxpayer is married 2561
and files a joint return and the combined federal adjusted gross 2562
income of the taxpayer and the taxpayer's spouse for the taxable 2563
year does not exceed one hundred thousand dollars, or if the 2564
taxpayer is single and has a federal adjusted gross income for the 2565
taxable year not exceeding fifty thousand dollars, deduct amounts 2566
paid during the taxable year for qualified tuition and fees paid 2567
to an eligible institution for the taxpayer, the taxpayer's 2568
spouse, or any dependent of the taxpayer, who is a resident of 2569
this state and is enrolled in or attending a program that 2570
culminates in a degree or diploma at an eligible institution. The 2571
deduction may be claimed only to the extent that qualified tuition 2572
and fees are not otherwise deducted or excluded for any taxable 2573
year from federal or Ohio adjusted gross income. The deduction may 2574
not be claimed for educational expenses for which the taxpayer 2575
claims a credit under section 5747.27 of the Revised Code. 2576

(19) Add any reimbursement received during the taxable year 2577
of any amount the taxpayer deducted under division (A)(18) of this 2578
section in any previous taxable year to the extent the amount is 2579
not otherwise included in Ohio adjusted gross income. 2580

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and 2581
(v) of this section, add five-sixths of the amount of depreciation 2582
expense allowed by subsection (k) of section 168 of the Internal 2583
Revenue Code, including the taxpayer's proportionate or 2584
distributive share of the amount of depreciation expense allowed 2585
by that subsection to a pass-through entity in which the taxpayer 2586
has a direct or indirect ownership interest. 2587

(ii) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of 2588
this section, add five-sixths of the amount of qualifying section 2589
179 depreciation expense, including the taxpayer's proportionate 2590
or distributive share of the amount of qualifying section 179 2591
depreciation expense allowed to any pass-through entity in which 2592
the taxpayer has a direct or indirect ownership interest. 2593

(iii) Subject to division (A)(20)(a)(v) of this section, for 2594
taxable years beginning in 2012 or thereafter, if the increase in 2595
income taxes withheld by the taxpayer is equal to or greater than 2596
ten per cent of income taxes withheld by the taxpayer during the 2597
taxpayer's immediately preceding taxable year, "two-thirds" shall 2598
be substituted for "five-sixths" for the purpose of divisions 2599
(A)(20)(a)(i) and (ii) of this section. 2600

(iv) Subject to division (A)(20)(a)(v) of this section, for 2601
taxable years beginning in 2012 or thereafter, a taxpayer is not 2602
required to add an amount under division (A)(20) of this section 2603
if the increase in income taxes withheld by the taxpayer and by 2604
any pass-through entity in which the taxpayer has a direct or 2605
indirect ownership interest is equal to or greater than the sum of 2606
(I) the amount of qualifying section 179 depreciation expense and 2607
(II) the amount of depreciation expense allowed to the taxpayer by 2608

subsection (k) of section 168 of the Internal Revenue Code, and 2609
including the taxpayer's proportionate or distributive shares of 2610
such amounts allowed to any such pass-through entities. 2611

(v) If a taxpayer directly or indirectly incurs a net 2612
operating loss for the taxable year for federal income tax 2613
purposes, to the extent such loss resulted from depreciation 2614
expense allowed by subsection (k) of section 168 of the Internal 2615
Revenue Code and by qualifying section 179 depreciation expense, 2616
"the entire" shall be substituted for "five-sixths of the" for the 2617
purpose of divisions (A)(20)(a)(i) and (ii) of this section. 2618

The tax commissioner, under procedures established by the 2619
commissioner, may waive the add-backs related to a pass-through 2620
entity if the taxpayer owns, directly or indirectly, less than 2621
five per cent of the pass-through entity. 2622

(b) Nothing in division (A)(20) of this section shall be 2623
construed to adjust or modify the adjusted basis of any asset. 2624

(c) To the extent the add-back required under division 2625
(A)(20)(a) of this section is attributable to property generating 2626
nonbusiness income or loss allocated under section 5747.20 of the 2627
Revised Code, the add-back shall be situated to the same location 2628
as the nonbusiness income or loss generated by the property for 2629
the purpose of determining the credit under division (A) of 2630
section 5747.05 of the Revised Code. Otherwise, the add-back shall 2631
be apportioned, subject to one or more of the four alternative 2632
methods of apportionment enumerated in section 5747.21 of the 2633
Revised Code. 2634

(d) For the purposes of division (A)(20)(a)(v) of this 2635
section, net operating loss carryback and carryforward shall not 2636
include the allowance of any net operating loss deduction 2637
carryback or carryforward to the taxable year to the extent such 2638
loss resulted from depreciation allowed by section 168(k) of the 2639

Internal Revenue Code and by the qualifying section 179	2640
depreciation expense amount.	2641
(e) For the purposes of divisions (A)(20) and (21) of this	2642
section:	2643
(i) "Income taxes withheld" means the total amount withheld	2644
and remitted under sections 5747.06 and 5747.07 of the Revised	2645
Code by an employer during the employer's taxable year.	2646
(ii) "Increase in income taxes withheld" means the amount by	2647
which the amount of income taxes withheld by an employer during	2648
the employer's current taxable year exceeds the amount of income	2649
taxes withheld by that employer during the employer's immediately	2650
preceding taxable year.	2651
(iii) "Qualifying section 179 depreciation expense" means the	2652
difference between (I) the amount of depreciation expense directly	2653
or indirectly allowed to a taxpayer under section 179 of the	2654
Internal Revised Code, and (II) the amount of depreciation expense	2655
directly or indirectly allowed to the taxpayer under section 179	2656
of the Internal Revenue Code as that section existed on December	2657
31, 2002.	2658
(21)(a) If the taxpayer was required to add an amount under	2659
division (A)(20)(a) of this section for a taxable year, deduct one	2660
of the following:	2661
(i) One-fifth of the amount so added for each of the five	2662
succeeding taxable years if the amount so added was five-sixths of	2663
qualifying section 179 depreciation expense or depreciation	2664
expense allowed by subsection (k) of section 168 of the Internal	2665
Revenue Code;	2666
(ii) One-half of the amount so added for each of the two	2667
succeeding taxable years if the amount so added was two-thirds of	2668
such depreciation expense;	2669

(iii) One-sixth of the amount so added for each of the six 2670
succeeding taxable years if the entire amount of such depreciation 2671
expense was so added. 2672

(b) If the amount deducted under division (A)(21)(a) of this 2673
section is attributable to an add-back allocated under division 2674
(A)(20)(c) of this section, the amount deducted shall be sitused 2675
to the same location. Otherwise, the add-back shall be apportioned 2676
using the apportionment factors for the taxable year in which the 2677
deduction is taken, subject to one or more of the four alternative 2678
methods of apportionment enumerated in section 5747.21 of the 2679
Revised Code. 2680

(c) No deduction is available under division (A)(21)(a) of 2681
this section with regard to any depreciation allowed by section 2682
168(k) of the Internal Revenue Code and by the qualifying section 2683
179 depreciation expense amount to the extent that such 2684
depreciation results in or increases a federal net operating loss 2685
carryback or carryforward. If no such deduction is available for a 2686
taxable year, the taxpayer may carry forward the amount not 2687
deducted in such taxable year to the next taxable year and add 2688
that amount to any deduction otherwise available under division 2689
(A)(21)(a) of this section for that next taxable year. The 2690
carryforward of amounts not so deducted shall continue until the 2691
entire addition required by division (A)(20)(a) of this section 2692
has been deducted. 2693

(d) No refund shall be allowed as a result of adjustments 2694
made by division (A)(21) of this section. 2695

(22) Deduct, to the extent not otherwise deducted or excluded 2696
in computing federal or Ohio adjusted gross income for the taxable 2697
year, the amount the taxpayer received during the taxable year as 2698
reimbursement for life insurance premiums under section 5919.31 of 2699
the Revised Code. 2700

(23) Deduct, to the extent not otherwise deducted or excluded 2701
in computing federal or Ohio adjusted gross income for the taxable 2702
year, the amount the taxpayer received during the taxable year as 2703
a death benefit paid by the adjutant general under section 5919.33 2704
of the Revised Code. 2705

(24) Deduct, to the extent included in federal adjusted gross 2706
income and not otherwise allowable as a deduction or exclusion in 2707
computing federal or Ohio adjusted gross income for the taxable 2708
year, military pay and allowances received by the taxpayer during 2709
the taxable year for active duty service in the United States 2710
army, air force, navy, marine corps, or coast guard or reserve 2711
components thereof or the national guard. The deduction may not be 2712
claimed for military pay and allowances received by the taxpayer 2713
while the taxpayer is stationed in this state. 2714

(25) Deduct, to the extent not otherwise allowable as a 2715
deduction or exclusion in computing federal or Ohio adjusted gross 2716
income for the taxable year and not otherwise compensated for by 2717
any other source, the amount of qualified organ donation expenses 2718
incurred by the taxpayer during the taxable year, not to exceed 2719
ten thousand dollars. A taxpayer may deduct qualified organ 2720
donation expenses only once for all taxable years beginning with 2721
taxable years beginning in 2007. 2722

For the purposes of division (A)(25) of this section: 2723

(a) "Human organ" means all or any portion of a human liver, 2724
pancreas, kidney, intestine, or lung, and any portion of human 2725
bone marrow. 2726

(b) "Qualified organ donation expenses" means travel 2727
expenses, lodging expenses, and wages and salary forgone by a 2728
taxpayer in connection with the taxpayer's donation, while living, 2729
of one or more of the taxpayer's human organs to another human 2730
being. 2731

(26) Deduct, to the extent not otherwise deducted or excluded 2732
in computing federal or Ohio adjusted gross income for the taxable 2733
year, amounts received by the taxpayer as retired personnel pay 2734
for service in the uniformed services or reserve components 2735
thereof, or the national guard, or received by the surviving 2736
spouse or former spouse of such a taxpayer under the survivor 2737
benefit plan on account of such a taxpayer's death. If the 2738
taxpayer receives income on account of retirement paid under the 2739
federal civil service retirement system or federal employees 2740
retirement system, or under any successor retirement program 2741
enacted by the congress of the United States that is established 2742
and maintained for retired employees of the United States 2743
government, and such retirement income is based, in whole or in 2744
part, on credit for the taxpayer's uniformed service, the 2745
deduction allowed under this division shall include only that 2746
portion of such retirement income that is attributable to the 2747
taxpayer's uniformed service, to the extent that portion of such 2748
retirement income is otherwise included in federal adjusted gross 2749
income and is not otherwise deducted under this section. Any 2750
amount deducted under division (A)(26) of this section is not 2751
included in a taxpayer's adjusted gross income for the purposes of 2752
section 5747.055 of the Revised Code. No amount may be deducted 2753
under division (A)(26) of this section on the basis of which a 2754
credit was claimed under section 5747.055 of the Revised Code. 2755

(27) Deduct, to the extent not otherwise deducted or excluded 2756
in computing federal or Ohio adjusted gross income for the taxable 2757
year, the amount the taxpayer received during the taxable year 2758
from the military injury relief fund created in section 5902.05 of 2759
the Revised Code. 2760

(28) Deduct, to the extent not otherwise deducted or excluded 2761
in computing federal or Ohio adjusted gross income for the taxable 2762
year, the amount the taxpayer received as a veterans bonus during 2763

the taxable year from the Ohio department of veterans services as 2764
authorized by Section 2r of Article VIII, Ohio Constitution. 2765

(29) Deduct, to the extent not otherwise deducted or excluded 2766
in computing federal or Ohio adjusted gross income for the taxable 2767
year, any income derived from a transfer agreement or from the 2768
enterprise transferred under that agreement under section 4313.02 2769
of the Revised Code. 2770

(30) Deduct, to the extent not otherwise deducted or excluded 2771
in computing federal or Ohio adjusted gross income for the taxable 2772
year, Ohio college opportunity or federal Pell grant amounts 2773
received by the taxpayer or the taxpayer's spouse or dependent 2774
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 2775
1070a, et seq., and used to pay room or board furnished by the 2776
educational institution for which the grant was awarded at the 2777
institution's facilities, including meal plans administered by the 2778
institution. For the purposes of this division, receipt of a grant 2779
includes the distribution of a grant directly to an educational 2780
institution and the crediting of the grant to the enrollee's 2781
account with the institution. 2782

(31)(a) For taxable years beginning in 2015, deduct from the 2783
portion of an individual's adjusted gross income that is business 2784
income, to the extent not otherwise deducted or excluded in 2785
computing federal or Ohio adjusted gross income for the taxable 2786
year, the lesser of the following amounts: 2787

(i) Seventy-five per cent of the individual's business 2788
income; 2789

(ii) Ninety-three thousand seven hundred fifty dollars for 2790
each spouse if spouses file separate returns under section 5747.08 2791
of the Revised Code or one hundred eighty-seven thousand five 2792
hundred dollars for all other individuals. 2793

(b) For taxable years beginning in 2016 or thereafter, deduct 2794

from the portion of an individual's adjusted gross income that is 2795
business income, to the extent not otherwise deducted or excluded 2796
in computing federal adjusted gross income for the taxable year, 2797
one hundred twenty-five thousand dollars for each spouse if 2798
spouses file separate returns under section 5747.08 of the Revised 2799
Code or two hundred fifty thousand dollars for all other 2800
individuals. 2801

(32) Deduct, as provided under section 5747.78 of the Revised 2802
Code, contributions to ABLE savings accounts made in accordance 2803
with sections 113.50 to 113.56 of the Revised Code. 2804

(33)(a) Deduct, to the extent not otherwise deducted or 2805
excluded in computing federal or Ohio adjusted gross income during 2806
the taxable year, all of the following: 2807

(i) Compensation paid to a qualifying employee described in 2808
division (A)(14)(a) of section 5703.94 of the Revised Code to the 2809
extent such compensation is for disaster work conducted in this 2810
state during a disaster response period pursuant to a qualifying 2811
solicitation received by the employee's employer; 2812

(ii) Compensation paid to a qualifying employee described in 2813
division (A)(14)(b) of section 5703.94 of the Revised Code to the 2814
extent such compensation is for disaster work conducted in this 2815
state by the employee during the disaster response period on 2816
critical infrastructure owned or used by the employee's employer; 2817

(iii) Income received by an out-of-state disaster business 2818
for disaster work conducted in this state during a disaster 2819
response period, or, if the out-of-state disaster business is a 2820
pass-through entity, a taxpayer's distributive share of the 2821
pass-through entity's income from the business conducting disaster 2822
work in this state during a disaster response period, if, in 2823
either case, the disaster work is conducted pursuant to a 2824
qualifying solicitation received by the business. 2825

(b) All terms used in division (A)(33) of this section have the same meanings as in section 5703.94 of the Revised Code.	2826 2827
(B) "Business income" means income, including gain or loss, arising from transactions, activities, and sources in the regular course of a trade or business and includes income, gain, or loss from real property, tangible property, and intangible property if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.	2828 2829 2830 2831 2832 2833 2834 2835 2836 2837
(C) "Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.	2838 2839 2840 2841 2842
(D) "Compensation" means any form of remuneration paid to an employee for personal services.	2843 2844
(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.	2845 2846 2847
(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	2848 2849
(G) "Individual" means any natural person.	2850
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	2851 2852
(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:	2853 2854 2855

(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	2856 2857
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.	2858 2859 2860 2861
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	2862 2863 2864
For the purposes of division (I)(3) of this section:	2865
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	2866 2867 2868 2869 2870 2871
(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;	2872 2873 2874 2875
(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;	2876 2877 2878 2879 2880 2881
(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter	2882 2883 2884 2885 2886

during all or some portion of the trust's current taxable year. If 2887
a trust document or instrument became irrevocable upon the death 2888
of a person who at the time of death was domiciled in this state 2889
for purposes of this chapter, that person is a person described in 2890
division (I)(3)(a)(iii) of this section. 2891

(b) A trust is irrevocable to the extent that the transferor 2892
is not considered to be the owner of the net assets of the trust 2893
under sections 671 to 678 of the Internal Revenue Code. 2894

(c) With respect to a trust other than a charitable lead 2895
trust, "qualifying beneficiary" has the same meaning as "potential 2896
current beneficiary" as defined in section 1361(e)(2) of the 2897
Internal Revenue Code, and with respect to a charitable lead trust 2898
"qualifying beneficiary" is any current, future, or contingent 2899
beneficiary, but with respect to any trust "qualifying 2900
beneficiary" excludes a person or a governmental entity or 2901
instrumentality to any of which a contribution would qualify for 2902
the charitable deduction under section 170 of the Internal Revenue 2903
Code. 2904

(d) For the purposes of division (I)(3)(a) of this section, 2905
the extent to which a trust consists directly or indirectly, in 2906
whole or in part, of assets, net of any related liabilities, that 2907
were transferred directly or indirectly, in whole or part, to the 2908
trust by any of the sources enumerated in that division shall be 2909
ascertained by multiplying the fair market value of the trust's 2910
assets, net of related liabilities, by the qualifying ratio, which 2911
shall be computed as follows: 2912

(i) The first time the trust receives assets, the numerator 2913
of the qualifying ratio is the fair market value of those assets 2914
at that time, net of any related liabilities, from sources 2915
enumerated in division (I)(3)(a) of this section. The denominator 2916
of the qualifying ratio is the fair market value of all the 2917
trust's assets at that time, net of any related liabilities. 2918

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

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

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

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

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

(f) For the purposes of division (I)(3)(e)(ii) of this

section, a "qualifying transfer" is a transfer of assets, net of 2950
any related liabilities, directly or indirectly to a trust, if the 2951
transfer is described in any of the following: 2952

(i) The transfer is made to a trust, created by the decedent 2953
before the decedent's death and while the decedent was domiciled 2954
in this state for the purposes of this chapter, and, prior to the 2955
death of the decedent, the trust became irrevocable while the 2956
decedent was domiciled in this state for the purposes of this 2957
chapter. 2958

(ii) The transfer is made to a trust to which the decedent, 2959
prior to the decedent's death, had directly or indirectly 2960
transferred assets, net of any related liabilities, while the 2961
decedent was domiciled in this state for the purposes of this 2962
chapter, and prior to the death of the decedent the trust became 2963
irrevocable while the decedent was domiciled in this state for the 2964
purposes of this chapter. 2965

(iii) The transfer is made on account of a contractual 2966
relationship existing directly or indirectly between the 2967
transferor and either the decedent or the estate of the decedent 2968
at any time prior to the date of the decedent's death, and the 2969
decedent was domiciled in this state at the time of death for 2970
purposes of the taxes levied under Chapter 5731. of the Revised 2971
Code. 2972

(iv) The transfer is made to a trust on account of a 2973
contractual relationship existing directly or indirectly between 2974
the transferor and another person who at the time of the 2975
decedent's death was domiciled in this state for purposes of this 2976
chapter. 2977

(v) The transfer is made to a trust on account of the will of 2978
a testator who was domiciled in this state at the time of the 2979
testator's death for purposes of the taxes levied under Chapter 2980

5731. of the Revised Code.	2981
(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.	2982 2983 2984 2985 2986 2987
(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.	2988 2989
(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.	2990 2991 2992 2993
(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.	2994 2995
(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required.	2996 2997 2998 2999
(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.	3000 3001 3002 3003
(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.	3004 3005 3006 3007
(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been	3008 3009 3010

permitted to claim had the taxpayer filed a federal income tax return. 3011
3012

(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed. 3013
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(Q) As used in sections 5747.50 to 5747.55 of the Revised Code: 3018
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(1) "Subdivision" means any county, municipal corporation, park district, or township. 3020
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(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution. 3022
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(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax. 3026
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(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows: 3028
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(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section: 3031
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(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to 3039
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beneficiaries for the taxable year; 3041

(b) The net amount is attributable to the S portion of an 3042
electing small business trust for the taxable year. 3043

(2) Add interest or dividends, net of ordinary, necessary, 3044
and reasonable expenses not deducted in computing federal taxable 3045
income, on obligations of any authority, commission, 3046
instrumentality, territory, or possession of the United States to 3047
the extent that the interest or dividends are exempt from federal 3048
income taxes but not from state income taxes, but only to the 3049
extent that such net amount is not otherwise includible in Ohio 3050
taxable income and is described in either division (S)(1)(a) or 3051
(b) of this section; 3052

(3) Add the amount of personal exemption allowed to the 3053
estate pursuant to section 642(b) of the Internal Revenue Code; 3054

(4) Deduct interest or dividends, net of related expenses 3055
deducted in computing federal taxable income, on obligations of 3056
the United States and its territories and possessions or of any 3057
authority, commission, or instrumentality of the United States to 3058
the extent that the interest or dividends are exempt from state 3059
taxes under the laws of the United States, but only to the extent 3060
that such amount is included in federal taxable income and is 3061
described in either division (S)(1)(a) or (b) of this section; 3062

(5) Deduct the amount of wages and salaries, if any, not 3063
otherwise allowable as a deduction but that would have been 3064
allowable as a deduction in computing federal taxable income for 3065
the taxable year, had the targeted jobs credit allowed under 3066
sections 38, 51, and 52 of the Internal Revenue Code not been in 3067
effect, but only to the extent such amount relates either to 3068
income included in federal taxable income for the taxable year or 3069
to income of the S portion of an electing small business trust for 3070
the taxable year; 3071

(6) Deduct any interest or interest equivalent, net of 3072
related expenses deducted in computing federal taxable income, on 3073
public obligations and purchase obligations, but only to the 3074
extent that such net amount relates either to income included in 3075
federal taxable income for the taxable year or to income of the S 3076
portion of an electing small business trust for the taxable year; 3077

(7) Add any loss or deduct any gain resulting from sale, 3078
exchange, or other disposition of public obligations to the extent 3079
that such loss has been deducted or such gain has been included in 3080
computing either federal taxable income or income of the S portion 3081
of an electing small business trust for the taxable year; 3082

(8) Except in the case of the final return of an estate, add 3083
any amount deducted by the taxpayer on both its Ohio estate tax 3084
return pursuant to section 5731.14 of the Revised Code, and on its 3085
federal income tax return in determining federal taxable income; 3086

(9)(a) Deduct any amount included in federal taxable income 3087
solely because the amount represents a reimbursement or refund of 3088
expenses that in a previous year the decedent had deducted as an 3089
itemized deduction pursuant to section 63 of the Internal Revenue 3090
Code and applicable treasury regulations. The deduction otherwise 3091
allowed under division (S)(9)(a) of this section shall be reduced 3092
to the extent the reimbursement is attributable to an amount the 3093
taxpayer or decedent deducted under this section in any taxable 3094
year. 3095

(b) Add any amount not otherwise included in Ohio taxable 3096
income for any taxable year to the extent that the amount is 3097
attributable to the recovery during the taxable year of any amount 3098
deducted or excluded in computing federal or Ohio taxable income 3099
in any taxable year, but only to the extent such amount has not 3100
been distributed to beneficiaries for the taxable year. 3101

(10) Deduct any portion of the deduction described in section 3102

1341(a)(2) of the Internal Revenue Code, for repaying previously 3103
reported income received under a claim of right, that meets both 3104
of the following requirements: 3105

(a) It is allowable for repayment of an item that was 3106
included in the taxpayer's taxable income or the decedent's 3107
adjusted gross income for a prior taxable year and did not qualify 3108
for a credit under division (A) or (B) of section 5747.05 of the 3109
Revised Code for that year. 3110

(b) It does not otherwise reduce the taxpayer's taxable 3111
income or the decedent's adjusted gross income for the current or 3112
any other taxable year. 3113

(11) Add any amount claimed as a credit under section 3114
5747.059 or 5747.65 of the Revised Code to the extent that the 3115
amount satisfies either of the following: 3116

(a) The amount was deducted or excluded from the computation 3117
of the taxpayer's federal taxable income as required to be 3118
reported for the taxpayer's taxable year under the Internal 3119
Revenue Code; 3120

(b) The amount resulted in a reduction in the taxpayer's 3121
federal taxable income as required to be reported for any of the 3122
taxpayer's taxable years under the Internal Revenue Code. 3123

(12) Deduct any amount, net of related expenses deducted in 3124
computing federal taxable income, that a trust is required to 3125
report as farm income on its federal income tax return, but only 3126
if the assets of the trust include at least ten acres of land 3127
satisfying the definition of "land devoted exclusively to 3128
agricultural use" under section 5713.30 of the Revised Code, 3129
regardless of whether the land is valued for tax purposes as such 3130
land under sections 5713.30 to 5713.38 of the Revised Code. If the 3131
trust is a pass-through entity investor, section 5747.231 of the 3132
Revised Code applies in ascertaining if the trust is eligible to 3133

claim the deduction provided by division (S)(12) of this section 3134
in connection with the pass-through entity's farm income. 3135

Except for farm income attributable to the S portion of an 3136
electing small business trust, the deduction provided by division 3137
(S)(12) of this section is allowed only to the extent that the 3138
trust has not distributed such farm income. Division (S)(12) of 3139
this section applies only to taxable years of a trust beginning in 3140
2002 or thereafter. 3141

(13) Add the net amount of income described in section 641(c) 3142
of the Internal Revenue Code to the extent that amount is not 3143
included in federal taxable income. 3144

(14) Add or deduct the amount the taxpayer would be required 3145
to add or deduct under division (A)(20) or (21) of this section if 3146
the taxpayer's Ohio taxable income were computed in the same 3147
manner as an individual's Ohio adjusted gross income is computed 3148
under this section. In the case of a trust, division (S)(14) of 3149
this section applies only to any of the trust's taxable years 3150
beginning in 2002 or thereafter. 3151

(T) "School district income" and "school district income tax" 3152
have the same meanings as in section 5748.01 of the Revised Code. 3153

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 3154
of this section, "public obligations," "purchase obligations," and 3155
"interest or interest equivalent" have the same meanings as in 3156
section 5709.76 of the Revised Code. 3157

(V) "Limited liability company" means any limited liability 3158
company formed under Chapter 1705. of the Revised Code or under 3159
the laws of any other state. 3160

(W) "Pass-through entity investor" means any person who, 3161
during any portion of a taxable year of a pass-through entity, is 3162
a partner, member, shareholder, or equity investor in that 3163
pass-through entity. 3164

(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.	3165 3166
(Y) "Month" means a calendar month.	3167
(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.	3168 3169 3170
(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.	3171 3172 3173 3174 3175 3176 3177 3178 3179
(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:	3180 3181 3182 3183 3184 3185 3186 3187 3188 3189
(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;	3190 3191 3192
(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;	3193 3194 3195

(c) Tuition, fees, or other expenses paid or reimbursed	3196
through an employer, scholarship, grant in aid, or other	3197
educational benefit program.	3198
(BB)(1) "Modified business income" means the business income	3199
included in a trust's Ohio taxable income after such taxable	3200
income is first reduced by the qualifying trust amount, if any.	3201
(2) "Qualifying trust amount" of a trust means capital gains	3202
and losses from the sale, exchange, or other disposition of equity	3203
or ownership interests in, or debt obligations of, a qualifying	3204
investee to the extent included in the trust's Ohio taxable	3205
income, but only if the following requirements are satisfied:	3206
(a) The book value of the qualifying investee's physical	3207
assets in this state and everywhere, as of the last day of the	3208
qualifying investee's fiscal or calendar year ending immediately	3209
prior to the date on which the trust recognizes the gain or loss,	3210
is available to the trust.	3211
(b) The requirements of section 5747.011 of the Revised Code	3212
are satisfied for the trust's taxable year in which the trust	3213
recognizes the gain or loss.	3214
Any gain or loss that is not a qualifying trust amount is	3215
modified business income, qualifying investment income, or	3216
modified nonbusiness income, as the case may be.	3217
(3) "Modified nonbusiness income" means a trust's Ohio	3218
taxable income other than modified business income, other than the	3219
qualifying trust amount, and other than qualifying investment	3220
income, as defined in section 5747.012 of the Revised Code, to the	3221
extent such qualifying investment income is not otherwise part of	3222
modified business income.	3223
(4) "Modified Ohio taxable income" applies only to trusts,	3224
and means the sum of the amounts described in divisions (BB)(4)(a)	3225
to (c) of this section:	3226

(a) The fraction, calculated under section 5747.013, and 3227
applying section 5747.231 of the Revised Code, multiplied by the 3228
sum of the following amounts: 3229

(i) The trust's modified business income; 3230

(ii) The trust's qualifying investment income, as defined in 3231
section 5747.012 of the Revised Code, but only to the extent the 3232
qualifying investment income does not otherwise constitute 3233
modified business income and does not otherwise constitute a 3234
qualifying trust amount. 3235

(b) The qualifying trust amount multiplied by a fraction, the 3236
numerator of which is the sum of the book value of the qualifying 3237
investee's physical assets in this state on the last day of the 3238
qualifying investee's fiscal or calendar year ending immediately 3239
prior to the day on which the trust recognizes the qualifying 3240
trust amount, and the denominator of which is the sum of the book 3241
value of the qualifying investee's total physical assets 3242
everywhere on the last day of the qualifying investee's fiscal or 3243
calendar year ending immediately prior to the day on which the 3244
trust recognizes the qualifying trust amount. If, for a taxable 3245
year, the trust recognizes a qualifying trust amount with respect 3246
to more than one qualifying investee, the amount described in 3247
division (BB)(4)(b) of this section shall equal the sum of the 3248
products so computed for each such qualifying investee. 3249

(c)(i) With respect to a trust or portion of a trust that is 3250
a resident as ascertained in accordance with division (I)(3)(d) of 3251
this section, its modified nonbusiness income. 3252

(ii) With respect to a trust or portion of a trust that is 3253
not a resident as ascertained in accordance with division 3254
(I)(3)(d) of this section, the amount of its modified nonbusiness 3255
income satisfying the descriptions in divisions (B)(2) to (5) of 3256
section 5747.20 of the Revised Code, except as otherwise provided 3257

in division (BB)(4)(c)(ii) of this section. With respect to a 3258
trust or portion of a trust that is not a resident as ascertained 3259
in accordance with division (I)(3)(d) of this section, the trust's 3260
portion of modified nonbusiness income recognized from the sale, 3261
exchange, or other disposition of a debt interest in or equity 3262
interest in a section 5747.212 entity, as defined in section 3263
5747.212 of the Revised Code, without regard to division (A) of 3264
that section, shall not be allocated to this state in accordance 3265
with section 5747.20 of the Revised Code but shall be apportioned 3266
to this state in accordance with division (B) of section 5747.212 3267
of the Revised Code without regard to division (A) of that 3268
section. 3269

If the allocation and apportionment of a trust's income under 3270
divisions (BB)(4)(a) and (c) of this section do not fairly 3271
represent the modified Ohio taxable income of the trust in this 3272
state, the alternative methods described in division (C) of 3273
section 5747.21 of the Revised Code may be applied in the manner 3274
and to the same extent provided in that section. 3275

(5)(a) Except as set forth in division (BB)(5)(b) of this 3276
section, "qualifying investee" means a person in which a trust has 3277
an equity or ownership interest, or a person or unit of government 3278
the debt obligations of either of which are owned by a trust. For 3279
the purposes of division (BB)(2)(a) of this section and for the 3280
purpose of computing the fraction described in division (BB)(4)(b) 3281
of this section, all of the following apply: 3282

(i) If the qualifying investee is a member of a qualifying 3283
controlled group on the last day of the qualifying investee's 3284
fiscal or calendar year ending immediately prior to the date on 3285
which the trust recognizes the gain or loss, then "qualifying 3286
investee" includes all persons in the qualifying controlled group 3287
on such last day. 3288

(ii) If the qualifying investee, or if the qualifying 3289

investee and any members of the qualifying controlled group of 3290
which the qualifying investee is a member on the last day of the 3291
qualifying investee's fiscal or calendar year ending immediately 3292
prior to the date on which the trust recognizes the gain or loss, 3293
separately or cumulatively own, directly or indirectly, on the 3294
last day of the qualifying investee's fiscal or calendar year 3295
ending immediately prior to the date on which the trust recognizes 3296
the qualifying trust amount, more than fifty per cent of the 3297
equity of a pass-through entity, then the qualifying investee and 3298
the other members are deemed to own the proportionate share of the 3299
pass-through entity's physical assets which the pass-through 3300
entity directly or indirectly owns on the last day of the 3301
pass-through entity's calendar or fiscal year ending within or 3302
with the last day of the qualifying investee's fiscal or calendar 3303
year ending immediately prior to the date on which the trust 3304
recognizes the qualifying trust amount. 3305

(iii) For the purposes of division (BB)(5)(a)(iii) of this 3306
section, "upper level pass-through entity" means a pass-through 3307
entity directly or indirectly owning any equity of another 3308
pass-through entity, and "lower level pass-through entity" means 3309
that other pass-through entity. 3310

An upper level pass-through entity, whether or not it is also 3311
a qualifying investee, is deemed to own, on the last day of the 3312
upper level pass-through entity's calendar or fiscal year, the 3313
proportionate share of the lower level pass-through entity's 3314
physical assets that the lower level pass-through entity directly 3315
or indirectly owns on the last day of the lower level pass-through 3316
entity's calendar or fiscal year ending within or with the last 3317
day of the upper level pass-through entity's fiscal or calendar 3318
year. If the upper level pass-through entity directly and 3319
indirectly owns less than fifty per cent of the equity of the 3320
lower level pass-through entity on each day of the upper level 3321

pass-through entity's calendar or fiscal year in which or with 3322
which ends the calendar or fiscal year of the lower level 3323
pass-through entity and if, based upon clear and convincing 3324
evidence, complete information about the location and cost of the 3325
physical assets of the lower pass-through entity is not available 3326
to the upper level pass-through entity, then solely for purposes 3327
of ascertaining if a gain or loss constitutes a qualifying trust 3328
amount, the upper level pass-through entity shall be deemed as 3329
owning no equity of the lower level pass-through entity for each 3330
day during the upper level pass-through entity's calendar or 3331
fiscal year in which or with which ends the lower level 3332
pass-through entity's calendar or fiscal year. Nothing in division 3333
(BB)(5)(a)(iii) of this section shall be construed to provide for 3334
any deduction or exclusion in computing any trust's Ohio taxable 3335
income. 3336

(b) With respect to a trust that is not a resident for the 3337
taxable year and with respect to a part of a trust that is not a 3338
resident for the taxable year, "qualifying investee" for that 3339
taxable year does not include a C corporation if both of the 3340
following apply: 3341

(i) During the taxable year the trust or part of the trust 3342
recognizes a gain or loss from the sale, exchange, or other 3343
disposition of equity or ownership interests in, or debt 3344
obligations of, the C corporation. 3345

(ii) Such gain or loss constitutes nonbusiness income. 3346

(6) "Available" means information is such that a person is 3347
able to learn of the information by the due date plus extensions, 3348
if any, for filing the return for the taxable year in which the 3349
trust recognizes the gain or loss. 3350

(CC) "Qualifying controlled group" has the same meaning as in 3351
section 5733.04 of the Revised Code. 3352

(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code. 3353
3354

(EE)(1) For the purposes of division (EE) of this section: 3355

(a) "Qualifying person" means any person other than a qualifying corporation. 3356
3357

(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following: 3358
3359
3360

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year; 3361
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3363
3364

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year. 3365
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3367
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(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation. 3369
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3371

(FF) For purposes of this chapter and Chapter 5751. of the Revised Code: 3372
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(1) "Trust" does not include a qualified pre-income tax trust. 3374
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(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (FF)(3) of this section. 3376
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(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, 3379
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directly, indirectly, or constructively through related interests, 3383
five per cent or more of the ownership or equity interests. The 3384
trustee shall notify the tax commissioner in writing of the 3385
election on or before April 15, 2006. The election, if timely 3386
made, shall be effective on and after January 1, 2006, and shall 3387
apply for all tax periods and tax years until revoked by the 3388
trustee of the trust. 3389

(4) A "pre-income tax trust" is a trust that satisfies all of 3390
the following requirements: 3391

(a) The document or instrument creating the trust was 3392
executed by the grantor before January 1, 1972; 3393

(b) The trust became irrevocable upon the creation of the 3394
trust; and 3395

(c) The grantor was domiciled in this state at the time the 3396
trust was created. 3397

(GG) "Uniformed services" has the same meaning as in 10 3398
U.S.C. 101. 3399

(HH) "Taxable business income" means the amount by which an 3400
individual's business income that is included in federal adjusted 3401
gross income exceeds the amount of business income the individual 3402
is authorized to deduct under division (A)(31) of this section for 3403
the taxable year. 3404

(II) "Employer" does not include a franchisor with respect to 3405
the franchisor's relationship with a franchisee or an employee of 3406
a franchisee, unless the franchisor agrees to assume that role in 3407
writing or a court of competent jurisdiction determines that the 3408
franchisor exercises a type or degree of control over the 3409
franchisee or the franchisee's employees that is not customarily 3410
exercised by a franchisor for the purpose of protecting the 3411
franchisor's trademark, brand, or both. For purposes of this 3412
division, "franchisor" and "franchisee" have the same meanings as 3413

in 16 C.F.R. 436.1. 3414

(JJ) "Employee" means an individual who is an employee under 3415
the rules adopted by the superintendent of industrial compliance 3416
pursuant to section 4177.01 of the Revised Code. 3417

Section 7. That existing sections 4113.21, 4121.01, 4123.01, 3418
4123.026, 4123.038, 4123.46, 4123.52, 4123.56, 4123.58, 4123.65, 3419
4123.66, 4131.03, 4141.01, and 5747.01 of the Revised Code are 3420
hereby repealed. 3421

Section 8. Sections 4121.471, 4123.01, 4123.026, 4123.46, 3422
4123.52, 4123.56, 4123.58, 4123.65, and 4123.66 of the Revised 3423
Code, as amended or enacted by Section 6 of this act, apply to 3424
claims under Chapter 4121., 4123., 4127., or 4131. of the Revised 3425
Code arising on or after the effective date of this section, 3426
except that division (F) of section 4123.56 and section 4123.58 of 3427
the Revised Code as amended by Section 6 of this act also apply to 3428
claims that are pending on the effective date of this section. 3429

Section 9. Division (A) of section 4123.512 of the Revised 3430
Code, as amended by Sub. H.B. 27 of the 132nd General Assembly, 3431
applies to claims under Chapter 4121., 4123., 4127., or 4131. of 3432
the Revised Code pending on or arising after September 29, 2017. 3433